Hi all,

I learned that Senator Hatch (Senate President Pro Tempore) and Speaker Ryan are signing the bill today and forwarding it to the White House for the President to sign.

I also wanted to send you excerpts from the Floor debate on Wednesday in which Rep. Collins mentioned our support, and the Senate colloquy between Senators Hatch and Coons during which Senator Hatch mentioned our support and introduced our letter into the Congressional Record. Our support was also mentioned by Chairman Goodlatte during the markup a few weeks ago and he also entered our letter into the Congressional Record then.

Mr. COLLINS of Georgia. Mr. Speaker, I rise today in support of S.1890, the Defend Trade Secrets Act. I introduced the House companion, and I am proud to see this bill moving forward. This legislation is sorely needed to protect the United States from the billions of dollars it faces in losses each year due to trade secrets theft.

However, the legislation could not have reached this point without the hard work and dedication of several people. First, I would like to thank Chairman Goodlatte and his staff for their efforts to move this bill through the Committee on the Judiciary and bring it to the floor.

This has been, as the ranking member said, a several-year process. We are glad to see it here.

I also wanted to thank those who introduced the House legislation with me, Mr. Nadler and Mr. Jeffries, both from New York, and their staff, for their commitment to the issue and their willingness to work across the aisle to implement meaningful reform.

On the Senate side, Senators Hatch and Coons were instrumental in getting us to this point. Their leadership, along with the leadership of Chairman Grassley and Senator Leahy, helped ensure the strong Senate vote of 87-0 and ensured this product was able to come to the House.

I would finally like to take just a moment to thank Jennifer Choudhry, my former legislative director, for her hand in introducing and shepherding this bill through the legislative process. Her contributions were invaluable, and she should be proud of her part in getting this legislation to the House floor today. I also thank Sally Rose Larson, who has taken up the mantle in my office and helped to get us here to the finish line.

The Defend Trade Secrets Act enjoys support from a broad coalition of groups and industries, from Americans for Tax Reform, the American Bar Association Intellectual Property Law Section, the Information Technology Industry Council, the chamber of
commerce, the National Association of Manufacturers, and many more. In fact, Mr. Speaker, this bill has more than 160 bipartisan cosponsors.

We were also mention on the Floor of the Senate during a colloquy between Senator Hatch and Coons back in October at which point our letter was first introduced into the Congressional record:

Mr. HATCH. That is right, I say to Senator Coons. I never thought our bill harmed employee mobility. But when I heard these concerns, I wanted to make sure that we addressed this particular issue. So we included language in the bill this Congress that states explicitly that a person cannot be prevented from accepting an offer of employment because of his or her prior exposure to trade secrets.

I think we have struck the right balance with this bill. I am not aware of any stakeholder opposition to this bill. Those who operate businesses in the real world and have to protect their trade secrets on a regular basis are strong supporters of the Defend Trade Secrets Act.

The list of companies and associations that have endorsed the act is diverse and impressive. Let me read the names of some of the businesses and organizations that support this bill: Adobe, AdvaMed, American Bar Association Section of Intellectual Property Law, American Intellectual Property Law Association, Association of Global Automakers, Biotechnology Industry Organization, Boeing Company, Boston Scientific, BSA-The Software Alliance, Caterpillar, Corning, DuPont, Eli Lilly and Company, General Electric, Honda, IBM, Illinois Tool Works, Information Technology Industry Council, Intel, International Fragrance Association of North America, Johnson & Johnson, Medical Device Manufacturers Association, Medtronic, Michelin North America, Micron, Microsoft, National Alliance for Jobs and Innovation, National Association of Manufacturers, New England Council, Nike, Pfizer, Philips, Intellectual Property Owners Association, Procter & Gamble, Semiconductor Industry Association, SAS, Software & Information Industry Association, U.S. Chamber of Commerce, and United Technologies Corporation. And let me mention just one more, but there are others: 3M. Mr. President, I ask unanimous consent to have printed in the Record letters of support from these organizations. There being no objection, the material was ordered to be printed in the Record, as follows:

American Bar Association,

October 5, 2015.
Re S. 1890, the Defend Trade Secrets Act of 2015

Hon. Charles E. Grassley,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington DC.

Hon. Patrick J. Leahy,
Ranking Member, Committee on the Judiciary,
U.S. Senate, Washington DC.
Dear Chairman Grassley and Ranking Member Leahy: I write to express the views of the American Bar Association Section of Intellectual Property Law on S. 1890, the "Defend Trade Secrets Act of 2015." These views have not been submitted to or approved by the ABA House of Delegates or Board of Governors, and should not be considered to be views of the Association.

There is no generally applicable federal private cause of action whereby an owner of a trade secret can seek redress for misappropriation of a trade secret. Relief must be sought under state law, and most states and the District of Columbia have in effect some version of the Uniform Trade Secrets Act (UTSA).

Congress recognized the need for federal protection of trade secrets when it enacted the Economic Espionage Act of 1996. That law authorizes criminal penalties of imprisonment for up to 15 years and a fine of not more than $10,000,000 for the theft of trade secrets for the benefit of a foreign government or other foreign interest. Lesser penalties are provided for misappropriation not benefiting foreign interests but which relate to products in interstate or foreign commerce. The Attorney General of the United States has the authority to seek injunctive relief against the theft of trade secrets, but the Act does not contemplate a private cause of action by the owners of those trade secrets. The Section of Intellectual Property Law supports establishment of such a cause of action, and urges the enactment of S. 1890 for this purpose.

Currently in the United States, trade secrets are protected under an un-harmonized patchwork of trade secret laws that is ill-equipped to provide an effective civil remedy for companies whose trade secrets are stolen. Not all states have adopted the UTSA, and many differ in the interpretation and implementation of existing laws. For instance, many states define protectable trade secrets differently and also have different requirements for the maintenance of claims for trade secret misappropriation. To give but two examples, some states have found a novelty requirement for information to be considered a trade secret, and some are more protective than others of customer lists.

States have differing statutes of limitations for trade secret claims, and there are also significant differences in the availability of monetary relief. Many states have not enacted Section 8 of the UTSA, which calls upon each state to construe and apply the law to achieve uniformity among states. Moreover, victims of trade secret theft can face lengthy and costly procedural obstacles in obtaining evidence when the misappropriator flees to another state or country or transfers evidence outside the state.

S. 1890 is the product of several years of congressional consideration and development. The Section of Intellectual Property Law has followed these developments and, in doing so, has identified essential components that should be included in a bill to establish a federal private cause of action for misappropriation of a trade secret. These components include:

- a definition of trade secret that is clear and effective and not unduly restrictive or overly technical;
- a clear delineation of the requirements for a federal cause of action;
the availability of remedies that are comparable to those available under the UTSA, including provisions providing for injunctive relief and monetary relief in the form of royalties, disgorgement of the proceeds of unjust enrichment, and exemplary damages;

provisions for seizure orders that adequately limit the circumstances in which they may be issued and executed and that provide for the custody, security, and access to seized property; and

confirmation that the bill's enactment will not preempt state trade secret laws.

[[Page S7253]]

Because S. 1890 contains these essential components, the Section of Intellectual Property Law supports its enactment.

Very truly yours,

Theodore H. Davis Jr.,
Section Chair, American Bar Association,
Section of Intellectual Property Law.

Thomas L. Stoll
Legislative Consultant, IP Law
Governmental Affairs Office
American Bar Association
Tel: 703-727-4671
Email: thomas.stoll@americanbar.org