

To the Joint Standing Committee on Treaties,

The recently announced AUSFTA treaty, in Chapter 17, contains significant concerns for both Australian software engineers and companies. One major area where this is the case is intellectual property laws enacted through software patents.

Inside the IT industry it is widely recognised that many frivolous and trivia software patents have been granted by the United States Patent and Trademark Office (USPTO) - we do not want that scenario repeated here (see <http://www.internetnews.com/bus-news/article.php/1462741>). The intention of software patents is to guard real invention, but in the USA software patents are a mechanism for large companies to squash competition by enforcing patent licensing on companies that do not have a defensive patent portfolio.

This causes great concern for both Australian companies - software patents allow an elitist club, those companies with a patent portfolio and those companies without.

Australian businesses start at a disadvantage here - without defensive patent portfolios, strengthening of software patent law will essentially become a US tax on Australian companies in patent licensing fees. One documented example of how Australian companies would be targeted is this interaction between IBM and Sun Microsystems (see <http://www.forbes.com/asap/2002/0624/044.html>)

It has been stated that no significant software development is free from violating someone else's software patent - the number of trivial and obvious patents is too broad to avoid.

Europe, Brazil and other countries/regions have so far stood firm against adopting a US-style broad software patent regime. If Australia is truly committed to hosting a vibrant IT sector - to be an exporter, not importer of IT software and services - we need to say no to software patents now. This issue is "make or break" for the local IT industry - adopting a US-style software patent system benefits large US companies to the detriment of smaller Australian companies.

Please do not allow software patents to become the nightmare here that they are in the USA.

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