

April 2, 2009

The Honorable Barack Obama
Office of the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Mr. President:

The undersigned public interest groups, library associations, and trade associations representing the technology, consumer electronics, and telecommunications industries write to ask that your future appointments to intellectual property (IP) policy positions reflect the diversity of stakeholders affected by IP policy, and that your administration create offices devoted to promoting innovation and free expression within the relevant agencies.

The Supreme Court in *Sony v. Universal* (1984) recognized that copyright law must achieve a “difficult balance between the interests of authors... in the control and exploitation of their writings... and society’s competing interest in the free flow of ideas, information, and commerce...” In *MGM v. Grokster* (2005), the Court stated that “[t]he more artistic protection is favored, the more technological innovation may be discouraged; the administration of copyright law is an exercise in managing the trade-off.” You also acknowledged this balance in your Technology Agenda, stating that we must not only protect IP, but also “update and reform our copyright and patent systems to promote civic discourse, innovation, and investment...”

To date, several of your appointees to positions that oversee the formulation and implementation of IP policy have, immediately prior to their appointments, represented the concentrated copyright industries. For example, two of the most senior officials in the Department of Justice represented the recording industry in litigation for many years. The fact that these individuals were litigators rather than registered lobbyists does not diminish the possibility that they may be inclined favorably towards the positions of the industries they long represented. Recent developments like the Justice Department's intervention in *Sony BMG v. Tenenbaum* in favor of the plaintiff record label heighten these concerns.

Many positions with IP policy responsibilities remain to be filled at the Patent and Trademark Office (PTO), the United States Trade Representative (USTR), and the Department of State. In selecting these officials, we ask you to consider that individuals who support overly broad IP protection might favor established distribution models at the expense of technological innovators, creative artists, writers, musicians, filmmakers, and an increasingly participatory public. Overzealous expansion and enforcement of copyright, for example, can quash innovative information technologies, the development and marketing of new and useful devices, and the creation of new works, as well as prohibit the public from accessing and using its cultural heritage.

The administration should also make appointments to policy positions mindful of the need to account for unintended structural biases. Another position not yet filled is that of the Intellectual Property Enforcement Coordinator, who, under the IP Enforcement Act of 2008, is required to coordinate IP enforcement efforts across several agencies. The first occupant of this position would naturally be more focused only upon certain aspects of IP policy—namely, organizing IP law enforcement efforts. However, the existence of this position, along with corresponding roles within various agencies, highlights a potential imbalance.

To that end, we urge you to create offices in relevant agencies, including at PTO, USTR, and the Department of State, whose dedicated role is to promote innovation and advance the cause of progress in the sciences and useful arts. These values, which underlie the purpose behind our IP laws, must be fairly represented in the executive branch. By doing so, your administration can work to ensure that efforts to protect IP are balanced with the need to promote public discourse and advance innovation.

We look forward to working with you to increase the balance in IP policy appointments.

Sincerely,

American Association of Law Libraries
American Library Association
Association of Research Libraries
Center for Democracy and Technology
Computer and Communications Industry Association
Consumer Electronics Association
Consumers Union
EDUCAUSE
Electronic Frontier Foundation
Entertainment Consumers Association
Essential Action
Home Recording Rights Coalition
Internet Archive
Knowledge Ecology International
NetCoalition
Public Knowledge
Special Libraries Association
U.S. Public Interest Research Group
Wikimedia Foundation

cc: Don Gips
Susan Crawford