

Congress Acts to Strengthen Federal Trade Secret Protection

January 16, 2013

On December 28, 2012, President Obama signed into law the Theft of Trade Secrets Clarification Act of 2012, (the TTSCA), S. 3642, which broadens the scope of the Economic Espionage Act of 1996 (18 U.S.C. Sections 1831-39). The TTSCA expands protection of trade secrets to include products or services “used or intended for use in interstate or foreign commerce.” A related law, the Foreign Economic Espionage Penalty Enhancement Act of 2012, which increases penalties for misappropriating trade secrets, is expected to be enacted soon.

The newly enacted amendments are intended to address criticism directed at the outcome of a recent Second Circuit case reported at *United States v. Aleynikov*, 676 F.3d 71(2d Cir. 2012). In that decision, Sergey Aleynikov’s conviction for trade secret misappropriation of proprietary computer source code under the Economic Espionage Act was overturned. The basis for that decision was that the source code was not intended to be included in a product that is produced for, or placed in, interstate or foreign commerce.

Once it becomes law, the Foreign and Economic Espionage Penalty Enhancement Act of 2012 will increase maximum fines for economic espionage committed by individuals from \$500,000 to \$5 million, and for organizations from \$10 million to not more than the greater of \$10 million or three times the value of the stolen trade secret to the organization.

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