

Once Upon a Time in Trade Secret Law: Federal Judge Expands Trade Secret Protection to Wu-Tang Clan Album, Opening New Strategies for Exclusive Assets

Client Alerts

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In a groundbreaking decision with significant implications for businesses operating in digital asset markets, luxury goods, and experiential entertainment, Judge Pamela K. Chen of the Eastern District of New York has become the first federal judge to recognize a musical work as a protectable trade secret under the Defend Trade Secrets Act (DTSA).¹ The September 25, 2025 ruling in *PleasrDAO v. Shkreli* expands trade secret protection beyond traditional business information to encompass unique cultural assets whose value derives from exclusivity.

Key Takeaways

- **Musical works and cultural artifacts can qualify as trade secrets** if their economic value derives from secrecy itself rather than eventual commercial exploitation
- **Exclusivity-based business models** can receive trade secret protection with proper contractual and security measures
- **Trade secret claims can coexist with copyright protection** when focused on maintaining confidentiality rather than preventing reproduction
- **Forfeiture orders and asset transfers** create ongoing obligations that, if violated, may constitute trade secret misappropriation

The Case

PleasrDAO, a decentralized autonomous organization, purchased Wu-Tang Clan's one-of-a-kind album "Once Upon a Time in Shaolin" for \$4.75 million in 2021 after the government seized it from Martin Shkreli following his securities fraud conviction. The album, deliberately created as a single copy with an 88-year prohibition on commercial exploitation, came with strict contractual restrictions designed to preserve its uniqueness.

Despite being required to surrender all copies as part of his criminal forfeiture, Shkreli retained digital copies and publicly livestreamed portions to thousands of listeners. He also claimed to have distributed copies widely and threatened to release the album via torrent. PleasrDAO sued under the DTSA, among other claims, seeking to protect the album's exclusivity. PleasrDAO did not pursue copyright infringement or breach of contract claims against Shkreli—traditional legal avenues for enforcing the rights at issue—likely because Shkreli, during his period of ownership, held a limited right to copy “Once Upon a Time in Shaolin,” and there was no direct contract between PleasrDAO and Shkreli. This left a gap in the law which PleasrDAO sought to fill with its trade secrets claim.

Judge Chen's Analysis

Expanding Trade Secret Definition

Judge Chen confronted precedent that music cannot constitute a trade secret. Federal courts had previously rejected trade secret claims for unreleased recordings by Prince² and Janet Jackson,³ reasoning that these materials were simply awaiting commercial release. In those cases, secrecy was merely a temporary business strategy—a prelude to the real value extraction through traditional distribution. Courts found that unreleased commercial music fundamentally exists to be heard, making trade secret protection inappropriate for what is essentially copyrighted material in a holding pattern.

Chen distinguished “Once Upon a Time in Shaolin” as “qualitatively different” from typical unreleased recordings. Here, secrecy wasn't a temporary state before commercialization—it was the entire point. The album's “secret and exclusive nature...is a large part of its intrinsic value,” with the 88-year prohibition on commercial release baked into its conceptual DNA. This wasn't music waiting to be released; this was music whose power came from NOT being released. By recognizing that “all forms and types of business information” can qualify as trade secrets when they meet statutory requirements, Chen opened the door for protecting assets where exclusivity itself—rather than the underlying content—drives economic value.

Novel Economic Value Framework

The court's most significant departure from traditional DTSA analysis was finding economic value not in competitive advantages for producing or marketing goods, but in the ability to maintain exclusivity itself. PleasrDAO's business model—monetizing scarcity through limited exhibitions, NFT sales, and exclusive experiences—depends entirely on preventing public disclosure. Each unauthorized release permanently diminishes this value in ways monetary damages cannot remedy.

Reasonable Security Measures

The court found PleasrDAO satisfied the reasonable measures requirement through:

- Physical security (armed guards, surveillance, vault storage)
- Contractual restrictions embedded in purchase agreements
- Limited access protocols with binding confidentiality agreements

- Compliance with government forfeiture requirements

Notably, the court credited contractual limitations that “run with the asset” across ownership changes—a particularly relevant consideration for NFT and digital asset transactions.

Implications for Business

Luxury and Experiential Businesses

Companies whose business models depend on artificial scarcity, exclusive access, or experiential consumption now have additional tools for protection. Consider whether your high-value unique assets might qualify for trade secret protection if properly structured. Although businesses will continue to rely on copyright and contract rights as their main sources of protection, trade secret protection can serve as an additional safeguard in situations where copyright and contract protections are not available or sufficient.

Content and Entertainment

Content creators and distributors should evaluate whether certain exclusive materials merit trade secret protection in addition to copyright. This dual-protection strategy could be particularly valuable for:

- Limited edition releases
- Exclusive venue-specific content
- Pre-release materials with enhanced confidentiality measures
- Unique performances or recordings

Digital Assets and NFTs

This ruling provides a potential framework for protecting NFT-based exclusivity and digital collectibles. Businesses creating or trading in unique digital assets should consider:

- Implementing robust access controls
- Including perpetual confidentiality obligations in contracts, including smart contracts
- Documenting how exclusivity creates economic value
- Maintaining detailed records of security measures

Acquisition and Employment Transitions

The ruling clarifies that legitimate initial access doesn’t immunize subsequent misuse. Organizations should:

- Review forfeiture and asset transfer provisions in transactions
- Strengthen post-employment obligations regarding confidential materials

- Document surrender requirements for terminated relationships
- Consider whether standard confidentiality agreements adequately address unique assets

Practical Recommendations

1. **Audit Unique Assets:** Identify assets whose value derives primarily from exclusivity rather than underlying content
2. **Strengthen Documentation:** Maintain clear records demonstrating (a) economic value from secrecy, (b) reasonable security measures, and (c) confidentiality notices
3. **Review Contractual Protections:** Ensure agreements include provisions that preserve trade secret status across ownership transfers and clearly define post-termination obligations
4. **Consider Dual Protection Strategies:** Evaluate whether valuable creative works merit both copyright and trade secret protection, carefully distinguishing the interests each protects
5. **Update Compliance Programs:** Review how your organization handles unique assets during litigation holds, government investigations, and other proceedings that might transfers of unique assets.

Looking Ahead

As this case proceeds to trial, it will likely provide additional guidance on damages calculations for exclusivity-based assets and the scope of discovery in DTSA cases involving digital materials.

Organizations operating in digital asset markets, luxury goods, or experiential entertainment should monitor this case closely and consider whether their valuable unique assets might benefit from trade secret protection under Judge Chen's framework.

Footnotes

[1] *PleasrDAO v. Shkreli*, No. 1:24-cv-04126, Dkt. 57 (E.D.N.Y. Sept. 25, 2025).

[2] *Paisley Park Enters., Inc. v. Boxill*, 253 F. Supp 3d 1037 (D. Minn. 2017).

[3] *Anderson v. Jackson*, No. 04-CV-2649 (CAS) (JWJx), 2005 WL 8166024 (C.D. Cal. Aug. 8, 2005).

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Content, Media, and Entertainment

Trade Secrets and Restrictive Covenants

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