

Saturday, 10 April 2004

Committee Secretary
Joint Standing Committee on Treaties
Department of House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Sir:

SUBJECT: FREE TRADE AGREEMENT (FTA) WITH THE UNITED STATES OF AMERICA

I would like to bring to your attention an issue which I believe could affect both businesses and individuals throughout Australia if the Free Trade Agreement is to go ahead. In particular, the effect that it could impose on open source software currently being used by both businesses and individuals.

I am unsure of your level of understanding of open source software, so please allow me to give a brief description. Open source software tries to promote a collaborative method of developing and distributing software. Rather than placing the original developers against the end users, the original developer encourages improvement and development by giving all users complete and equal access to the programs internals. For proprietary (closed) software, e.g. Microsoft's Windows and Office products, only the author of the software, in this case, Microsoft, has access to the program internals or 'source code'.

The users of open source software do not need to pay for the software, or track licences and developers do not need permission to modify and customize the software. The advantages can clearly be seen with the growth of the Internet which is powered by open standards originally developed by open source software. Other technologies which are open source include the Apache webserver, which powers over two thirds of websites on the Internet [1], the Linux Operating System (which is well on its way to becoming the dominate server Operating System) and the long-standing BIND program which still serves the vast majority of domain names on the Internet.

Open source developers in the United States have had to struggle with their Digital Millennium Copyright Act (DMCA). The proposed Free Trade Agreement threatens to bring the same problems into Australia. A survey conducted in February 2004 found that almost 50% of Australian small businesses are currently using open source software with a further 14% planning to do so next year [2].

Some terms of the proposed Free Trade Agreement will make certain kinds of open source software illegal. Circumvention of anything which protects "access" to copyright material will be outlawed. This sounds reasonable until you realize how broad this proposed law could be. An example could be consumer attempting to access their legally purchased DVD on their legally purchased DVD player. This situation could soon be found to be illegal. As DVD publishers have not created a DVD player for the Linux Operating system, with little chance of this ever happening, the users were forced to create themselves one. The law currently makes it illegal to sell a Linux DVD player, but not illegal to download, write, or use it yourself. If there Free Trade Agreement is to go ahead, all these situations will become banned.

Additionally, the Free Trade Agreement makes "patents available for any invention, whether a product or process, in all fields of technology..." Currently Australian law states that the patents may only be issued when it is "not contrary to the law, nor mischievous to the state by raising of the prices of commodities at home or hurt of trade, or generally inconvenient". The amendments created by the Free Trade Agreement remove these points. The "generally inconvenient" section allowed us to limit the patents given in relation to software. Windows is what is called a WIMP GUI (Windows, Icons, Mouse, and Pointer Graphical User Interface). This idea was pioneered in the 1970s by Xerox Palo Alto Research Centre, and inspired Apple Computer's popularisation as the Macintosh. Now imagine if Xerox patented the idea of the GUI. The application

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Microsoft Windows, would, at best, be very un-user friendly, or at worst, non-existent. Another example would be the "spreadsheet", originally invented by Dan Bricklan in his application VisiCalc. The idea was legitimate, much as the word processor allowed a computer to become a typewriter, the spreadsheet allowed the dynamic calculation of totals as squares in a balance sheet. Aware of the popularity of such a program, Bricklan contacted a patent lawyer who advised him that software was not patentable, which was a fact back in 1979. Overtime companies started to develop their own spreadsheet applications, such as Lotus 1-2-3, and more recently, Microsoft Excel. Had Bricklan's idea originally been patented, Lotus and Microsoft would have been unable to create their own, arguably better, products to compete. If Bricklan had received his patent, there would be no reason for him to create new features and overall increase the usefulness of his program. With Lotus and Microsoft competing, he was forced to ensure that his application had as many features as possible overall helping consumers.

I am sure by now you are aware of Linux Australia's documents on this issue. If not, I encourage you to read their position paper (<http://www.linux.org.au/papers/fta-paper.pdf>). I am in full agreement with their points, which I believe are important which will hurt Australian individuals and business if the Free Trade Agreement is to go ahead in its current state.

For the sake of open source software – please seriously reconsider the terms of the Australia – United States of America Free Trade Agreement.

Sincerely,

Alan Isherwood

[1] Netcraft Web Server Survey Archives

http://news.netcraft.com/archives/web_server_survey.html

[2] Survey conducted by Boston-based Forrester Research

<http://www.linuxworld.com.au/index.php/id:600985259;fp:2;fpid:1>