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“Economic Espionage and Trade Secret Theft:
Are Our Laws Adequate for Today’s Threats?”

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Introduction

Good morning, Chairman Whitehouse, Ranking Member Graham, and members of the Committee. On behalf of The Boeing Company, I thank you for convening this hearing and am grateful for your leadership on efforts to improve trade secrets laws. It is a privilege to be a participant on this panel and provide Boeing's view on the challenges faced by America's innovators.

Company Introduction

Boeing first began making twin-float seaplanes in 1915 from a small red boathouse in Seattle, and while much has changed since then, our company remains unique in that we assemble, test and deliver most of our highly-competitive products right here in the United States. The final assembly facilities for our commercial products are located in the states of Washington and South Carolina, but we have facilities for engineering and manufacturing major components in multiple states beyond those two—including Oregon, Florida, California, Montana and Utah, where we have a growing presence. Our defense and space-related production primarily is located in the states of California, Missouri, Pennsylvania, Texas, Arizona, Florida and Alabama.

Today Boeing has 160,000 employees across the United States. Both during and in the wake of the recent global recession we hired many new talent workers with critical skills—and created a total of more than 15,000 new, high-paying jobs since 2005. Our hiring has been driven by our record order backlog of \$441 billion, \$374 billion of that attributable to our commercial airplanes. With more than 5,000 commercial aircraft on order, our commercial backlog is diverse, with customers across the world committing to purchase a full range of Boeing airplanes. While 80 percent of our commercial airplanes go to airlines outside the United States, 80 percent of our supplier spend is with U.S. companies. Last year, we paid \$48 billion to more than 15,600 U.S. businesses, including 6,600 small or disadvantaged businesses, which collectively support an additional 1.5 million jobs across the country.

Boeing's Trade Secrets Are Its Competitive Advantage

Boeing's significant contribution to the U.S. economy today, as it has been for the past 100 years, is the result of the ingenuity of our highly skilled workers. Innovating each step of the way, they develop the designs, drawings, software, chemical formulas and manufacturing techniques that make our commercial airplanes, fighters, transports, refueling aircraft, helicopters, satellites, electronic and defense systems, advanced information and communication systems—the most sought after products and technologies in the world. Boeing protects much of its intellectual property through trade secret laws.

Of course, Boeing's cutting edge technologies take years to develop at an enormous expense. For example, when we design, model, build, and test an airplane, even each component of a plane, we make tremendous investments of time and money. And we build several different kinds of planes. For each, Boeing invests in facilities, research and development, product design and production system design, implementation and, of course, countless hours of numerous teams of skilled engineers and technicians. But those investments can be wiped out in an instant. Once publicly disclosed, rights in trade secrets may be lost forever, along with the competitive advantage they provide. Boeing cannot afford to have its technologies stolen or have its competitors, both old and new, take advantage of decades of technology investment and the vast amount of spending Boeing has committed to perfect the design of just one of our products. But that is the real threat Boeing faces every day.

Trade secret protections are vital to protecting Boeing's substantial intellectual property. Boeing does not simply have one recipe for its secret sauce; Boeing has thousands of trade secrets that are critical to maintaining its unparalleled success. We not only invent new aircraft and techniques for building them, but we are constantly inventing and reinventing the thousands of components that go into them, and even the tools and processes for making those components. Unfortunately, Boeing's valuable scientific, technical, engineering, financial, business or economic information is at significant risk.

The Threat

Of course, Boeing is on constant guard to prevent the escape of our trade secrets. But today, companies cannot simply lock their trade secrets in a safe. The vast majority of our business and engineering information is stored electronically. And with the productivity that comes with the digital age also come significant risks. We recognize that at any moment we could lose a trade secret, through a breach of our network, through disclosure by one of our employees or partners, or through an escape at one of our or our many suppliers' facilities.

We know this because Boeing has been a victim of this crime. In a well known case, Boeing was victimized by an employee who collected sensitive documents containing trade secrets relating to technologies used in the Space Shuttle and Delta IV rocket programs.

We are not just up against mere thieves; in some cases, we are up against concerted public-private nation-state efforts using every collection platform at their disposal to aid their domestic industrial, military and economic development. To combat these sophisticated attacks requires truly innovative private-public partnerships that take advantage of information sources and talents within our federal organizations, as well as those skills contained within private industry. In addition to proactively working to protect our secrets, we need to tell those involved that this theft is a crime and send a message that we will not stand by as these concerted efforts harm our businesses, our economy and steal our jobs.

A Threat to the U.S. Economy

Fear of trade secret theft is not a concern just for Boeing. In February of 2013, the White House issued the Administration's Strategy on Mitigating the Theft of U.S. Trade Secrets ("White House Strategy"), which includes a summary of several criminal trade secret cases that the Department of Justice has prosecuted over the past few years. Targeted U.S. companies included an array of household names including Corning, DuPont, Motorola, Ford, GM, Dow Chemical, and many others. This summary details the theft, here in the United States, of the crown jewels of several major companies. Our partners at the Department of Justice can attest to the fact that if there are dozens of cases of trade secret thefts that have been publicly prosecuted, there are many more instances of theft which did not become public and were not addressed. The theft of these trade secrets enables competitors to move directly into the production of competing knock-off products, thereby avoiding the investments and risks that the U.S. innovator must shoulder to bring a product to market. And this is not just a concern for big businesses. Middle and small-size companies that rely on trade secrets have as much or more to fear as we do, particularly if their survival depends on a single product or service.

The White House Strategy concludes that the pace of economic espionage and trade secret theft against U.S. corporations is accelerating and moving to the cyber world. Because online attacks are hard to detect, allow access to more information at once, and are difficult to attribute, in its 2011 report, the Office of the National Counterintelligence Executive predicts that cyber intrusions will become the preferred

method for trade secret theft. Even though online trade secret theft appears to be on the rise, it is worth noting that none of the prosecuted cases listed in the summary of cases involved online theft.

The Need to Act

Given the risk U.S. companies face every day, something more needs to be done to deter cyber thieves from attempting to steal our trade secrets. Thus, we strongly support your efforts, Chairman Whitehouse and Ranking Member Graham, to call attention to the issue and to provide law enforcement with additional tools to help deter such trade secret theft. It is critical to the U.S. economy and necessary to protect jobs here that we take affirmative steps to strengthen our laws and further protect our invaluable trade secrets, and we are happy to help you in those efforts in any way we can.

We also applaud the efforts of law enforcement, both federal and state, to help companies react to the significant threat trade secret theft is to U.S. business and the U.S. economy. Undoubtedly, we have the best law enforcement in the world. I must emphasize that Boeing greatly appreciates the assistance it has received from law enforcement over the years. And while the Economic Espionage Act provides an excellent law enforcement tool to help stem the tide of this illegal activity, the threat is so pervasive that federal law enforcement cannot always be expected to go it alone.

While containing a vital trade secret may be the highest priority of a victim company, it would be unreasonable to expect it to always be the highest priority of federal law enforcement. Federal law enforcement is simultaneously combating significant crimes on many fronts. We acknowledge that its resources have limits. Thus, in addition to recognizing the need to strengthen law enforcement's authority to combat trade secret theft, we also acknowledge the need for companies to have the ability, in those cases when federal law enforcement cannot act swiftly, to take immediate action of our own to contain an escape of our trade secrets.

The Uniform Trade Secrets Act (UTSA) provides a general framework for state legislatures to adopt trade secret protections, and companies have successfully brought cases in state courts. As a model law, however, the standards, procedures and remedies can vary from state-to-state and the time needed for either state or company officials to come up to speed to adapt to local procedures may make all the difference. Jurisdictional issues may complicate matters further if, for example, the thief resides in a state different from the state in which the theft occurred. Accordingly, it is a real concern of U.S. companies that state action under the Uniform Trade Secrets Act may not, in some instance, be immediate enough to prevent the loss of a trade secret.

When a company has a trade secret on the verge of escaping its grasp, it must have the ability to act immediately to prevent that escape. Thus, we also applaud Senator Coons and Senator Hatch for introducing the Defend Trade Secrets Act and your efforts to establish the right for companies to file an application in a federal district court

requesting an order to seize property containing trade secrets stolen from the company, when necessary to prevent the irreparable harm disclosure of those trade secrets will cause. Stopping criminals from getting on a plane with our trade secrets and, thereby, preventing their disclosure, is indeed our highest priority. And, in those worst cases, where the secret is disclosed to a competitor and a company is seriously harmed, companies should be empowered to seek damages, so long as appropriate safeguards are in place to prevent abuse. We look forward to working with Senator Coons and Senator Hatch on this bill, and supporting your efforts to encourage the Congress to act quickly to pass this important legislation.

We are also thankful to Senator Flake for his recognition that many of these files are destined for competitors located outside of the U.S., and the difficulties U.S. companies face as a result. We are grateful for his efforts to address that aspect of the problem and look forward to working with Senator Flake to strengthen trade secret laws.

We are also encouraged that the new laws under discussion, if passed, would strengthen overseas trade secret enforcement, by raising awareness of the issue, promoting cooperation between U.S. and foreign law enforcement, and empowering our trade negotiators to encourage our trading partners to similarly raise the bar.

Closing

We applaud the efforts of Chairman Whitehouse, Ranking Member Graham and the other Members of the Subcommittee to highlight this issue and to strengthen U.S. trade

secret laws, and protect our most valuable asserts. Thank you for your time in hearing our concerns.