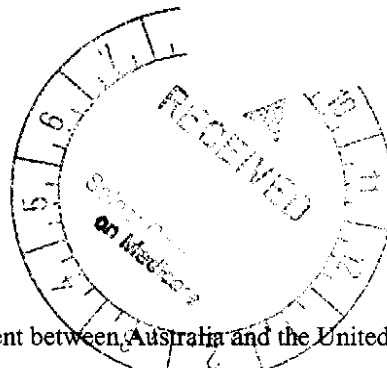


Secretary  
Senate Select Committee on the Free Trade Agreement  
between Australia and the United States of America  
Suite S1.30.1  
The Senate  
Parliament House  
Canberra ACT 2600  
AUSTRALIA



Dear Sirs of the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America,

I would like to voice my objections to the US-Australian Free Trade agreement. My primary objection to it is an objection to the alterations to copyright law.

There are two conceptual models of ownership of ideas:

- The copyright model: Monopolies on ideas words, and other works are not a good thing – if someone copies an idea or work, he does not deprive the original owner of anything (unlike physical property). Therefore ideas belong to the public. However, in order to “promote the Progress of Science and useful Arts”<sup>1</sup>, monopolies are granted “for limited Times to Authors and Inventors”<sup>2</sup>.
- The Intellectual Property model: Ownership of ideas is a natural right, and people need to be protected from any who use their ideas in unauthorised ways, in perpetuity.

Copyright is not Property, and copyright law is different than property law. However, the Intellectual Property advocates, in an attempt to establish IP as the model for ownership of ideas try to confuse copyright with property (and often say copyright when they mean intellectual property).

The first conceptual model was accepted from the time of the American Revolution. After the amount of time that was thought most likely to encourage continued authorship (which began at 28 years in the UK and USA, before the Federation of Australia)<sup>3</sup>, works passed into the public domain, and were free to all people. If an author wanted to continue to receive benefits, he needed to continue authoring.

As time went on, large corporate interests took over WIPO – the World Intellectual Property Organisation<sup>4</sup>. The purpose of this organisation was to promote the second conceptual model<sup>5</sup>, in order that the corporations might buy ideas and works, hold them in perpetuity, and charge everyone for the use of them, squeezing out the authors themselves and small businesses (through infringement prosecution)<sup>6</sup>. Through a successful campaign, they have mostly succeeded in supplanting the first conceptual model with the second, at least in the minds of American policy makers. They now intend to use the economic might of the USA<sup>7</sup> to muscle the rest of the world into giving to corporate interests at the expense of the public domain.

The Free Trade Agreement may not appear to grant copyright in perpetuity, but recent history must be taken into account. The US Government recently voted to extend copyright for another 20 years<sup>8</sup>. This is not a big thing in itself, but taken together with the fact that they have extended copyright 11 times in the last 40 years, means that very little has passed into the public domain in that time, and will not in the next 20 years. In addition, it sets a precedent, and means that the US Government will most likely pass another such law in another 20 years (or less). I’m sure you can see how this leads to perpetuity of copyright in practise, although it is not yet here in theory.

All this leads me to the conclusion that we in Australia currently have better copyright laws than the USA (and our laws are more in line with their constitution than their own laws). I would therefore suggest that the USA be asked to align with our copyright laws, rather than the other way around, and I would also suggest that if they refuse, the Free Trade Agreement be rejected as harmful to the Australian public and business.

<sup>1</sup> Constitution of the United States of America, Article I, Section 8

<sup>2</sup> Ibid

<sup>3</sup> For Thomas Macaulay’s speech to the House of Commons in 1841 on why and how copyright should be extended, see <http://yarchive.net/macaulay/copyright.html>

<sup>4</sup> A branch of the UN which had achieved some good things in internationalisation of copyright in the past

<sup>5</sup> As can be seen from their current vision being “to promote the protection of intellectual property throughout the world”, quoted from “Medium-Term Plan for WIPO Program Activities - Vision and Strategic Direction of Wipo” at <http://www.wipo.int/about-wipo/en/dgo/pub487.htm>

<sup>6</sup> Although naturally they don’t put it that way themselves

<sup>7</sup> Where they have greater control over the government due to their laws about campaign contributions

<sup>8</sup> The Sonny Bono Copyright Term Extension Act of 1998

Naturally there is much more that I could add here, but I will instead finish with some selected recommended reading on the effects that passing the Free Trade Agreement could have on Australia. I have taken some time to find articles which are very short (no more than a few pages) and readable.

For a short summary of how it could adversely affect the country economically, I suggest Roger Clarke's short essay "The Economic and Cultural Impacts of the Free Trade Agreement Provisions relating to Copyright and Patent Law".  
<http://www.anu.edu.au/people/Roger.Clarke/II/FTA17.html>

To gain great insight into how perpetual copyright could affect society, I suggest Richard Stallman's very short and easy to read article "The Right to Read", which is available as Appendix A of this document (as allowed by the copyright of the article), or in the link below. As can be seen from the Author's note at the end, all the groundwork for the effects he mentions are laid, and almost no new laws are required – it's only a matter of time in the USA.  
<http://www.gnu.org/philosophy/right-to-read.html>

For an understanding of why perpetual copyright will not work in the long term, I suggest Spider Robinson's very interesting "Melancholy Elephants" which is available at  
[http://www.baen.com/chapters/W200011/0671319744\\_\\_1.htm](http://www.baen.com/chapters/W200011/0671319744__1.htm)

Overall, for the good of the nation, please take action appropriately.

Yours sincerely,

Tim Nelson

## Appendix A: The Right to Read

Reproduced in full from <http://www.gnu.org/philosophy/right-to-read.html> as specified by the copyright notice.

### The Right to Read

by **Richard Stallman**

*This article appeared in the February 1997 issue of **Communications of the ACM** (Volume 40, Number 2).*

(from "The Road To Tycho", a collection of articles about the antecedents of the Lunarian Revolution, published in Luna City in 2096)

For Dan Halbert, the road to Tycho began in college--when Lissa Lenz asked to borrow his computer. Hers had broken down, and unless she could borrow another, she would fail her midterm project. There was no one she dared ask, except Dan.

This put Dan in a dilemma. He had to help her--but if he lent her his computer, she might read his books. Aside from the fact that you could go to prison for many years for letting someone else read your books, the very idea shocked him at first. Like everyone, he had been taught since elementary school that sharing books was nasty and wrong--something that only pirates would do.

And there wasn't much chance that the SPA--the Software Protection Authority--would fail to catch him. In his software class, Dan had learned that each book had a copyright monitor that reported when and where it was read, and by whom, to Central Licensing. (They used this information to catch reading pirates, but also to sell personal interest profiles to retailers.) The next time his computer was networked, Central Licensing would find out. He, as computer owner, would receive the harshest punishment--for not taking pains to prevent the crime.

Of course, Lissa did not necessarily intend to read his books. She might want the computer only to write her midterm. But Dan knew she came from a middle-class family and could hardly afford the tuition, let alone her reading fees. Reading his books might be the only way she could graduate. He understood this situation; he himself had had to borrow to pay for all the research papers he read. (10% of those fees went to the researchers who wrote the papers; since Dan aimed for an academic career, he could hope that his own research papers, if frequently referenced, would bring in enough to repay this loan.)

Later on, Dan would learn there was a time when anyone could go to the library and read journal articles, and even books, without having to pay. There were independent scholars who read thousands of pages without government library grants. But in the 1990s, both commercial and nonprofit journal publishers had begun charging fees for access. By 2047, libraries offering free public access to scholarly literature were a dim memory.

There were ways, of course, to get around the SPA and Central Licensing. They were themselves illegal. Dan had had a classmate in software, Frank Martucci, who had obtained an illicit debugging tool, and used it to skip over the copyright monitor code when reading books. But he had told too many friends about it, and one of them turned him in to the SPA for a reward (students deep in debt were easily tempted into betrayal). In 2047, Frank was in prison, not for pirate reading, but for possessing a debugger.

Dan would later learn that there was a time when anyone could have debugging tools. There were even free debugging tools available on CD or downloadable over the net. But ordinary users started using them to bypass copyright monitors, and eventually a judge ruled that this had become their principal use in actual practice. This meant they were illegal; the debuggers' developers were sent to prison.

Programmers still needed debugging tools, of course, but debugger vendors in 2047 distributed numbered copies only, and only to officially licensed and bonded programmers. The debugger Dan used in software class was kept behind a special firewall so that it could be used only for class exercises.

It was also possible to bypass the copyright monitors by installing a modified system kernel. Dan would eventually find out about the free kernels, even entire free operating systems, that had existed around the turn of the century. But not only were they illegal, like debuggers--you could not install one if you had one, without knowing your computer's root password. And neither the FBI nor Microsoft Support would tell you that.

Dan concluded that he couldn't simply lend Lissa his computer. But he couldn't refuse to help her, because he loved her. Every chance to speak with her filled him with delight. And that she chose him to ask for help, that could mean she loved him too.

Dan resolved the dilemma by doing something even more unthinkable--he lent her the computer, and told her his password. This way, if Lissa read his books, Central Licensing would think he was reading them. It was still a crime, but the SPA would not automatically find out about it. They would only find out if Lissa reported him.

Of course, if the school ever found out that he had given Lissa his own password, it would be curtains for both of them as students, regardless of what she had used it for. School policy was that any interference with their means of monitoring students' computer use was grounds for disciplinary action. It didn't matter whether you did anything harmful--the offense was making it hard for the administrators to check on you. They assumed this meant you were doing something else forbidden, and they did not need to know what it was.

Students were not usually expelled for this--not directly. Instead they were banned from the school computer systems, and would inevitably fail all their classes.

Later, Dan would learn that this kind of university policy started only in the 1980s, when university students in large numbers began using computers. Previously, universities maintained a different approach to student discipline; they punished activities that were harmful, not those that merely raised suspicion.

Lissa did not report Dan to the SPA. His decision to help her led to their marriage, and also led them to question what they had been taught about piracy as children. The couple began reading about the history of copyright, about the Soviet Union and its restrictions on copying, and even the original United States Constitution. They moved to Luna, where they found others who had likewise gravitated away from the long arm of the SPA. When the Tycho Uprising began in 2062, the universal right to read soon became one of its central aims.

#### Author's Note

This note was updated in 2002.

The right to read is a battle being fought today. Although it may take 50 years for our present way of life to fade into obscurity, most of the specific laws and practices described above have already been proposed; many have been enacted into law in the US and elsewhere. In the US, the 1998 Digital Millennium Copyright Act established the legal basis to restrict the reading and lending of computerized books (and other data too). The European Union imposed similar restrictions in a 2001 copyright directive.

Until recently, there was one exception: the idea that the FBI and Microsoft will keep the root passwords for personal computers, and not let you have them, was not proposed until 2002. It is called "trusted computing" or "palladium".

In 2001, Disney-funded Senator Hollings proposed a bill called the SSSCA that would require every new computer to have mandatory copy-restriction facilities that the user cannot bypass. Following the Clipper chip and similar US government key-escrow proposals, this shows a long-term trend: computer systems are increasingly set up to give absentees with clout control over the people actually using the computer system. The SSSCA has since been renamed to the CBDTPA (think of it as the "Consume But Don't Try Programming Act").

In 2001 the US began attempting to use the proposed Free Trade Area of the Americas treaty to impose the same rules on all the countries in the Western Hemisphere. The FTAA is one of the so-called "free trade" treaties, actually designed to give business increased power over democratic governments; imposing laws like the DMCA is typical of this spirit. The Electronic Frontier Foundation asks people to explain to the other governments why they should oppose this plan.

The SPA, which actually stands for Software Publisher's Association, has been replaced in this police-like role by the BSA or Business Software Alliance. It is not, today, an official police force; unofficially, it acts like one. Using methods reminiscent of the erstwhile Soviet Union, it invites people to inform on their coworkers and friends. A BSA terror campaign in Argentina in 2001 made veiled threats that people sharing software would be raped in prison.

When this story was written, the SPA was threatening small Internet service providers, demanding they permit the SPA to monitor all users. Most ISPs surrender when threatened, because they cannot afford to fight back in court. (Atlanta Journal-Constitution, 1 Oct 96, D3.) At least one ISP, Community ConneXion in Oakland CA, refused the demand and was actually sued. The SPA later dropped the suit, but obtained the DMCA which gave them the power they sought.

The university security policies described above are not imaginary. For example, a computer at one Chicago-area university prints this message when you log in (quotation marks are in the original):

"This system is for the use of authorized users only. Individuals using this computer system without authority or in the excess of their authority are subject to having all their activities on this system monitored and recorded by system personnel. In the course of monitoring individuals improperly using this system or in the course of system maintenance, the activities of authorized user may also be monitored. Anyone using this system expressly consents to such monitoring and is advised that if such monitoring reveals possible evidence of illegal activity or violation of University regulations system personnel may provide the evidence of such monitoring to University authorities and/or law enforcement officials."

This is an interesting approach to the Fourth Amendment: pressure most everyone to agree, in advance, to waive their rights under it.

#### References

- The administration's "White Paper": Information Infrastructure Task Force, Intellectual Property and the National Information Infrastructure: The Report of the Working Group on Intellectual Property Rights (1995).
- An explanation of the White Paper: The Copyright Grab, Pamela Samuelson, Wired, Jan. 1996
- Sold Out, James Boyle, New York Times, 31 March 1996
- Public Data or Private Data, Washington Post, 4 Nov 1996. We used to have a link to this, but Washinton Post has decided to start charging users who wishes to read articles on the web site and therefore we have decided to remove the link.
- Union for the Public Domain--an organization which aims to resist and reverse the overextension of copyright and patent powers.

This essay is published in *Free Software, Free Society: The Selected Essays of Richard M. Stallman.*

#### Other Texts to Read

- Philosophy of the GNU Project
- Copy Protection: Just Say No Published in Computer World.

The author's note talks about the battle for the right to read and electronic surveillance. The battle is beginning now; here are links to two articles about technologies now being developed to deny you the right to read.

- Electronic Publishing: An article about distribution of books in electronic form, and copyright issues affecting the right to read a copy.
- Books inside Computers: Software to control who can read books and documents on a PC.

#### Translations of this page:

[ Česky | Deutsch | English | Español | Français | עברית | 日本語 | 한국어 | Magyar | Polski | Português | Русский ]

Return to the GNU Project home page.

Please send FSF & GNU inquiries to [gnu@gnu.org](mailto:gnu@gnu.org). There are also other ways to contact the FSF. Please send broken links and other corrections (or suggestions) to [webmasters@gnu.org](mailto:webmasters@gnu.org).

Please see the Translations README for information on coordinating and submitting translations of this article.

Copyright 1996 Richard Stallman

Verbatim copying and distribution of this entire article is permitted in any medium without royalty provided this notice is preserved.

Updated: \$Date: 2004/04/14 15:10:56 \$ \$Author: corey \$