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THE DEFEND TRADE SECRETS ACT: WHY INTERPRETING THE NEW LAW ON ITS OWN TERMS PROMOTES UNIFORMITY

I. INTRODUCTION

Trade secrets, a category of intellectual property recognized at state and federal law, are integral parts of many corporations' intellectual property portfolios.[1] A trade secret is a type of intellectual property that is not disclosed by its owner, and is therefore unlike patents, trademarks, or copyrights—all types of information that are disclosed to the public. As a result, trade secrets may represent a viable alternative to patents and copyrights since its value is derived from its secrecy.

In the United States, the laws governing trade secrets have typically been the offspring of the state common law. As each state developed its own understanding of trade secrets, this area of law became increasingly complex, leading the Uniform Law Commission to publish and promote the Uniform Trade Secret Act in 1979.[2] Since then, the UTSA has been enacted by forty-eight states and the District of Columbia.

Despite this success, the *enacted* UTSAs across the country are not truly uniform, and state courts have also been unable to divorce themselves from preexisting, state-specific case law, which has led to conflicting results.[3] Due to this disjointed implementation, a vocal segment of both the business and legal communities have pushed for federalization, which, proponents hope, will finally bring uniformity and predictability to a historically opaque law.

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1. Rockwell Graphic Sys., Inc. v. DEV Indus., Inc., 925 F.2d 174, 180 (7th Cir. 1991) (noting trade secrets are of "growing importance to the competitiveness of American industry").

2. *See* UNIF. TRADE SECRETS ACT, *prefatory note* (UNIF. LAW COMM'N 1985).

3. *Compare* Burbank Grease Servs., LLC v. Sokolowski, 2006 WI 103, ¶ 1, 717 N.W.2d 781, 792, *and* Orca Commc'n Unlimited, LLC v. Noder, 337 P.3d 545, 546 (Ariz. 2014), *and* Stone Castle Fin., Inc. v. Friedman, Billings, Ramsey & Co., 191 F. Supp. 2d 652, 659 (E.D. Va. 2002) (all concluding common law claims concerning misappropriated confidential, non-trade secret, information survives UTSA preemption), *with* BlueEarth Biofuels, LLC v. Hawaiian Elec. Co., 235 P.3d 310, 323 (Haw. 2010), *and* Mortgage Specialists, Inc. v. Davey, 904 A.2d 652, 664 (N.H. 2006), *and* Auto Channel, Inc. v. Speedvision Network, LLC, 144 F. Supp. 2d 784, 788 (W.D. Ky. 2001), *and* Composite Marine Propellers, Inc. v. Van Der Woude, 962 F.2d 1263, 1265 (7th Cir. 1992). In doing such a comparison, one will find that the first group of cases all conclude that common law claims concerning misappropriated confidential, non-trade secret, information survives the UTSA whereas the latter cases conclude that state-enacted UTSA provisions abolish common law claims concerning misappropriation of confidential, non-trade secret information.

Congress was generally deaf to proponents' pleas. However, the ascendency of China as the world's second largest economy—compounded with widespread allegations that Chinese companies (and/or the Chinese government itself) hack into and steal American companies' trade secrets—created a more receptive environment on Capitol Hill.[4] In 2014, two bills were introduced in both houses of Congress. Both died.

Although both bills failed in 2014, on July 29, 2015, the Defend Trade Secrets Act was resurrected and reintroduced on the Senate floor.[5] The DTSA purports to grant "[t]he district courts of the United States . . . original jurisdiction of civil actions brought under this section."[6] On May 11, 2016, the DTSA was signed into law. This Comment assesses the DTSA within the existing framework of the UTSA and suggests federal courts interpret the new law on its own terms without overtly relying on the UTSA.[7]

To accomplish the aforementioned goal, this Comment first traces the development of trade secrets from a common-law concept to codification under the UTSA, highlighting the UTSA's benefits and shortcomings. Next, this Comment will discuss the events that led to the push for congressional action. Finally, this Comment focuses on the newly enacted, non-preemptive DTSA, encouraging federal courts to rely on the DTSA's language without giving controlling weight to pre-existing UTSA precedent. If federal courts interpret the DTSA independently, the new law will have the greatest chance of creating a uniform trade secrets regime in the United States.

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4. David S. Levine, *School Boy's Tricks: Reasonable Cybersecurity and the Panic of Law Creation*, 72 WASH. & LEE L. REV. ONLINE 323, 324 (2015), http://scholarlycommons.law.wlu.edu/wlulr-online/vol72/iss2/6.

5. S. 1890, 114th Cong. (2015). *See also* S. 1890, 114th Cong. 2d Sess. (Jan. 28, 2016), https://www.congress.gov/bill/114th-congress/senate-bill/1890/text. In January 2016, the Senate Committee amended the proposed bill; however, none of the alterations affected the sections analyzed in this Comment.

6. Defend Trade Secrets Act of 2016, Pub. L. No. 114-153, § 2(c), 130 Stat. 376, 380 (2016).

7. Prior to its enactment, debate focused primarily on whether federalization of trade secrets was necessary. *Compare* David S. Almeling, *Four Reasons to Enact a Federal Trade Secrets Act*, 19 FORDHAM INTELL. PROP. MEDIA & ENT. L. J. 769, 770–71 (2009), *with* Christopher B. Seaman, *The Case Against Federalizing Trade Secrecy*, 101 VA. L. REV. 317, 364 (2015) (arguing against federalization believing federal courts are unequipped to truly deal with trade secret problems noting that most trade secret issues arise out of purely state concerns like contracts, torts, etc., but largely ignoring the fact that federal courts are often called upon to apply state laws and are generally competent in doing so).

II. "UNITY" OUT OF DISCORD: THE UNIFORM TRADE SECRETS ACT

Traditionally, trade secrets were protected under state law and developed according to each state's common law experience.[8] Although previous legal regimes recognized trade secrets as a type of information asset, at the onset of the industrial revolution, trade secrets laws were discordant—non-uniform—nationally.[9] Due to the discrepancies between states, both the business and legal communities began pushing for a uniform law governing trade secrets.[10]

The Uniform Law Commission took up this call for legislation, and by 1979, put forward the Uniform Trade Secret Act.[11] The UTSA sought to clarify and simplify trade secrets law.[12] Perhaps the most important clause of the UTSA is its unifying clause: "This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it."[13] Forty-eight states and the District of Columbia have enacted some form of UTSA.[14]

Despite this success, the UTSA's application by state courts has not been uniform. For example, section 7 of the UTSA "displaces conflicting tort,

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8. *See* Michael Risch, *Why Do We Have Trade Secrets?*, 11 MARQ. INTELL. PROP. L. REV. 1, 13 (2007); *see* Shubha Gosh, *Open Borders, Intellectual Property & Federal Criminal Trade Secret Law*, 9 JOHN MARSHALL REV. INTELL. PROP. L. 24, 57 (2009).

9. *See* Seaman, *supra* note 7, at 323, 326.

10. *See* Comment, *Theft of Trade Secrets: The Need for a Statutory Solution*, 120 U. PA. L. REV. 378, 380–81 (1971).

11. UNIF. TRADE SECRETS ACT, *Prefatory Note* (UNIF. LAW COMM'N 1985).

12. UNIF. LAW COMM'N, *Why States Should Adopt UTSA* (2015), http://www.uniformlaws.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UTSA.

13. UNIF. TRADE SECRETS ACT § 8.

14. Ala. Code § 8-27-1 (2017); Alaska Stat. § 45.50.910 (2017); Ariz. Rev. Stat. Ann. § 44-401 (2017); Ark. Code Ann. § 4-75-601 (2017); Cal. Civ. Code § 3426 (2017); Colo. Rev. Stat. § 7-74-101 (2017); Conn. Gen. Stat. § 35-50 (2017); Del. Code Ann. tit. 6 § 2001 (2017); Fla. Stat. Ann. § 688.001 (2017); Ga. Code Ann. § 10-1-760 (2017); Haw. Rev. Stat. § 482B-1 (2017); Idaho Code § 48-801 (2017); 765 ILCS 1065/1 (2017); Ind. Code. Ann. § 24-2-3-1 (2017); Iowa Code § 550.1 (2017); Kan. Stat. Ann. § 60-3320 (2017); Ky. Rev. Stat. Ann. § 365.896 (2017); La. Stat. Ann. § 51:1431 (2017); Me. Rev. Stat. Ann. tit. 10 § 1541 (2017); Md. Code Ann. Com. L. § 11-1201 (2017); Mich. Comp. Laws Ann. §§ 445.1901–445.1910 (2017); Minn. Stat. § 325C.01 (2017); Miss. Code Ann. § 75-26-1 (2017); Mo. Rev. Stat. §§ 417.450–417.467 (2017); Mont. Code Ann. § 30-14-401 (2017); Neb. Rev. Stat. § 87-501 (2017); Nev. Rev. Stat. § 600A.010 (2016); N.H. Rev. Stat. Ann. § 350-B:1 (2017); N.J. Stat. Ann. § 56:15-1 (2017); N.M. Stat. Ann. § 57-3A-1 (2017); N.C. Gen. Stat. § 66-154 (2017); N.D. Cent. Code § 47-25.1-01 (2017); Ohio Rev. Code Ann. § 1333.61 (2017); Okla. Stat. Ann. tit. 78 § 85 (2017); Or. Rev. Stat. § 646.461 (2016); 12 Pa. Cons. Stat. § 5301 (2017); 6 R.I. Gen. Laws § 6-41-1 (2017); S.C. Code Ann. § 39-8-10 (2017); S.D. Codified Laws § 37-29-1 (2017); Tenn. Code Ann. § 47-25-1701 (2016); Tex. Code Ann. § 134A.001 (2017); Utah Code Ann. § 13-24-1 (2017); Vt. Stat. Ann. tit. 143 § 4601 (2017); Va. Code Ann. § 59.1-336 (2017); Wash. Rev. Code Ann. § 19.108.010 (2017); W. Va. Code § 47-22-1 (2017); Wis. Stat. Ann. §134.90 (2017); Wyo. Stat. Ann. § 40-24-101 (2017); D.C. Code § 36-401 (2017); *See also* Melvin F. Jager, 3 TRADE SECRETS LAW Appendix A2: State Trade Secret Statutes—Variations on the Uniform Law (2017).

restitutionary, and other law . . . providing civil remedies for misappropriation of a trade secret."[15] At first glance, this clause appears to preempt each state's common law traditions in trade secrets, including the misappropriation of confidential information falling outside the definition of trade secret. However, problems can occur when a plaintiff sues for both misappropriation of a trade secret *and* the misappropriation of confidential information falling outside the statutory definition of a trade secret.[16] Many courts that have considered the issue have held that the UTSA's preemption provision "abolish[es] all free-standing alternative causes of action for theft or misuse of confidential, proprietary, or otherwise secret information falling short of trade secret status."[17] Thus, to be protectable, the confidential information must satisfy the statutory definition of a trade secret.[18]

Courts in other states, namely Wisconsin, Arizona, and Virginia, have found the UTSA does not preempt common-law causes of action.[19] For example, Arizona and Wisconsin continue recognizing causes of action for the misappropriation of confidential (non-trade secret) information.[20] In *Burbank*

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15. UNIF. TRADE SECRETS ACT § 7.

16. Daniel P. Hart, *Arizona Supreme Court Holds that UTSA Does Not Preempt Common Law Claims for Misuse of Confidential Information that is Not a Trade Secret*, LEXOLOGY, (Jan. 14, 2016), http://www.lexology.com/library/detail.aspx?g=49d21cd1-6fdf-48ad-86cc-2daeb66ab3ed.

17. BlueEarth Biofuels, LLC v. Hawaiian Elec. Co., 235 P.3d 310, 321 (Haw. 2010) (*quoting* Hauck Mfg. Co. v. Astec Indus., 375 F. Supp. 2d 649, 655 (E.D. Tenn. 2004) (applying Tennessee law)); *see also* Mortgage Specialists, Inc. v. Davey, 904 A.2d 652, 664 (N.H. 2006) (finding that New Hampshire's UTSA preempts claims based on the unauthorized use of information, "regardless of whether that information meets the statutory definition of a trade secret."); Auto Channel, Inc. v. Speedvision Network, LLC, 144 F. Supp. 2d 784, 789 (W.D. Ky. 2001) (finding that Kentucky's "UTSA replaces other law relating to the misappropriation of trade secrets, regardless of whether the Plaintiffs demonstrate that the information at issue qualifies as a trade secret."); Composite Marine Propellers, Inc. v. Van Der Woude, 962 F.2d 1263, 1265 (7th Cir. 1992) ("Illinois has abolished all common law theories of misuse of such [secret information] . . . [u]nless defendants misappropriated a (statutory) trade secret, they did no legal wrong.") (*called into doubt by* Parus Holdings, Inc. v. Banner & Witcoff, Ltd., 585 F. Supp. 2d 995, 1004 (N.D. Ill. 2008)).

18. K.C. Multimedia, Inc. v. Bank of Am. Tech. & Operations, Inc., 171 Cal. App. 4th 939, 958 (2009) (concluding that common law claims "based on the same nucleus of facts as the misappropriation of trade secrets claim for relief" are preempted by California's Uniform Trade Secret Act) (quoting and agreeing with Digital Envoy, Inc. v. Google, Inc., 370 F. Supp. 2d 1025, 1035 (N.D. Cal. 2005)).

19. Burbank Grease Servs., LLC v. Sokolowski, 2006 WI 103, ¶ 32, 717 N.W.2d 781, 792; Orca Commc'n Unlimited, LLC v. Noder, 337 P.3d 545, 546 (Ariz. 2014); Stone Castle Fin., Inc. v. Friedman, Billings, Ramsey & Co., 191 F. Supp. 2d 652, 659 (E.D. Va. 2002).

20. Orca Commc'n,, 337 P.3d at 547 (Ariz. 2014) (interpreting Arizona's Uniform Trade Secret Act to only displace common law claims for the "misappropriation" of a "trade secret," which allows Arizona's common law tradition to survive in claims alleging the misappropriation of confidential (non-trade secret) information); *Sokolowski*, 2006 WI 103, ¶ 33, 717 N.W.2d at 793–94 (engaging in an extensive statutory interpretation of Wisconsin's Uniform Trade Secret Act and subsequently concluding that civil claims not grounded in a trade secret "*as defined in the statute*

Grease Servs., LLC v. Sokolowski, the Wisconsin Supreme Court interpreted Wisconsin's UTSA as not preempting common law causes of action involving the misappropriation of (non-trade secret) confidential information falling outside the scope of trade secrets statutory definition. The Wisconsin Supreme Court noted that the state legislature had only preempted the common law concerning the laws of trade secrets.[21] The legislature did not, however, preempt the common law governing the misappropriation of confidential information that was not a trade secret. Since the legislature had not taken these extra steps, the majority refused to accept (without further legislative action) that the misappropriation of confidential information could not be protected merely because it did not meet the statutory definition of a trade secret.

The Wisconsin Supreme Court also downplayed the importance of section 8 of the UTSA. Section 8 of the UTSA requires the act be applied to "make uniform the law relating to the misappropriation of trade secrets among states enacting [it]."[22] Theoretically, section 8 requires courts assess how other states have applied the statute and harmonize the current case with them; under the approach outlined in *Sokolowski*, it was likely that UTSA uniformity would be undermined. Indeed, the dissent in *Sokolowski*, written by Justice Ann Walsh Bradley, noted that "[p]ermitting litigants in UTSA states to assert common-law claims for the misappropriation or misuse of confidential data [reduces] the UTSA to just another basis for recovery and leave prior law effectively untouched," which "effectively negate[s] the UTSA's goal of promoting uniformity in 'trade secrets' law" and "render[s] the statutory preemption provision effectively meaningless."[23]

Other supreme courts have been critical of *Sokolowski*.[24] For instance, in *BlueEarth Biofuels, LLC v. Hawaiian Electric Company*, the Supreme Court of Hawai'i held that Hawai'i's UTSA does preempt common law claims regarding the misappropriation of confidential information that does not meet the statutory definition of a trade secret: "[T]he Hawai'i State Legislature has

remain[] available[.]" (Emphasis in original).

21. *Sokolowski*, 2006 WI 103 ¶ 1, 717 N.W.2d at 785.

22. *Id.* ¶ 26, 717 N.W.2d at 785.

23. *Id.* ¶ 69, 717 N.W.2d at 801 (Bradley, J. dissenting) (*quoting* Robert Unikel, *Bridging the "Trade Secret" Gap: Protecting "Confidential Information" Not Rising to the Level of Trade Secrets*, 29 LOY. U. CHI. L. J. 841, 888 (Summer 1998)). *See generally*, Gale R. Peterson, *Trade Secrets in an Information Age*, 32 HOUS. L. REV. 385, 388 (1995) (laying out the competing interpretations of trade secrets).

24. *See Sokolowski*, 2006 WI 103 ¶¶ 69, 72, 717 N.W.2d at 801 (Bradley, J., dissenting); BlueEarth Biofuels, LLC v. Hawaiian Elec. Co., 235 P.3d 310, 321 (Haw. 2010); *see also*, Michael Ahrens, *Wisconsin Confidential: The Mystery of the Wisconsin Supreme Court's Decision in* Burbank Grease Services v. Sokolowski *and Its Effect Upon the Uniform Trade Secrets Act, Litigation, and Employee Mobility*, 2007 WIS. L. REV. 1271, 1301–02 (2007).

directed that '[a]ll provisions of uniform acts adopted by the State shall be so interpreted and construed as to effectuate their general purpose and to make uniform the laws of the states and territories which enact them.'"[25] The Supreme Court of Hawai'i held preemption must occur or else the UTSA's general purpose, uniformity, would be thwarted.[26]

In sum, despite the UTSA's near universal adoption by the states, uniform interpretation has not been entirely achieved.

III. AN OPPORTUNITY TO REFOCUS: FEDERAL COURTS INTERPRETING THE DTSA ON ITS OWN TERMS PROMOTES UNIFORMITY

Historically, the federal government took little interest in regulating trade secrets. Congressional interest spiked, however, when the economy became increasingly propelled by innovation and creativity. A key concern was that foreign companies, governments, or both were hacking into company databases and stealing secret information, or even hiring former company employees who then smuggled the information to their new employer.[27] Congress first attempted to rectify this problem by passing the Economic Espionage Act of 1996.[28] However, the EEA does not create a private cause of action: it is a criminal statute. As such, state law continued dominating trade secrets law.[29]

Twenty years passed before Congress began considering a federal civil cause of action for trade secret misappropriation. For instance, after supporting (then) senate bill 1890, Senator Orrin Hatch noted that confidential information is increasingly vulnerable to misappropriation because information is often stored electronically and thus can be easily "hacked" by other companies, governments, or individuals.[30] Once enacted, the DTSA amended the EEA and provides "a single, national standard for trade secret misappropriation"

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25. *BlueEarth Biofuels*, 235 P.3d at 323.

26. *Id.*

27. R. Mark Halligan, *Protection of U.S. Trade Secret Assets: Critical Amendments to the Economic Espionage Act of 1996*, 7 J. MARSHALL REV. INTELL. PROP. L. 656, 657, 660–61 (2008) (proposes amending the Economic Espionage Act to create a federal cause of action for civil suits six years before DTSA was first proposed).

28. 18 U.S.C. §§ 1831–1839 (2012).

29. Press Release, Senate, Senate, House Leaders Introduce Bipartisan Bicameral Bill to Protect Trade Secrets (July 29, 2015), http://www.hatch.senate.gov/public/index.cfm/2015/7/senate-house-leaders-introduce-bipartisan-bicameral-bill-to-protect-trade-secrets (last visited Mar. 28, 2016). Senator Hatch of Utah is quoted as stating "[I]n today's global information age, there are endless examples of how easy—and rewarding—it can be to steal trade secrets. Yet there are no federal remedies available to help victim companies recover from their losses." *Id.*

30. *Id.* Senator Hatch then goes on to support the DTSA because it will give U.S. companies the ability to protect their trade secrets in federal courts. *Id.*; *see also* S. 1890, 114th Cong. (2016) (enacted May 11, 2016).

providing "clear rules and predictability" in trade secret litigation.[31]

Since the DTSA's enactment, federal district courts have (unsurprisingly) interpreted the new law through the lens of preexisting state UTSAs.[32] Although this impulse is understandable, it should nonetheless be resisted. Instead, federal courts should reject overt reliance on state laws and interpret the DTSA on its own terms. Doing so will demarcate federal claims from their state equivalents and allow a new body of law to build up around the DTSA without getting bogged down in common law, state-specific quirks.

This is easier said than done. Given the DTSA's relative novelty, no DTSA claims have been reviewed by an appellate court yet. The lack of appellate guidance — compounded with Congress's insistence that the DTSA mirror the UTSA — encourages (at least short-term) continued reliance on preexisting UTSA case law by both courts and litigants.[33] Specifically, the interplay between section 2(c) of the DTSA and 18 U.S.C. § 1836 (2)(f) intertwines the fledgling DTSA with the UTSA. Section 2(c) of the DTSA grants original jurisdiction to U.S. district courts, allowing federal courts to develop their own interpretation of UTSA language without relying on preexisting state precedent.[34] However, the insertion of 18 U.S.C. § 1836 (2)(f) could stunt the DTSA's development because it explicitly states "[n]othing in the [DTSA] shall be construed to . . . preempt any other provision of law."[35]

Federal courts (and litigants) could quickly wade into the types of judicial quagmires Charles Dickens once lodged against the courts of chancery because the DTSA does not preempt preexisting state laws.[36] For instance, if an employer files suit against a former employee (and her new employer) for both the misappropriation of a trade secret and the misappropriation of confidential information, as a state law claim, the federal court will need to interpret the DTSA and determine whether a trade secret has been stolen.[37] It will then need

31. *See* H.R. REP. NO. 114-529 at 6 (2016); S. REP. NO. 114-220 at 14 (2016).

32. Kuryakya Holdings, LLC v. Ciro, No. 15-cv-703-jdp, slip op. at 11 (W.D. Wis. Mar. 15, 2017) (noting the statutory language of the DTSA is "essentially the same" as the UTSA); Mission Measurement Corp. v. Blackbaud, Inc., 216 F. Supp. 3d 915, 921 (N.D. Ill. 2016) (denying motion for dismissal for failure to state a claim because the seventh circuit has held that claims for trade secret misappropriation (under Illinois UTSA) do not need to be highly specific at pre-trial stage to survive).

33. *See Kuryakya Holdings,* slip op. at 11 (noting that while the DTSA creates a federal cause of action, "the parties agree that substantively the UTSA and DTSA are essentially the same.") (internal quotation marks omitted).

34. Defend Trade Secrets Act of 2016, Pub. L. No. 114-153, § 2(c), 130 Stat. 376, 380 (2016) (proposed amendment to 18 U.S.C. § 1836(b)).

35. *Id.*

36. *See generally* CHARLES DICKENS, BLEAK HOUSE (1853) (satirizing the judicial system of 19th Century England as distant relatives duke it out for a long-deceased gentleman's fortune, racking up court and attorney's fees until nothing remains of the fortune).

37. *Economic Espionage & Trade Secret Theft: Are Our Laws Adequate for Today's Threats?*

to determine whether the misappropriation of non-trade secret confidential information falling outside the statutory definition of a trade secret can be brought under the DTSA.

Relying too heavily on state-enacted UTSAs encourages regional discrepancies at the federal level, dashing hopes of uniformity.[38] As noted in section II of this Comment, uniformity under the UTSA was never achieved. Therefore, federal courts, when assessing DTSA claims, should resist relying on state-specific UTSA decisions.

Instead, federal courts should interpret the DTSA on its own terms rather than assessing new claims through the lens of preexisting UTSA precedent. The DTSA uses the EEA's preexisting definitions; a "trade secret" is information that an owner has taken reasonable steps to keep secret, bestowing the information with independent economic value.[39] If the misappropriated information falls within this broad definition, the owner must also demonstrate that reasonable measures were taken to keep the information secret, and also that the information derives independent economic value from not being generally known by others.[40] As with the UTSA, plaintiffs must establish three things:

(1) the misappropriated information falls within the definition of trade secret;

(2) the owner took reasonable measures to keep the information secret; and

(3) the misappropriated information's value is derived from its secrecy.[41]

Given federal courts' long experiences with both the Patent and Copyright Acts, federal courts should assess whether the misappropriated secret falls within its *own* understanding of a code, compilation, formula, design, method, program, process, etc., helping to break early reliance on state-enacted UTSAs.

Federal courts should also interpret the DTSA in light of its purpose.[42] The

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Before the Subcomm. on Crime and Terrorism of the Comm. on the Judiciary, 113th Cong. 15 (2014) (statement of Douglas K. Norman, Vice President and General Patent Counsel, Eli Lilly and Company).

38. *Compare Kuryakya Holdings,* slip op. at 15 (holding general claims of trade secret misappropriation were inadequate), *with* Mission Measurement Corp. v. Blackbaud, Inc., 216 F. Supp. 3d 915, 921 (N.D. Ill. 2016) (holding the generalized claims were sufficient to survive motion for summary judgment (failure to state a claim) at pre-trial stage of litigation).

39. 18 U.S.C. § 1839(3) (2012) (defining "trade secret" as "all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, 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").

40. *Id.* at § 1839(3)(A)–(B).

41. *Id.* at § 1832.

42. Karl N. Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to be Construed*, 3 VAND. L. REV. 395, 402–06 (1950).

DTSA's stated purpose is to create a civil cause of action in federal courts. Both the House and Senate reports noted uniformity as a driving force behind federalization, binding the DTSA closely with the UTSA. However, the familial-like relationship between the UTSA and the DTSA should not be confused with state enacted UTSAs. If courts must rely on the UTSA, it should be the UTSA as promulgated by the Uniform Law Commission. This will have two beneficial results. First, it will highlight the UTSA as a persuasive source of authority. Where once federal courts were bound by state UTSA decisions, courts can now interpret the "new" language under the DTSA. Second, referring to the Uniform Law Commission's UTSA will encourage uniformity among federal courts. District courts would now look to the experiences of sister courts in other circuits rather than the state law where the district court resides, promoting a uniform interpretation of the DTSA.

Relying on the Uniform Law Commission's version of the UTSA for guidance allows for a more organic understanding of the DTSA. Focusing on the Uniform Law Commission's UTSA[43] rather than state-enacted versions guards against common law claims, similar to *Sokolowski*, from working their way into federal decisions. Claims involving the misappropriation of confidential, non-trade secret information should remain within the realm of state law, allowing federal claims to focus purely on the misappropriation of anything meeting the statutory definition of a trade secret.

In sum, despite successfully passing the DTSA into law, Congress has bound the new federal trade secret law closely to the preexisting UTSA. Although theoretically helpful, allowing federal courts to draw on previous decisions interpreting the UTSA, the close relationship between the DTSA and UTSA encourages regionalization because federal courts will interpret the DTSA according state-specific quirks under the UTSA. Therefore, federal courts should reject this impulse and interpret the DTSA according to its own terms because it will encourage a truly uniform body of law governing trade secrets to develop.

IV. CONCLUSION

Prior to the DTSA's enactment, the laws governing trade secrets remained firmly within the domain of state law. Now that the DTSA has become law, there is a chance that national uniformity could be achieved at a federal level. However, because the DTSA is non-preemptive and its language borrows heavily from the UTSA, there is a real risk that federal courts will rely on preexisting UTSA precedent while interpreting the DTSA, leading to regionalized decisions.

43. UNIF. TRADE SECRETS ACT§ 8.

In order to understand the issue at hand, this Comment briefly traced the development of the laws governing trade secrets through state common law. This Comment then discussed the push for uniformity through the UTSA. Despite the UTSA's successful adoption throughout the country, state courts have struggled to harmonize with each other. The dissonance, especially regarding the survival of common law causes of action for the misappropriation of confidential (non-trade secret) information, is highlighted by the contrasting Wisconsin and Hawai'i interpretations of the UTSA in *Sokolowski* and *BlueEarth Biofuels*. Whereas the Wisconsin Supreme Court refused to throw out its common law tradition because the state legislature had not expressly preempted these causes of action that did not fall within the statutory definition of "trade secret," the highest court in Hawai'i found the exact opposite.

After noting the development of trade secret law in the United States and the UTSA's fragmented implementation, this Comment next discussed why Congress began considering the creation of a federal civil cause of action. Although the DTSA creates a federal civil cause of action, uniformity will be difficult to achieve if courts look to state enacted UTSAs while interpreting claims under the DTSA. Instead, federal courts should interpret the DTSA on its own terms and look to other areas of federal law to reach legal conclusions. Doing so allows the DTSA to develop without getting bogged down in state-specific quirks and will help create a truly uniform trade secret regime in the United States that is resistant to regionalization.

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