

To: [FN-OMB-IntellectualProperty](#)
Subject: Comments on the Joint Strategic Plan
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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:

Any strategic plans for enforcement of intellectual property should measure all of the costs and benefits involved. Enforcement has its own costs to citizens and consumers, especially when legal uses of copyrighted works can be mistaken for infringement.

It should be noted that there is a clear record of apocalyptic fears from the entertainment industry about new technology followed by a reality that is nearly the polar opposite. In 1906 John Philip Sousa wrote an article entitled "The Menace of Mechanical Music" where he wrote about the dangers of the player piano and the gramophone. His primary fear was that mechanical recordings would deprive composers and performers of their livelihood and in consequence music would disappear from America. More famously perhaps is the fight against the photocopier during the 1970's and the fear that it would put publishers out of business, especially those of academic journals. In this case the courts ruled that photocopies were an improvement on hand copying and legal. More recently and perhaps more famously are the attacks on, home taping on analog cassette, home taping on digital audio tape(DAT), home taping on VCR (and worse 'commercial skipping'), MP3 players, DVR's and HDTV. At each innovation, industry reaction has been alarmist, not to say apocalyptic, and completely, utterly wrong. These fears are not new. In Plato's Phaedrus, Socrates famously argued against the 'new' technology of writing because it would "create forgetfulness in the learners' souls, because they will not use their memories." In the fifteenth century workers in the Netherlands threw their wooden shoes (sabots) into the gears of automated looms and in 1565 Conrad Gessner, the Swiss scientist, warned against the dangers of the printing press.

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.

A good counter example would be Baen Books who famously provides a vast free library of their authors works and as a consequence has seen a rise in sales of paper back, hard back and back issues of stories.

Measures like cutting off Internet access in response to alleged copyright infringement can do more harm than good. 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.

Unfortunately false accusations are all too common, as witnessed by the copious body of defamation, libel and slander law. In this instance it would be all too easy for someone to be targeted by a stalker, and angry neighbor or a political opponent and lose a vital service without the chance to face their accuser or defend themselves. Two recent examples that may illustrate these concerns are Viacom's apparent attempt to sue YouTube for video's Viacom itself uploaded to YouTube and, more egregiously, Universal Music Group's attempt to sue Stephanie Lenz because a home video of her 'dancing baby' had Prince's "Let's Go Crazy" playing in the background.

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.

I would suggest that such provisions are akin to a publisher suing a student for making margin notes in a text book, or a computer or automobile manufacturer suing an owner for adding after market parts. Perhaps more importantly, if such laws had been in place in the 1970's and 80's Microsoft and Apple would never have come into existence since both companies depended entirely on utilizing the efforts

of other people and industry.

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,

Joseph A. Johnson

Citations

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