

**Subject:**

Request of the Intellectual Property Enforcement Coordinator for Public Comments Regarding the Joint Strategic Plan

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**The Smithsonian Center for Folklife and Cultural Heritage (CFCH)** is a nonprofit research and educational unit of the Smithsonian Institution dedicated to promoting the understanding and continuity of diverse, contemporary grassroots cultures in the United States and around the world. The Center produces the Smithsonian Folklife Festival, Smithsonian Folkways Recordings, major national cultural events, exhibitions, documentary films and videos, symposia, publications, and educational materials. The Center conducts ethnographic and cultural heritage policy oriented research, maintains the Ralph Rinzler Folklife Archives and Collections, and provides educational and research opportunities through fellowships, internships, and training programs.

The CFCH is interested in intellectual property enforcement from the perspective of preserving, disseminating and sustaining the tangible and intangible cultural heritage of grassroots communities and artists from all over the world for the purpose of increasing knowledge and understanding among peoples.

A primary concern is to balance the need for all information to remain available with the need for creators to be equitably remunerated. When intangible cultural heritage is distributed freely by third parties, the creative community's ability to sustain itself is harmed. Equally, it does not serve the public good or creative communities for works to be sequestered in private archives or filtered purely by profit motive. The intention of our copyright law was to nurture innovation and invention while maximizing the public good; these principles must be preserved in the digital age.

In addition to clear, efficient, and effective IP enforcement policies and procedures, there are a number of issues that must be addressed in order to achieve this balance. Works of unknown ownership should be made available to the public so that today's and tomorrow's generations of authors can make reference to yesterday's American culture. Recording artists should be remunerated for broadcast use of their creations. The lack of a performance right for recording artists in the US is in contravention of WTO and Berne Convention agreements and denies recording artists a significant source of both domestic income and monies from reciprocal rights agreements with international performing rights organizations. Peer-to-peer sharing services, even legalized ones, should be examined carefully to be sure that creators are fairly compensated. And the public should be educated in order to instill and emphasize responsibility in future generations to respect authors and owners of creative works.

Any action taken with regard to enforcing restrictions on the piracy of intellectual property should first consider the needs of creators and smaller copyright owners, as well as the privacy of individuals. We do not want the important efforts in this area, however, to detract from broader efforts to protect these small groups and individuals. The availability of internet distribution channels to individuals and grassroots entities has greatly increased the diversity of materials available. It would not be beneficial to the public for large, for-profit organizations (such as the telecom or entertainment industries) to control distribution channels. An example of an area of concern is a commercial internet distribution channel where only a small percentage of the content is paid for by consumers and artists are remunerated in fractions of a cent per stream. Major labels (who supply much of the content) have acquired an equity position in the company, thus opening profit channels that exclude the creators upon whose works the business has been built.