

**From:** [REDACTED]  
**To:** [FN-OMB-IntellectualProperty](#)  
**Subject:** Public input: Intellectual Property and Risks to the Public  
**Date:** Tuesday, February 23, 2010 4:25:04 PM

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Dear Coordinator Espinel,

I'm pleased to see you soliciting public input in your new position as Intellectual Property Enforcement Coordinator, but I'm disturbed and worried about the way you frame the questions in your recent blog posting.

In your posting, you lump together "risks to the public," "costs to the economy," and "protecting the creativity of Americans." These are very different goals, and much of the current Intellectual Property discussion requires careful distinctions among them. As a citizen, I urgently request you to carefully distinguish these three goals.

To take one of your examples, toxic counterfeit toothpaste is clearly a "risk to the public" problem, and represents a vast class of problems that deserve full and aggressive enforcement.

I imagine that such cases also often fit into the "protecting the creativity of Americans" category, in that the counterfeits harm the business of the legitimate manufacturer (and brand owner). Again, this would fully justify serious attention from your office.

But there are several major classes of disputes presently being treated as "Intellectual Property" problems that are very different. A broad description of the category might be "information-product I.P." In many cases, these case do *\*not\** represent "risks to the public" at all: quite the contrary, since digital information can be reproduced with 100% accuracy, they represent clear benefits to the public: cheaper products.

Significant energy has been expended by the holders of these copyrights and patents, to claim that these practices represent significant "costs to the economy" -- roughly speaking, the claim is that where free copies are available, business is lost. But this turns out not always to be correct. One particularly extreme counter example is in digital music: on the one hand, research consistently shows that people with free music download access buy *\*more\** commercial music, not less: the downloads are advertising, not competition. On the other hand, the financial reports of the most vociferous opponents of downloading show them having record-breaking profits, during precisely the time when "pirating" (as they choose to call it) is most common: their own financial reports confirm what research has already indicated, that free downloads are *\*good\** for business and the economy, not bad. The strategy of prosecution and prohibition followed by the music business is meant only to retain their monopolies, not to help the economy or the public, and this is a very much less legitimate purpose.

Another member of the "information product" class is Open Source Software. We hear now of lobbyists such as the International Intellectual Property Alliance advocating import/export curbs against countries that encourage the user of Open Source software. In this case, there is no question or appearance of theft even suggested: the only objection is that someone is willing to provide a competing product at a lower price (free, in this case). This is flagrant and unmixed abuse of the public authority for competitive advantage, without any shred of support from any of your three categories of dangers.

A final note must be made of the long-pending so-called "Anti-Counterfeiting Trade Agreement," or ACTA, which for a year or more has been steadfastly negotiated in secrecy, and repeatedly leaked by concerned insiders as having outrageous and chilling terms relating to information products and their use.

I hope your office will be able to represent the people of this country fairly and completely, particularly in these areas where businesses (domestic and foreign) are attempting to use our government as a weapon against us.

References:

- [1] <http://www.guardian.co.uk/technology/blog/2010/feb/23/opensource-intellectual-property>
- [2] <http://www.technollama.co.uk/encouraging-open-source-could-land-you-in-trouble>

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