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21 October 2005

Inquiry Into TPM Exceptions  
House Standing Committee on LACA  
House Of Representations  
Parliament of Australia

AUUG is the Organisation for Unix, Linux and Open Source professionals. AUUG dates back to 1975, making it one of the oldest technical computer user groups in the world. AUUG wishes to support Linux Australia's submission to the current inquiry — a draft of this submission is available from:

<http://ozlabs.org/~rusty/index.cgi/IP/2005-09-13.html>

AUUG has always been a proponent of interoperability, supporting such ideas as open systems, open standards and open source software. As such we request that the committee recommends the implementation of broad exceptions relating to reverse engineering and interoperability under section 17.4.7(e)(i) of the FTA.

As a starting point, we would like to emphasise that copyright legislation should not be used to stop interoperability when no logical breach of copyright occurs. Expressed in the terms of the current inquiry:

If a TPM must protect a copyrighted work then for a circumvention device to be considered illegal it must infringe or facilitate infringement of copyright.

We use an example from the United States that is also used in Linux Australia's submission.

In 2003 a garage door manufacturer, Chamberlain Group, brought legal action against a competitor, Skylink Technologies, who made a third party remote control unit for Chamberlain's garage doors. Chamberlain claimed that

Skylink's remote control unit circumvented their TPM, and said this was illegal under the DMCA, the US's anti-circumvention law. The court ruled that Skylink's circumvention device did not infringe or facilitate infringement of Chamberlain's copyright. A summary of the ruling is available at:

<http://www.ipjustice.org/090203.shtml>

However, as stated in Linux Australia's submission to this inquiry, Australian law does not clearly state that a device that illegally circumvents a TPM must, in the process, infringe or facilitate infringement of copyright. Thus, legal action like that brought by Chamberlain might succeed in Australia.

The current combination of pre-existing Australian copyright law and the US-compatible measures recently introduced by the FTA has the potential to restrict competition by stopping the production, distribution and use of interoperable technologies. In addition, in Australia we do not have a general fair use clause in our copyright law. We ask the committee to consider a range of exceptions relating to interoperability in cases when a TPM is being used for anticompetitive purposes rather than to protect copyright.

More generally, we request that the committee recommend a broader range of exceptions relating to interoperability, especially those that apply to the development, distribution and use of Open Source software. It is important for competition that consumers purchasing items such as eBooks and DVDs can access the material contained on these items using their choice of software, provided that software has obvious non-infringing uses. From a software production point-of-view, Australia is a world leader in production of Open Source software so it is important to encourage continued innovation.

Yours sincerely  
Martin Schwenke

Authorised by:  
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The Organisation for Unix, Linux and Open Source Professionals