

**From:** [REDACTED]  
**To:** [FN-OMB-IntellectualProperty](#)  
**Subject:** Thoughts on the subject of intellectual property rights enforcement  
**Date:** Wednesday, February 24, 2010 5:15:33 PM

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Dear Ms. Espinel:

I am a United States citizen who has been following the issue of intellectual property (IP) law, and enforcement of said law, in the US for quite some time. I am writing in response to your public call for input on the measures to be used when enforcing IP law and punishing IP infringement. While I have not registered any copyrights, trademarks, or patents with the Copyright Office or any other agencies, I have a greater-than-average understanding on the subject of IP law, and my own opinion on how that law should be implemented and enforced, which I hope you will take into account when considering how to put your new powers to use.

Let me first congratulate you on being appointed to the position of Intellectual Property Enforcement Coordinator. Insofar as IP law is drafted and enforced according to the fundamental intent of IP law, such a position is important to the enforcement of IP law. The example you cited in your post on the White House blog, concerning counterfeit and potentially toxic toothpaste, is a good point, and I offer my full support as a US citizen for using IP law to catch and prosecute those who mislead consumers in this fashion. This type of IP infringement causes direct harm to the public, and I wish you the best of luck in curtailing this practice, and practices like these.

At the same time, however, I wish to caution you with regards to other areas of IP enforcement, and how IP laws are applied with regards to those areas. As you are no doubt aware, there exists a growing trend among the American public for the use of what is called "peer-to-peer" software, that enables the transfer of electronic files from one device to another over the Internet. This practice, known as "file sharing," may be used for the unauthorized transfer of copyrighted works, including music, motion pictures, e-books, video games, and software. This act constitutes copyright infringement under United States copyright law, and while the vast majority of such copyright infringement is of a non-commercial nature (as in, the user who downloads a file does so for personal use and not for commercial profit), several rights holders have brought lawsuits against those who infringe copyright in such a manner. Your post did not specify whether this sort of infringement is on your list of illegal acts to target, so I would like to ask a few things of you.

It is true that a minority of file sharers use the networks to download copyrighted works for profit; for example, a bootlegger might download a movie, burn it to dozens or hundreds of DVDs, and sell those DVDs without permission from the copyright holder. This constitutes commercial infringement for profit, and once again, I support any attempts by you or your office to curtail this activity, as these unlawful DVDs directly represent lost sales to the rightful copyright holders. But again, this action does not represent the great majority of file sharers, and if and when you decide to implement and enforce policy against all file sharing, I would ask that you keep in mind its generally non-commercial nature.

The main thrust of this email, however, is to ask you to maintain the utmost respect for the fundamental rights and freedoms that we enjoy as American citizens. It is plausible that in your quest to enforce IP rights, you will target the Internet, and subsequently the networks that are or could be used for copyright infringement, which are numerous. You are probably aware of the fact that multiple attempts have been made, both by the federal government and by rights holders, to combat infringement online. However, due to several factors surrounding online copyright infringement, such as the ease of infringing copyright and the sheer number of citizens who are using peer-to-peer software of some form, fighting copyright infringement using conventional means (such as individual lawsuits from rights holders) is difficult and ultimately impractical.

To that end, there are and have been several measures introduced that go to greater and greater lengths to enforce IP rights. A prime example of such a measure is the upcoming Anti-Counterfeiting Trade Agreement (ACTA), which includes provisions for Internet enforcement of IP rights. These provisions go beyond those which we currently have today, such as a provision that legally allows signatories to voluntarily implement a "graduated response" policy, by which Internet Service Providers are required to suspend subscribers after three allegations of copyright infringement. This punishment does not fit the offense of copyright infringement, and as a concerned citizen, I ask that you remember that the farther and farther our federal government goes to enforce IP rights online, the closer and closer our federal government comes to overextending its authority and harming certain fundamental liberties that are crucial to the existence of a free society.

When considering laws to pass and policies to implement, the government must always strive to pass the least restrictive laws, and implement the least restrictive policies, that are necessary to achieve the desired goal. However, in all cases, when these laws and policies would violate any inalienable rights of our citizens, these laws and policies must not be given legal power. As a hypothetical example, suppose the federal government were considering implementing a policy by which the Internet connections of all American citizens were actively monitored, in order to catch infringers of IP rights. While this would undoubtedly aid in any efforts to enforce IP rights, it would also constitute a gross and inexcusable violation of individual privacy rights, as Internet connections can be and are used in ways that do not constitute copyright infringement, such as accessing bank accounts, medical information, education, legal entertainment, and public discussion and debate. While I am aware of the fact that no such policy is in force, this email is being written in the hopes of preventing such a policy from ever enjoying the force of law.

The ongoing battle against IP rights infringement may be a difficult battle, due to the nature of the problem, but nonetheless I urge you to devote whatever resources are necessary to ensuring that whatever policies you and your office choose to implement, they fully respect the basic rights and liberties of American citizens that make a free society possible. Once again, congratulations on your appointment to the position of Intellectual Property Enforcement Coordinator, and with respect to my advice to you as detailed above, I wish you the best of luck in carrying out your role.

--A concerned citizen