

July 16, 2009

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Washington, DC 20504
BY FACSIMILE: 202-456-9490

Lawrence H. Summers
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Washington, DC 20502
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Dear General Jones and Mr. Summers:

We are writing in regard to several references in the Administration's recently released Cyberspace Policy Review to "intellectual property." For example, the Executive Summary states that "Federal policy should address requirements for national security, *protection of intellectual property*, and the availability and continuity of infrastructure, even when it is under attack by sophisticated adversaries" (page v, emphasis added). Similarly, as part of the introduction's "Case for Action," the Review observes that "industry estimates of losses from intellectual property to data theft in 2008 range as high as \$1 trillion" (page 2).

We urge the Administration to clarify, as it further develops its cybersecurity policies and strategies, that it does not generally intend for issues relating to intellectual property protection to be treated as "cybersecurity" matters falling within the mandate of the new cybersecurity official envisioned by the Review. Rather, the references in the Review should be read to allude to a narrow set of circumstances in which cybersecurity and intellectual property truly overlap, particularly computer intrusions that expose trade secrets.

"Intellectual property" is a broad term that includes trade secrets, copyrights, trademarks, and patents. In each of these areas, the transition to a digital and networked world poses significant challenges. Computers and the Internet, while creating tremendous new opportunities, also can raise new problems for rightsholders seeking to police and enforce their rights. Many of these problems, however – for example, illegal file trading on peer-to-peer networks or cybersquatters using trademarked terms in Web site domain names – have nothing to do with cyber intrusions or hacking. In addition, while some online intellectual property matters center on how to prevent plainly unlawful behavior, others involve novel and debatable questions regarding how intellectual property laws should apply in cyberspace. Copyright policy in particular is a highly contentious tangle of opposing interests and has become far more politicized than cybersecurity need be or should be.

A new cybersecurity policy official should not risk becoming distracted by these or other issues that are tangential to security. The official should devote full and undivided attention to threats stemming from malicious actors who attempt to harm, gain unauthorized access to, or seize control of computers or the networks that connect them. Computer and network intrusions falling within the scope of the official's proper focus may sometimes result in the theft of nonpublic information constituting intellectual property. Or security vulnerabilities occasionally may stem from counterfeit computer products. But most other intellectual property matters should remain outside the cybersecurity officer's purview.

Indeed, treating intellectual property protection as a cybersecurity concern would only threaten to confuse Administration leadership in the area. The PRO IP Act, enacted last October, already requires the appointment of an Intellectual Property Enforcement Coordinator within the Executive Office of the President. In short, the subject of intellectual property is fully covered and responsibility has been assigned. There is no need and no basis for creating duplicate authority, and we do not believe the Review intended to suggest otherwise.

As the persons to whom a new cybersecurity official is slated to report, we urge you to provide clear direction to the eventual appointee to avoid wading into intellectual property issues under the guise of cybersecurity.

Thank you for considering our views on this matter.

Sincerely,

Center for Democracy & Technology
Computer & Communications Industry Association
Consumer Electronics Association
Library Copyright Alliance
NetCoalition
Public Knowledge