

Filling the DMCA Void: Exploring a Take-Down Provision for Trade Secrets on the Internet

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When a trade secret owner discovers its trade secrets have been posted on the Internet, there is currently no legislative mechanism by which the owner can request that the information be taken down. The only remedy to effectuate removal of the material is to obtain a court order, usually through a temporary restraining order or a preliminary injunction.

In an earlier article I explored and analyzed the tremendous danger to trade secrets that have been posted on the Internet. Indeed, the trade secret status is most often lost forever. Accordingly, upon discovering a posting of secret information, trade secret owners must act swiftly to attempt to prevent the imminent destruction.

The current requirement of a court order for a take-down is not only expensive, but does not offer the requisite expediency for trade secret owners. This article will therefore explore a proposal for trade secret take-down legislation, similar to that provided for the immediate removal of suspected copyright violations under the Digital Millennium Copyright Act (DMCA). Such a proposal will suffer from drawbacks, including First Amendment concerns. The article will wrestle with the theoretical, doctrinal, and practical issues involved.