

**From:**

**Subject:**

Intellectual Property Protection and the Public Domain

**Date:**

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Ms. Espinel,

I applaud the administration's efforts to create your position and look into the growing concerns around intellectual property. This is becoming a huge issue, and will continue to become more prominent, as we move into a digital era where eventually most books, movies, albums etc. will be sold and bought in digital formats rather than the physical formats to which we've been long accustomed.

As such, copyright laws will have to evolve as the main threat shifts from losing physical copies of these items, to authors, musicians, directors (and their publishers, labels and studios) main risk becomes losing sales to illegal downloads and illegal copying of their copyrighted material. I fully support going after piracy hard, even moving it to a criminal rather than civil matter, as long as the punishments are in proportion to the crime. For instance, the illegal download of a book or album should not be hit with the huge settlements that have been given out in RIAA lawsuits against people who have illegally downloaded music. The illegal download of an album should be treated as a misdemeanor, and the penalties no more severe than what one would get for stealing the actual CD. A system of fines is probably appropriate, but they must be proportionate to the crime. Perhaps fines can be the value of the digital content (how much it current sells for) plus an added 25% penalty. The specifics are not so important--what is crucial is that illegal downloads are huge threat to the publishing, print and film (among other) industries, and laws and enforcement need to evolve to keep pace with the move into the fully digital era--while also making sure punishments aren't so disproportionate to the harm done to be in violation to constitutional protections against cruel and unusual punishments.

However, at the same time it is important to protect the rights of consumers and the public. In many areas--for example electronic books on devices like the Amazon Kindle--the rights of legitimate users who are buying the books they download are being challenged. DRM schemes tie the book to one device and make it less useful than the print copy of the book which often costs the same or less than the electronic version. Rightful owners of a book cannot loan it to friends or family members. They cannot sell their copy or donate it to the library etc. In short, just like copyright laws and enforcement need updating, so do Fair Use laws. The current Fair Use laws are woefully inadequate even for print materials. For instance, the university at which I teach is currently being sued about Fair Use issues relating to using copyrighted materials in the classroom, providing students with access to journal articles, chapters of books not available in the library for course readings and so forth. As inadequate as Fair Use laws in their current form are for print material, they're even less adequate for digital content. Should consumers be able to sell their copy of an e-book (while not keeping a copy for themselves)? Should there be a system to loan e-books for limited amounts of time? Fair Use laws need to be expanded to clarify how legitimate owners who bought digital content can use that content without being in violation of copyright laws.

Finally, the last crucial issue I wish to address is when copyrighted material should enter the public domain. While content producers, publishers etc. absolutely need to have their rights protected, so does the public. Currently copyrights are extended well beyond the death of the author--70 years beyond currently for most materials. This is excessive. Content creators need their material and profits protected, and it should extend beyond their death. Having it end at death would cause a disincentive for people to continue

working late in life, knowing their family will see little from the work. It also gives no incentive for surviving family to publish works posthumously. To protect the interest of the public, copyrights should expire 5-10 years after death of the creator of the material, with perhaps some stipulations that it can be extended for works still selling in high volume beyond that point (as most works sell only for a year or two after publication, but many have popularity and sales that carry on). Such a system would protect the rights of authors, musicians, artists etc., while also allowing for social progress in the arts as material enters the public domain in a more timely manner. In any case, the laws regarding when works enter the public domain are currently not in the public interest. Most material stops selling well before the creator has passed on, yet the works aren't available to the public domain for 70 years or after their death.

Thank you for your time and consideration in reading my thoughts on intellectual property and enforcing copyright laws. I applaud the efforts you and your office are putting forth to deal with the complex issues surrounding these issues in the digital age.

Sincerely,

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