

From: [REDACTED]
Sent: Tuesday, March 16, 2010 6:19 AM
To: FN-OMB-IntellectualProperty
Subject: Re: Comments on the Joint Strategic Plan

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Victoria Espinel
Intellectual Property Enforcement Coordinator
Office of Management and Budget
Executive Office of the President
Filed via email

Dear Ms. Espinel:

Any strategic plans for enforcement of intellectual property should measure all of the costs and benefits involved. Enforcement has its own costs to citizens and consumers, especially when legal uses of copyrighted works can be mistaken for infringement. Differentiating between the two is a very time consuming and troublesome process currently, due to the unspecific nature of the laws involved.

The Joint Strategic Plan should carefully examine the basis for claims of losses due to infringement, and measure credible accounts of those losses against all of the consequences of proposed enforcement measures, good and bad. These losses should not be based on an ethereal idea of 'supposed sales' which consider every infringing copy to be a sale lost. This is a false notion, and causes a great deal of harm within the current media establishment.

Measures like cutting off Internet access in response to alleged copyright infringement will do more harm than good. Internet connections are not merely entertainment or luxuries; they provide vital communication links, often including basic phone service. This is even more clearly unfair in cases where users are falsely or mistakenly accused. At very most, restriction of Internet access should be administered only after a just trial by Criminal Court, not Civil, as Civil Court removes many of the basic protections against abuse provided by the Constitution. Current Media Establishments are unfairly leveraging their clout to cause the defendants' inability to defend their accused actions.

Internet service providers should not be required or asked to violate users' privacy in the name of copyright enforcement beyond the scope of the law. Efforts to require or recommend that ISPs inspect users' communications should not be part of the Joint Strategic Plan.

The anti-circumvention provisions of the Digital Millennium Copyright Act can criminalize users who are simply trying to make legal uses of the media they have bought. Breaking digital locks on media should not be a crime unless they are being broken for illegal purposes. The government should not spend its resources targeting circumventions for legitimate purposes. This is a futile use of resources. As long as there is a lock, there is a method to bypass it. With each new generation of digital locks, there arises a substantial movement to break it, as this lock is seen as a challenge. This is done for legitimate purposes, but the results lead to infringement under current laws. If I purchase a DVD or BR-ROM, it is 'illegal' to make a backup, as I am required to break the lock. But this media is vulnerable to destruction and defacement (as by children for example), which would result in my legitimate purchase being wasted. But were I to make a copy, I could safely store the original work, and use the copy. This would greatly encourage me to spend money creating a

collection of films and music, which I currently do not aspire to, as I would be able to make a backup of my purchase. Distributing these copies is not right, and should be illegal, but the initial backup should be legal.

Any plans or agreements on IP enforcement, like the proposed Anti Counterfeiting Trade Agreement (ACTA) should be made open and transparent. In dealing with questions of copyright and the Internet, too much is at stake for our country's laws and policies to be made out of the public eye. Any decision made here can impact the lifestyle of current and future generations, and should be dealt with in such a way that we know what can affect us. Media Establishments that leverage industry clout to press policies should not be seen as more legitimate than the common person, as that is what this country is built on.

Thank you for your time,
Sincerely,

Matthew Jensen