

**Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Hearing on “Protecting Trade Secrets: the Impact of Trade Secret Theft on American
Competitiveness and Potential Solutions to Remedy This Harm.”
December 2, 2015**

The United States is the world’s leader in innovation, creating cutting-edge technologies and products that improve our daily lives. This occurs in good measure because of our robust system of intellectual property protection and enforcement.

Trade secrets are a lesser known, but increasingly important form of intellectual property.

Trade secrets allow for the legal protection of commercially valuable, proprietary information. Some famous and oft-cited examples of trade secrets include the formula for Coca-Cola or the recipe for Kentucky Fried Chicken.

In fact, a broad range of valuable information may be protected as a trade secret, including complex financial and technical information and computer algorithms.

These trade secrets hold immense value to American companies. The U.S. Chamber of Commerce recently released a report stating that “publicly traded U.S. companies own an estimated \$5 trillion worth of trade secrets.”

Trade secrets encompass an expanding portion of firms’ intellectual property portfolios, particularly in knowledge-centric areas of the economy such as technology and manufacturing.

However, the theft of trade secrets of American companies is increasing, and this hurts the U.S. economy and costs American jobs. Globalization, the emergence of the digital economy, and the increasing frequency with which trade secret thieves utilize technology and cyber capabilities, has made it more difficult for trade secret owners and law enforcement to guard against theft and to fight back.

Last year, the Federal Bureau of Investigation’s Assistant Director of the Counterintelligence Division, Randall Coleman, testified before the Committee that “economic espionage and theft of trade secrets are increasingly linked to the insider threat and the growing trend of cyber-enabled trade secret theft.”

In February 2013, the White House released a report detailing that “[e]merging trends indicate that the pace of economic espionage and trade secret theft against U.S. corporations is accelerating.”

Then-Attorney General Eric Holder underscored these findings when he stated that, “There are only two categories of companies affected by trade-secret theft: those that know they’ve been compromised and those that don’t know yet.” The result is that, according to a recent report of the Commission on the Theft of American Intellectual Property, annual losses owing to trade secret theft are likely comparable to the current annual level of U.S. exports to Asia – over \$300

billion. The report further estimates that trade secret theft is responsible for the loss of 2.1 million American jobs.

Unlike other areas of intellectual property, the protection of trade secrets in the United States has mainly been a matter of state law, with forty-seven states having enacted some variation of the Uniform Trade Secrets Act.

While differing state trade secret laws share many features, state legislatures often made changes as they enacted the UTSA. This has led some to argue that the existing patchwork of state laws imposes difficult procedural hurdles in the many cases where a trade secret is taken across state lines. Federal law, through the Economic Espionage Act of 1996 (EEA), allows federal law enforcement authorities to criminally prosecute trade secret thieves, but it doesn't give trade secret owners a private right of action in federal court.

As companies increasingly utilize trade secrets and as trade secret theft has soared, the FBI reports that their caseload for economic espionage and trade secret theft cases increased more than 60% from 2009 to 2013. In fact, some commentators point out that in the face of what the FBI has described as an "immense threat," the Bureau's Counterintelligence Division's Economic Espionage Unit, which is tasked with investigating offenses under the EEA, does not have the resources and necessary bandwidth to bring prosecution of all trade secret cases.

I've heard from a broad coalition of stakeholders - large and small - representing job creating businesses in innovative sectors of the American economy, about the need for a federal law to protect their valuable trade secrets.

In my own state of Iowa, we've seen first-hand how some of our most innovative agricultural companies, like DuPont Pioneer, have become targets of trade secret thieves who seek to profit from the hard work and research of others. In one recent case, foreign nationals were indicted for engaging in a scheme to steal proprietary test seeds from Iowa fields to benefit a foreign agricultural company.

So, I look forward to learning more about this important issue and potential legislative solutions.