

Whitehouse-Graham Discussion Draft – July 29, 2013
Redline of Existing Chapter¹

18 U.S.C. § 1831. Economic espionage

(a) **In general.**—Whoever, intending or knowing that the offense will benefit any foreign government, foreign instrumentality, or foreign agent, or intending or knowing that the offense is committed at the request, under the direction, or on behalf of any foreign government, foreign instrumentality, or foreign agent, knowingly—

(1) steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains a trade secret;

(2) without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys a trade secret;

(3) receives, buys, or possesses a trade secret, knowing the same to have been stolen or appropriated, obtained, or converted without authorization;

(4) attempts to commit any offense described in any of paragraphs (1) through (3); or

(5) conspires with one or more other persons to commit any offense described in any of paragraphs (1) through (3), and one or more of such persons do any act to effect the object of the conspiracy,

shall, except as provided in subsection (b), be fined not more than \$5,000,000 or imprisoned not more than 15 years, or both.

(b) **Organizations.**—Any organization that commits any offense described in subsection (a) shall be fined not more than the greater of \$10,000,000 or 3 times the value of the stolen trade secret to the organization, including expenses for research and design and other costs of reproducing the trade secret that the organization has thereby avoided.

18 U.S.C. § 1832. Theft of trade secrets

(a) Whoever, with intent to convert a trade secret, that is related to a product or service used in or intended for use in interstate or foreign commerce, to the economic benefit of anyone other than the owner thereof, and intending or knowing that the offense will, injure any owner of that trade secret, knowingly—

(1) steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains such information;

¹ The addition of Sections 1831 and 1832 as RICO predicates is not shown on this redline.

(2) without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys such information;

(3) receives, buys, or possesses such information, knowing the same to have been stolen or appropriated, obtained, or converted without authorization;

(4) attempts to commit any offense described in paragraphs (1) through (3); or

(5) conspires with one or more other persons to commit any offense described in paragraphs (1) through (3), and one or more of such persons do any act to effect the object of the conspiracy,

shall, except as provided in subsection (b), be fined under this title or imprisoned not more than 10 years, or both.

(b) Any organization that commits any offense described in subsection (a) shall be fined not more than \$5,000,000.

18 U.S.C. § 1833. Exceptions to prohibitions

This chapter does not prohibit—

(1) any otherwise lawful activity conducted by a governmental entity of the United States, a State, or a political subdivision of a State; or

(2) the reporting of a suspected violation of law to any governmental entity of the United States, a State, or a political subdivision of a State, if such entity has lawful authority with respect to that violation.

18 U.S.C. § 1834. Criminal forfeiture

Forfeiture, destruction, and restitution relating to this chapter shall be subject to section 2323, to the extent provided in that section, in addition to any other similar remedies provided by law.

18 U.S.C. § 1835. Orders to preserve confidentiality

(a) In general.—In any prosecution or other proceeding under this chapter, the court shall enter such orders and take such other action as may be necessary and appropriate to preserve the confidentiality of trade secrets, consistent with the requirements of the Federal Rules of Criminal and Civil Procedure, the Federal Rules of Evidence, and all other applicable laws. An interlocutory appeal by the United States shall lie from a decision or order of a district court authorizing or directing the disclosure of any trade secret.

~~(a)~~(b) **Interested Owners.**—The court shall allow an owner of a trade secret at issue in a prosecution under this chapter to file a submission under seal that describes the interest of the owner in a trade secret remaining confidential, and shall consider such submission before issuing an order under subsection (a). The record for an interlocutory appeal brought by the Government shall include the submission made under seal to the court by the owner of the trade secret, and may be supplemented on appeal by a further submission under seal by the owner of the trade secret. No submission under seal made pursuant to this subsection may be entered into evidence in a prosecution.

18 U.S.C. § 1836. Civil proceedings to enjoin violations

(a) The Attorney General may, in a civil action, obtain appropriate injunctive relief against any violation of this chapter.

(b) The district courts of the United States shall have exclusive original jurisdiction of civil actions under this section.

18 U.S.C. § 1837. Applicability to conduct outside the United States

This chapter also applies to conduct occurring outside the United States if—

(1) the offender is a natural person who is a citizen or permanent resident alien of the United States, or an organization organized under the laws of the United States or a State or political subdivision thereof; ~~or~~

(2) an act in furtherance of the offense was committed in the United States; or

(3) an act in furtherance of the offense was committed through means or facilities located in the United States and the offense resulted in an injury to an individual or entity located in the United States.

18 U.S.C. § 1838. Construction with other laws

This chapter shall not be construed to preempt or displace any other remedies, whether civil or criminal, provided by United States Federal, State, commonwealth, possession, or territory law for the misappropriation of a trade secret, or to affect the otherwise lawful disclosure of information by any Government employee under section 552 of title 5 (commonly known as the Freedom of Information Act).

§ 1839. Definitions

As used in this chapter—

(1) the term “foreign instrumentality” means any agency, bureau, ministry, component, institution, association, or any legal, commercial, or business organization, corporation, firm, or entity that is substantially owned, controlled, sponsored, subsidized, commanded, managed, or dominated by a foreign government or foreign agent;

(2) the term “foreign agent” means any officer, employee, proxy, servant, delegate, or representative of a foreign government;

(3) the term “trade secret” means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, strategies, negotiating positions, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if—

(A) the owner thereof has taken reasonable measures to keep such information secret; and

(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public; ~~and~~

(4) the term “owner”, with respect to a trade secret, means the person or entity in whom or in which rightful legal or equitable title to, or license in, the trade secret is reposed; ~~and~~

(5) the term “benefit any foreign government, foreign instrumentality, or foreign agent” shall include the conveyance of any trade secret to any foreign government, foreign instrumentality, or foreign agent.