

[REDACTED]

Sent: Tuesday, March 16, 2010 12:05 AM
To: FN-OMB-IntellectualProperty
Cc: Joe Prerost (Me)
Subject: Re: Comments on the Joint Strategic Plan

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Re: 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.

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. Every effort must be made to legitimately prove that an accused infringer has actually done the infringing. The current state of affairs as demonstrated by the RIAA and MPAA court cases against accused downloaders is unacceptable. We must return to a true state of innocent until proven guilty.

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. It is not in the purview of the ISPs to examine what information is being sent along its pipes to the user nor do we want that to be the standard operating procedure. If the ISP gains that information then it is trivial to stifle competition for the services that the ISP has chosen to provide outside of the data pipe.

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. A person must be allowed to use what they have purchased in a legal manner including making personal copies of legally acquired media. The same should be pursued for hardware as well as software. A legally purchased television or media player should not be hamstrung in a misguided attempt to prevent possible copyright infringement.

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 Obama administration was elected in large part because of the promises to provide transparency and change the status quo of back room deals. Now is the time to prove that conviction and provide any proposed legislation or executive orders to the public as well as to ask for public comments at that stage accepting that changes can still be made based on those public comments.

Sincerely,

Joseph Prerost