

Dear Sir/Madam,

I have read through the Exposure Draft - Copyright Amendment (Technological Protection Measures) Bill 2006 and can see copyright owners are getting a large amount of protection. I also feel that consumers rights are being severely constrained.

The original premise of copyright was to protect the manufacturer's right to receive income off a product. This draft legislation imposes mechanisms that make legitimate uses of software or hardware subject to infringing the Act without any intent to deprive the manufacturer of income. There are exemptions that try to allow a predefined number of uses that are not related to copyright. This approach does not scale well to the rapid continuous advances in technology. An approach of defining circumvention of TPM with intent to infringe copyright would result in legislation that is a lot easier to understand and leaves consumers with rights over their purchases and gives copyright owners with a distinctive right to income from their works.

The limitations of the exemptions approach is very evident (Division 2A, Subdivision A, 116AK, 7(1)C) that defines an overarching exemption for Commonwealth and State authorities. If these authorities find it difficult to operate within the regime proposed how are consumers and companies going to cope? Why should authorities not follow the same exemption process as individuals?

The number of exemptions exist to protect the user's rights however the user is not able to obtain assistance in exerting these rights. Anyone assisting the user for commercial purposes is liable for an offence (116AL).

The exemption process it seems really odd that an application for an exemption could take up to 4 years for a determination. Do copyright owners have a say in the exemption process? Can an exemption repeal process exist? Can applications be gazetted for public comment? I think each of these should exist for the purposed of accountability and fair input.

I note that the criminal liability extends for commercial purposes and this is a really good thing. I'm grateful that I can do something to a TPM for

personal purposes and not be worried about criminal liability.

I'm also grateful for the attempts to tie the circumvention to copyright. This is a good move that prevents this legislation becoming an anti-competitive legislation.

As a consumer I want the right to:

1. View and interact with games, DVDs and their future equivalent on my choice of hardware or operating system regardless of where it was purchased. View, modify and interact with data produced by another vendors product. If a friend of mine uses Microsoft Word for example to produce a document that prevents meaningful access by content scrambling (but not copy protection) I want access to the data with a compatible program.
2. Make backups of such items for the purpose of recovery in the event of damage. Limiting backups to a single copy places an unnecessary legal restriction on what would technically be implemented as a full copy backup every month for example. The fragile nature of CDs, tape, hard disks and other electronic storage media makes backups necessary and makes more than a single copy also necessary.
3. Know that software and hardware purchased will not contain rootkits like the Sony Rootkit that detrimented the security of users.

Taking a look at the Exposure Draft - Copyright Amendment Regulations 2006:

(a) Interoperability with computer programs

Restricting this to program to program interoperabilities makes this very

limited. Consider the following cases:

1. interoperation access to data

E.g

An Airline wants a program to access flight data of a partnered airline that is

usually accessed by a TPM program. The program that normally provides access

to the data does not interoperate with the Airlines existing system.

Criteria for exceptions: A Yes - data is TPM protected B.a -

Infringement under 116AK C.a.ii - no limit D.i -yes the TPM is limiting

access to the data E.i - yes - denial of access is placing limitations

on the user F - no - the data is not the property of the TPM

manufacturer. The data owned

by the partner airline.

2. interoperatable access to hardware

e.g.

I have purchased a Sony Playstation 2. I wish to run my own program on this

hardware. The Sony Playstation hardware prevents this using a TPM.

Criteria for exceptions: A. - Yes ability to use the hardware is TPM protected B.a. - Infringement is bypassing the TPM C.a.ii - no - all users should be able to use their hardware. D.i. yes - access control has been applied limiting the user to specific software.

E. yes - hardware that has been procured by the user is usable by them for

their own software.

F. no - No attempt has been made to infringe copyright by the user.

3. interoperable hardware

I want to make a hardware product that runs Nintendo and Playstation 2 software. The software is encoded to prevent access.

A. yes - software is TPM protected.

B. a. yes - access to the software is bypassing some of its protections. C.a.ii. no D.i. yes - access control prevents access to software by hardware designed to be a superior product.

E.i. yes - denial of access impedes the production of a compatible product. F.ii. no - the end user still needs to purchase the software to work with the

compatible product. No attempt has been made to copy the software for the end user.

(d) Assistance to persons with a print disability

This exemption is strictly print. Could a deaf person access audio material

that gets displayed as text?

(e) Archives or Libraries

In a similar vein to archives or libraries are businesses allowed an exemption for archival purposes?

What about the archival of private hospital records 7 years from when the patient turn 18 (last time I checked) is a long time for software. It would be ideal to archive the records before the software that access them is obsolete.

(j) Malfunctioning technological protection measures

(i) Why are there conditions on this exemption? If a TPM breaks or impedes a persons normal use of a copyrighted work then it should not have the protection of this Act.

(ii) So if a TPM breaks I'm required to purchase another one (until assuredly it breaks as well)?

(k) I'm assuming this is preventing Sony rootkits and the like. If a program runs a backdoor that doesn't interfere with the host product however it facilitates detrimental acts on the product from an unauthorised person it should also be an exception.

Looking at the exemptions in the Copyright Amendment (Technological Protection Measures) Bill 2006

Exemptions in the bill

(4) encryption technology

May need to be extended to other functional examinations.

e.g. Verifying an accounting program to make sure it always adds up correctly
Verifying the implementation of mathematical model for flight simulation.

(5) computer security testing

Could this be extended beyond the scope of 'computer' to just 'security testing'

e.g.

Verifying the security of a proximity sensor to detect false alarms.

(6) Online Privacy.

I'm very happy this provision is here.

Some other things to consider:

Modification of the software to manipulate limits in a copyright protected program:

e.g.

A email product does not allow emails greater than 10 kilobytes to be sent.

Can I, or a third party, modify the program to raise this limit to 2 megabytes.

or:

A email product does not produce email classifications consistent with ACMA

regulations. Can I modify it to perform these functions?

Benjamin Stephan and Lutz Vongel put a great mini movie together about trusted

computing that epitomises the desire of industry to control technological

aspects of consumer products (available: <http://www.lafkon.net/tc/>).

Are

these the technical protective measures that industry wants to protect through legislation?

Please listen to the users in protecting their consumer rights to a competitive market place and to own the produce that they pay for.

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Daniel Black
8 Bidwill Close
Yarralumla ACT 2600

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Proudly a Gentoo Linux User.

Gnu-PG/PGP signed and encrypted email preferred

<http://pgp.mit.edu:11371/pks/lookup?op=get&search=0x76677097>

GPG Signature D934 5397 A84A 6366 9687 9EB2 861A 4ABA 7667 7097