Linux Australia

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10th March 2016

Committee Secretary
Joint Standing Committee on Treaties
PO Box 6021
Parliament House
CANBERRA ACT 2600

Subject: Submission to the Joint Standing Committee on Treaties – Trans-Pacific Partnership Agreement (TPP)

Dear Secretary,

This submission is made in response to a *Call for Submissions* by the Joint Standing Committee on Treaties into the finalised Trans-Pacific Partnership Agreement (TPP), and its recent tabling in the Australian Parliament.

Linux Australia wishes to raise multiple specific and general concerns with sections of the final TPP agreement. Whilst these concerns remain, Linux Australia does not support the ratification of this treaty.

Linux Australia is the peak governing body for Open Technology in Australia, including the rapidly growing Open Source Software and Hardware industries. We represent the thousands of Open Source users and developers within Australia.

The rise of Open Source software has demonstrated significant benefits to both public and private industry, becoming an increasingly critical aspect of large IT projects. The use of Open Source Software and Open Standards is now a required consideration in government tenders, and initiatives such as data.gov.au demonstrate the added value these technologies provide for innovation - a flagship of the government's future policy agenda.

Whilst Linux Australia harbours deep concerns around the general copyright terms of the TPP, most specifically the extension of copyright length (a measure which will severely limit innovation) and the adoption of anti-consumer and anti-competitive

digital locks (aka Digital Restrictions Management or 'DRM' laws), we have consulted with other parties who we believe are better suited to address such issues within their own submissions.

This submission will therefore cover areas of the text that specifically impact Free and Open Source Software and Hardware industries. After seeking the opinion of an expert in the area of international trade agreements, we hereby raise the following concerns:

Concern 1

- Article 14.17 deals with the treatment of source code and restricts what actions a member government may perform.
    - Specifically: *"No Party shall require the transfer of, or access to, source code of software owned by a person of another Party, as a condition for the import, distribution, sale or use of such software, or of products containing such software, in its territory."*

- Whilst the intent of this article was likely otherwise, the text as written will have significant detrimental consequences for Australia's growing Open Government and digital standards programs.

- The Australian Government's recently founded Digital Transformation Office (DTO) has defined a standard for digital services that includes amongst its criteria: *"Make all new source code open and reusable where appropriate"*[1]. We strongly commend the approach of the DTO in this area.

- **The current text of this article of the TPP however means that no Australian government agency would be able to enforce its copyrights on any such Open Source product or service against a company or person from another TPP nation.**
    - Our research into this article indicates that none of the additional clauses would change the above. This includes 14.17.3(a) as licenses such as those commonly used in open source software (e.g. the GNU General Public License - GPL) are not considered 'commercially negotiated contracts'.

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[1] https://www.dto.gov.au/standard/

Concern 2

- As has recently been demonstrated in cases such as the Volkswagen emissions scandal, software is now affecting every aspect of our lives. The Australian public have always relied upon the Government to ensure that the products and services we use, be they automotive, medical, industrial *inter alia* meet high benchmarks for public safety.

- Maintaining such standards will become - and arguably has already become - impossible whilst the internal workings of devices remain hidden from inspection and improvement. Open Source licensing at its core ensures transparency and leads to higher product quality as bugs and defects become 'shallow' to transparent review.

- **Should the government ever decide that legislating a requirement to provide source code (Even for compliance purposes) of a given product or service is desirable - a measure that is being increasingly discussed in a number of technical industries - the TPP will likely prevent them from enforcing any such laws.**

- Despite the exceptions made in Article IV of the GATS, there is no clear, definitive wording that covers such scenarios and relying on such terms is an insufficient safeguard.

The TPP is an exceptionally wide reaching treaty and touches upon many industries. It is unfortunate that such an impactful treaty must be presented to Parliament as an 'all or nothing' proposition, particularly given that negotiations for it were conducted largely without input from the Australian public.

Given the above concerns coupled with the inability for changes to now be made, Linux Australia recommends strongly that the TPP not be ratified by Parliament.

Sincerely

Hugh Blemings, President

On behalf of the Linux Australia Council