



Coordination and Strategic Planning of the Federal Effort Against Intellectual Property
Infringement: Request of the Intellectual Property Enforcement Coordinator for Public
Comments Regarding the Joint Strategic Plan
(Federal Register Volume 75, Number 35 – FR Doc. 2010-3539)
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The open Internet has transformed our lives and society at large. It has the power to deliver the world's information to the palm of every person, and provide each of us the means for freedom of expression. It has become a central mode of interaction in personal and professional life, and the foundation for society's political and economic activity.

The effort to develop a Joint Strategic Plan to improve intellectual property enforcement should advance a future that protects intellectual property rights at the same time as it empowers individuals, fuels free speech, promotes innovation and embraces radical technological change.

As both an innovator in online technologies and an intermediary, Google respects all of the creativity and generativity nourished by our services, both the intellectual property rights of traditional content owners and the fair use rights of those who seek to build on these works. We support flexible and adaptable legal frameworks around the world that provide those who create and invest in new technologies the freedom to innovate. This freedom, and the public benefit that comes with it, is made possible by intellectual property regimes that facilitate technological evolution and are not tied to particular business models or traditional technologies.

Intellectual property enforcement is often complex and context sensitive, with far-reaching consequences for the vibrancy of democracies and the competitiveness and economic growth of nations. The United States set an early foundation of balanced Internet laws that have enabled US businesses to innovate and succeed in the global marketplace. The new federal government coordination initiative must respect this balance, taking care to avoid chilling lawful behavior or harming the innovation and job-producing growth opportunities that arise from technological development.

Not long ago many branches of the US Government came together to coordinate efforts to form a global interconnected network of computers that now serves billions of users worldwide. The Internet's founders believed in openness and the power of information to better our world. It turned out that their bold vision and trust in scientific progress ushered in a new era of prosperity for the United States that continues to sustain our global competitiveness and leadership in the 21st Century. We should not, through overly restrictive intellectual property enforcement policies, inadvertently reverse course and dismantle the legal underpinnings that enable the Internet to thrive.

Response to Part I:

Google is motivated by a passion to connect people and open doors to new perspectives, knowledge, and creativity. In response to Part I of the comment request, Google reviews just some of the ways in which the changing online environment for content generation and consumption must be taken into account when assessing the need for, and full impact of, any additional enforcement efforts. The Joint Strategic Plan should reflect the totality of US economic and democratic interests. Ensuring that both the Internet economy and the creative economy continue to flourish is essential to further the growth and development of society as a whole.

New Technologies Are Transforming Content Generation and Consumption

The unprecedented democratization of content production and distribution is reshaping the content landscape. The combination of increased computing power, connectivity, and collaboration gives rise to incredible possibilities for content generation and consumption that are only beginning to be explored.

Once hard-to-access tools of production are now commonplace. The availability of broadband networks, digital cameras, and easy-to-use editing software means anyone with an idea can express it to a global audience at minimal cost and effort. The Internet fulfills the First Amendment ideal of a soapbox in the park for every speaker. A Pew study shows the face of some of these new entrants in the content sector – in 2007, 64% of teenagers had engaged in some form of online content creation.¹

The result is an explosion in content, a media environment more prolific and competitive than ever before. Traditional content generators and owners remain viable and strong. But user-created content ranging from pet videos to citizen journalism from war-torn regions of the world now competes directly for people's attention.

People are also simultaneously changing the way they engage with and consume content. Interactivity has brought a shift in control. Audiences, especially young people, are exercising more choice over what they watch, when, where and on what devices. They are interacting and forming communities around content. People are naturally social, and the Web embodies this phenomena. A new blog is created every second of every day.² Social networks now account for one out of every six minutes spent online, with two-thirds of all Internet users visiting social networking sites.³

The economic, social and civic value of these new sources of content generation and consumption, including the fundamental importance of the expression itself, must be accounted for in any intellectual property policymaking exercise.

¹ Amanda Lenhart, Mary Madden, Aaron Smith, and Alexandra Macgill, *Teens and Social Media*, Pew Internet & American Life Project (2007), available at <http://www.pewinternet.org/Reports/2007/Teens-and-Social-Media.aspx?r=1>.

² Technorati, *State of the Blogosphere* (2005), available at <http://www.sifry.com/alerts/archives/000332.html>.

³ IP Carrier, *Social Media, Networking now 17% of Total Internet Use*, Oct. 21, 2009, available at <http://ipcarrier.blogspot.com/2009/10/social-media-networking-now-17-of-total.html>.

Business Models are Adapting and Embracing the New Trends

With the amount of information online increasing exponentially, it's vitally important for creators to be available online and findable. Many content creators, including traditional content industries, are adapting and embracing the new media consumption trends. They strive to find ways to be social and viral, to connect with their audience in a more personalized and interactive way.

History has proven time and time again that new technologies generate new business models and can lead to entirely new forms of commerce. Online commerce continues to grow and evolve rapidly, even though 90% of retail is still conducted offline.⁴ Pricing methods such as pay-per-use, micro-payments and subscriptions increasingly appear online alongside free ad-supported models. Advances in image search and mobile technology hold the promise of helping brand owners reach consumers at the point of purchase with relevant product information.

Content creators in increasing numbers are choosing to make their content available through more open models, such as Creative Commons licensing. Open systems, including open source software and open technological standards, can lead to transformative innovation, greater consumer choice, and a vibrant, profitable and competitive environment for businesses.

With the rapid change of our modern Internet era, more disruption is inevitable. From the way we experience content as consumers to the business models that underpin it, our legal frameworks and enforcement efforts must be flexible to accommodate future technological change. In today's digital world, progress can be measured almost in real time. So the process of experimentation can be faster and more iterative. Successful businesses are increasingly thinking globally and building in the ability to scale.

The Joint Strategic Plan should embrace change as a catalyst for future economic growth, and prioritize openness, flexibility and experimentation. This means embracing innovation at its very core. Too often innovation is employed as a slogan, at times even in pursuit of policies that can undermine the very conditions necessary for innovation to occur. In our intellectual property system, this can arise by policies that forfeit future innovation and creativity by locking in the status quo, or worse by altering legal frameworks in ways that constrain consumers, control distribution channels, or weaken competitive threats. The inter-agency effort should strive for intellectual property enforcement policies that are content and business model neutral, and over time spawn deep, lasting innovation that will drive our economy for generations to come.

The Internet is a Massive Engine of Economic Growth, and More

⁴ Lehman Brothers, Internet Data Book (June 2008).

As President Obama expressed in his Strategy for American Innovation,

The Internet has created entire new markets, while facilitating sales and increasing productivity for all sectors of the economy. Even beyond its direct economic contributions, the Internet also support a host of other important US policy goals – including enabling transparency and civic engagement in our democratic processes and supporting the fundamental right of free expression.

In many ways, the Internet is an industry of small businesses, growing constantly in size and breadth. Last year, more than 20,000 small businesses provided Internet-related services such as web hosting, web design, publishing and Internet-based software consulting.⁶ Intermediaries, companies such as Internet service providers and hosting providers, are growing in number, aided in part by the movement of more information and functions from offline to online. A prominent example of this trend is cloud computing, which enables consumers and businesses of all sizes to use the virtual space of the Internet to run their core computing applications, resulting in cheaper and better ways to operate.

As the President's Strategy noted, the Internet is estimated to add as much as \$2 trillion to annual GDP, over \$6,500 per person.⁷ Interactive advertising, alone, is responsible for \$300 billion of economic activity in the US.⁸ The advertising-supported Internet represents 2.1% of the total U.S. gross domestic product and directly employs more than 1.2 million Americans with above-average wages in jobs that did not exist two decades ago, with another 1.9 million people working to support those jobs. In total, interactive advertising is responsible for 3.1 million American jobs.

The fair use doctrine contributes directly In 2007, the Computer and Communications Industry Association found that industries that rely upon fair use generated revenue of \$4.5 trillion, contributed \$507 billion (18%) to US GDP growth, generated \$194 billion in exports, fueled productivity gains of \$128,000 per employee, and employed 17 million people, one out of every eight workers in the US.⁹ Because consumers and businesses to build upon prior innovation to create, access and consume information in new ways, they provide a multiplier effect to stimulate growth across an even broader swath of the economy.

As these figures demonstrate, o The measures of the Internet's economic productivity and growth will only increase in the coming years, as more people and more devices access the Internet at even faster speeds. T

⁵ Executive Office of the President, National Economic Council & Office of Science and Technology Policy, *A Strategy for American Innovation: Driving Towards Sustainable Growth and Quality Jobs* (Sept. 2009), available at http://www.whitehouse.gov/assets/documents/SEPT_20__Innovation_Whitepaper_FINAL.pdf

⁶ Interactive Advertising Bureau, *Economic Value of the Advertising-Supported Internet Ecosystem* (June 10, 2009), at 6, available at <http://www.iab.net/media/file/Economic-Value-Report.pdf> (IAB Report).

⁷ Executive Office of the President, *Strategy for American Innovation*.

⁸ IAB Report at 6.

⁹ Computer & Communications Industry Association, *Fair Use in the U.S. Economy* (2007). CCIA's study followed the methodological guidelines of the World Intellectual Property Organization (WIPO).

examine economic effects comprehensively, going beyond current data to forecast the likely

Google Helps Rightsholders Derive Value Online

Google is constantly innovating and offering new ways for content creators to promote their works to new audiences and earn revenue. Every day Google works to better connect users with the information they are seeking, helping them find information, products and services they might otherwise not have found.

We help many different type of companies simply by helping users find their websites. For example, Google sends about 4 billion clicks each month, or 100,000 per minute, to news publishers through Google News, web search and other services. Each click is an opportunity for publishers to attract loyal readers and earn revenue. Simple technical standards give site owners a way to opt out of our search and news services.

Google also provides a variety of advertising solutions to help web publishers maximize revenue. In 2009, Google paid more than \$5 billion in revenue to web publishers through our AdSense program. We generate revenue for companies of all sizes across all geographies, from the New York Times to AskTheBuilder.com, where home construction expert Tim Carter earns an average of \$1400 a day through Google advertising. It's common for small businesses who sign up for Google's AdWords advertising program to experience an immediate and significant increase in traffic to their websites.

Google also partners with more than 30,000 authors and publishers, from over 100 countries, to gain exposure and drive book sales. Book Search makes finding books as easy as finding webpages. Simply by visiting books.google.com, users can search across the text of over 12 million books, both old and new, obscure and popular, including works in 100 languages. By easing discovery, we are also extending the commercial life of backlist titles. In many cases, authors and publishers who haven't sold certain books for decades are suddenly selling again, simply because users are now able to find their books more easily.

In less than five years, YouTube has evolved from a simple personal video sharing site to a way to connect people to the cultures and opinions of others. Today more than 24 hours of new video is uploaded to YouTube every minute. Political candidates now communicate with the public in a new way; citizen journalists have reported from war zones and inside repressive regimes; aspiring artists have risen to worldwide fame; and professional and amateur creators alike have found a new way to promote their work.

YouTube provides a powerful way for rightsholders to promote their works online and earn revenue. YouTube has thousands of direct partnership agreements with content owners, in which the content owners receive a majority of the ad revenue earned from user views. Moreover, YouTube's "Click-2-Buy" feature on partner videos takes users directly to where they can purchase content. The feature is routinely used by record companies to promote download sales of songs included in YouTube videos.

From its early days, YouTube has gone above and beyond legal requirements and has taken numerous steps to protect against copyright infringement. It adopted terms of use and community guidelines that explicitly prohibit infringement, it educated users through a "copyright tips" page as well as email messages, it displayed prominent messages during the video upload process warning users not to upload unauthorized materials, it imposed a 10-minute limit for

general user uploads that prevents the upload of full-length TV shows and movies, it removed allegedly infringing material expeditiously upon receiving DMCA or equivalent notices, and it terminated the accounts of repeat infringers. Since its inception, less than 1% of the total number of videos on YouTube have been the subject of DMCA or equivalent takedown notices.

YouTube also makes available technology and tools to help content owners protect their rights, including an automated tool for copyright holders to send DMCA notices with the click of a mouse, and hashing technology to prevent reload of exact copies of removed videos. In 2007, YouTube launched an advanced content identification system (“Content ID”) that now scans every video uploaded to YouTube. When the system finds a match, it follows the rightsholder’s instructions to either (i) leave the video up (and receive valuable marketing information), (ii) block the video from display on the site, or (iii) monetize the video by sharing advertising revenue. More than 1000 rightsholders worldwide – including most major television networks, movie studios and record labels in the US – now use Content ID, with most choosing to monetize rather than remove the found videos.

Despite YouTube’s success in offering rightsholders a new way to derive value online, designing and implementing flexible yet scalable technological solutions is not easy. It’s precisely because our Content ID system was voluntary that YouTube engineers could iterate, experiment and eventually roll out a cutting edge copyright protection system that gives rightsholders new choices while respecting fair use and other limitations and exceptions.

Response to Part II:

Regarding Part II, we recommend the following steps to promote the balance of public and private interests in intellectual property rights enforcement. We note upfront that developing and implementing the Joint Strategic Plan should continue in an open and transparent manner that enables the wide range of potentially affected stakeholders full participation. This will help ensure that the Joint Strategic Plan takes into account the contribution of Internet-related industries to jobs, innovation, growth, exports, creativity, and freedom of expression. The plan itself should focus entirely on the coordination of enforcement efforts directed at existing intellectual property law, and should not seek to develop new substantive law.¹⁰ Given its statutory mandate, every aspect of the Joint Strategic Plan must clearly pertain to infringement, and not merely unauthorized use (which may in fact be lawful under a limitation or exception to intellectual property rights).

Maintain the Balance of Intellectual Property Laws Essential for Our Knowledge-Based Economy

Millions of people use Google’s search engine every day, but few realize that it would not exist without limitations and exceptions to intellectual property protection that permit us to crawl, analyze, index and help users explore the Web. Technology innovators depend both upon intellectual property protection and appropriate limits for that protection.

¹⁰ The driving principle of the Prioritizing Resources and Organization for Intellectual Property Act (Pro-IP Act) was that more effective coordination would help address any perceived deficiencies in the federal government’s current enforcement efforts. The House Judiciary Committee advised that the “critical coordination and planning role should concentrate on the enforcement of the IP laws and not the development of underlying substantive laws.” H.R. Rep. No. 110-617 at 29.

This reflects the careful balance in the US intellectual property legal framework, with a number of important limitations and exceptions placed on patent, copyright, trademark and other intellectual property rights by the Constitution, the Congress and the courts. This balance requires policymakers to focus not only on the private interests of rightsholders but also on the public's paramount interest in promoting the progress of science and the useful arts and the free flow of ideas, information, and commerce. The Supreme Court has recognized the explicit tradeoff, stating "[t]he more artistic protection is favored, the more technological innovation may be discouraged."¹¹

Core national priorities, including achievements in science, education, research, development, global competitiveness and job growth, depend on robust recognition of intellectual property limitations and exceptions. While copyright law assures authors the right to their original expression, it does not extend to, and therefore explicitly encourages others to build freely upon, the ideas and information conveyed by a work. As a First Amendment outgrowth, the doctrine of fair use guarantees politicians, journalists, scholars, and ordinary citizens the basic tenets of free expression, including being able to quote from, comment on and fairly use the works of others. Fair use also protects competition by allowing companies to reverse engineer and make their products interoperate with others. And fair use guarantees that technology can thrive and evolve, including the Internet itself, whose core operational modality is the technical copying and dissemination of information.

US intellectual property policy should allow maximum flexibility for creative, transformative re-uses of protected material. Fair use and other restrictions have grown in importance with the rise of the information economy, yet the scope of protection afforded by these doctrines in the online environment is constantly challenged. Fair use determinations often require a complex evaluation of numerous issues involving artistic, political, and personal freedom, but this does not diminish the overall importance of the doctrine itself. Indeed, as the Supreme Court advises, "[A] successful defense of a copyright infringement action may further the policies of the Copyright Act every bit as much as a successful prosecution of an infringement claim by the holder of a copyright."¹²

It is also vital that consumers receive the full benefits of trademark limitations and defenses in the online world. Trademarks are a part of our daily life and culture, helping us identify products and services. Competitors and third parties can use trademarked terms lawfully so long as the terms are not used in a way likely to cause consumer confusion as to the source of the goods or services or affiliation with the owner. In the context of online advertising, for example, consumers are best served by maximizing choices of keywords, ensuring relevant and informative advertising. Consumers regularly use Internet sites to research products, read product reviews, and find resale opportunities.

The US government – and the IPEC inter-agency effort in this context – must ensure that intellectual property policy is not enforced overbroadly such that it undermines the core structure of the US knowledge-based economy. Just as inadequate copyright protection can reduce incentives to create, excessive copyright protection can stifle creativity, harm competition, halt innovation, block free speech, and gridlock economic growth. Erosion of the balance of intellectual property law through the Joint Strategic Plan or its implementation could endanger the nation's economy and threaten the millions of jobs that rely upon this balance.

¹¹ *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 125 S. Ct. 2764, 2775 (2005).

¹² *Fogerty v. Fantasy, Inc.*, 114 S. Ct. 1023, 1030 (1994).

Maintain the Safe Harbors for Internet Intermediaries

Any effort to coordinate intellectual property enforcement must preserve protections for Internet intermediaries. The government's enforcement efforts should focus on situations in which there is direct commercial infringement that is significant and unambiguous. For example, priority should be given to infringement that threatens serious harm to public health and safety from organized efforts to distribute harmful counterfeit products.¹³ The legal regimes for intermediaries are functioning as intended and no further government intervention is necessary.

Congress laid the legal foundation for the modern Internet era by protecting intermediaries from liability, the mere threat of which would hinder the growth of online commerce and communication. Section 230 of the Communications Decency Act, for instance, immunizes intermediaries from most tort law liability for content created by third parties. Congress explicitly set the policy of the United States "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."¹⁴

Congress also directly protected intermediaries through the Digital Millennium Copyright Act, by providing online service providers safe harbor from liability for copyright infringement claims based on users' actions.¹⁵ Congress recognized that robust online communications would be chilled if service providers faced unlimited damages claims based on material that their users posted or transmitted. The DMCA therefore aimed to "facilitate the robust development and world-wide expansion of electronic commerce, communications, research, development, and education in the digital age."¹⁶

In the US, the DMCA's notice-and-takedown safe harbor regime is designed to balance the interests of copyright owners, service providers and the public. Like other negotiated legislative compromises, people may have strong views about whether it could have been drafted differently. Indeed, a number of academics, entrepreneurs and public advocates, for example, believe that the DMCA's framework unduly harms innovation, First Amendment rights, and technological progress. They likewise believe companies can too easily misuse the DMCA to force the removal of non-infringing material, and that the law incentivizes intermediaries to acquiesce in overreaching or even fraudulent removal requests, with resulting harm to free speech and commerce online.

Despite this tension, as interpreted so far, in the US the DMCA safe harbor remains an appropriate framework for copyright enforcement in the Internet environment. It pragmatically requires cooperation between copyright owners and service providers. The copyright owner must identify the work believed to be infringed, identify the location of the allegedly infringing material, and certify its claims under penalty of perjury. Service providers must expeditiously take down or block access to that material. Users can contest the infringement claim by filing a counter-notice. Through this carefully-crafted process, the DMCA has been instrumental in the creation and growth of the Internet, including sites that host user-generated content. Individuals

¹³ Google's advertising policies prohibit counterfeiting, and we have on numerous occasions disapproved or disabled ads and terminated advertisers because of counterfeiting. We work collaboratively with brand owners to better identify counterfeiters and help eliminate the sources of counterfeit goods.

¹⁴ Communications Decency Act, 47 U.S.C. § 230 (1996).

¹⁵ Digital Millennium Copyright Act, 17 U.S.C. §§ 512, 1201–1205, 1301–1332; 28 U.S.C. § 4001 (1998).

¹⁶ S. Rep. No.105-190, at 1-2 (1998).

the world over now express themselves and form new communities through blogs, social networks, and the sharing of their photos and videos, in large part because of the sensibilities inherent in the DMCA.

Distinguish Appropriately Among the Different Intellectual Property Rights

Because the United States, like other countries, has distinct legal frameworks for various intellectual property rights, the Joint Strategic Plan must carefully distinguish among these rights in its efforts to coordinate enforcement.

Congress, for instance, has wisely not required a generalized notice-and-takedown or similar regime for trademarks. This reflects our core First Amendment principles, as well as pragmatic realities and the underpinning of US trademark law as a consumer protection. Trademarks can be validly held by multiple entities, and one can easily imagine the case of an over-zealous trademark owner misusing a takedown process to remove bad product reviews or other unflattering information, harming consumers, competition and e-commerce.

Moreover, intermediary liability and injunctions in patent cases, when the intermediary has no other relationship to the accused infringement, would put service providers in an extremely tenuous position. Private companies are not in a position to police complex patent technology disputes, where determining the validity of third party patent infringement accusations would be difficult or impossible.

Promote the Balance of US Intellectual Property Law around the World.

Recognizing the importance of the Internet economy, the policy of the US government should be to promote abroad flexible legal frameworks that account for technological evolution and freedom of expression. Internet services are fast becoming some of our strongest export industries, and they need balanced legal frameworks to operate in other countries. Policies that advance the export interests of Internet industries alongside those of traditional content owners will grow more aspects of our domestic economy.

Initiatives such as the Anti-Counterfeiting Trade Agreement and other international foreign policy or trade efforts must promote and defend the full balance of our nation's intellectual property laws and not disadvantage the ability of some of the most innovative and successful US industries to access export markets. The Administration's recent support for balanced copyright laws at the World Intellectual Property Organization was a useful start, affirming that the United States is committed to both better exceptions *in* copyright law and better enforcement of copyright law.¹⁷ Our trade agreements should likewise explicitly promote fair use, or comparable limitations based on the Berne Convention's three-step test, and other strong limitations and exceptions.

To protect the balance in copyright law and not unduly hinder innovation or freedom of expression, enforcement actions and infringement remedies should be proportionate and tailored, affording users due process protections. Moreover, adequate checks should guard against misuse of intellectual property rules by rightsholders or foreign governments to harm competition or the public interest, or to discriminate against and deny market access.

¹⁷ United States of America, Statement on Copyright Exceptions and Limitation for Persons with Print Disabilities, World Intellectual Property Organization, Standing Committee on Copyright and Related Rights, 19th Session (Dec. 15, 2009) at 5.

Other Specific Recommendations:

Measure Broader Societal Costs, Including Risks to Freedom of Expression. Given the critically important parts of our society that depend on strong limitations and exceptions to intellectual property rights, the inter-agency effort should measure all proposed recommended enforcement actions against the potential costs to freedom of expression, civic participation and future innovation and job growth. The Joint Strategic Plan, for example, should evaluate whether trademark owners are using over-zealous enforcement of their marks to shut down small businesses or otherwise chill free speech and hurt consumers. Likewise, the overall costs to society from the proliferation of non-practicing entities in the patent area should be measured.

Free Expression Impact Assessments. Before any US government agency changes policies pertaining to intellectual property enforcement, the agency should be required to conduct a free expression impact assessment to ensure that the change would not inadvertently risk a reduction in the availability of tools that advance core political and human rights, including free expression and civic participation. These risks could materialize by enforcement of intellectual property rights in a manner that stifles particular speech or eliminates media platforms or technologies critical for the dissemination of speech. As the government seeks to improve information sharing and strengthen the capacity of other countries to enforce intellectual property rights, the US should formally consult with a full range of stakeholders – including civil rights and free expression advocates around the world and on the ground in the particular countries – on the impact that these policies will have on the promotion of free expression.

Training of Foreign Government Officials and IP Attaches. Any training or technical assistance offered to foreign government officials should incorporate and emphasize the importance of the limitations, exceptions and safe harbors that promote innovation and freedom of expression. Similarly, all US IP Attaches should receive training not just in intellectual property rights, but also the limitations, exceptions and safe harbors that are a fundamental aspect of the US legal regime. A robust program for training in this regard matters not just to ensure that US Internet-related industries (some of the nation's most competitive export industries) can access other markets, but also so that foreign government officials do not use the US sponsored training as an excuse to restrict freedom of expression or exclude Internet-related industries and services, preferring domestic alternatives. For notice-based regimes, training should also stress the due process protections needed to ensure that notice procedures are efficient and effective. Internet industry representatives and Internet users should be involved in developing any such training.

Reduce Multi-Territorial Licensing Inefficiencies. The US Government should promote efficient and transparent multi-territory licensing regimes, adapted to the multi-territorial reach of Internet services. Inefficiencies in clearing licenses for online activity pose a substantial barrier to Internet companies seeking to experiment with new ways to offer scalable, global solutions that directly benefit rightsholders. The Internet is global, yet complex licensing and co-ownership practices and the transaction costs of negotiating rights at the national level can deter companies large and small from launching new online content services or features. Global licensing structures need to keep up with technological advances and business developments.

Prevent Misuse by Foreign Governments. The last few years have seen an increasing number of governments, even democratic ones, seeking to restrict freedom of expression online. Emerging threats to our economy could very well arise through over-enforcement or misuse of intellectual property protection by foreign governments or private actors, at a serious cost to US competitiveness, particularly in the information economy, and to freedom of expression for

individuals around the globe. As an example, broad discovery provisions in patent infringement actions in foreign countries can be misused by quasi-official entities to access sensitive information not typically needed for copyright or trademark disputes.

Increase Access to Information and Transparency. The US government should broadly consider how it can help reduce infringement by increasing access to government-funded research and purchasing products and services that conform to open standards.