

To the Senate Select Committee on the Australia-USA FTA,

I am writing regarding the strong concerns I have towards certain components to the Australia-United States Free Trade Agreement (AUSFTA).

In particular, I draw your attention to Section 17, Intellectual property, and the subsections 17.4 Obligations pertaining to Copyright and 17.9 Patents. My concerns relate to the adoption of the severe (some would say draconian) forms of these laws which hold in the US.

With regard to 17.4 part 4, the time after which a copyright is considered to expire, I ask you to consider the original and true purpose of copyright. The purpose of copyright is to encourage innovation by giving the copyright author control over his/her work for a limited period of time. The central concept is that, in order for the intellectual work of the author to benefit society it should be made available to the public. To provide incentive for authors to create, they gain exclusive rights to their work for some time period, in order that they might benefit from their creation. It is against the good of society to make this period overlong. A copyright term of the order of 20-25 years provides ample time for the author to benefit from their work, while at the same time is short enough to encourage further creation. Furthermore, it provides a relatively short time frame between the creation of the work and the point at which society gains the full benefits of the creation. An expiry term of the authors life plus 70 years, as specified in the AUSFTA, is far too long.

With regard to 17.4 part 7, the restriction upon devices whose purpose is to circumvent electronic protection, I will simply say that there are many instances where common sense would dictate that the fair use of a product requires the circumvention of electronic protection. One such example is the making of backup copies of digital music or software. Another is the specific region encoding provided on DVDs. In an era when overseas travel is so easy, does it really make sense to disallow region free DVD players? As an academic, it is common to spend 1-3 years in a country doing research and then to move on to a different country. Must I own a separate DVD player for every country that I have worked in?

With regard to 17.9, the current wording allows for software patents. I cannot stress enough how damaging software patents would be to the

software industry. The European Union examined the issue and voted to specifically ban software patents. Our current patent law requires that patents "be not contrary to the law, nor mischievous to the state by raising of the prices of commodities at home or hurt of trade, or generally inconvenient". The AUSFTA has no such restriction. The purpose of a patent is to encourage invention, by much the same mechanism as that outlined for copyright above. The real effect of software patents would be to stifle invention, and this appears to be the effect that has occurred in the US where the US patent office passes thousands of software patents a year.

Software is not a mechanical construct, it is an abstract construct much like mathematics, and therefore should not be subject to patent law. Software is already covered by a limited term monopoly law, as software is protected by copyright. Therefore patent law is not required to encourage software innovation. In fact, by allowing the patenting of software processes (abstract concepts such as dragging an icon from one folder to another), innovation is stifled as new innovators cannot build upon existing software concepts. The key issue is that copyright is precisely that, the exclusive right of the author to control the copying of the intellectual work, specifically the software itself (being the source code and binary code, not its ideas). On the other hand a software patent would forbid the creation of any software which incorporated concepts that were similar to patented concepts, regardless of whether or not any of the original software's code was used. This clearly contradicts the notion that ideas cannot and should not be patented.

In light of these issues, and in particular the limited amount of the estimated financial benefit of the AUSFTA, I must urge that the Senate Select Committee find that the AUSFTA is not in the national interest and therefore recommend that the treaty not be ratified.

Yours Sincerely,

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