

## Former Goldman Sachs Employee’s Long Legal Battle over the Word ‘Tangible’ By Sheila Tabrizi, J.D. Candidate 2019 | February 13, 2017

Since [2009](#), Sergey Aleynikov, a former computer programmer for Goldman Sachs, has been fighting a long legal battle that stems from whether the proprietary code taken from his former employer, Goldman Sachs, constitutes [“tangible”](#) property as defined by the NY penal code for the unlawful use of secret scientific material (Penal Law §165.07). The reason for all this confusion is that the penal law was created before the advent of computers.

It is undisputed that upon leaving Goldman Sachs, Aleynikov was set to work for a high-speed trade start up – a potential competitor to Goldman Sachs. Furthermore, the proprietary information taken was a code that if misused could [manipulate](#) the stock market. Why Goldman Sachs has such a code is a question that remains unanswered.

Nearly all evidence weighs in favor of corporate espionage, except for whether the act of taking a code and uploading it via hard drive onto an encrypted server is considered theft of “tangible property.”

On January 24, 2017, the Supreme Court of New York, Appellate Division, [overturned](#) a previous ruling and deemed that the copying of source code onto a hard drive constitutes a [“tangible reproduction or representation”](#) of Goldman Sachs’s confidential information.

The defendant argued that because the code itself is intangible, the outdated statute does not apply. However, the court held that the defendant made a tangible reproduction of the code, via hard drive, and that is sufficient to meet the penal code’s standards for tangible.

Due to the large-scale impact of this ruling on the definition and subsequent broadening of the penal code to include the transfer of code as tangible property, it won’t be a surprise to see this law, or even this case, remanded for further review.