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THE DEFEND TRADE SECRETS ACT ISN'T AN “INTELLECTUAL PROPERTY” LAW

Eric Goldman[†]

Congress' passage of the Defend Trade Secret Act is one of the most important developments in intellectual property law over the past decade, yet counterintuitively the statute expressly says it is not an intellectual property law. This apparent paradox should successfully preserve a legal quirk in the law governing liability for user-generated content online. However, Congress' solution affects over 200 other federal statutes. Fortunately, the implications for those other laws appear to be mostly inconsequential (we hope).

INTRODUCTION

In 2016, Congress enacted the Defend Trade Secrets Act (“DTSA”),¹ the first federal law providing civil protection for trade secrets. This statute has an unusually significant impact on trade secret law and, more generally, intellectual property law.²

Much of the DTSA's language copied or paraphrased existing trade secret law, including the Uniform Trade Secret Act (“UTSA”).³ Still, the law has numerous novel provisions and rough edges that courts will need to address.⁴

This essay looks closely at one such curiosity: the odd and unprecedented declaration that the DTSA “shall not be construed to

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1. Defend Trade Secrets Act of 2016, Pub. L. No. 114-153, 130 Stat. 376 (2016). Mostly codified at 18 U.S.C. § 1836.

2. Elsewhere, I described the DTSA as “the biggest IP development in years.” Eric Goldman, *The New ‘Defend Trade Secrets Act’ Is The Biggest IP Development In Years*, FORBES TERTIUM QUID (Apr. 28, 2016), <http://bit.do/ForbesDTSAIP>.

3. UNIF. TRADE SECRETS ACT (UNIF. LAW COMM’N 1985), <http://bit.do/UTSA1985>.

4. Elsewhere, I analyzed another DTSA curiosity, the *sui generis ex parte* seizure provision. See Eric Goldman, *Ex Parte Seizures and the Defend Trade Secrets Act*, 72 WASH. & LEE L. REV. ONLINE 284 (2015).

be a law pertaining to intellectual property.”⁵ This essay explains how this declaration preserves the status quo for 47 U.S.C. § 230 (“Section 230”), which immunizes websites from liability for third party content. However, the declaration potentially affects hundreds of other statutes. In general, it appears that the declaration doesn’t lead to many unintended consequences; but if courts make unexpected interpretations of it, Congress may need to revise and tighten the language.

I. THE DTSA’S 2(G) PROVISION

Traditionally, trade secrets were viewed as part of unfair competition law.⁶ However, reflecting the broad expansion of intellectual property’s scope and importance, over time trade secrets have become routinely characterized as an intellectual property right⁷ on par with copyrights, patents, trademarks and other laws protecting intangible assets.⁸

Given the near-universal modern conceptualization of trade secrets as a major category of intellectual property, it would be logical to assume that the trade secrets protections offered by the DTSA would be characterized as “intellectual property” and the DTSA would be considered an “intellectual property law.” Indeed, the rhetoric supporting the DTSA’s passage frequently referred to enhancing the protection of “intellectual property.” For example, the

5. Defend Trade Secrets Act § 2(g).

6. For example, trade secret provisions are housed in the RESTATEMENT (THIRD) OF UNFAIR COMPETITION (AM. LAW INST., 1995).

7. *See, e.g.*, ROGER M. MILGRIM, 1-2 MILGRIM ON TRADE SECRETS Ch. 2, Trade Secrets as Property, § 2.01 (2016) (“One’s rights . . . in a trade secret are intangible intellectual property.”).

8. Congress sometimes includes trade secrets in its definitions of “intellectual property,” but does so inconsistently:

Trade secrets included: 15 U.S.C. § 8112 (defining “intellectual property enforcement” as “matters relating to the enforcement of laws protecting copyrights, patents, trademarks, other forms of intellectual property, and trade secrets. . .”); 19 U.S.C. § 2242(d)(2) (including “patents, process patents, registered trademarks, copyrights, trade secrets, and mask works” in the scope of “intellectual property” subject to the USTR’s Special 301 reports); 19 U.S.C. § 2411(d)(3)(F)(i) (same); 11 U.S.C. § 101(35A)(A) (in Bankruptcy Code, “intellectual property” includes “trade secrets”).

Trade secrets excluded: 15 U.S.C. § 278n(e)(3) (in the context of “Technology Innovation Programs,” defining “intellectual property” as patents, patentable subject matter and federal copyrights); 19 U.S.C. § 4341 (in the context of customs enforcement, defining “intellectual property rights” as “copyrights, trademarks, and other forms of intellectual property rights that are enforced by U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement”); 15 U.S.C. § 4602(b)(5) & 4606(b) (regarding Sematech, separately enumerating “intellectual property” and “trade secrets”).

Senate Report on the DTSA declares: “Trade secrets are a form of intellectual property.”⁹

Yet, counterintuitively, section 2(g) of the DTSA (the “Section 2(g) Provision”) says:

This section and the amendments made by this section shall not be construed to be a law pertaining to intellectual property for purposes of any other Act of Congress¹⁰

Because this declaration conflicts with prevailing conceptualizations of trade secrets, the Section 2(g) Provision leaves most intellectual property experts puzzling about its origin. Unfortunately, Congress provided no clues about its intent. The Section 2(g) Provision apparently attracted little or no attention from Congress during its numerous markups and debates about the bill, and neither the Senate nor House Reports discuss it at all. So where did the Section 2(g) Provision come from, and why is it there?

II. IMPLICATIONS FOR SECTION 230

The Section 2(g) Provision resolves a potential clash between the DTSA and Section 230. To understand this conflict, I’ll start with a little background on Section 230 and how it handles trade secrets issues.

Section 230 was enacted in 1996 during the early days of the Internet as a mass medium. To prevent litigation from crushing the Internet, especially during its most vulnerable nascent stage, Section 230 created a zone of immunity.¹¹ Summarized simply, Section 230 says online intermediaries cannot be held legally responsible for third party content or actions. For example, if a user posts defamatory remarks to an online message board, Section 230 eliminates the message board operator’s possible defamation liability for those remarks.¹² Section 230 does not affect the user’s potential liability for his or her own remarks.

9. S. REP. NO. 114-220, at 1 (2016), <http://bit.do/DTSA2016>; *see also* 162 CONG. REC. H2028, H2030 (daily ed. Apr. 27, 2016) (Rep. Goodlatte said the DTSA “will help American innovators protect their intellectual property from criminal theft Our intellectual property laws cover everything from patents, copyrights and trademarks, and include trade secrets”).

10. Defend Trade Secrets Act § 2(g).

11. Eric Goldman, *Want To End The Litigation Epidemic? Create Lawsuit-Free Zones*, FORBES TERTIUM QUID (Apr. 10, 2013), <http://bit.do/ForbesEndLitEpidemic>.

12. Eric Goldman, *47 USC 230 and Message Board Cases*, TECH. & MKTG. L. BLOG (May 11, 2011), <http://bit.do/Goldman47USC230>.

Section 230 expressly does not immunize intellectual property claims.¹³ To the extent that trade secrets are an “intellectual property,” Section 230 does not eliminate online intermediaries’ potential legal responsibility for third party dissemination of trade secrets. In those circumstances, the standard *prima facie* elements and defenses determine liability.¹⁴

The Ninth Circuit complicated Section 230’s applicability to trade secret matters in its 2007 ruling, *Perfect 10 v. ccBill*.¹⁵ The Ninth Circuit held that Section 230 immunizes *state* intellectual property claims; the statutory exclusion for “intellectual property” only excluded *federal* intellectual property claims.¹⁶ So, if a trade

13. “Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.” 47 U.S.C. § 230(e)(2).

14. For example, in three pre-Section 230 cases, website operators avoided liability for user-posted trade secret information. *Religious Technology Center v. Netcom On-Line Communication Services, Inc.*, 923 F. Supp. 1231 (N.D. Cal. 1995); *Religious Technology Center v. F.A.C.T.NET, Inc.*, 901 F. Supp. 1519 (D. Colo. 1995); *Religious Technology Center v. Lerma*, 897 F. Supp. 260 (E.D. Va. 1995).

Among other challenges for plaintiffs, scienter is usually a prerequisite for trade secret misappropriation. *See DVD Copy Control Ass’n, Inc. v. Bunner*, 31 Cal. 4th 864 (2003). A message board operator may not have the requisite scienter until it knows that a user posted trade secret misappropriation, such as if it receives a takedown notice from the trade secret owner. IAN BALLON, 4 E-COMMERCE AND INTERNET LAW § 49.08 (2015 update). As a practical matter, if Section 230 does not apply, online intermediaries will likely follow a “notice-and-takedown” procedure for trade secret complaints similar to those they use to handle copyright and trademark claims. *See IAN BALLON*, 2 E-COMMERCE AND INTERNET LAW § 10.18[1] (2015 update).

15. *Perfect 10, Inc. v. ccBill LLC*, 488 F.3d 1102 (9th Cir. 2007).

16. *Id.* at 1118-19:

The CDA does not contain an express definition of “intellectual property,” and there are many types of claims in both state and federal law which may — or may not — be characterized as “intellectual property” claims. While the scope of federal intellectual property law is relatively well-established, state laws protecting “intellectual property,” however defined, are by no means uniform. Such laws may bear various names, provide for varying causes of action and remedies, and have varying purposes and policy goals. Because material on a website may be viewed across the Internet, and thus in more than one state at a time, permitting the reach of any particular state’s definition of intellectual property to dictate the contours of this federal immunity would be contrary to Congress’s expressed goal of insulating the development of the Internet from the various state-law regimes . . . In the absence of a definition from Congress, we construe the term “intellectual property” to mean “federal intellectual property.”

In a footnote, the court added:

States have any number of laws that could be characterized as intellectual property laws: trademark, unfair competition, dilution, right of publicity and trade defamation, to name just a few. Because such laws vary widely from state to state, no litigant will know if he is entitled to immunity for a state claim until a court decides the legal issue. And, of course, defendants that are otherwise entitled to CDA immunity will usually be subject to the law of numerous states.

secret owner sues an online intermediary in a Ninth Circuit court for state law trade secret misappropriation because a user disseminated trade secrets through the online intermediary, the online intermediary can invoke Section 230 to immunize itself—even if the online intermediary knew of the user’s misappropriation, and even if the online intermediary received and failed to act upon a takedown notice.¹⁷

The Ninth Circuit’s Section 230 analysis in *ccBill* has not persuaded other courts. All other opinions interpreting Section 230’s intellectual property exclusion do not distinguish between state and federal intellectual property claims.¹⁸ As a result, there is currently a “circuit split” between the Ninth Circuit and the rest of the country regarding Section 230’s immunization of state intellectual property claims.

Without the Section 2(g) Provision, the DTSA would have partially overturned *ccBill*’s Section 230 holding *sub silentio*.¹⁹ Throughout the country—including the Ninth Circuit—trade secret owners could have brought DTSA claims (as federal intellectual property claims) against online intermediaries without running into the Section 230 immunity. Thus, where *ccBill* effectively kept online intermediaries safe from trade secret claims, the DTSA would have exposed online intermediaries to trade secret claims even in the Ninth Circuit.

An entity otherwise entitled to § 230 immunity would thus be forced to bear the costs of litigation under a wide variety of state statutes that could arguably be classified as “intellectual property.” As a practical matter, inclusion of rights protected by state law within the “intellectual property” exemption would fatally undermine the broad grant of immunity provided by the CDA.

Id. at 1119 n.5.

17. Opinions applying Section 230 to trade secret claims are scarce. I believe the only case applying *ccBill*’s Section 230 holding to a trade secret claim is *Stevo Design, Inc. v. SBR Mktg. Ltd.*, 919 F. Supp. 2d 1112, 1125 (D. Nev. 2013); *but see Stevo Design, Inc. v. SBR Mktg. Ltd.*, 968 F. Supp. 2d 1082, 1090 (D. Nev. 2013) (suggesting limits to the earlier ruling).

18. *See, e.g., Doe v. Friendfinder Network, Inc.*, 540 F. Supp. 2d 288 (D.N.H. 2008); *Atlantic Recording Corp. v. Project Playlist, Inc.*, 603 F. Supp. 2d 690 (S.D.N.Y. 2009); *UMG Recordings, Inc. v. Escape Media Group, Inc.*, 948 N.Y.S. 881, 888-89 (N.Y. Sup. Ct. 2012), *rev’d on other grounds*, 107 A.D.3d 51, 964 N.Y.S.2d 106 (N.Y. App. 2013); *Ohio State Univ. v. Skreened Ltd.*, 16 F. Supp. 3d 905, 918 (S.D. Ohio 2014).

Also, two appellate courts addressed the issue prior to the Ninth Circuit’s *ccBill* ruling and reached conclusions inconsistent with *ccBill*. *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1320-24 (11th Cir. 2006) (state publicity rights claim); *Universal Communication Systems, Inc. v. Lycos, Inc.*, 478 F.3d 413, 422-23 (1st Cir. 2007) (state trademark claim). *See generally* IAN BALLON, 3 E-COMMERCE AND INTERNET LAW § 37.05[5] (2015 update).

19. I believe the Electronic Frontier Foundation requested that the Section 2(g) Provision be added to the DTSA bill to protect *ccBill*’s holding.

Instead, the Section 2(g) Provision means that trade secret owners cannot assert DTSA claims—anywhere in the country—against online intermediaries based on third party content or actions. Section 230 cases are often resolved for the defense on a motion to dismiss,²⁰ so if a plaintiff asserts a DTSA claim against an online intermediary based on third party content or actions, the court should grant the defendant’s motion to dismiss the DTSA claim—without the plaintiff getting discovery or getting the opportunity to make a summary judgment motion.

Still, online intermediary defendants should not get too excited about the immunity from DTSA claims. The DTSA expressly does not preempt state laws,²¹ including state trade secret laws; and the Section 2(g) Provision expressly does not redefine state trade secret law as not “intellectual property.”²² Thus, state trade secret claims are still “intellectual property” claims for Section 230 purposes; so outside the Ninth Circuit, Section 230 does not immunize state trade secret claims.

It seems illogical, or at least incongruous, for Congress to treat state trade secrets as “intellectual property” and federal trade secrets as “not intellectual property,” so courts could struggle with the implicit but conspicuous doctrinal conflict. Still, given the clarity of Congress’ desire not to preempt state law, the DTSA almost certainly does not affect plaintiffs’ ability to bring state trade secret claims as they always have. So even as the Section 2(g) Provision screens out DTSA claims predicated on third party content, it will not screen out the parallel state trade secret claim.

As a result, the Section 2(g) Provision effectively retains the pre-DTSA status quo about online intermediary liability for trade secret misappropriation claims for third party content. In the Ninth Circuit, *ccBill* still applies and Section 230 immunizes state trade secret claims. Outside the Ninth Circuit, courts do not recognize Section 230’s immunity for state trade secret claims. Federal (DTSA) claims didn’t exist before the DTSA and are immunized by Section 230—both inside and outside the Ninth Circuit—in situations where Section

20. See generally David S. Ardia, *Free Speech Savior or Shield for Scoundrels: An Empirical Study of Intermediary Immunity Under Section 230 of the Communications Decency Act*, 43 LOY. L.A. L. REV. 373 (2010).

21. Defend Trade Secrets Act § 2(f) (“Nothing in the amendments made by this section shall be construed ... to preempt any other provision of law”).

22. The section 2(g) Provision only applies to “other Act[s] of Congress.” Defend Trade Secrets Act § 2(g).

230 applies.²³ Therefore, if Congress sought to preserve the *ccBill* holding, the Section 2(g) Provision apparently succeeded.

III. OTHER IMPLICATIONS

While the Section 2(g) Provision targeted Section 230, Section 2(g) did not limit its effect to Section 230. Given its expansive effect, what other federal laws might it affect?

The short answer is that the Section 2(g) Provision implicates a broad range of statutes that use the term “intellectual property” and creates some interpretative curiosities. However, for the most part those curiosities are largely inconsequential.

To assess the full implications of the Section 2(g) Provision for federal laws other than Section 230, I searched for the phrase “intellectual property” in the United States Code. I found 212 statutory references containing the phrase.²⁴ I then personally analyzed each of the 212 results to see what consequences might result from excluding the DTSA from their use of the term “intellectual property.”²⁵

As discussed in the prior section, state trade secret laws still should be characterized as “intellectual property” for federal statutory purposes. This blunts much of the potential impact of the Section 2(g) Provision. Where a federal statute refers to “intellectual property,” it will still include state trade secrets. In virtually all cases, the omission of the DTSA from the meaning of the phrase “intellectual property” is inconsequential to the extent state trade secrets are still included in the definition.

23. Of course, appellate courts could flip their stance on Section 230's applicability to state trade secret claims. The Ninth Circuit could also overturn *ccBill*, or other circuits could adopt its interpretation of Section 230. Or the Supreme Court could resolve the Circuit split, though the Supreme Court has never taken a Section 230 case.

24. Search conducted at <http://bit.do/USCode> on July 21, 2016. Search results on file with the author. Westlaw and Lexis's databases both find results from the annotated version of the U.S. Code, so searches in those databases produce substantially more citations because the phrase “intellectual property” appears only in the annotations, not the code itself.

The 212 search results are a little high because they include a few results where material that is not an “Act of Congress” (such as executive orders or superseded language) referenced the term “intellectual property.”

25. This approach may be incomplete because litigants may be able to argue that the Section 2(g) Provision applies to interpretations of federal law even where the enabling federal statute didn't use the phrase “intellectual property.” Speculating on those areas is beyond the scope of this short essay, but it would not be surprising if litigants eventually address this question.

The primary exception occurs if the DTSA protects any material that state trade secret law does not. I'll call that material "DTSA-only Trade Secrets." The existence of DTSA-only Trade Secrets is theoretically possible because the DTSA's definition of "trade secret" material does not match any other trade secret statute word-for-word. However, if the category exists at all, DTSA-only Trade Secrets likely represents a small universe because the DTSA²⁶ and the UTSA²⁷ both define "trade secrets" expansively and therefore are likely to protect material effectively co-extensively.²⁸ If courts unexpectedly interpret the DTSA in a way that creates a meaningful universe of DTSA-only Trade Secrets, that could have significant implications for trade secret law because of some of the consequences discussed below.

Let's look more closely at the parts of the U.S. Code (other than Section 230) where Section 2(g) Provision issues may arise:

Agency Scope. The United States Patent and Trademark Office's (PTO) scope of authority references "intellectual property" multiple times.²⁹ The Section 2(g) Provision makes the DTSA technically outside the PTO's scope. So where Congress authorizes the PTO to comment or advise on "intellectual property," in theory the DTSA is not included.³⁰ However, because of the DTSA/state trade secret law overlap, the PTO can still address trade secret issues generally. As a practical matter, it's also unclear who would challenge the PTO's authority to address the DTSA.

A similar authority scope issue applies to the "Intellectual Property Enforcement Coordinator" (IPEC),³¹ a White House office currently held by Danny Marti.³² However, unlike the PTO, Congress

26. 18 U.S.C. § 1839(3).

27. Uniform Trade Secrets Act § 1(4). State definitions of "trade secret" vary, but most states use the UTSA's definition or a close variation of it.

28. "The UTSA definition of a trade secret, Uniform Trade Secrets Act § 1(4) is largely tracked in the Economic Espionage Act, 18 U.S.C. §§ 1831-1839. The parallel definitions have been judicially recognized." MILGRIM, *supra* note 7, §1.01 n.38 (citing *United States v. Hsu*, 155 F.3d 189, 195-196 (3d Cir. 1998)). See also Rochelle C. Dreyfuss, *Trade Secrets: How Well Should We Be Allowed to Hide Them? The Economic Espionage Act of 1996*, 9 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 1, 9-13 (1998); Christopher B. Seaman, *The Case Against Federalizing Trade Secrecy*, 101 VA. L. REV. 317, 361-62 (2015).

29. See 35 U.S.C. § 2(b).

30. However, the DTSA expressly requires the PTO to periodically assist with a report on international trade secret theft. *Defend Trade Secrets Act* § 4.

31. See 15 U.S.C. §§ 8111-16.

32. USIPC, *IPEC Leadership*, OFFICE OF MANAGEMENT AND BUDGET, <http://bit.do/AboutIPEC>.

expressly authorized IPEC to address “trade secrets,”³³ which should incorporate the DTSA even if its “intellectual property” references don’t.

Tax Code. Because most trade secret material will be simultaneously protected by the DTSA and state trade secret law, it will be difficult or impossible to isolate a trade secret’s net extra economic value attributable to the DTSA as separated from the trade secret’s value under state trade secret law. To the extent the Internal Revenue Service (IRS) has special rules for “intellectual property,” it would be economically pointless to calculate the DTSA-specific value.

If any DTSA-only Trade Secrets exist, they may drop out of the IRS’s treatment of “intellectual property.” However, their value will remain taxable under non-IP specific rules. It’s hard to anticipate whether the alternative tax calculations provide a material net benefit to either the trade secret owner or the I.R.S.

Two parts of the tax code, 26 U.S.C. § 170(m) and 26 U.S.C. § 6050L(b), provide detailed rules for the tax treatment of charitable donations of intellectual property. Because of the Section 2(g) Provision, these rules would not apply to DTSA-only Trade Secrets; in which case default tax rules for property donations ought to apply instead. If the IRS or taxpayers somehow could isolate the DTSA-specific value of trade secrets also protected by state trade secrets laws, that value should be eligible for default tax treatment as well.

Bankruptcy Code. 11 U.S.C. § 365(n) allows bankruptcy trustees to ratify or reject an executory “intellectual property” license. The Bankruptcy Code expressly defines “intellectual property” to include trade secrets,³⁴ so the Section 2(g) Provision should not change the treatment of trade secret licenses.

Nevertheless, the Section 2(g) Provision possibly causes DTSA-only Trade Secrets to drop out of the Bankruptcy Code’s definition of “intellectual property.” If so, licenses covering only DTSA-only Trade Secrets would not be subject to §365(n)’s trustee rejection option.³⁵

33. 15 U.S.C. § 8112.

34. 11 U.S.C. § 101(35A)(A).

35. See generally Sharon K. Sandeen, *Identifying and Keeping the Genie in the Bottle: The Practical and Legal Realities of Trade Secrets in the Bankruptcy Proceedings*, 44 GONZ. L. REV. 81, 121 (2008).

Federal Court Jurisdiction. The DTSA provides federal courts with original jurisdiction over DTSA claims.³⁶ If a trade secret case gets to federal court but Section 230 immunizes a plaintiff's DTSA claims, however, the case could lose its basis for federal court jurisdiction if there are no other bases supporting jurisdiction.³⁷ Judges may then decide not to exercise supplemental jurisdiction, which would force the plaintiff back to state court; and in exceptional circumstances, lack of jurisdiction could lead to permanent dismissal of the plaintiff's claims.

A Note About Customs Enforcement. Numerous statutes discuss Immigrations and Customs Enforcement (ICE) and intellectual property rights.³⁸ However, the Section 2(g) Provision does not appear to affect ICE's authority.

ICE's statutory authority to seize goods at the border does not apply to trade secret misappropriation,³⁹ and the DTSA does not affect this. ICE can obtain trade secret-based seizure authority if the International Trade Commission (ITC) issues exclusion orders based on trade secrets.⁴⁰ The ITC bases exclusion orders on its statutory authority to regulate "[u]nfair methods of competition and unfair acts in the importation of articles"⁴¹ rather than any statutory reference to "intellectual property," so the DTSA does not affect the ITC's authority or any exclusion orders it issues.

IV. CONCLUSION

The Section 2(g) Provision's counterintuitive declaration baffles many intellectual property experts, but the provision seems likely to achieve its apparent goals. It successfully preserves the Ninth Circuit's interpretation of Section 230 to prevent trade secret claims against online intermediaries while having minimal effects on other

36. Defend Trade Secrets Act § 2(c).

37. For example, trade secret plaintiffs routinely allege Computer Fraud & Abuse Act claims to provide federal court jurisdiction. See Eric Goldman, *Do We Need a New Federal Trade Secret Law?*, SANTA CLARA UNIV. LEGAL STUDIES RESEARCH PAPER No. 35-14, 2 (Sept. 19, 2014) <http://bit.do/GoldmanNewFedTSLaw>. If plaintiffs continue this practice, they may ensure a separate basis for federal court jurisdiction irrespective of the DTSA claim.

Although the DTSA's basis for federal jurisdiction may moot the issue, a defendant's actual or likely assertion of Section 230 immunity may not independently confer federal jurisdiction. See *Cisneros v. Sanchez*, 403 F. Supp. 2d 588 (S.D. Tex. 2005); *Leviston v. Jackson*, No. 15 Civ. 4563(KPF), 2015 WL 3657173 (S.D.N.Y. June 12, 2015).

38. E.g., 19 U.S.C. §§ 4341-50.

39. 19 U.S.C. § 1595a(c)(2).

40. *TianRui Grp. Co. v. Int'l Trade Comm'n*, 661 F.3d 1322 (Fed. Cir. 2011).

41. 19 U.S.C. § 1337(a)(1)(A).

federal laws. Still, the broad reach of the Section 2(g) Provision creates the possibility of unexpected judicial interpretations, and if those materialize, Congress will almost certainly have to revisit the Section 2(g) Provision to narrow its effect more precisely to the Section 230 context.