

To the Senate Select Committee on the USFTA, Parliament House, Canberra.

Summary

I hereby want to express my concerns about two issues I consider important – the Anti-Circumvention (aka Technological Protection) Measures and the Software Patents, both considered in chapter 17 - Intellectual Property Rights - of the FTA. I, being a computer programmer, fear that my ability to write programs will be severely limited by these provisions. I also fear that the Australian computer industry may become subject of legal bullying from large American corporations.

1. Anti-Circumvention

The Anti-Circumvention is considered in Article 17.4, paragraph 7. The way it is written means that I will not be able to access any “protected” content that I legally own in ways other than those approved by the copyright owners. In fact this means that I will not be able to play a legally purchased DVD on a computer running a Linux operating system. I do not dispute the rights of copyright owners to control the copies of their work and I do not endorse copyright infringements. I however dispute the right of copyright owners to control the ways in which consumers access the legally purchased contents. I believe that once somebody purchases a copyrighted material – be it a book, CD or DVD, he/she should be free to access it in ways that best suits him/her, provided that no copyright infringements are being committed. This however is not the case with the US style anticircumvention

laws, where a programmer was arrested and put in jail because he wrote a program that enables blind people to access protected content. If the law enforcement officers were strict enough they could have jailed the blind people that used that program as well. Is this something that the senate would approve as a law?

The problem with the anti-circumvention will get worse in the near future, when the “trustworthy computing” takes off. It is expected that computer hardware will come with built-in “digital rights management” and writing a program that uses that hardware would become a felony. This indeed suppresses the creativity, limits the range of business activities that can be carried out and limits the freedom of the consumers.

2. Software Patents

Software patents are often being used as weapons against the competition. For quite some time the American patent office had relaxed rules for granting patents and large American corporations accumulated high number of patents, some of them for trivial and obvious things and some of them with rather vague and broad description. In fact at the moment it is not possible to write a relatively large program without risk of being sued for patent infringement. These large corporations usually have agreements between them not to sue each other for patent claims but they can use (and do use) their patent pools against smaller competitors.

For quite some time the patent rules in Australia were much stricter and Australian IT companies could not accumulate such large patent pools. If the senate relaxes these requirements then the large US corporations would transfer their patents in Australia and will be in a position to bully the local IT businesses.

The real problem with the US style software patents is that sometimes it takes less than a day for a regular programmer to “discover” something patentable and then the patent holder can stop competition for the next 30 years based on this patent. This is realised by the Europeans and so far they resist the software patents pressure from the US.

Conclusion

The quite vague and ambiguous definitions about what is wrong combined with the large penalties for copyright infringements and with the high costs for any legal defense is a

dangerous combination that will hurt the small to medium size business – the most wide spread type of IT business in Australia. Just the threat of the lawsuit would be enough to hamper the creativity and to limit the business opportunities that an entrepreneur might want to explore. This is bad, please do not allow it.

Please take the above concerns into consideration.

Yours sincerely,

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