

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 Committee members,

I am a computer engineer and software developer. I'm an Australian citizen currently living and working in Helsinki, Finland.

My primary concern is the Intellectual Property Rights provisions of the FTA (Free Trade Agreement). I believe these changes are not in the national interest, and will harm Australia's long term economic prospects.

As the honourable members are no doubt aware, copyright and patents are state legislated monopolies, used to reward creativity and allow the owners to extract financial or other gains for their efforts. The duration of these monopolies must be carefully balanced to allow the owners to extract value from their creation, with society's need to build upon these creations. The window of opportunity granted to the innovator must close at some point in order for society to benefit.

The proposed changes to copyright and patent law will protect large copyright holders (mostly US corporations), rather than stimulate the Australian economy, which is one purpose of copyright and patent law. It is vital that changes to these laws are well researched and benefit Australian, rather than American business.

DMCA (Digital Millennium Copyright Act) bill in the US has been used to attempt to suppress software such as DeCSS. DeCSS software was developed to enable Linux PCs to play DVDs. This tool circumvents copy protection on DVDs, and therefore falls foul of the DMCA. However, the main use of DeCSS is to allow owners of DVDs to watch them on alternative operating systems.

The DeCSS case highlights negative aspects of DMCA type laws. Contrary to popular belief, duplicating a DVD doesn't require it to be decoded, as the copy will be decoded by the player – the process of copying doesn't care about the content being copied. Other methods of copying DVD material are also possible without DeCSS.

However, DeCSS has a very valid use – allowing owners of DVDs to view them on alternative platforms. The DMCA laws reduced the rights of consumers and prevented innovation by making the reading and playing of DVDs on platforms without official DVD software impossible.

Introduction of DMCA like laws, will have a negative impact on Australian innovation.

Introduction of software patents will have drastic effects on local software development. There is no need to grant companies software patents – the industry has thrived in the current environment.

A recent example of the negative impact software patent can be seen in the case of JPEG images. JPEG images have been used since the Internet began for displaying images on the Internet. Their use has been wide, and the benefit great. A US company Forgent has recently begun suing companies which produce software which manipulates or creates JPEG images. Forgent claims to hold patents relating to JPEG algorithms. This software is in wide spread use, and now, after many years of use, a company steps forward and claims it is owed royalties. This is a prime example of the negative impact software patents will have if adopted in Australia. Suddenly the cost of producing software must include a legal team to search for and defend against patents.

Software is already well protected with copyright law – patents are unneeded and unwelcome – they significantly increase the cost of producing software.

Australia's future economy and industry will be built upon information technology and innovation in the fields affected by these expansions.

It is my belief that implementing the proposed expansions to Intellectual Property laws is selling Australia's future, for some doubtful short term benefits. The cost is simply too high.

These changes to Australia's Intellectual Property laws must be rejected – they serve the interests of American corporations, they will be a burden to local industry and are not in Australia's best interest.

Best Regards,

Daniel Milne

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