

Date: Thu, 27 Apr 2006 10:20:07 +0100
To: <gowers.review@hm-treasury.x.gsi.gov.uk>

Dear Sir,

Thank you for the opportunity to contribute to your enquiry.

The Foundation for Information Policy Research is an independent body that studies the interaction between information technology and society. Its goal is to identify technical developments with significant social impact, commission and undertake research into public policy alternatives, and promote public understanding and dialogue between technologists and policy-makers in the UK and Europe.

FIPR's view is that the balance between rightsholders' interests and the public domain has swung too far towards the rightsholders. This is hampering innovation and growth in a number of ways.

On the patent front, the careless granting of many broad patents for material containing little innovative content is starting to cause serious problems for industry - especially in fields such as IT where a product may contain thousands of innovations, where innovations are incremental, and submarine patents can emerge at any time. Some fields have become unnavigable because of the patent thicket. For example, fraudsters make millions from 'phishing' scams in which bank customers are induced to enter authentication data at fake websites. Some of the most promising technical countermeasures cannot be deployed because of the many (and unavailable) patents on cryptographic protocols.

In addition, the duration of copyright in published works is excessive from the viewpoint of maximising social welfare. It needs to be long enough for the investing middlemen like publishers and film makers to be able to justify buying the work of creative artists (who mostly do not need incentivising because their compulsion to produce art is irresistible anyway). But no commercial operator deciding which work to spend money publishing can sensibly be attributing any serious net present value to receivables more than 10 or 15 years into the future, because their present value is too small to count and their uncertainty is too great. So copyright in a work once published does not need to be more than the patent term of 20 years.

In the field of digital rights management, we would like to submit to you a submission we first made to APIG, which is available at:

<http://www.cl.cam.ac.uk/~rja14/Papers/apig.pdf>

and in support of this we would like to draw to your attention a peer-reviewed academic paper on the competition-policy aspects of 'Trusted Computing':

<http://www.cl.cam.ac.uk/ftp/users/rja14/tcpa.pdf>

as well as the Trusted Computing FAQ:

<http://www.cl.cam.ac.uk/~rja14/tcpa-faq.html>

In our view, the anti-circumvention provisions of the WIPO Treaty are seriously excessive, and Her Majesty's Government should work to abolish or at least mitigate them. They have had the effect of privatising policy, by transferring control over intellectual property and other rights from national governments to the vendors of the most successful platforms. It was perfectly foreseeable that this would be abused, and it is now being abused.

The Government should introduce domestically, and push for the wide international adoption of, a fruit-of-the-poisoned tree clause which provides that the abuse of a rights-management mechanism must void its legal protection, and render unenforceable all copyrights protected under it. The detailed analysis and argument for this is contained in a submission that FIPR made jointly with EDRI and VOSN to the European Commission, which we hereby also submit to you:

<http://www.edri.org/campaigns/copyright>

This proposal contains a number of other proposals which we would like you to consider, such as legalising activities that are useful but at present technically illegal, such as the use of anti-virus software.

Regards

Professor Ross Anderson
Chair, FIPR