

**Written Submission by Arts+Labs
to the Intellectual Property Enforcement Coordinator
Regarding the Development of a Joint Strategic Plan
March 24, 2010**

Arts+Labs¹, an alliance of the technology, content and creative communities, appreciates the opportunity to comment on the development of a strategic plan for aggressive enforcement of the intellectual property of U.S. rights holders. Arts+Labs' goal is a strong information economy, based on innovation, creativity and respect for the rights of all participants.

Arts+Labs strongly believes that the wholesale digital theft of intellectual property such as music, video, software, games, news, and other content undermines the creative community and poses a significant long-term threat to our economy and to the continued evolution of the Internet. If intellectual property rights are not enforceable our information and our economy will suffer.

Some argue that the revolution in technology demands a laissez-faire attitude towards copyright and market rules. Arts+Labs strenuously disagrees.

Even in a world of "bits" and "bytes," the continued development of content is contingent on respect for creators' intellectual property. Authors, musicians, filmmakers, inventors, software writers, game developers, journalists and others who earn a living by creating content are entitled to control the use of their work and to a genuine opportunity to earn fair and adequate remuneration. Absent those assurances, the professional creators on which so much of our economy is based will be discouraged from new creative work. The result will be diminution in the volume and quality of online content and the loss of the general economic benefits that flow from this work.

Further, IP theft does significant damage to our national economy. A 2007 study produced by economist Stephen E. Siwek on behalf of the Institute for Policy Innovation (IPI) estimated \$25.6 billion in direct annual losses to U.S. copyright industries from infringing activity. Using methodology developed by the U.S. Commerce Department, Siwek calculated that the indirect effects on related businesses brought annual losses to nearly \$60 billion a year, cost the economy about 373,000 jobs, and deprived the government of \$2.6 billion in tax revenues.² In a separate study that same year, Siwek estimated that online theft alone cost the U.S. music and related industries about \$3.5 billion annually.³ A 2005 study by LEK Consulting for the U.S. Motion Picture industry estimated annual losses to online theft of \$2.3 billion⁴ It is likely that growth in online activity as well as greater use of P2P software that is widely used to share files illegally has pushed digital theft even higher in recent years.

Confronting this challenge will require increased coordination among government bodies at all levels and particularly among federal departments and agencies. The protection of intellectual property must, therefore, be a shared priority for every government department and independent agency, and the effect on enforcement should be a core consideration in the development of public policy, rules and regulations. Ideally, rules and regulations should enable aggressive enforcement of intellectual property rights. At a minimum, rules and regulations should not impair the ability of law enforcement or of rights holders to protect IP.

We are frankly concerned, however, that proposed rules now pending at the Federal Communications Commission (FCC) as part of its Open Internet proceeding may have the unintended effect of undermining a range of legitimate efforts to curtail illegal copying and online distribution of copyrighted material. Enactment of these regulations also may undermine the Intellectual Property Enforcement Coordinator's joint strategic plan to defend intellectual property.

¹ Arts + Labs members include, ASCAP, AT&T, Autitude, Blue Pixel, BMI, Cisco, JibJab, Microsoft, NBC Universal, the Songwriters Guild of America, Verizon, and Viacom

² Siwek, Steven – The True Cost of Copyright Industry Piracy to the U.S. Economy, Policy Report 189, The Institute for Policy Innovation, October, 2007

³ Siwek, Steven – True Cost of Sound Recording Piracy to the U.S. Economy, Policy Report 188, The Institute for Policy Innovation, August 2007

⁴ L.E.K., "The Cost of Movie Piracy, prepared for the Motion Picture Association of America, May 2006

The FCC has wisely and explicitly observed that the protection of Internet users' rights applies only to legal activity. However, enforcement is only part of the solution. IP owners also must have the opportunity to differentiate themselves and compete against pirated content by offering better, safer, easier, and legal access to online content. By prohibiting collaborations that enable content owners to differentiate themselves, the proposed rules would create a safe haven for thieves and bar strategies that would enable creators to earn fair compensation. This would be a major error that should be corrected before the adoption by the FCC of new rules or principles designed to assure an open Internet.

With due respect for the independence of the FCC and other federal agencies, we urge the IPEC to work with the Commission and others across the government to elevate awareness of intellectual property rights and to encourage agencies to take account of the risks to American entrepreneurs and workers from copyright violations.

To sum up, we suggest the following fundamental guideposts for the development of strategic plan by the Intellectual Property Enforcement Coordinator (IPEC):

- In developing its strategic plan, the IPEC should define intellectual property protection as government-wide priority that should be factored in to all new or revised government policies, rules and regulations.
- All new and revised rules and regulations should enable IP enforcement. At a minimum, rules and regulations should not impair the ability of law enforcement or of rights holders to protect intellectual property.
- As part of the policy development process, we urge the IPEC to request the Department of Commerce or other appropriate agency to undertake and complete in 2010 an independent assessment of the extent of online digital theft and its economic impact on professional creators.
- Because illegal behaviors on the Internet cross multiple jurisdictions, IP protection efforts will increasingly require coordination with law enforcement authorities across national lines. In addition to reaching out to international governments, IPEC should monitor international enforcement activities aimed at digital theft in order to assess their effectiveness and possible application to intellectual property protection efforts by the United States.

Arts+Labs does not commend or oppose any of the specific initiatives occurring around the world, but we believe the various international experiments can provide helpful lessons for U.S. policymakers.

We thank the IPEC for this opportunity to comment on this matter and we offer our strongest support for your efforts.

Respectfully submitted,

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