
From:
Sent: Monday, March 15, 2010 4:56 PM
To: FN-OMB-IntellectualProperty
Subject: The Joint Strategic Plan

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To Victoria Espinel, Office of Management and Budget

Dear Ms. Espinel,

As a professor of media history, college instructor, and citizen, I am deeply concerned about the trends in intellectual property currently being pursued by the administration.

The voices calling for greater legal and technical capabilities for the monitoring and enforcement of IP compliance, including opponents of true network neutrality, are loud, powerful, and well-funded. It appears they have the ear of the President on ACTA and other issues.

I fear greatly, however, that too much deference to the concerns of large IP-holders will have serious negative consequences for the future of the internet. Media history shows us that, when the government accedes to the demands of corporate media players, the public tends to lose. Examples include the marginalization of amateur radio operators, the suppression of FM radio, and the ways that the promise of cable television to make television a more publicly accessible medium were throttled by for-profit interests.

In each of these cases, large, wealthy stakeholders used apocalyptic rhetoric and overblown fear-mongering to coerce policymakers and regulators into shaping the medium first and foremost in the corporate (rather than the public) interest. Fears of unrestricted speech, Communist subversion, copyright infringement, etc. were routinely used to secure favorable decisions from the government.

It is not that those fears were unreasonable per se, but that regulators have an unfortunate tendency to cut the public out of policy discussions and listen only to the most powerful players. Rarely, a brave government official can make a difference, but all too often regulatory capture sets in, and the public loses.

I urge you not to let that happen again. In the name of fighting "piracy" or "terrorism" or whatever the apocalyptic fear of the day is, the government is on the threshold of screwing it up for everyone and forever. Once you've turned the internet into a space of perfect monitoring and enforcement of every possible illegality, you will have killed the openness, access, freedom, and power that this medium promises.

For example, as a professor I make fair use of copyrighted materials all the time. Perfect enforcement would inevitably wrongly entangle law-abiding educators, students, libraries, and others in unnecessary legal battles, or worse, produce a chilling effect that harms us even more. We already have to deal with the DMCA, which makes it illegal for citizens to exercise their fair use rights: how much more restriction of speech, surveillance, and harassment of law-abiding citizens will this administration allow in deferring unquestioningly to the MPAA and the RIAA?

If you believe I'm exaggerating, google Stephanie Lenz, and then read the Electronic Frontier Foundation's latest report on the DMCA. How any one, even a government official who only takes meetings with "important" stakeholders, could know about these things and still regulate in a one-sided pro-corporate manner is beyond me. Yet it's happening. I strongly encourage you NOT to be such an official. Instead, do the right thing--BALANCE the concerns of IP giants with our rights as citizens to free speech, free assembly, privacy, due process, and the other rights that the ACTA treaty is threatening to curtail.

As Public Knowledge writes, "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. 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 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. 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."

Thank you for soliciting citizen thoughts on this issue and for listening and caring.

Sincerely,
--Bill Kirkpatrick

Bill Kirkpatrick
Assistant Professor
Department of Communication
Denison University
Granville, OH 43023
(740) 587-0606 (h)
(740) 587-8512 (w)
mwkirkpa@gmail.com
kirkpatrickb@denison.edu
www.billkirkpatrick.net