

To:

Secretary

Senate Select Committee on the Free Trade Agreement between Australia and the United States of America Suite S1.30.1 Senate Parliament House Canberra 2600 FTA@aph.gov.au

I am writing to inform you of my dismay at some aspects of the so-called "Free" Trade Agreement recently agreed between the Australia and the United States governments. In particular, I want to raise some important issues about section 17, "Intellectual Property", and in particular, the amendments to Australian copyright laws which the Agreement prescribes.

Section 17.4 of the agreement indicates that Australia will implement a set of copyright laws that are roughly the equivalent of the United States' Digital Millennium Copyright Act 1998 (DMCA), only more draconian and with fewer exemptions.

In the US, the DMCA has provisions which make it inapplicable for certain fair-use and free-speech issues, but nevertheless it has been used inappropriately by the film and music industries to trample on consumers' fair use rights (e.g., the ability to view a DVD on certain operating systems, or to rip a CD one has purchased to one's own iPod). It has also been used for its chilling effects [1] on free speech (e.g., software vendors preventing discoverers of genuine computer security flaws from revealing the existence of those flaws, or attempting to shut down web sites with contrary viewpoints [2]).

This is what happened in a country that both cherishes its constitutional right to free speech and has a strong history of fair use, upheld by the country's highest court [3]. Australian law has guarantees for neither. If free speech and fair use are the judicial "checks and balances" that keep the US DMCA in check, what will keep Australia's equivalent in check?

All the while, incidentally, the DMCA has failed spectacularly at what it aimed to achieve: stopping high-volume criminal copyright violation ("piracy"). Is a DMCA even needed in Australia? Software and movie pirates are already subject to existing criminal laws; adding another criminal charge to the list is not going to dissuade them.

Ironically, A DMCA criminal charge has been raised against only one person in the US, and that was a Russian man who wrote a piece of software that permits blind people to read encrypted e-Books!

The Free Trade Agreement intimates that it is desirable to import the US DMCA as-is, without regard to the legal climate in the US which helps to prevent such an Act from being misused. Other countries (e.g., Canada) have Free Trade Agreements with the US, and have not felt the need to implement their own version of the DMCA. If the Australian government feels that the DMCA must be emulated, then it must pay close attention to non-violating, legitimate uses of copyrighted material, and provide laws specifically permitting fair use at the same time.

Yours faithfully,

Deborah Pickett

References:

[1] Chilling Effects Clearinghouse DMCA Frequently-Asked Questions.  
<http://www.chillingeffects.org/anticircumvention/faq.cgi>

[2] Gallery of DeCSS scramblers, by David Touretsky. <http://www-2.cs.cmu.edu/~dst/DeCSS/Gallery/index.html>

[3] Sony vs Universal (US Supreme Court decision allowing home taping)  
<http://www.virtualrecordings.com/betamax.htm>

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