

As an increasingly concerned end user of software, a citizen of this world who loves freedom, a vocal proponent of the FSF and member of the Open Source movement, I hereby wish to register my concern regarding the current review of what you term Intellectual Property Rights.

Firstly, the term 'Intellectual Property' is in itself problematic. To quote from an article on the Free Software Foundation website: The term "intellectual property" operates as a catch-all to lump together disparate laws. Non-lawyers who hear the term "intellectual property" applied to these various laws tend to assume they are instances of a common principle, and that they function similarly. Nothing could be further from the case. These laws originated separately, evolved differently, cover different activities, have different rules, and raise different public policy issues. Copyright law was designed to promote authorship and art, and covers the details of a work of authorship or art. Patent law was intended to encourage publication of ideas, at the price of finite monopolies over these ideas--a price that may be worth paying in some fields and not in others. Trademark law was not intended to promote any business activity, but simply to enable buyers to know what they are buying; however, legislators under the influence of "intellectual property" have turned it into a scheme that provides incentives for advertising (without asking the public if we want more advertising). (<http://www.gnu.org/philosophy/not-ipr.xhtml>)

I am uncomfortable with the use of a blanket term to cover issues that are inherently different, and I wish to have that noted.

On page 1 of your call for evidence there is also a problematic sentence. It suggests that the state must ensure that IP owners can enforce their rights through both technical and legal means. The state remit is that of legal jurisdiction. The adoption of technological enforcement of copyright, patent or trademark claims as an extension or supplement of legal jurisdiction is an untenable one. It is not the state's place to enforce or sanctify technological limitations on hardware or software. It is the state's role to provide a legal framework for just regulation. By allowing for the confusion of legal and technological jurisdiction, the state permits the existence of limitations on end user experiences that go far beyond the enforcement of just rights. The most worrying example of this is termed Digital Rights Management (DRM), and falls within the remit of the call for evidence under the section entitled 'COPYRIGHT DIGITAL RIGHTS MANAGEMENT.'

Digital Rights Management is an unfair extension of legitimate copyright terms to cover all aspects of use. It is about restricting how and when people can use copyrighted files. It may restrict how many times people can play something. It may restrict people's ability to share something. It may restrict the method people employ to consume something. It is about allowing companies to determine how the end user will experience the copyrighted material that the end user purchased.

Ultimately DRM means that when a person buys a copyrighted file, they don't actually have the permission to use it. The file containing the DRM protected information won't necessarily work on another computer, or your mobile phone, or your PDA. It's a bit like selling a book designed to be read in the living room, but with a limitation preventing it being read in the bath. Instead of finding a way to stop the end user giving illegitimate copies of a work to other people, DRM is about controlling the right to copy work for any purpose, and in the process it determines the end user consumption method and options as well.

DRM creates a completely new way of controlling how people access information and sanctions corporate control in what was previously a very private sphere. DRM will allow the companies who create DRM, and the companies that own the content, to control digital networks. It is an unappealing thought, and governments will be disenfranchised along with citizens. At best DRM is a misguided attempt to solve a legal concern through a technological arena. At worst it is a wholly unfair attempt to control how people can access or use copyrighted material, regardless of historical precedent or fair access rights.

DRM is unnecessary. Governments already stop people sharing copyrighted material through copyright law. Existing copyright law is applicable to books that you can hold, and books on your

computer. It applies to music, movies and software. There is no place nor fair justification for any extension of this law through technological limitations and controls.

On a final note, I wish to note that your call for evidence does raise valid points. In particular, on page 2 it is suggested that while patents provide a vital incentive for innovation, the granting of overly broad patent protection, together with restrictive or restricted licensing of IP, can impede the development of the next generation of products and reduce competition. This is undoubtedly true, especially in an area critical to the sustainability of the European economic sphere: software development. The United States of America currently sanctifies broad software patents and innovation is distorted because of this. Examples of obvious, overly broad or misguided patents abound, with perhaps the most famous being that of Amazon.com and their patent of One-click purchasing system. Such a patent is obvious, and dependent only on an authentication system and a user log-in identity.

While an argument exists for the ability to patent an innovating invention, the use of standard technology to facilitate an obvious and abstract service is unacceptable. Software patents, covering an area without tangible products and where standardised tools are used to create new applications, are an unjust for both innovators and end users. Software should properly be covered by copyright law, not patents. There is an excellent article on this matter on The Guardian website, (<http://technology.guardian.co.uk/online/comment/story/0,12449,1510566,00.html>).

Thank you for reading my thoughts on this matter. I look forward to following this consultation processes closely.

Yours,

Bharath Manu Akkara Veetil