

To: The Attorney-General's Department
Re: Further Review of Exceptions to the Technological Protection
Measure Scheme

Thank you for the invitation to respond to the draft Bill. I'd like to raise the following issue:

POTENTIAL USE OF TPM LAW AGAINST PVR USERS

Australian TV guide data is protected by copyright -- at least, according to Channels Nine and Seven. They have used this to slow the local take-up of Personal Video Recorders (PVRs), such as Tivo, Microsoft Media Centre, and MythTV, which they see as a threat to their business model.

TV stations routinely post guide data on their web sites (e.g. <http://tvguide.ninemsn.com.au>), and so do their licensees (e.g. <http://www.yourtv.com.au/>). However, they often insert code to hide or obscure the data, in order to make it unreadable to users of home PVRs.

I'm concerned that this code may be considered a TPM, and the software in PVRs that unscrambles the code may be considered a circumvention device, and that TV stations will thus be able to use this law to sue, or threaten to sue, PVR users for engaging in an activity that is currently legal and has nothing to do with piracy.

The draft Bill provides an exception for "interoperability." However, this does not appear to cover PVR users, or indeed any program that interacts with the web. This is because before a web page can be read, it must first be downloaded -- that is, a copy must be created on the local device. This copy is generally stored in a cache, for performance reasons, and would appear to violate 116AK (3)(c), since it makes the information "readily available to the person from another source when the act is done."

I believe this could be remedied by either:

- (a) Adding a specific exclusion for the reading of web pages; or
- (b) Modifying the "interoperability" clause to allow the reading of web pages; for example, by excluding local copies of web pages from the requirements of 116AK (c).

I imagine this would also be broadly useful in the future to users of web services in general.

Attachment A: Using a home PVR to read TV guide data

- (A): untested in court, but allegedly yes
- (B) (a): no
- (B) (c): yes
- (C) (a): no
- (D): yes
- (E): yes (used to delay PVR take-up)
- (F): no

Background: Currently, Australian PVR users have two ways of obtaining guide data. The first is to use a service that distributes it, such as IceTV or OzTivo. The second method, which I believe is under threat here, is where individual home users have their PVRs read (or "scrape") the guide data directly from the web.

This activity is currently legal, to the best of my understanding. Yet a TV station could claim that their web page obfuscation is "designed, in the normal course of its operation, to prevent or inhibit an act... that would infringe copyright," and thus under this Bill it would be illegal to circumvent it, even for home PVR use.

The Sydney Morning Herald has an informative article about the battle between TV stations and PVR users:

<http://www.smh.com.au/news/biztech/legal-battle-over-electronic-guides/2006/06/19/1150569266669.html?page=fullpage>

It does seem a shame that rather than outlawing TPM circumventions that lead to copyright infringement, the Bill outlaws circumventions of any TPM that claims to protect copyright, whether that's what it's actually doing in this particular instance or not. That is, all manner of acts are prohibited even though they may not lead to copyright violation. That does not seem to be entirely in keeping with the stated intention of being "good news for consumers, bad news for pirates."

Thank you for your consideration.

Max Barry