

George Wardle

From: Andrew McPherson (92)(a)
 Sent: Wednesday, 31 March 2010 4:49 p.m.
 To: trademarks; Peter McCaffrey; simon.power
 Subject: Submission on ACTA treaty.

I am making this submission as an interested party, I am associated with Act on Campus, the Pirate Party of New Zealand, and as a videographer and programmer.

Firstly, let me state that I consider this treaty's secretly negotiated status as a farce designed by old-media lawyers to keep obsolete and dying industries afloat. As a free-marketeer, this disgusts me, that we would seek to associate with unproductive and uncompetitive protectionist techniques. I thought the eighties was the decade capitalism won over socialism, why should we bring back socialist ideals because big industry wants it?

It is also unacceptable that I had to find a leaked version dated Jan 18th, 2010 online just a few days before the submission deadline, giving not enough time to properly comment.

Second point, I think it should be non-negotiable that piracy refers exclusively to piracy for commercial gain only. There is no evidence that consumers copying music from a disc to an iPod (or downloading an episode of a tv series they missed recording) causes lost sales, as they already have a copy and won't pay twice for the same thing.

[This principle is like trying to charge a schoolkid who steals a softdrink from a coke fountain, they won't pay for something they don't have the money for in the first place.]

Third point, any fines should be fairly set at the retail price of the goods, as it is insane to let hollywood bankrupt a university student for downloading a cd or dvd. (Look up Joel Tenenbaum)

Forth point, rightsholders should have to pay the costs of prosecutions, as they initiate the proceedings and are doing so purely to recoup their perceived lost profits.

Fifth point, we should not implement an Orwellian surveillance regime just to check that intellectual property rights are being infringed. The ISP should not pass on user information to rightsholders just on the basis of an allegation of piracy.

Sixth point, the authorities should only be able to seize items used in infringement for commercial piracy cases only. It is unreasonable that customs should get to confiscate anybody's iPod or laptop with just one pirated song or movie on it, or video of someone singing happy birthday.

Seventh point, all talk of imprisonment for IP infringement should be left as just talk. The most severe punishment should be a fine for commercial piracy.

Eighth point, ISP and Search Engine safe harbours. ISPs and Search Engines are deeply automated, to require active surveillance of traffic requires deep-packet inspection, a technology which is typically used for censorship in china and other dictatorships not covered by this treaty. I will not allow democracy and free speech to be stolen from the west just because it suits the dying business model of a few protectionist industries.

Ninth point, circumvention of DRM can be done by anyone who passed NCEA Level 1 maths, or School Cert. Maths. DRM doesn't work for the same reason keeping your PIN number on your EFTPOS card doesn't keep it secure. Freedom is the freedom to say that 2 + 2 = 4.

Tenth point, you can't eliminate hacking by calling it illegal, you just drive it underground.

Reverse-Engineering provides vital ways to improve software by showing inefficiencies in the design. By making a standard industry practice illegal, you risk creating unsafe and highly error-prone software as a standard practice.

Eleventh point, this proposed treaty doesn't need yet another international committee which removes certain rights most civilised people take for granted.

Twelfth point, English should be the only language that the treaty is valid in, to avoid mistranslations and avoid removal of rights in other languages.

Thank you for considering this submission.
Andrew McPherson.

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