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Linux Australia Submission to the Inquiry into Technological Protection Measures exceptions

26th September 2005

1 About Linux Australia

Linux Australia is Australia's peak body representing the interests and concerns of Australian Linux and Open Source Software (OSS) developers, system administrators and users. Linux Australia is also the organisation behind linux.conf.au, one of the world's top Linux development conferences.

2 Recommendations

Linux Australia's members use, and potentially create, independent software that plays DVDs and other copyrighted content, and doing so may be interpreted as circumvention. We believe that, if our anti-circumvention laws are drafted well, we will not require specific exceptions as available under Article 17.4.7(e)(viii) because it will be clear that our law will only capture those infringing copyright or assisting such infringement. It would be clearly legal, and encouraged, to produce, import and sell your own competing version of a product (such as DVD playing software). Even if this product were not to obey non-copyright-related restrictions preferred by copyright holders, it would be safe from legal harassment (such as a "region-free" DVD player).

On the other hand, if our laws are not drafted well, the exceptions available under Article 17.4.7(e)(viii) cannot help us. An explicit exception which allowed use of particular "region-free" DVD playing software would be useless without the ability to import, create, distribute or sell such a thing, and 17.4.7(e)(viii) only allows exceptions for *use*. No business will be able to create or supply such software to their customers, and so Australia will forgo the advantages of any economic activity surrounding it.

In addition, if laws are unclear, then merely requesting an exception for (say) using region-free DVD-playing software now could be taken as an indication

that such an exception is required, and hence an indication that it is actually illegal to produce, import, distribute or sell such things. This could weaken any defense against future legal action.

Whatever our laws become, there seems little doubt that people will continue to believe they still own the movies, music and other works they have purchased. People will continue to believe they have a right to access legitimately purchased copyright content on the software platform of their choice. Someone will write their own DVD playing software, or create their own software which can play songs they purchased from iTunes, or create their own eBook reading software, or interoperate with some future work they have purchased. Like some of our members, they might even try to make a living providing their software to others.

Given the existing practices and reputations of various companies in this space, evidenced by lawsuits both in the United States and in Australia, it is clear that an opportunity to suppress legitimate competition as being “without the permission of the copyright owner” will be seized aggressively. Our law must definitively avoid providing such an anti-competitive weapon.

Yours sincerely,

Rusty Russell, Linux Australia IP Policy Adviser.