



**BEFORE THE  
U.S. PATENT AND TRADEMARK OFFICE**

**Request for Comments on the U.S. Patent  
and Trademark Office’s Draft 2022-2026  
Strategic Plan**

**COMMENTS OF THE COPYRIGHT ALLIANCE**

The Copyright Alliance appreciates the opportunity to respond to the U.S. Patent and Trademark Office’s (USPTO) January 6, 2023 [request for public comments](#) on the Draft 2022-2026 Strategic Plan (Draft Strategic Plan).

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 2 million individual creators and over 15,000 organizations in the United States, across the spectrum of copyright disciplines. The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of copyrighted works for the public to enjoy.

We appreciate the opportunity to provide comments on the USPTO’s Draft Strategic Plan to promote and protect the intellectual property (IP) of millions of U.S. creators and innovators, including those who depend on copyright laws. While the U.S. Copyright Office (USCO) is tasked by statute with “[a]dvis[ing] Congress on national and international issues relating to copyright” and “[p]rovid[ing] information and assistance to Federal departments and agencies and the Judiciary on national and international issues relating to copyright,” the USPTO also plays a vital role on copyright-related issues.<sup>1</sup> For many years, the two offices have work together harmoniously to help ensure the protection of America’s innovators, businesses and creators, and we continue to support and encourage coordination and cooperation between the two agencies.

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<sup>1</sup> See 17 U.S.C. § 701(b)(1)-(2).

We raise the following comments in hopes it will assist the USPTO in carrying out its role as the expert IP agency within the Administration and in identifying opportunities for the realization of the Office’s objectives and goals identified in the Draft Strategic Plan.

### **Goal 3: Promote the protection of IP against new and persistent threats**

In Goal 3 of the Draft Strategic Plan, the USPTO commits to promoting the protection of IP rights for U.S. stakeholders. While the focus is on the protection of patent and trademark owners, the theft and criminal schemes and issues outlined in the draft are equally harmful and concerning to copyright owners. Because the USPTO is uniquely situated in the executive branch as an expert IP agency and frequently collaborates with other federal agencies and policymakers, including the USCO and the U.S. Department of Justice (DOJ), on domestic and foreign copyright enforcement and piracy issues, we believe copyright owners should also be included within the USPTO’s scope of the identified objectives in Goal 3. Making this goal more inclusive also signals that the USPTO will continue its close and collaborative relationship with the USCO and support the Copyright Office in its administration of copyright laws and policy matters on these issues.

A recent report on the economic value that core copyright industries add to the U.S. economy shows how critical it is to promote the integrity of copyright law and the protection of copyrighted works.<sup>2</sup> In 2021, the core copyright industries—whose primary purpose is to create, produce, distribute, or exhibit copyright materials—added more than \$1.8 trillion dollars in value to the U.S. Gross Domestic Product (GDP).<sup>3</sup> That number grows to \$2.9 trillion—accounting for 12.52% of the U.S. economy—when considering the “total” copyright industries, which include partial copyright, non-dedicated support, and interdependent industries.<sup>4</sup> Further, the total copyright industries employed nearly 16.1 million workers in 2021, accounting for 8.14% of all U.S. employment. As such a major contributor and key driver of growth to the U.S. economy, the report concludes that the continued value added by the copyright industries depends on “strong laws, effective enforcement, and steps to open markets.”<sup>5</sup>

The integrity and enforceability of the rights of U.S. copyright owners are constantly threatened by criminal, commercial scale online piracy of copyrighted works. Objective 3.3 of the Draft Strategic Plan details continued collaboration across various federal agencies and bodies, including the DOJ, to reduce intellectual property crimes. We support the USPTO pursuing this objective,

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<sup>2</sup> ROBERT STONER & JÉSSICA DUTRA, INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE, COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2022 REPORT, (18th ed. 2022), *available at* <https://www.iipa.org/files/uploads/2020/12/2020-IIPA-Report-FINAL-web.pdf>.

<sup>3</sup> *Id.* at 8.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 29.

and we recommend that information on the issues of piracy of copyrighted works and the tools to combat such piracy be included in the exchange of information and awareness-raising programs amongst enforcement agencies. Effective enforcement of intellectual property laws depends on awareness of the law, including updates that allow enforcement agencies and copyright owners to more effectively combat infringement.

In recent years, creators and copyright owners have welcomed new legislative and administrative tools to combat domestic online infringement, including the new copyright small-claims court, the Copyright Claims Board (CCB), and the Protecting Lawful Streaming Act of 2020 (PLSA).<sup>6</sup> As part of Objective 3.3, we urge the USPTO to continue its educational and awareness efforts on copyright and on the various copyright enforcement tools that are available to copyright owners and creators, like the CCB and PLSA. To date, very few (only two) cases have been prosecuted under the PLSA to address domestic commercial-scale digital streaming piracy. We support the USPTO continuing to work with the DOJ, to the extent possible, to lend its expertise on IP matters to DOJ prosecutors.

Similarly, we recommend that the USPTO's goal of facilitating partnerships to improve IP enforcement and reduce global IP crime and infringement as discussed in the Draft Strategic Plan's Objective 3.4 include awareness of and an exchange of ideas surrounding the enduring threat of global online piracy of copyrighted works. Large-scale criminal infringement perpetrated by foreign based websites and their operators continues to harm U.S. copyright owners and the creative industries, and jurisdictional roadblocks have made it extremely difficult to hold such operations accountable in U.S. courts. Targeted training efforts and technical assistance to foreign governments and law enforcement officials on the dangers of criminal copyright infringement and how to combat it would benefit not only U.S. copyright owners and markets, but also those in partnering countries.

To further Goal 3, in Objective 3.5 of the Draft Strategic Plan, the USPTO also commits to supporting the development and enforcement of clear IP laws, particularly in the consistency and clarification in the application of U.S. IP laws. We support the USPTO in this objective and identify Artificial Intelligence (AI) as an area where the Office can be proactive and help educate other domestic and foreign policymakers, stakeholders, and the public about the importance of respecting the rights of IP owners and the legal challenges surrounding both the ingestion of copyrighted works into AI systems and the output.

As AI technology continues to evolve and questions arise about how copyright laws apply to the creation of AI-generated works, it is critical that the underlying goals and purposes of our copyright

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<sup>6</sup> This law increased the criminal penalties for those engaged in commercial illicit streamlining of copyrighted works by enabling the DOJ to bring felony charges against providers of such illicit streams. It harmonized criminal penalties for violations of the public performance rights associated with digital streaming with the penalties that had long existed for violations of the reproduction and distribution rights. 18 U.S.C. § 2319.

system are upheld and that the rights of creators and copyright owners are respected. When considering the intersection of AI and copyright law, established copyright laws must not be weakened based on a mistaken belief that doing so is necessary to incentivize AI technologies. Education about copyright owners' rights and the benefits of licensing are paramount, and the USPTO is uniquely situated within the Administration to provide guidance and clarification of the IP implications related to AI.

Additionally, as more countries begin to consider the relationship between AI and IP, it is vital that the USPTO collaborate with the U.S. Copyright Office and other agencies, like the Office of the Intellectual Property Enforcement Coordinator, the State Department, and the Office of the U.S. Trade Representative to ensure that IP rights are respected globally and that countries do not adopt new exceptions to copyright for AI that place the interests of AI technologies over the interests and rights of IP rights holders.

It is critical to AI innovation that the creative contributions and impact of the copyright community to AI are acknowledged. As the Administration continues to consider its positions on AI, it is critical that the USPTO have a seat at the table in any such policymaking efforts to ensure that any policy decisions, trade discussions, or analysis concerning AI not degrade the rights to the underlying works that fundamentally shape, train, and develop AI technologies—specifically, the copyrights and creativities of creators and rightsholders.

Again, we appreciate the opportunity to submit these comments in response to the identified goals and objectives for the Draft Strategic Plan and commend the USPTO's continued commitment to protecting U.S. creators and innovators. The Copyright Alliance stands ready to assist the USPTO in its strategic objectives and priorities and can provide any additional information or assistance as requested.

Respectfully Submitted,



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