

Submission on the Copyright Amendment Bill



NZOSS

New Zealand Open Source Society

What is the NZOSS?

- An open source advocacy society
- Represents open source users and developers
- Over 200 members nation wide
- Several associate Linux User Groups

Why a submission?

- Copyright is the cornerstone of open source
- Changes to law may impact uptake of open source
- We wish to address the consequences of the bill on New Zealanders

Technical Protection Measures

The TPM provision will:

- Extend the rights of content owners
- Make format shifting illegal
- Make video recording illegal
- Eliminate the right of resale
- Reinforce multinational monopolies
- Artificially support failing business models
- Threaten the success of free trade agreements

Extending rights of content owners

“It has been suggested that in seeking copyright protection for TPMs, copyright owners are attempting to go beyond the traditional scope of copyright protection by attempting to control access to works, rather than use of them.”

- Ministry of Economic Development

Extending rights of content owners

“... TPMs provide copyright owners with greater scope to control access to materials than was possible in the analogue world, and that access (along with the ability to read, view or listen), compared to use, has not traditionally been an exclusive right of the copyright owner.”

- Ministry of Economic Development

Extending rights of content owners

“A number of countries have expressed concerns that uncontrolled use of TPMs together with anti-circumvention legislation and contractual practices would allow rights owners to extend their rights far beyond the bounds of the copyright regime, to the detriment of the public interest.”

- Ministry of Economic Development

Extending Rights: Our Concern

TPM systems will allow content owners to use contracts to extend their rights. Legislative balance will be undermined.

These contracts will be “accepted” when the consumer unwraps the product or agrees to sign up for a download service.

Extending Rights: Our Concern

TPM systems will allow music companies to charge users every time music is played.

In effect they will be able to move from a selling a album that the user can play any number of times to one where they sell “plays”.

Format Shifting

The bill makes format shifting legal only when the content is not protected by TPM.

If the content is protected by a TPM the act of circumvention, even though it is otherwise a permitted act, is illegal.

Format Shifting

Multinational technology vendors who are losing control of file formats will be able to use TPM in their formats to prevent competition.

If it is not legally possible to circumvent a TPM you might not be able to access files even if they were created by you.

Format Shifting Example

If you legally download the latest song from iTunes you are limited by the format to only play it on a iPod.

You will not legally be able to turn it into another format in order to play it on anything but an iPod. This damages competition.

Format Shifting: Steve Jobs

“Imagine a world where every online store sells DRM-free music encoded in open licensable formats. In such a world, any player can play music purchased from any store, and any store can sell music which is playable on all players. This is clearly the best alternative for consumers, and Apple would embrace it in a heartbeat.”

- Steve Jobs, Apple CEO

Format Shifting: SSC

“[TPM systems] could be used to prevent access to information and software which are already within a government’s systems. The remote attestation feature - meaning that they send information to an external server when used- of many TC and DRM systems has the potential to damage the security of government systems and the privacy of people who use them.”

- ICT Branch, State Services Commission

Formats: Vendor Specific

TPM systems are always vendor specific

TPM systems are usually patent encumbered

Content owners and technology vendors are using formats to control the distribution channel.

Time Shifting

The bill will make it legal to record a transmitted TV show for the purpose of watching it later, but only when not protected by a TPM.

With the introduction of TPM in public digital broadcasts, as well as existing systems in commercial providers, consumers will lose the practical ability to time shift TV shows.

TVNZ On Demand

*“... content on TVNZ ondemand has digital rights associated with it. In this situation TVNZ is obligated to have these viewers acquire a licence. Sometimes a small fee may be applicable. If you are acquiring a licence for the first time, you will need to register within **Windows Media Player.**” - TVNZ*

- *The TPM system that TVNZ is obligated to use is reinforcing the Microsoft monopoly.*
- *Technology competitors are locked out.*

Reinforces Monopoly

Allows Microsoft to prevent interoperability

Allows big four music companies to control
distribution

Limits Access

Limits independent music companies and local artists by denying access to “legal” distribution channels

Limits Microsoft's competitors ability to display or play legal content

Right of Resale

When you buy a book or CD or DVD you have the right to resell it. Although you don't own the copyright you do own the copy.

TPM allows the content providers to put contracts around provision of content that removes the right to resell your legally purchased copy.

Do the Big Labels Care?

Do the big music labels really care about the artists?

In 2006 the RIAA lobbied the federal government Copyright Royalty Judges to lower the rates paid to publishers and songwriters for use of lyrics and melodies in applications like cell phone ring tones and other digital recordings.

Do the Big Labels Care?

For Music downloaded off the Internet Music Companies:

- Pay half the royalties – 5% instead of 10%.**
- Charge artists a 25% “packaging” charge despite there being no packaging.**

China Free Trade Agreement

“Securing preferential access to China's economy has the potential to deliver significant gains to our exporters. It is the fastest growing major economy, currently growing at 9.5 percent per annum. China is our fourth largest trading partner, taking over \$1.6 billion of New Zealand's merchandise exports and over \$1 billion of services.”

- New Zealand Ministry of Foreign Affairs & Trade

China and Intellectual Property

“U.S. complaints to the WTO over commercial piracy in China will “badly damage” cooperation, Vice Premier Wu Yi warned on Tuesday, insisting that China has made great strides in protecting patents and copyrights.”

- Scientific American, April 2007

By supporting US Style TPM legislation we will alienate the Chinese, and potentially damage our chances of entering a free trade agreement with them.

US Free Trade Agreement

“A United States-New Zealand FTA would be a natural complement and extension to the United States-Australia FTA. It would avoid the risk of harmful trade and investment diversion that could otherwise result from the Australian agreement, given the close integration of the Australian and New Zealand economies.”

- New Zealand Embassy, Washington.

US Free Trade Agreement

What deal did Australia have to do?

“Tighter controls on circumventing technological protection of copyright material together with a mechanism for examining and as necessary introducing public interest exceptions in relation to technological protection measures, along with a transition period to provide the opportunity for public submissions in this area, as well as other measures in relation to circumvention tools.”

US Free Trade Agreement

By introducing new TPM legislation now we have in effect already conceded one of our bargaining chips in any free trade deal.

Why would the US enter free trade negotiations if the Government is giving them what they want without negotiation?