

[REDACTED]

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**From:** [REDACTED] 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:

A practical, working definition of intellectual property that can be used to define the difference between infringement and fair use is impossible. In many cases it is a moderately complicated matter to determine if a particular use is allowed and benefits the culture and promotes the freedom of United States citizens, or if it is truly an infringing act.

Basic fairness and due process of law demands that any decision of guilt and application of punishment must be conducted by a government official that is assigned the responsibility to enforce justice. Allowing an individual or corporation to be able to apply a guilty verdict by filing unsupported, un-reviewed claims of infringement does not meet the basic tenets of justice that is the hallmark of our country.

When intellectual property infringement is found to be the case, the punishment must be precise and calculated with reason. In today's digital economy, the act of cutting off of internet access to a home can have tremendous impacts that far outweigh the actual damages that the initial infringement caused. Removing internet access is also a blunt instrument that can affect innocent members of the same household.

Any framework that is used to enforce intellectual property rights must use the best science to calculate the actual costs of the infringement, prove to the government judgment official the actual amount of infringement, so that a realistic monetary punishment can be applied. This punishment must be weighed and incorporated into the penal code so that the punishment for infringement is properly placed between misdemeanor dog-leash penalties and manslaughter.

Freedom of speech is a basic right and must be encouraged if our country is to remain free. The ability to harass a person to silence with unfounded intellectual property infringement claims must be avoided at all costs. You must ensure that there is an easy to use mechanism that individuals can use to refute claims. There must also be sufficient penalties associated with the filing of unfounded claims to deter the use of this mechanism as a way of suppressing speech. One possible solution is a "three-unfounded-claims and your out" penalty for filers of claims.

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.

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.

Sincerely,

Todd Jacob  
Lancaster, CA