



**RESPONSE TO THE U.S. INTELLECTUAL PROPERTY ENFORCEMENT
REQUEST FOR COMMENTS ON THE JOINT STRATEGIC
PLAN ON INTELLECTUAL PROPERTY ENFORCEMENT**

The Library Copyright Alliance (LCA) consists of three major library associations: the American Library Association, the Association of Research Libraries, and the Association of College and Research Libraries. These three associations collectively represent over 350,000 information professionals and more than 100,000 libraries of all kinds throughout the United States. An estimated 200 million Americans use these libraries over two billion times each year. LCA welcomes the opportunity to respond to the request of the U.S. Intellectual Property Enforcement Coordinator's (IPEC) for comments on the 2016 Joint Strategic Plan on Intellectual Property Enforcement.

Perhaps more than other institutions, libraries stand at the middle point between users and rights holders, investing heavily in the development and acquisition of protected and public domain materials and at the same time providing broad access to these resources by the public. Libraries are major consumers of intellectual property. The libraries represented by LCA spend more than \$4 billion annually acquiring books and other information resources. At the same time, libraries serve our communities by providing them access to these materials, access made possible by provisions in the Copyright Act that protect educational uses such as lending, preservation, distance education, and interlibrary loan. We are at the fulcrum of a delicate legal balance between rights holder control and public access and meaningful use.

In order to protect public access, the law also protects intermediaries like libraries, who facilitate access in ways that would be impossible in a system of absolute author or rights holder

upon the works of others.”⁵ The 2013 JSP further acknowledged that “Fair use is a core principle of American copyright law. The Supreme Court has repeatedly underscored fair use provisions in the Copyright Act as a key means of protecting free speech....”⁶ The 2013 JSP recommended that the Copyright Office, in consultation with the Administration, publish and maintain an index of major fair use decisions “in order to make fair use more accessible to the authors of the 21st century, ease confusion about permissible uses, and thereby encourage the production of a greater variety of creative works....”⁷ We are gratified that the Copyright Office published this index, including summaries of the holdings, in the spring of 2015, and hope that the Office continues to update it as the courts hand down additional fair use decisions.

Additionally, the 2016 JSP should support prompt Senate ratification of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled. It also should support the adoption of appropriate exceptions and limitations, including flexible, open-ended provisions like 17 U.S.C. § 107, in other jurisdictions. Ambassador Froman stated that in the Trans Pacific Partnership Agreement, “we are asking our trading partners to secure robust balance in their copyright systems – an unprecedented move that draws directly on U.S. copyright exceptions and limitations, including fair use for important purposes such as scholarship,

⁵ *2013 Joint Strategic Plan on Intellectual Property Enforcement*, U.S. Intellectual Property Enforcement Coordinator, Executive Office of the President, 18 (June 2013)(*hereinafter* 2013 JSP).

⁶ *Id.*

⁷ *Id.*

criticism, news commentary, teaching, and research.”⁸ The United States should ask other trading partners likewise to secure a robust balance in their copyright systems.

II. Data-Driven Decision Making

The IPEC appropriately asks for assistance in improving the availability of data regarding

industries such as grocery stores, clothing stores, sporting goods and musical instrument

In sum, DHS's own statistics show that it is not taking the danger posed by counterfeit goods to health and safety seriously enough. The Joint Strategic Plan should reallocate resources to target this threat.

IV. Lawful Content

The 2013 Joint Strategic Plan recognized that "when Americans and people around the world are given real choices between legal and illegal options, the vast majority will want to choose the legal option."¹⁸ For that reason, the Administration "encouraged the further development and use of legitimate online services as an important part of an effective approach to reducing infringing activity." The Plan noted that there already were "a myriad of legitimate ways" to obtain content, including "authors using systems to permit free distribution of their works under conditions that they choose." At the same time, the Administration stated that it would "support and ... look for additional ways to encourage and facilitate efforts that will help expand the reach of legitimate alternatives to infringement.."

Notwithstanding this acknowledgement of the importance of the availability of

September 2014, President Obama announced a new commitment to “promote educational resources to help teachers and students everywhere.”²¹ The National Action Plan in support of the Open Government Partnership contains a section dedicated to promoting open education. The Plan states:

Open education is the open sharing of digital learning materials, tools, and practices that ensures free access to and legal adoption of learning resources. There is a growing body of evidence that the use of open