

Dear Mrs. Espinel,

As Members of the European Parliament, we very much welcome the open consultation for your Administration's new strategy for intellectual property rights (IPR) enforcement, please find our suggestions hereby.

The internet challenges the territorial nature of IPR management and enforcement. As a result, European citizen's rights and business practices are increasingly affected by American laws and policies with regards to the internet.

In recent years we have observed the growing reach of US laws beyond its territory, also with regards to IPRs. The effect is most notable on the internet, where the US Congress proposed laws which would have detrimental and adverse affects on Europe's internet freedom. We are concerned about developments in this direction.

When the US Department of Justice effectively closed down the file hosting service MegaUpload, it seized servers and domain names with the cooperation of local law enforcement agencies in Hong Kong and New Zealand, but also in EU Member States. The credibility of effective extraterritorial IPR enforcement concerns us. Equally alarming is the envisaged extradition of a British EU citizen due to copyright infringements, or the blocking of Spanish websites, which likely did not infringe Spanish law. Given the importance of a solid transatlantic relation, we urge you to consider the negative extraterritorial impact of US law.

We fully appreciate that acts in Europe or third countries may be considered criminal in the US and may have an effect on stakeholders within your territory. However, we would like to stress that the rigorous extraterritorial enforcement of US IP law on the internet is not a sustainable way to address the challenges stemming from the internet in relation to IPR protected media.

On July 4th, we rejected the Anti-Counterfeiting and Trade Agreement (ACTA). Although there were many reasons to reject this treaty, one of the reasons is that the remedies for counterfeit and dangerous products would also be applicable on internet users. The concerns with mixing up physical goods and digital data have been widely expressed by EU citizens protesting in many European cities. Although we agree that enforcement of IPR is important, it cannot act as a panacea and should not be the holy grail of IP policy. Reform is needed, in the EU as well as in the US. IPR enforcement must be proportional and laws need social legitimacy through democratic oversight. IPR enforcement should not distort the free market or free trade either.

The tensions in this policy area will persist if we do not establish a realistic and balanced approach to IPR enforcement online. Increasing coercive legal actions to defend a legal construct which appears to be outdated in the digital environment will not fix the underlying problems.

If the US is serious about tackling online infringements of IPRs, a new approach is needed. Full consideration must be given to the new position of the consumer or user in the information society. Further, copyright must be reviewed so that it achieves its multiple aims also in the digital environment. Overall, a positive, open and

transparent policy process is needed, whereby all stakeholders are engaged at every step of the operation.

Given the great public interest in the debate on online enforcement of IPR's, the US and the EU should lead in meeting the challenge of reforming IPR policies to be legitimate in the information age.

We would hereby like to invite you to engage in a constructive dialogue between the EU and the US using existing or possibly new channels of communication and cooperation when shaping new policies regarding copyright in the information age.

We should work with multiple stakeholders and representatives of government agencies from both sides of the Atlantic and focus on:

- Establishing common goals and underlying principles of IP law and policy,
- Gathering, sharing and evaluating information related to IPR infringements, to ensure evidence-based policies,
- Forming a modern IPR framework with proportional enforcement measures,
- Inform each other about expected extraterritorial impact of proposed legislation.

We must no longer confuse unauthorised use of media with life-threatening medicines or faulty counterfeit aircraft parts. We must also refrain from upsetting the underlying architecture of the internet, which has served our societies so well over the last couple of decades. We must avoid excessive surveillance of our citizens or impede the freedom of expression disproportionately, and most of all, both the EU and the US can benefit a lot from the endless opportunities which the internet and ICT technologies can bring our economies, societies and citizens.

We hope you share these considerations and that the US Government is willing to cooperate constructively with the EU.

Yours sincerely,

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