

From: quozl@us.netrek.org on behalf of James Cameron [quozl@hwy.com.au]
Sent: Friday, 2 September 2005 4:31 PM
To: Committee, LACA (REPS)
Cc: Anderson, John (MP)
Subject: Submission, technological protection measures exceptions

Submission to Standing Committee on Legal and Constitutional Affairs, Inquiry into technological protection measures (TPM) exceptions.

by James Cameron, P.O. Box 25, Tooraweenah, NSW, Australia.
2nd September 2005. 02 6848 1176. quozl@hwy.com.au

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BY: LACA

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G'day,

Thank you for the opportunity to make a submission to your inquiry. Please feel free to ask for any additional information you may require.

I'm an open source developer engaged in volunteer work in rural New South Wales and Queensland. I'm employed by Hewlett-Packard as a Linux remote support software engineer.

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1. Applicability to Terms of Reference

There are several activities that I am involved with that relate to the terms of reference. Three such are detailed in the following sections. In each section I've pointed out which terms of reference my activities appear to relate to. Some sections relate to more than one term of reference.

Sections 5 and 6 however are general comments that do not meet the terms of reference. Rather they are my "gut feel" response to the background paper.

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2. Tooraweenah Community Technology Centre

Re: ToR (a), (b), (e)

Tooraweenah Community Technology Centre in Central West NSW, is now entirely volunteer run, with up to \$2,000 annual operational funding by the Gilgandra Shire Council. The centre provides adult education, library and internet access services.

I'm a technical volunteer to the centre. The centre runs open source software and relies on interoperability with commercial software. The Samba open source project is a critical component on our server.

Our open source usage accounting software (of which I am the open source developer) interoperates with Microsoft Windows, Samba and Linux.

Our primary mouse and keyboard skills training package relies on the Apache and PHP open source projects.

2.1 'Other' Exceptions Needed

We don't have the time and resources to check our software for features that circumvent access control measures.

As an example, PDF files can have a "password protection feature", allegedly to prevent them from being printed. Some PDF content providers have used this feature for access control. One of the PDF viewers on Linux transparently provides a circumvention for this access control. We didn't know it was happening until someone noticed that we could print a certain PDF from Linux.

So I would ask for an 'other' exception that excludes situations where the user of the software isn't aware of the circumvention feature, or has no reasonable control over whether the feature exists in the open source software they are using.

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3. Computer Camp, Scripture Union Queensland

Re: ToR (a), (b), (e)

The religious institution Scripture Union Queensland runs a yearly computer camp, at which I have been a leader since 2001. The camp aims to provide an enjoyable holiday to students, including gaming, and technical training in information technology.

The camp uses open source software extensively, due to its availability, low cost, and liberal licensing conditions. We prepare a distribution of Linux on CD that is used during the camp, and taken home by the students.

The camp also develops open source software, during the technical training. Last year, two of our students collaborated to build a real-time maze simulation program written in the Python programming language. After explaining the concept of open source, and the details of the GNU General Public License, the students chose to release the software as open source.

2.1 'Other' Exceptions Needed, Ignorance of Downloads

The Linux on CD we prepare for the camp is derived from Knoppix, which is a project driven mainly by European open source developers who operate under a completely different intellectual property regime.

Sometimes, Knoppix includes software components that circumvent access control measures such as the PDF viewer mentioned earlier, or the "dd" command which copies raw data. It isn't practical for the team to check for and remove all such software, and some of it is essential to normal operation anyway. We just download the CD image of Knoppix and add what we need for the camp.

An 'other' exception that allows for our ignorance of what is actually in an open source program would be beneficial. Without an exception, there will be adverse impact; we would have to ignore the availability of open source because of the new risk created by the criminal liability.

2.2 'Other' Exceptions Needed, Temporary Copying

We also use commercial software to a limited extent, according to the license conditions and special grants by the software rights holders.

To date this has been done by "sharing out" the distribution media in a fashion that circumvents copyright protection measures, yet restricting use of the software to comply with the license conditions. All such copies are destroyed once used.

Without an exception, there will be adverse impact to the volunteer operation of the camp. The 'other' exception could be an exception to access control mechanisms for commercial software so that the software can be deployed into classroom computers by being placed on a server.

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4. Technical Aid to the Disabled

Re: ToR (d)

I am technical volunteer member P5497 of Technical Aid to the Disabled (TAD) NSW, registered charity CFN 10944, ABN 32 857 835 194, www.technicalaidnsw.org.au.

As part of my work for TAD in their Custom Designed Aids (CDA) section, I've used open source software to build aids for people with disabilities. Some of the aids have been released on my web site as open source software with design documents.

<http://quozl.linux.org.au/tad/>

Some aids have to interoperate with other devices. The interoperability exception already listed should cover that.

While none of the aids I've produced directly affect a disabled person's access to copyright materials, it is something that may happen. The new prohibition on circumvention being a criminal matter worries me greatly, but I haven't got any specific 'other' exceptions to suggest.

I am still worried though that I may download and use an open source tool for my work for TAD that ends up containing a circumvention without me knowing it.

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5. Control motivation may be misplaced

The information paper asserts that there is an increase in copyright infringement in the digital age.

The implication is that it is the digital age that has increased the rate of infringement.

This is overly simplistic. The digital age has brought an increase in both the ability to infringe and the quantity of material that can be infringed.

It is primarily the increase in quantity that is causing an increase in infringement.

The average home now has a large collection of copyright material; it would be germane to determine the increase over a long period, in terms of the dollar value of the works and the investment made in them by the copyright owners.

Homes now more copyright material stored in them than ever before. The insurance industry has recognised this in their policy design. People have more movies, music, books, and other content than they did 20 years ago.

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6. Lack of a "fair use" doctrine that US citizens have

US citizens operate under their DMCA, but have a "fair use" right to make their own copies of copyright material. In Australia we don't have a "fair use" right in the same fashion; I'm told it is still illegal to record a television program in order to watch it later, or to project a book on a large screen so that a disabled person can read it.

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End of submission.