Index

31

A

value of trade secret, relevance of, 129-

	31
aberrant conduct, 149–50 defined, 150	wrongdoer's profits, consideration of,
	128–29
impact on sentencing, 150	approval requirement for EEA, 13–14
law-abiding life, deviation from, 150	codification of, 14
abuse of position of trust, impact of, 146-	negative economic effect of EEA,
49	concerns regarding, 13
fiduciary duties, consideration of, 148	personnel eligible to provide approval,
position of trust, defined, 147	14
sentence adjustment for, 146	prosecution initiations, requirements for,
amount of loss, determining, 126-44. Also	14
see research and development costs;	violations of, sanctions for, 14
response costs impact on loss	
determination	В
actual loss, defined, 127	D 11/751 D 20/7
damages for past harm, consideration	Beall, Thomas R., 207
of, 128–29	border searches in EEA investigations,
fair market value considerations, 127	29–32
fines adjusted upward based on	authority for, limitations on, 30
amount, 126	Coast Guard officers, conduct by, 30
intended loss, defined, 127	conduct of, requirements for, 29
loss, defined, 127	Customs and Border Protection agents
lost profits, 132–33	conduct of, 30
calculating, 133	functional equivalents of physical
difficulties in determining, 133	borders, 30
replacement cost considerations, 127–	defined, factors regarding, 30
28	search authority for, 30
	guidelines for, 31
Restatement of Torts, provisions	Immigration and Customs Enforce-
regarding, 128	ment agent conduct of, 30
thieves' market concept, 137	law enforcement agents with authority
defined, 137	for, 30
use in loss valuations, 137	procedures for, 30
unjust enrichment, 136–38	prohibitions regarding, 31
market value determinations, 137–	reasonable suspicion, application of, 31
38	usefulness of, 29
	· · · · · · · · · · · · · · · · · · ·

C	purpose of, 202
	seizure of property, provisions for, 203–
Child Protection Act, 119	04
civil remedies under the EEA, 201–04.	actual possession requirement,
Also see Defend Trade Secrets Act	204–05
congressional purpose in EEA enact-	materials seized, procedures
ment, 201–03	regarding, 205
Clinton, William, 15	seizure orders, requirements for,
Coast Guard officers, border searches,	205
conduct of, 30	special master, 206
Computer Fraud and Abuse Act, 133–35	appointment of, 206
criminal proceedings in trade secret cases,	function of, 206
157–59. Also see discovery in trade	support for, 206
secret cases	defenses to EEA charges, 99–108. Also
criminal discovery rules, impact of, 157	see entrapment; impossibility defense
EEA provisions regarding secrecy	to EEA charges; independent
protection, 158	development; reverse engineering
Federal Rules of Civil Procedure,	acquired experience, employee use of,
impact of, 158	100
Federal Rules of Evidence, impact of,	casually retained information, issues
158	regarding, 101
protective orders, 159–61	developed skills, employees capitalizing
role in secrecy protection, 159	on, 102
terms of, 159	disclosure of trade secret, 114–15
public disclosures of trade secret theft,	reasonable measures to keep secret,
impact of, 158	requirement for, 114
secrecy protections, difficulties regard-	efforts to memorialize knowledge,
ing, 157–59	consideration of, 108
trial procedures, 166–68	employee exposure to information,
Customs and Border Protection agents,	consideration of, 100
border searches, conduct of, 30	general knowledge exclusion from trade
D	secret definition, 103
D	ignorance or mistake, 108–09
Defend Trade Secrets Act, 43, 112, 202–	trade secret conversion, consideration
06	of, 105
compensatory damages, provisions for,	diplomatic issues in international EEA
203	enforcement, 193–97
criticism of, 207–09	Chinese military personnel, indictment
trade secret claims as weapons,	of, 193–97
potential for, 208–09	diplomatic responses, 195
EEA, amendments to, 202	retaliatory measures, potential for, 196
enactment of, 202	U.S. Department of Justice, actions
equitable relief, provisions for, 203	regarding, 193
equitable relief, provisions for, 203	· · - · · · · · · · · · · · · · · · · ·

employee exposure to information, consideration of, 100 potential obstacles to, 100 enforcement of the Economic Espionage Act. See federal resources for EEA enforcement entrapment, 119–21	Foreign Intelligence Surveillance Act authorization, requirements for, 32 electronic surveillance under, 32–36 significant purpose requirement, application of, 33 Freeh, Louis, 2, 3, 69, 157
electronic surveillance, FBI use of, 119 entrapment defense, avoidance of, 120	Н
undercover operations use by FBI, 119 EUROPOL, IP protection efforts of, 20	Hatch, Orrin, 13 Holder, Eric, 9
F	I
electronic surveillance, use of, 119 intellectual property crime, investigation of, 12 trade secret theft, investigation of, 11 undercover operations, use of, 119 federal resources for EEA enforcement, 9–12 Department of Justice enforcement activities 9 Feinstein, Dianne, 6 foreign agent, trade secret theft, 75–79 acting as foreign agent, determining, 75 as foreign agent, 75 benefit to government, determining, 75 Foreign Corrupt Practices Act economic espionage provisions, 72 international enforcement of the EEA, application, 182 foreign instrumentality in trade secret thefts, 72–76 activities directed by government, determination of, 73 evasion of EEA, prevention of, 72 Foreign Corrupt Practices Act, application to, 72 instrumentality, failure to define, 72	IBM, economic espionage, target of, 6 Immigration and Customs Enforcement agents, border searches, conduct of, 30 impossibility defense to EEA charges, 115–19 act not made criminal by statute, consideration of, 117 examples of, 115 potential damage to EEA, consideration of, 119 trend regarding, 117 viability of, 117 independent development, 112–13 as defense to EEA charges, 112 burden of proof for, 112 independent economic value derived from secrecy, 61–65 difficulties regarding, 64 independent economic value requirement, issues regarding, 61–62 state trade secret laws, provisions regarding, 62 Uniform Trade Secrets Act, provisions of, 62 Industrial Espionage Act passage of, 7
state-owned enterprises, issues regarding, 72 substantial control requirement, 72–74	provisions of, 7 Industrial Revolution, economic espionage during, 2

K key logger software use in EEA investigations, 36 Kohl, Herb, 5–7, 107	National Security Act of 1947, 7 National Security Cyber Specialists Network, 11 purpose of, 11 National Stolen Property Act, 4
M	0
Mandatory Victims Restitution Act, 152 McCollum, Bill, 6–7 Mexican Revenue Service, IP protection efforts of, 20 Mitchell, Michael, 23 multiple prosecutions of trade secret theft cases, 169–76 Double Jeopardy Clause, application to, 170	Obama Administration, trade secret theft discouragement of, 19 Obama, Barack, 93, 198 offense level of crime, determining, 126– 44. <i>Also see</i> amount of loss, determining; sentencing guidelines, U.S. Omnibus Crime Control and Safe Streets Act, provisions of, 32
double jeopardy protections inapplicability of, 172 dual sovereignty doctrine application to, 170 exceptions to, 172 furtherance of justice, consideration of, 175 preemption of state law, EEA provision regarding, 169 two different sovereigns, violations involving, 170 vindictive prosecutions, issues regarding, 174	preemption of state law, EEA provision regarding, 169 Prioritizing Resources and Organization for Intellectual Property Act, 18, 51 private interests participation in EEA enforcement, 20–27 internal investigations, benefits of, 21 trade secret owners involvement with, 20–21 trade secrets owned by others, protection of, 21–22
N	proprietary information loss, cost of, 3 punishing organizations for EEA
National Intellectual Property Law Enforcement Coordination Council, 15 National Intellectual Property Rights	violations, 154–56 culpability score, consideration of, 155 effective compliance plans, importance of, 155 ethics programs, importance of, 155
Coordination Center, 14–17 establishment of, 14 investigations under, 16–17 member agencies, 15 purpose of, 14 Strategic Plan, implementation of, 16–	ethics programs, importance of, 155 fines for, determining, 154–55 monetary fines as criminal penalties, 154 U.S. Sentencing Guidelines application to, 155

foreign country involvement in trade secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125	punishment for EEA violations. Also see	U.S. Sentencing Commission, recom-
U.S. Economic Espionage Penalty Enhancement Act, provisions of, 124–25 forfeiture, 151–52 court discretion regarding, 151 mandatory facet of sentencing, 151 supplement to other punishments, 151 Mandatory Victims Restitution Act, provisions of, 152 Prioritizing Resources and Organization for Intellectual Property Act, provisions of, 151 restitution, 152–56 reimbursement, requirements for, 153 value of the property, payment for, 153 victim, defined, 152 victim's expenses, determining, 154 statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 tion, 133–36 civil litigation costs, consideration of, 135–36 Computer Fraud and Abuse Act provisions of, 132–34 reverse engineering, 110–12 as defense to EEA charge, limitations of, 112 Defend Trade Secrets Act, impact of, 112 Rogers, Mike, 193 Rogers, William, 170 Royal Canadian Mounted Police, IP protection efforts of, 20 Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of; amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125		
ment Act, provisions of, 124–25 forfeiture, 151–52 court discretion regarding, 151 mandatory facet of sentencing, 151 supplement to other punishments, 151 Mandatory Victims Restitution Act, provisions of, 152 Prioritizing Resources and Organization for Intellectual Property Act, provisions of, 151 restitution, 152–56 reimbursement, requirements for, 153 value of the property, payment for, 153 victim, defined, 152 victim's expenses, determining, 154 statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 135–36 Computer Fraud and Abuse Act provisions of, 133–34 reverse engineering, 110–12 as defense to EEA charge, limitations of, 112 Defend Trade Secrets Act, impact of, 112 Rogers, Mike, 193 Rogers, William, 170 Royal Canadian Mounted Police, IP protection efforts of, 20 Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of; amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125		-
ment Act, provisions of, 124–25 forfeiture, 151–52 court discretion regarding, 151 mandatory facet of sentencing, 151 supplement to other punishments, 151 Mandatory Victims Restitution Act, provisions of, 152 Prioritizing Resources and Organization for Intellectual Property Act, provisions of, 151 restitution, 152–56 reimbursement, requirements for, 153 value of the property, payment for, 153 victim, defined, 152 victim's expenses, determining, 154 statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 135–36 Computer Fraud and Abuse Act provisions of, 133–34 reverse engineering, 110–12 as defense to EEA charge, limitations of, 112 Defend Trade Secrets Act, impact of, 112 Rogers, Mike, 193 Rogers, William, 170 Royal Canadian Mounted Police, IP protection efforts of, 20 Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of, amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of, foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125	Economic Espionage Penalty Enhance-	civil litigation costs, consideration of,
court discretion regarding, 151 mandatory facet of sentencing, 151 supplement to other punishments, 151 Mandatory Victims Restitution Act, provisions of, 152 Prioritizing Resources and Organization for Intellectual Property Act, provisions of, 151 restitution, 152–56 reimbursement, requirements for, 153 value of the property, payment for, 153 victim, defined, 152 victim's expenses, determining, 154 statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 Computer Fraud and Abuse Act provisions of, 133–34 reverse engineering, 110–12 as defense to EEA charge, limitations of, 112 Defend Trade Secrets Act, impact of, 112 Regers, Mike, 193 Rogers, William, 170 Royal Canadian Mounted Police, IP protection efforts of, 20 Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of, amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125	ment Act, provisions of, 124–25	
court discretion regarding, 151 mandatory facet of sentencing, 151 supplement to other punishments, 151 Mandatory Victims Restitution Act, provisions of, 152 Prioritizing Resources and Organization for Intellectual Property Act, provisions of, 151 restitution, 152–56 reimbursement, requirements for, 153 value of the property, payment for, 153 victim, defined, 152 victim's expenses, determining, 154 statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 reasonable measures to keep information Instructions, 126 Sentencing Reform Act, provisions of, 125	-	Computer Fraud and Abuse Act
mandatory facet of sentencing, 151 supplement to other punishments, 151 Mandatory Victims Restitution Act, provisions of, 152 Prioritizing Resources and Organization for Intellectual Property Act, provisions of, 151 restitution, 152–56 reimbursement, requirements for, 153 value of the property, payment for, 153 victim, defined, 152 victim's expenses, determining, 154 statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 reasonable measures to fence independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 reverse engineering, 110–12 as defense to EEA charge, limitations of, 112 Defend Trade Secrets Act, impact of, 112 Regers, Mike, 193 Rogers, William, 170 Royal Canadian Mounted Police, IP protection efforts of, 20 Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of, 112 Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of, 112 Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of, 124 Sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of, 124 Sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of, sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of, sentencing guidelines, U.S., 125–50. Also sentencing in Trust, impact of foreign country inv		
supplement to other punishments, 151 Mandatory Victims Restitution Act, provisions of, 152 Prioritizing Resources and Organization for Intellectual Property Act, provisions of, 151 restitution, 152–56 reimbursement, requirements for, 153 value of the property, payment for, 153 victim, defined, 152 victim's expenses, determining, 154 statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 reimbursement, requirements for, 153 value of the property, payment for, 154 Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of; amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125		-
Mandatory Victims Restitution Act, provisions of, 152 Prioritizing Resources and Organization for Intellectual Property Act, provisions of, 151 restitution, 152–56 reimbursement, requirements for, 153 value of the property, payment for, 153 victim, defined, 152 victim's expenses, determining, 154 statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R R R R Defend Trade Secrets Act, impact of, 112 defined, 110 EEA provisions regarding, 111 Rogers, Mike, 193 Rogers, William, 170 Royal Canadian Mounted Police, IP protection efforts of, 20 Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of; amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125	supplement to other punishments,	as defense to EEA charge, limitations
Prioritizing Resources and Organization for Intellectual Property Act, provisions of, 151 restitution, 152–56 reimbursement, requirements for, 153 value of the property, payment for, 153 victim, defined, 152 victim's expenses, determining, 154 statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R R R 112 defined, 110 EEA provisions regarding, 111 Rogers, Mike, 193 Rogers, William, 170 Royal Canadian Mounted Police, IP protection efforts of, 20 Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of; amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125	Mandatory Victims Restitution Act,	
Prioritizing Resources and Organization for Intellectual Property Act, provisions of, 151 restitution, 152–56 reimbursement, requirements for, 153 value of the property, payment for, 153 victim, defined, 152 victim's expenses, determining, 154 statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 defined, 110 EEA provisions regarding, 111 Rogers, Mike, 193 Rogers, William, 170 Royal Canadian Mounted Police, IP protection efforts of, 20 S Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of; amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125		
tion for Intellectual Property Act, provisions of, 151 restitution, 152–56 reimbursement, requirements for, 153 value of the property, payment for, 153 victim, defined, 152 victim's expenses, determining, 154 statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 EEA provisions regarding, 111 Rogers, Mike, 193 Rogers, William, 170 Royal Canadian Mounted Police, IP protection efforts of, 20 S Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of; amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125	-	defined, 110
restitution, 152–56 reimbursement, requirements for, 153 value of the property, payment for, 153 victim, defined, 152 victim's expenses, determining, 154 statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 Rogers, Mike, 193 Rogers, William, 170 Royal Canadian Mounted Police, IP protection efforts of, 20 S Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of; amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125	-	
restitution, 152–56 reimbursement, requirements for, 153 value of the property, payment for, 153 victim, defined, 152 victim's expenses, determining, 154 statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 Rogers, William, 170 Royal Canadian Mounted Police, IP protection efforts of, 20 S Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of; amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125		
reimbursement, requirements for, 153 value of the property, payment for, 153 victim, defined, 152 victim's expenses, determining, 154 statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 Royal Canadian Mounted Police, IP protection efforts of, 20 Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of; amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125	-	
value of the property, payment for, 153 victim, defined, 152 victim's expenses, determining, 154 statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of; amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125		
value of the property, payment for, 153 victim, defined, 152 victim's expenses, determining, 154 statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of; amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125		•
victim, defined, 152 victim's expenses, determining, 154 statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of; amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of; foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125		F
victim, defined, 152 victim's expenses, determining, 154 statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of; amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Schumer, Charles, 6 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of; amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125		S
victim's expenses, determining, 154 statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 sentencing guidelines, U.S., 125–50. Also see aberrant conduct; abuse of position of trust, impact of; amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125		
statutory maximums, 124 U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 see aberrant conduct; abuse of position of trust, impact of; amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125		
U.S. Intellectual Property Enforcement Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 see aberrain Conduct, abuse of position of trust, impact of; amount of loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125	-	
Coordinator, recommendations of, 124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 coordinator, recommendations of, loss, determining; sophisticated means to perpetrate offense, impact; use of special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125	-	
124 R reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 sentencing Reform Act, provisions of, 125		
R use of special skills, impact of foreign country involvement in trade secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 clifficulties created by requirement, 60 special skills, impact of foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125		
foreign country involvement in trade secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 foreign country involvement in trade secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125	12.	
reasonable measures to keep information secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 difficulties created by requirement, 60 secret theft, 144–46 Sentencing Guidelines' Application Instructions, 126 Sentencing Reform Act, provisions of, 125	R	
secret, 55–61. Also see independent economic value derived from secrecy costs imposed by, 55 Sentencing Reform Act, provisions of, difficulties created by requirement, 60 Sentencing Reform Act, provisions of, 125		-
economic value derived from secrecy costs imposed by, 55 Sentencing Reform Act, provisions of, difficulties created by requirement, 60 I25		
costs imposed by, 55 Sentencing Reform Act, provisions of, difficulties created by requirement, 60 125		Sentencing Guidelines' Application
difficulties created by requirement, 60 125	economic value derived from secrecy	
	costs imposed by, 55	Sentencing Reform Act, provisions of,
failure to do so consequence of 56 Sentancing Deform Act 125	difficulties created by requirement, 60	125
	failure to do so, consequence of, 56	Sentencing Reform Act, 125
reasonable steps, defined, 57 service of process, 185–99	reasonable steps, defined, 57	service of process, 185–99
security measures, examples of, 57 Federal Rule of Criminal Procedure 4,	security measures, examples of, 57	Federal Rule of Criminal Procedure 4,
Reno, Janet, 13, 14 application to, 185	Reno, Janet, 13, 14	application to, 185
4 11 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	research and development costs, 138-44	jurisdictional gap, 185–91
research and development costs, 138–44 jurisdictional gap, 185–91	calculation of, 139-40	overcoming, 191–92
· · · · · · · · · · · · · · · · · · ·	cost of project, tracking, 138	means of service, revised requirements
calculation of, 139–40 overcoming, 191–92	loss estimates, reasonableness of, 144	for, 192
calculation of, 139–40 overcoming, 191–92 cost of project, tracking, 138 means of service, revised requirements loss estimates, reasonableness of, 144 for, 192		purpose of, 185
research and development costs 138-44 jurisdictional gap 185-91		
· · · · · · · · · · · · · · · · · · ·		
calculation of, 139–40 overcoming, 191–92	loss estimates, reasonableness of, 144	for, 192
calculation of, 139–40 overcoming, 191–92 cost of project, tracking, 138 means of service, revised requirements loss estimates, reasonableness of, 144 for, 192		purpose of, 185
calculation of, 139–40 overcoming, 191–92 cost of project, tracking, 138 means of service, revised requirements loss estimates, reasonableness of, 144 for, 192		

service, procedures for, 185 two requirements for effective service, 185	trade secret, misappropriation of, 39–43. <i>Also see</i> reasonable measures to keep information secret; specificity
sophisticated means to perpetrate offense impact of, 149 proof of, 149	requirement in misappropriation prosecutions; whoever statute provisions
sentence adjustment for, 149	categories of, 39
specificity requirement in misappropria- tion prosecutions, 52–55 double jeopardy, pleading of, 52	economic espionage, 39 theft of trade secrets, 39 Defend Trade Secrets Act, provisions
fairly informing defendant, requirement for, 52	of, 43 EEA definition of misappropriation,
indictment, need for inclusion of particulars, 52	breadth of, 42 misappropriation, difficulties in
Specter, Arlen, 5–7	defining, 41
Strategy on Mitigating the Theft of U.S. Trade Secrets, 18–27	owner of trade secret, defining, 55 prosecutions under EEA, 41–43
agencies involved with, 19 Obama Administration introduction of,	receipt or possession of trade secrets, 43–44
18 purpose of, 18	prosecution for, 43 Restatement (Third) of Unfair Compe
Т	tition, application of, 41 reverse engineering, issues regarding, 42
Task Force on Intellectual Property Intellectual Property Enforcement Coordinator, cooperation with, 10 purpose of, 10 representatives to, 10	Uniform Trade Secrets Act, application to, 41 trade secret owner, injury to, 86–89. <i>Also see</i> interstate or foreign commerce related to trade secrets
trade secret defined, 49–52 criminal prosecutions under EEA, 51– 52 EEA broad definition of, 49	actual injury, issues regarding, 88 disadvantage, suffering of, requirement for, 86
forms of information covered by EEA, 50	trade secret definition, impact of, 87 Trade Secrets Clarification Act, 90, 93, 95
general knowledge exclusion from, 103 information not protected by EEA, 52 information protected under the EEA, 50	trade secrets, theft of, proof requirements for, 81. <i>Also see</i> trade secret owner, injury to intent, proof of, 85–86
Uniform Trade Secrets Act definition of, 49	circumstantial evidence for, 85 intent to confer benefit, 82–86 intent to convert, 81–82

Treasury and Government Appropriations Act, 15 U U.S. Department of Justice. Also see Task Force on Intellectual Property Computer Crime and Intellectual Property Section, purpose of, 10 Computer Hacking and Intellectual Property coordinator, 10 enforcement of EEA, 9–12. intellectual property theft, focus of, 9 international EEA enforcement, issues	Uniform Trade Secrets Act, 17 independent economic value, provisions regarding, 62 trade secret defined, 49 trade secret misappropriation, application to, 41 trade secret theft, application to, 17 unjust enrichment in trade secret theft, 136–38 use of special skills, impact of, 146–50 sentencing adjustment for, 146 special skill, defined, 146
regarding, 193 National Security Cyber Specialists	W
Network, 11	whoever statute provisions, 39–40
Task Force on Intellectual Property, establishment of, 10	individuals, application to, 39 organization
trade secret theft, investigation of, 11 U.S. Intellectual Property Enforcement	application to, 39 defined, 39
Coordinator, EEA penalties,	penalties for EEA violations, 40
recommendations regarding, 124 U.S. Sentencing Commission, trade secret	worker mobility, Economic Espionage Act impact on, 13
theft, recommendations regarding,	Y
U.S. Trade Representative, IP protection efforts of, 19	Yeltsin, Boris, 6