

Do Not Compete: How Trade Secret Protections in the Northeast Paved the Way for Silicon Valley's Tech Boom

Before the emergence of Silicon Valley as a hotspot for innovative technology, Boston's Route 128 Technology Corridor was the largest tech hub in the United States. Throughout the last three decades of the twentieth century, Route 128 was surrounded by businesses working on cutting-edge minicomputers and household appliances.¹ By the 1990s, Boston's tech companies faced competition from the other side of the nation. Businesses in the San Francisco Bay Area began working on microcomputers and PCs, and they eventually drove most of the Route 128 companies out of business. Silicon Valley became the technology capital of the world.

Legal scholars and political scientists attribute Silicon Valley's success to employee mobility.² The majority of US states enforce non-competition agreements to protect employers' trade secrets. Some states, however, including California, have banned non-competition agreements outright.³ California Business and Professions Code 16600 voids any contract which restrains anybody "from engaging in a lawful profession, trade, or business of any kind."⁴

UC Berkley Professor AnnaLee Saxenian argued that the strict prohibition of non-competition agreements was a cause of Silicon Valley's high-tech innovation.⁵ Compared to other regions, Silicon Valley allows for much more employee mobility, which attracts a lot of talent to the geographic area. Route 128, on the other hand, had robust non-competition agreements. As a result, it lagged behind Silicon Valley in terms of value and innovation.

Technology has evolved from minicomputers and PCs to smartphones and self-driving cars, and Silicon Valley maintains its dominance because it allows for good ideas to spread across the region, ultimately benefiting its economy as a whole. Engineers from companies like Alphabet, Tesla, and Uber continue to leave their jobs to create rival start-ups throughout the Bay Area.⁶ In 2016, two former leaders of the self-driving car teams at Alphabet and Uber founded the autonomous driving company Argo AI.⁷ Argo AI partnered with Ford and Volkswagen in 2019 and currently has a valuation of \$7.5 billion.⁸ Similarly, an Alphabet engineer and a Tesla engineer teamed up in 2016 to launch the tech company Aurora Innovation.⁹ Last month, Aurora Innovation agreed to acquire Uber's self-driving car business as it attempts to revolutionize the future of transportation.¹⁰

Assuming Professor Saxenian's theory is accurate, there is a strong incentive for businesses to follow the Silicon Valley model and avoid non-competition agreements altogether. However, the highly competitive nature of the industry can lead to a collective action problem. It is not in an individual company's interest to have its trade secrets out. Additionally, no company wants to give up the people who brought it success in the first place. Enacting laws to reduce the prevalence of non-competition agreements might be the best way to collectively facilitate

¹ <https://techcrunch.com/2009/10/31/the-valley-of-my-dreams-why-silicon-valley-left-bostons-route-128-in-the-dust/>; <https://www.vox.com/new-money/2017/2/13/14580874/google-self-driving-noncompetes>

² <https://www.vox.com/new-money/2017/2/13/14580874/google-self-driving-noncompetes>

³ https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=BPC§ionNum=16600.

⁴ *Id.*

⁵ <https://www.vox.com/new-money/2017/2/13/14580874/google-self-driving-noncompetes>

⁶ *Id.*

⁷ *Id.*

⁸ <https://techcrunch.com/2020/07/30/self-driving-startup-argo-ai-hits-7-5-billion-valuation/>

⁹ <https://www.vox.com/new-money/2017/2/13/14580874/google-self-driving-noncompetes>

¹⁰ <https://www.cbsnews.com/news/uber-self-driving-cars-aurora-innovation/>

employee mobility. It could all be worth it in ten years if it draws in talented employees who in turn innovate and create value. In 2018, more than twenty years after losing out to Silicon Valley in the tech race, Massachusetts passed a new law limiting the enforceability of non-competition agreements.¹¹ Boston's Technology Corridor is still considered the country's second largest tech center behind Silicon Valley.¹² Time will tell if the new law will help attract the necessary talent to spur innovation and create space for free-flowing ideas in the region.

-- *Robert Hesni*

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Over the past twenty-five years, Silicon Valley has outperformed other US tech hubs, such as the Boston Route 128 Technology Corridor, to house some of the most innovative and valuable tech companies in the world. Silicon Valley's success could be attributed to the California law prohibiting employers from requiring their employees to sign non-competition agreements. Massachusetts recently followed suit and enacted a law limiting the enforceability of non-competition agreements. If good ideas can flow across Boston's Route 128 like they did in Silicon Valley, the region might see an increase in talent, innovation, and value over the next several years.

¹¹ <https://www.laboremploymentlawblog.com/2018/08/articles/non-competition-covenants/new-massachusetts-law-limits-non-compete/>

¹² <https://www.digitalrealty.com/blog/bostons-technology-corridor>