

From: [REDACTED]
Sent: Monday, March 15, 2010 4:51 PM
To: FN-OMB-IntellectualProperty
Cc: [REDACTED]
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:

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. This happens too often already because Internet service providers have a strong incentive to take down first and ask questions later. Automated solutions designed to help website operators comply with the notice and takedown provisions of the current legal structure cannot tell the difference between permissible fair uses and impermissible infringement, resulting in an excessive number of false positives. This negatively impacts the ability of the public to use the Internet to freely obtain information for research, news reporting, and commentary. With a few notable exceptions, such as the decisions of Northern District of California judge Jeremy Fogel, the protections for fair uses of information are sorely lacking.

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, such as the effective loss of the ability to make fair uses of information published online.

Measures like cutting off Internet access in response to alleged copyright infringement will harm the public far more than the benefit intellectual property owners and fly in the face of the Constitutional mandate to promote the progress of science and the useful arts. 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. Indeed, in today's increasingly technological society, Internet access is critical to promote education and free speech.

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. The same country that worked with providers like Twitter

and Google to protect the rights of political dissidents in places like Iran and China to access the Internet in the service of democracy worldwide should not be shrouding its own actions with specious claims of “national security” when faced with lobbying from special interests in the recording and motion picture industries.

Sincerely,

James Lai
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