

I wish to comment on the Copyright Amendment Bill 2006.

I am concerned that the Bill will now enable prosecution of copyright infringements with a degree of severity that elevates such infringement to a level of criminality above the actual or perceived damages incurred by the holder of copyright.

Infringements of copyright will, under proposed amendments, create a strict criminal liability on non-commercial infringers. Copyright is not property, it is a legal construction. It is one thing to establish a strict 'civil' liability but a completely different matter to create a strict 'criminal' liability. To do this is to ignore the *actus reus* aspect of establishing the criminality of a person's action. In all other jurisdictions that have respect for due process it is necessary to satisfy that the act will not make a person guilty unless the mind is also guilty.

To prosecute and criminalise people for overstepping copyright boundaries with the same enthusiasm and rigour as car thieves is a travesty and should not be countenanced by this legislation.

The amendments do not take into account that devices used to enjoy digital media are often format-selective. One can't play a CD audio file on an iPod for example, formats vary according to the device used as a player. These amendments do not take into account other current technologies (and foreseeable future ones). The Bill should explicitly state that a person is able to change the format of legally purchased copyright-protected material to suit the device that the end-user has chosen to enjoy their purchase. If a person buys a film they now have the opportunity to view it at home either on their television, their home computer and more recently their portable gaming machines or mobile telephones. They should not have to purchase the film 6 times to watch it once nor force all members of a family to watch it at the same time at the same place.

International travel is now common and affordable to many people. For commercial reasons distributors of material select the markets and the timetables of release. It is not unheard of that this country either misses out on distribution entirely or may be a year behind initial release. Someone then may bring into this country a legal DVD/Computer game/Software programme to find that they are unable to play the game or watch the movie because the only devices sold in this country are Region Coded. In a globalised economy there should be no such artificial constraints as this, it holds consumers hostage to the distributors of said materials, it effectively says that we will get what we're given when we are given it. This bill should legalise the modification of these devices to allow owners of these devices the same utility as that enjoyed by Europe and the United States.

Computer ownership in this country has increased at an accelerated rate, it is now common for each household to have a computer, sometimes 2, for each person. Some pieces of software can cost hundreds sometimes thousands of dollars to enable a household member to do little more than edit and create home movies digitally and create and print photographs of family outings. Many musicians enter the industry using software installed on their home PC.

The amendments do not take into account that

- hardware fails and needs repair and occasional upgrading

- children are careless and may not treat valuable technology with the care and respect that an adult would show
- software companies will try and maximise profits at any length

As such current D.R.M, validation, enabling and other measures included in the computer code of these programmes determine how often the software can be installed and on what computer and that determination is made by the company that has already accepted the purchase price in the sale. The solution, according to the software manufacturer, is to pay further monies to repurchase the programme. Copyright legislation should be amended to allow end-users to re-install software on home computers without contacting the software supplier every time a re-install is required. It should be legal to make a back-up hard-copy and to maintain an installation programme on the intended PC. A damaged book is still largely readable - the slightest damage to a computer disc renders it inoperable and useless. Therefore you cannot afford copyright-protected material stored on optical disc-based media the same protection as material stored on a paper media.

An alternative to the larger well-known software corporations is known as Open Source it is intended to be free and accessible to all who want to use it. It is distributed mostly by Peer to Peer downloading. Restriction, limiting or criminalising peer to peer networking will restrict and limit the development and distribution of this alternative source of technology further increasing the financial burden on ordinary consumers and forcing them to maintain a commercial arrangement with large software companies and impeding the growth and development of future technology. Peer to Peer networks should have their legal status protected from the provision of these amendments.

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