

Canadian Software Innovation Alliance
www.softwareinnovation.ca

June 3, 2008

VIA EMAIL

The Honourable Jim Prentice, P.C., M.P.
Minister of Industry
C.D. Howe Building
235 Queen St.
Ottawa, Ontario K1A 0H5

The Honourable Josée Verner, P.C., M.P.
Minister of Canadian Heritage, Status of
Women and Official Languages
House of Commons
Ottawa, Ontario K1A 0A6

Dear Ministers:

Re: Open Source Software and Copyright Reform

We are the Canadian Software Innovation Alliance (CSIA), a coalition of innovative companies and professionals who develop, maintain and depend on open source software. We write to you to introduce our concerns over the direction of copyright policy in Canada, in the hope that your government will address copyright reforms with an approach that serves the interests of Canadians and is sensitive to the needs of innovators, particularly in the area of open source software.

The CSIA's mandate is to advocate on behalf of its members, and on behalf of all Canadians, for public policy that will protect innovation and fair competition within the software industry. We understand that your government is considering revising Canadian copyright law, and we are concerned that some of the reforms put forth will have a negative impact on the rights of Canadians and the competitiveness of Canada's software industry in general, and on open source developers especially.

The open source software movement represents an alternative approach to the conventional proprietary model of software creation. Open source developers distribute their software with the source code available to users and other developers. This approach permits others to review, examine, revise and even redistribute the code. This offers many practical benefits: software can be specialized, scaled and maintained in order to meet users' specific needs. As a result, open source software is widely used in many areas: over half (52.7%) of public institutions, and over a third (37.3%) of large private firms use open source software. Consumer applications include the Firefox web browser, the OpenOffice productivity suite, and the Linux operating system. On the business side, open source accounts for over half of the market share in internet server software worldwide.

Copyright is crucial to open source software developers. Open source relies on the exclusive rights granted by copyright law to allow developers to dictate the terms under which their software may be distributed and used. Open source also relies on the

limitations of copyright law to allow developers to access other software. Software development requires access to computer programs for many reasons, including the need to develop innovative functionality extensions or follow-on software, to undertake security research, to make code interoperable, and to research functionality, including reverse engineering code to identify functionality. Sound copyright policy requires a proper balancing of these rights and restrictions, giving creators some control over their creations while ensuring that others can work with and build upon them without prohibitive or unfair restrictions.

The CSIA is particularly concerned that your departments are intending to implement legal restrictions on the circumvention of technological protection measures (TPMs) and digital rights management (DRM) technologies. While the intended purpose of legal protections for TPMs is to discourage copyright infringement, the history of such laws in other countries demonstrates that they are ineffective at protecting content and pose a barrier to competition and innovation. Their effect is to prevent legitimate use by law-abiding citizens. We urge you to reject these extremist measures: the best anti-circumvention legislation would be none at all. However, should Parliament decide to enact anti-circumvention laws, such laws must not restrict non-infringing uses: they must provide exceptions protecting competition and interoperability, and allow reverse engineering, security research, and development and acquisition of circumvention tools for all such legitimate purposes.

In addition, the fair dealing provisions in the current *Copyright Act* are unclear and antiquated, and need updating to meet the needs of modern software innovators. Of particular concern to the CSIA is the need to clearly protect as fair dealings security research, reverse engineering, and uses intended to allow interoperability. These sorts of dealings support innovation and creativity and generate economic opportunities for Canadians. The best way to modernize fair dealing doctrine would be to amend the *Copyright Act's* present fair dealing provision to be inclusive, rather than exclusive. Enumerated fair dealings should be characterized as illustrative of uses which constituted fair dealings, rather than restricting fair dealings to a few specific categories and letting other legitimate uses fall through the cracks.

The CSIA has prepared a White Paper, entitled “Software Innovation, Copyright and the Dangers of Anti-Circumvention Legislation”, which outlines our position on copyright reform in more detail. We enclose a copy for your review. It is also available on our website (www.softwareinnovation.ca).

We believe that Canadian copyright law has been too much shaped by the interests of conventional content creators and copyright holders, including those in the software industry. This has had the result of restricting competition and innovation for Canadian businesses and freedom for Canadian citizens and businesses. The CSIA calls on the government to consult broadly on copyright policy to ensure that the interests of all stakeholders, including businesses that rely on open source software, are taken into account prior to committing to legislation.

Sincerely,

The Canadian Software Innovation Alliance

Encl.

cc: Susan Bincoletto
Director General, Marketplace Framework Policy Branch
Industry Canada

cc: Barbara Motzney
Director General, Copyright Policy
Department of Canadian Heritage

CSIA Members

Member Organization	Website
Flora Consulting	flora.ca
Guided Vision	guidedvision.com
MekTek Solutions	mektek.ca
Naoi Technologies	
Nash Information Services Inc.	nashinfo.com
Lulu	lulu.com
Open Computing	opencomputing.ca
Open Enterprise Solutions	openenterprise.ca
OpenConcept Consulting Inc.	openconcept.ca
Openflows Networks Ltd.	openflows.org
Openject Consulting	openject.com
Red Hat Inc.	redhat.com
Revolution Linux	revolutionlinux.com
Roaring Penguin Software Inc.	roaringpenguin.com
Sandelman Software Works	sandelman.ca
Savoir-Faire Linux Inc.	savoirfairelinux.com
Schigas Solutions	schigas.com
Starnix Inc.	starnix.com
Wireless Nomad Cooperative	wirelessnomad.com
XDS Canada Inc.	
Xelerance Corporation	xelerance.com

CSIA Supporters

Supporter Organization	Website
The Citizen Lab	citizenlab.org
CLUE: The Canadian Association for Open Source	cluecan.ca
Creative Commons Canada	creativecommons.ca
Electronic Frontier Canada	efc.ca
Talent First Network	talentfirstnetwork.org
Telly.org	telly.org