

From: [REDACTED]
To: [FN-OMB-IntellectualProperty](#)
Subject: Public Response to Prioritizing Resources and Organization for Intellectual Property Act of 2008, Public Law 110-403
Date: Friday, March 19, 2010 1:56:12 PM

Thank you for offering the public an opportunity to offer suggestions on this law. I'm sure you will be sifting through a deluge of inflammatory and poorly thought out comments from the public at large. It's my hope that this will not be one of them.

You asked:

The IPEC requests written submissions from the public that provide specific recommendations for accomplishing one or more of the objectives of the Joint Strategic Plan, or other specific recommendations for significantly improving the U.S. Government's enforcement efforts. Recommendations may include, but need not be limited to: Proposed legislative changes, regulations, executive orders, other executive action, guidelines, or changes in policies, practices or methods.

I will address the areas you requested suggestions for:

1. Reducing the supply of infringing goods, domestically and internationally;
2. Identifying weaknesses, duplication of efforts, waste, and other unjustified impediments to effective enforcement actions;
3. Promoting information sharing between participating agencies to the extent permissible by law;
4. Disrupting and eliminating infringement networks in the U.S. and in other countries;
5. Strengthening the capacity of other countries to protect and enforce intellectual property rights;
6. Reducing the number of countries that fail to enforce intellectual property rights;
7. Assisting other countries to more effectively enforce intellectual property rights;
8. Protecting intellectual property rights in other countries by:
 - Working with other countries to reduce intellectual property crimes in other countries;
 - Improving information sharing between law enforcement agencies in the U.S. and in other countries; and
 - Establishing procedures for consulting with interested groups within other countries.
 - Establishing programs to enhance the enforcement efforts of foreign governments by providing training and technical assistance designed to:
 - o Enhance the efficiencies and minimize the duplication of U.S. Government training and assistance efforts;
 - o Prioritize deployment of U.S. Government resources to those countries in which programs can be carried out most effectively and will have the greatest impact on reducing the number of infringing products in the relevant U.S. market, protecting the intellectual property rights of U.S. rights

holders, and protecting the interests of U.S. persons otherwise harmed by infringements in other countries.

To give some background, the work that I do involves both the use of a large number of copyright protected products (software) as well as relies on copyright protection for the products we create (also software) so I have an interest in maintaining software copyright protection. I'm also well versed in economic theories and bulk human behavior, giving me a perspective on likely outcomes from changes in the legal and social landscape.

1) Reducing the supply of infringing goods, domestically and internationally

I propose legislative change as the single most effective way to reduce the supply of infringing goods. Specifically, I suggest that we reinstate the copyright registration requirement. This will help shrink the list of goods for which copyright may be infringed, thereby making it possible to focus limited resources on a smaller subset of goods, resulting in better enforcement options for each good. It also will enhance the public good by ensuring that abandoned goods are available for public use without causing an undue hardship on the holders of a copyright which needs legal protection.

Similarly, I propose another legislative change-- reduce the duration of copyright to again focus the enforcement effort on goods that are newer and worthy of more aggressive enforcement.

- 2) Identifying weaknesses, duplication of efforts, waste, and other unjustified impediments to effective enforcement actions
- 3) Promoting information sharing between participating agencies to the extent permissible by law

A single, centralized location where anyone involved in the investigation can provide updates on their progress and the targets of their investigations will help a great deal on both of these issues. Something similar to a "wiki" (open security but with extremely aggressive auditing and version controls) will both expand collaboration by allowing anyone with an interest to contribute, and also remove the impediment of first "proving" the need to participate.

4) Disrupting and eliminating infringement networks in the U.S. and in other countries

The most effective way to eliminate infringement networks is to provide a non-infringing way to get an economically superior product. One way to encourage this might be a legislative change giving tax breaks for selling products which can directly compete with those found on infringing networks. All too often end users see a situation where the products available for sale are inferior to those available via copyright infringement. This motivates exactly the opposite of the desired behavior, and when it continues the violations become more socially acceptable-- degrading the overall effectiveness of copyright law.

Technical attempts to eliminate these are unlikely to succeed. At best an "arms race" will develop where the defenders need to succeed every time and the attackers only need succeed once. In my opinion, technical countermeasures should be a low priority for enforcement since the efforts will be largely futile.

- 5) Strengthening the capacity of other countries to protect and enforce intellectual property rights
- 6) Reducing the number of countries that fail to enforce intellectual property rights
- 7) Assisting other countries to more effectively enforce intellectual property rights
- 8) Protecting intellectual property rights in other countries

We should have a policy of openly assisting with outside investigations, perhaps by including international representatives in the solution offered for 2) and 3). This will reduce the barriers to investigations that tend to happen as they cross international borders. Our best chance is cooperating fully with foreign government investigations. Attempting to extend our laws to foreign countries is likely to encounter significant resistance and resentment, which will hobble our ability to cooperate.

Another option might be a tariff or outright ban on exports of copyrighted goods destined for countries which refuse to cooperate with our investigations. I suspect that this may have the unintended consequence similar to the issues raised in 4) where users will be driven to violate copyright in order to avoid the tariff, so this should be used with caution.

Thanks again for the opportunity to comment. I hope that you have found my suggestions useful. Should you desire a clarification or more information, please feel free to contact me.

Sincerely,

-- Steve Bonds