

From: [REDACTED]
To: [FN-OMB-IntellectualProperty](#)
Subject: an appeal for balanced copyright
Date: Monday, March 15, 2010 3:57:51 PM

Re: Comments on the Joint Strategic Plan
Victoria Espinel
Intellectual Property Enforcement Coordinator
Office of Management and Budget
Executive Office of the President
Filed via email

Dear Ms. Espinel:

The copyright law considers the privilege of copyright as being balanced out by obligations to the public good. Any strategic plans for enforcement of intellectual property should measure all of the costs and benefits to all of the stakeholders --not just the content owners. Enforcement has its own costs to citizens and consumers, especially when legal uses of copyrighted works can be mistaken for infringement.

Too often the content industries inflate claims of harm as purported "losses." 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.

Measures like cutting off Internet access in response to alleged copyright infringement are insidious. 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. Imagine giving other utilities like water or power the unilateral right to switch off service arbitrarily.

Internet service providers should be regulated like utilities, and 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. Instead, there should be a Privacy and Access Czar to ensure that Internet users enjoy the maximum rights available to them under the law.

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. Moreover, the exemptions to the DMCA for film, music, and media instructors should be permanently granted and expanded.

The ACTA should be tabled for an extended period public deliberation. Any plans or agreements on IP enforcement, like the proposed Anti Counterfeiting Trade Agreement (ACTA) should be made open and transparent, well in advance of public hearings and debates. The public interest should be equally represented in all these debates.

Sincerely,
Patrick Burkart