

Attn Senate Select Committee on the Free Trade Agreement between Australia and the USA:

I am an analyst/programmer. I've recently been working on a software project overseas. Years ago, the product was constructed to depend on a piece of software that was released by a well-known software monopolist. (This company has been demonstrated to be a monopoly in US courts which let them off for it with a slap on the wrist that changed nothing). Said monopolist spat the dummy after a lawsuit between it and Sun a few years ago and subsequently dropped this product line altogether. Thus we are left with a dependency on an unsupported product.

Last week, I had a task of having to try and find a way of replicating the functionality of the not supported product. Since the functionality is complicated, it has been necessary for me to find ways to reverse engineer that product to learn how it works. Now the story isn't all convenient from the perspective of this letter because the truth is that our product is not hopelessly dependant on the functionality of the now unsupported tool. Migration to something else is possible. However, it's quite conceivable that similar situations exist without our happy ending.

Under the US's infamous Digital Millennium Copyright Act and (I believe) recent Australian law as well, my reverse engineering would have been unlawful in these countries. In the US, people are thrown into jail for such behaviour.

When I learnt to drive, I had a dodgy ute. At one point the hose pipes started to give up the ghost. I learnt a fair bit about the insides of my car while waiting for the car to cool down and then putting in a temporary fix by wrapping duct tape around the pierced sections, hose clamping the tape to the pipe and then reattaching the pipe to its fitting.

I also did a lot of driving around to try and find old carburettors in used car lots because mine were no longer manufactured. In the end a local firm saw the demand and started to produce third-party carburettors to fill this opportunity in the market.

Imagine a world where using third party carburettors or fixing your own car was illegal. The roads are designed only to work with a single car, and trying to adjust other cars to fit onto those roads is (1) technically infeasible and (2) illegal. How would people even learn how cars worked under such a system? Reverse engineering is an important tool that engineers need to master and they use it to learn throughout their careers.

The funny thing is, if these measures are introduced it will be just a matter of time until this is the situation in cars. It won't be much effort for manufacturers to put microchips in car parts that query one another to request authorisation before they activate. Under measures present in the FTA, circumventing such measures would be illegal.

The anti-circumvention measures outlined in the FTA are a massive threat to a free-market economy. They make the cost of entry for new

products into existing markets prohibitive. In the field of software, many of these markets are already wrapped up by US-based monopolies.

The arguments that are used to justify the measures are invalid and boil down the government being placed in a position where it is mandating business practices that are concocted and which would otherwise be unfeasible. I am sure other submissions will go into detail to indicate the way in which trade in DVDs will actually become less free due to anti-competitive measures inherent to the DVD region system.

Australia has a far better tradition than the US in all of:

- our standard of review for patent grants
- what qualifies as a patent
- anti-monopolist legislation
- consumer legislation
- not reducing ourselves to being dirty protectionists

Yet it is us who have had impositions placed on us in this agreement!

- The most ridiculous is the adoption of the absurd Sonny Bonny copyright extension debacle. The US should have come to us on this. (In fact the US should never have gone that way in the first place - it's the result of thinly-veiled chequebook politics and I believe the US federal court is even considering ruling it unconstitutional at the current time)
- Over the top anti-circumvention measures which advantage entrenched monopolists over new players and over consumers, including criminalisation! These measures are contrary to existing Australian precedent, ACCC policy, common sense and always have an unjustifiable impact on consumers' fair use rights.
- Extensions to Digital Restriction Management policy (again, this is designed by big companies specifically to limit consumers' fair use rights)
- A number of stupid changes to patent law that bring us closer to the rag tag US model

This is far from an exhaustive list and considering the mess the group have made of the bits I do understand I'd strongly recommend paying attention to submissions relating to others.

Yet we have passed up the opportunity to ask any number of reasonable things of the US:

- Where are the clauses instructing the US to introduce legislation comparable to the third line forcing provisions available in our Trade Practices Act 1974? A couple of years ago, a well known US monopolist used its control over the desktop operating systems market to leverage computer suppliers in such a way that a competitor, 'Be' was forced to bankruptcy. Third line forcing would have made Microsoft's behaviour unlawful.
- Where are the clauses instructing the Bush administration not to pull funding out from underneath its prosecutors in antitrust suits?
- Where are the instructions to tell the US to get its house in order in the area of patents and stop approving things that are outside of the spirit of patents?
- Where are the clauses requesting the US pull its legal system into line and reduce factors that contribute towards the cross-licensing

patent culture that so hampers entry into technical fields by new players?

It would appear that the Australians involved in the negotiations have made good short term gains to remove US tariffs. However, the price is too high. These concessions have come at the expense of much more significant long term concessions that will restrict our ability to determine the future of copyright and patent law in our own country and which will hamper our ability to become a leader in technical fields into the future.

The message such an agreement would send to the US is this: they can introduce unjustifiable trade tariffs now and later use them as bargaining chips in return for control over other countrys' legislative frameworks.

Yours faithfully,

Craig J M Turner