

Australian Linux bodies blast US free-trade deal

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Australia's national open source industry body, OSIA (Open Source Industry Australia), and Linux Australia have spoken out about their concerns over the proposed Australian-US Free Trade Agreement (AUSFTA), warning that the legal framework of the intellectual property clauses will put the entire Australian software development industry at risk.

The companies have released a joint statement saying the introduction of a US style patenting system for software is "not in Australia's interest" and "will increasingly hamper Australia's ability to efficiently compete in global markets".

Open source spokesman, Brendan Scott, said the clause will have wider reaching effects than just the open source community.

"The FTA may introduce obstacles and legal traps which will have serious and harmful effects on almost all Australian software developers. It's a whole-of-industry issue for Australia," he said.

The joint statement lists numerous problems with the AUSFTA draft, foremost criticising the wording of the document that they say suggest a "harmonisation of Australia's software patents law with the US laws" when the US system itself "has been broadly condemned as flawed by many industry observers".

The statement also warns that software developers may run the risk of unknowingly breaching one of the many thousands of US patents with "non-trivial" pieces of software, leaving them facing hefty fines.

"Ignorance of such patents is no excuse. In future, Australian developers may not be able to make any software without the fear of paying ransom," the companies stated in the release.

It also says that many Australian developers may have already built products that infringe on US patent laws, leaving an opening for patent holders to "bring such legal hooks into Australia" and damage the industry.

"Most Australian software developers do not have the resources to check their software code-bases against the tens of thousands of software patents which may flood the market if Australia degrades its stringent software patent laws," they said.

OSIA and Linux add that the proposed AUSFTA also allows for "punitive damages", which may lead to Australian software developers being sued for exuberant compensation as a warning to others.

The statement also lists numerous financial inequalities the agreement would create between large and small Australian software developers, as it says "obtaining software patents is expensive".

"The introduction of US-style software patenting will before be a one-sided affair, and definitely not in the local industry's favour," it states.

Other financial concerns relate to Australian developers inability to "go toe-to-toe with large firms on IP legal issues", and the hoarding of patents by large ICT firms to hold competitive sway.

"By degrading Australia's patent system to match the US approach we will handicapping our local developers needlessly."

Scott warns that there is also "serious issues" with the introduction of legislation based on the US Digital Millennium Copyright Act, which he said was mandated by the AUSFTA.

"Anything which stops academic research into security and which also stops any endeavour towards software interoperability engineering is a serious problem for R & D in this country," he said.

Pia Smith, president of Linux Australia, said the proposed agreement would put "anti-competitive tools into the hands of large players, without any real accountability".

"It grants a monopoly over technology, innovation, competition, and even the research sector. The DMCA in the US has been used to threaten competitors, stifle innovation, halt research, jail developers, and systematically remove the rights of consumers," she said. "

Allowing the same to happen here, especially under an FTA where we lose the ability to fix the issues locally is naive, and dangerous to Australia."

OSIA and Linux state both the companies support the proposals made by UNSW's Baker & McKenzie Cyberspace Law and Policy Centre, as a "starting point" to fixing the agreement.

These include tightening the criteria for software and 'business process' patent applications; establishing a public interest litigation fund; changing the ipaustralia.gov.au page to make lodged patents easier to track; limiting the implementation of DMCA-style laws; and introducing US 'Fair Use' amendments to Copyright Act.

"We also call upon all firms which purport to represent the interests of the Australian ICT industry and local developers, such as the AIIA, Software Engineering Australia, the ACS, the Internet Industry Association and Software Queensland, to make public statements about this topic," said Scott.

"Now is the time to make a stand to keep local software development unencumbered and efficient, so we have a chance to compete in the global marketplace."