

**To:**

[FN-OMB-IntellectualProperty](#)

**Subject:**

Request for written submissions from the public (FR Doc 2010-3539)

**Date:**

Sunday, March 21, 2010 2:30:02 PM

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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,

I am writing to offer my comments on the Federal Government's intellectual property enforcement strategy.

I am a photographer, and my living is intimately connected with my ability to realize the value of the intellectual property that I produce. However, I believe very strongly in the openness of government, the doctrine of fair use, the individual rights to privacy and free speech, and the importance of ensuring that any enforcement regime is subject to judicial review. I am concerned that current thinking in the Federal Government--notably the Anti-Counterfeit Trade Agreement--favors an enforcement regime that does too little to protect the aforementioned rights.

First, the process for developing any new laws or regulations must be open and transparent, including particularly the negotiations for the Anti-Counterfeit Trade Agreement (ACTA). The full draft text of the agreement must be made public, and the ongoing negotiations must be opened to all interested parties. This includes the people, who have a very strong interest in ensuring that ACTA balances their rights against those of creators.

Second, intellectual property enforcement must not rely on wholesale monitoring, either by ISPs of their users' communications or by U.S. Customs agents of travelers' electronic devices. Many web searches, e-mails, files exchanged, and other Internet communications are of a private nature, and wholesale monitoring of those communications represents a clear invasion of privacy in violation of the Fourth Amendment. The Internet has also become the premier forum for people to express their opinions publicly, and the very knowledge that such opinions are being systematically monitored is likely to dissuade them from doing so, and thus to act as a restraint on the First Amendment right to freedom of speech. In addition, automated monitoring systems cannot distinguish between theft and legitimate fair use--a distinction that by its very nature relies on human judgment--and thus their use has no place in intellectual property enforcement.

Third, any enforcement regime must maintain robust protections for fair use, including for bypassing digital rights management for otherwise legal purposes. Borrowing and building upon the ideas of others--one kind of fair use--has been a bedrock of creative enterprise for millennia, and the United States cannot maintain its status as the world's foremost center of innovation if creators are limited in what they can create by a lack of protection for fair use.

Fourth, any enforcement regime must ensure that punishment of

infringers--including termination of Internet connections--takes place only after full judicial review. The Internet is no longer a luxury. The instructions for this very comment, for example, specify that "[a]ll submissions should be sent electronically via intellectualproperty@omb.eop.gov"--i.e., via the Internet. A citizen deprived of his or her Internet connection on the unsubstantiated say-so of a third party would have been unfairly deprived of his or her ability to comment, and thus of his or her right to participate in government.

Thank you for your consideration.

Sincerely yours,  
Andrew Slayman  
Andrew Slayman Photography