

- 17 Australian law does not have an equivalent aegis, although it could be argued that s120(3) of the Trademarks Act 1995 (Cth)17 or s52 of the Trade Practices Act 1974 (Cth)17 gives similar protection.
- 18 Anthony J. DeGidio Jr, "Internet Domain Names and the Federal Trademark Dilution Act: A Law for the Rich and Famous at <http://www.lawoffices.net/tradedom/semppap.htm>.
- 19 Intermatic Inc. v. Toeppen, 1996 WL 622237 (N.D. ILL).
- 20 Panavision International, L.P. v. Toeppen, 1996 WL 653726 (C.D. Cal.)
- 21 15 U.S.C. S 1125(c).
- 22 NTIA Statement of Policy at [http://www.ntia.doc.gov/ntiahome/domainname/6\\_5\\_98dns.htm](http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm).
- 23 Interim Report of the WIPO Internet Domain Name Process at <http://wipo2.wipo.int>.
- 24 Simon Jones, "Domain Names: Where to Next?" [1997] 4 CTRLR 199.
- 25 NSI Policy (Revision 03, 25 February 1998) at <http://www.rs.internic.net/domain-info.html>.
- 26 Section 5 "Domain Name Allocation Policy" at <http://www.ina.com.au>.
- 27 At <http://www.inta.org>.
- 28 Note 16.
- 29 Note 16 at page 5.
- 30 Note 16 at 6.
- 31 Note 23 at 7.
- 32 State of Minnesota v. Granite Gate Resources No. C6-95-7227, 1996 WL 767431(Minn. Ramsey County Dist. Ct. Dec. 11, 1996).
- 33 Note 27.
- 34 Playboy Enterprises Inc. v. Huckleberry Publishing Inc. Unreported SDNY 1996.
- 35 In a more recent and not unrelated development, USA Today reported (on 11 February 1999) that Playboy Enterprises has commenced litigation against portal sites Excite and Netscape for trademark infringement because searches on those portal sites using words trademarked by Playboy Enterprises (such as "Playboy" and "Playmen") returned search results which included banner ads for hard core pornography web sites which are benefitting from a misappropriation of Playboy Enterprises' 'goodwill and reputation'.
- 36 Zippo Manufacturing Company v. Zippos Dot Com, Inc., 952 F.Supp. 1119 (W.D. Pa., Jan 16, 1997).
- 37 Note 32.
- 38 Bernadette Jew, "Cyber Jurisdiction-Emerging Issues & Conflicts of Law when Overseas Courts Challenge your Web", Computers & Law No.37 Dec. 1998, page 32.
- 39 Prince Plc v. Prince Sports Group Inc. (unreported).
- 40 Harrods Limited v. UK Network Services Limited & Others December 9, 1996, Lightman J (unreported).
- 41 Pitman Training Limited and PTC Oxford Limited v. Nominet U.K. Limited and Pearson Professional Limited at <http://www.open.gov.uk/lcd/scott.htm>.
- 42 At <http://www.gtld-mou.org/gTLD-MoU.html>.
- 43 At note 24.
- 44 At <http://www.ntia.doc.gov>.
- 45 At note 24, page 5.
- 46 Note 24 at page 7.
- 47 Australia's response to the Green Paper at <http://www.noie.gov.au/dns/ausreply.html>.
- 48 Note 24 at page 34.
- 49 Note 24 at page 70.
- 50 See <http://www.noie.gov.au/>
- 51 See <http://www.au.moniker.net/#objects>
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## Linux for the Legal Community: A Primer

*Con Zymaris, Cybersource Pty Limited*

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Abstract: Linux is perched at the precipice of overflowing out of the technical IT community from which it sprang and onto the general consciousness of all computer users. What is Linux, and how does it affect information technology users amongst the legal profession? This paper will endeavour to answer these questions.

While you may by now have heard of Linux, it is perhaps worth a re-introduction. Linux is an operating system, like MS Windows, MS Windows NT and Novell. Linux doesn't need Windows or DOS on a computer to work correctly. It can however coexist (dual boot) with Windows. Unlike Windows, Linux can also run happily on Apple Macintosh hardware, on Sun SPARCStations, on HP PA-Risc systems, on Palm Pilots, and even on NEC Supercomputers. Linux is also perhaps the first operating system to be developed on the Internet. It is also perhaps the most well understood operating system by technologists,

due to the fact that its core operating instructions, its source code, are fully disclosed and open for all to see. Due to this, and also to its burgeoning success, Linux is spearheading a method of software construction and distribution which will have broad repercussions for all computer users. This method is called open source.

The term 'open source' is well defined by one of its foremost proponents, Eric S. Raymond (1). In essence, the basic tenets and philosophy of this development paradigm are that software is developed and distributed in an open manner. The source code is provided. The software may be distributed freely. Others may extend the application, or derive from it, but always making their contributions available under the same conditions as the original software (2). There are a great number (perhaps tens of thousands) of open source applications available. The ones that most people are aware of are operating systems like Linux and FreeBSD, utility and systems tools like GNU,

web servers (Apache), emailer transports (qmail and sendmail), development tools (Perl, GCC, Python, PHP) and many more. There are often specific and subtle differences between the philosophies and legalities of various open source and freed software licences, which we will cover shortly. While open source as a concept may be new to many people, it has been around for quite some time. Most of the technologies which spawned the Internet, and which now keep it running are based on open source tools. These tools have proven themselves (and their by which they were developed) as highly viable. The next time someone drops a comment about not risking the use of open source applications in a mission critical process, remind them that if they rely on their web server being available to the outside world, or if they use email in business, they already heavily rely on open source applications.

Strictly speaking, 'Linux' refers to the piece of code at the core of an operating system, the kernel. In order for an operating system to be useful in any way, it must be surrounded by a myriad of utilities and tools which together, produce a viable 'whole'. These other components normally bundled with Linux are also open source. Linux has the same functionality and is very similar to Unix, oft described as the most powerful of operating systems. Due to trademark requirements however, Linux cannot be legally called 'Unix', without paying the XOpen group's licence requirements. For numerous reasons, this is unlikely to happen. These include the fact that, much like the Internet, Linux is a co-operative construction, not owned by anyone, thus no central body exists to fork over monies for a 'Unix' branding. Furthermore, many argue now, more than ever, Unix needs Linux for survival rather than the other way around. Perhaps 12 months ago, Microsoft's Windows NT appeared to be on an inexorable path to becoming the dominating operating system platform. Now, just a year later, this not only seems unlikely, but Windows NT's position in the enterprise has been severely weakened through a combination of slip-ups from Microsoft, and the onrush of Linux.

Besides the number of impressive technical traits that Linux possesses, one fact about it almost always startles most users. Linux is, as are all open source applications, free. While you can purchase a Linux boxed set (often called a distribution) from a multitude of vendors who create packaged versions (e.g Caldera, Pacific High Tech, Red Hat, SuSe, etc (3,4,5,6)) what you are in fact paying for is the packaging, manuals and some initial installation support. In most circumstances these packaged versions cost around \$70. The actual software you are 'buying' is in fact free of cost. Given the right resources, you could in fact download all the installation files, at no charge, from the Internet, from each vendor's web site. Perhaps one of the easiest ways

of starting with Linux is to buy a copy of the APC Linux Pocketbook for \$14.95 (15). You can also acquire the full equivalent software from a CD clearing-house like CheapBytes (7) for perhaps US\$1.99, which merely pays for the CD media and a nominal duplication/service charge. Once you have this software in your possession, you can install it, fully, legally, on as many computers as you wish. We are indeed, not in Kansas any more Toto.

While all this talk of low/no cost may catch our attention, and availability of source code sounds esoterically interesting, the real force behind the recent Linux momentum, the reason why it is in fact turning heads, is it works, and works well. Its combination of power, flexibility, performance and stability, produce a great contender. Linux has by now, achieved a legendary status amongst technologists who have come to rely on its robustness. It is common to have a Linux system run for several hundred days at a time, without failure. To many of us who spent the most of the 90's working within the Windows or Macintosh realm, this kind of 'uptime' is difficult to comprehend. Also, benchmarks on the same hardware have shown that Linux performs from 40% to 250% faster than Microsoft's fastest operating system, Windows NT 4.0 (8) Due to its open source nature, Linux lends itself to a myriad of customisations from resellers, ISVs and thin-client/thin-server manufacturers, as has been evidenced by products from the likes of Corel's Netwinder and Cobalt's Qube (9)

Open source works well for the same reasons that Science works well. The scientific process has become one of the most successful areas of human endeavour due to its openness, the free exchange of ideas and the steady accumulation of knowledge available to all. It has overtaken all competing methods of analysing the world around us, by showing that it can consistently deliver better results. By analogy, making the source code available for peer review and extension, is perhaps open source's most powerful advantage. Besides the

verification provided by peer review, refutation for issues such as security is possible, learning of techniques by new practitioners is a great advantage, as is modification and redistribution of the code under similar licence conditions. It's possible that the open source development process will eventually become the most successful due to its advantages of openness and the free exchange of ideas, and the steady accumulation of program source code available to all. The open source development method may overtake competing software development methods to achieve this status by consistently delivering better results. So far, it's on the right track.

While all these issues of performance and capability are nice, why should the average user be interested in Linux? After all, it has obviously sprung from a group of technologists. What compelling reasons exist for the mainstream computer user, or for that matter users with specialised needs like lawyers, to consider Linux for their next information technology solution? This can be answered through explicit reference to the Internet. Possibly not for the obvious reasons that Linux makes a wonderful vehicle for Internet communications and service, but through an analogy. The Internet was in existence for many years prior to its explosive introduction to the general populace in 1993. Linux was created in 1991, and is only now becoming known mainstream. The people who developed the philosophy and structures of the Internet are pretty much the same people who are instituting the current revolution of Linux and open source. For many early years, most businesses and non-technical professionals couldn't see the advantages of the Internet, so use was limited to the technologists. The technologists knew, however, that they were onto something 'good' with the Internet, and kept on cajoling and advocating it to their non-technical colleagues. Likewise for Linux. When the Internet wave did eventually break, it appeared in the guise of the biggest revolution in mass

'publishing' and human communication since Gutenberg's 16th printing press. As of now, Linux and open source appears, to its adherents, as the biggest revolution in software construction almost since the dawn of the computer era. The amount of publicity Linux is now getting is phenomenal. There has been a 100 fold increase in general and IT trade press coverage in the past 13 months. In short, people and organisations should pay close attention to Linux, as it may, in fact take off in a dramatic way over the next few years, much like the Internet, and help change the computer landscape forever.

As can be expected by the relatively nouveau, perhaps daring ideas denoted by Linux and open source, there are numerous interesting legal issues which arise, concerning ownership of intellectual property, licensing and such thorny topics as warranty and support.

It is often said that one of the reasons corporations use to justify buying solely commercial software, is the potential, if at some later point it's required, to sue the vendor. While a reasonable surmisation in theory, in practice this is very difficult to achieve. There have been very few cases brought to court and the number of successful compensation cases is probably negligible. In many instances, the software vendor has produced a licence which, through disclaimers, leaves almost no mechanism for the claimant to instigate any worthwhile action. Furthermore, in most circumstances the vendors are huge organisations with almost limitless legal resources, thus making the task a risky proposition. This current climate will be likely made even harder for claimants, at least in the U.S, if the proposed Uniform Commercial Code: Article 2b, Software Contracts and Licences Information is instigated as law in future. To many people, the UCC2b (10) law provides extra powers to software publishers, at the expense of consumers. Support for Linux has, until now, worked differently to the mainstream

commercial model, however, it did work, and work well. Linux was supported by a countless array of user groups, websites, mailing lists and online (IRC) channels. Support was so good, in fact, that the prestigious InfoWorld magazine awarded the Linux community the 'Best Computer Industry Support of 1997' award. In recent times, most major software and hardware vendors have pledged support for Linux, either through porting of applications and after sales service, or through bundling and hardware integration. This list is almost too long to iterate through, but includes IBM, HP, Compaq, Silicon Graphics, Oracle, Lotus, Sybase, Informix, Borland, Corel, Dell, Gateway and Computer Associates. When combined with the best free support in the world, this makes for a compelling choice.

One area where consumers have never-ending configurational and legal problems with closed-source software is in the licence. Too many firms are liable to prosecution by way of using (unknowingly perhaps) illegal copies of licensed software. Furthermore, recent trends in application software indicate that vendors are on a get-tough stance, demanding that users seek (from the vendor electronically) for serial codes for newly installed apps after 50 re-uses. By comparison, the base licence of Linux and many open source projects, the GPL (Gnu Public Licence) (12) fundamentally holds the best interests of the software consumer. It makes it your right to use the software in whatever way you see fit, with minimal constraints, and no fees. However, it also protects the software developer by way of guaranteeing that his efforts cannot be incorporated into another product by someone else, for commercial gain. This therefore allows these open source developers the freedom to put extensive effort into their works, and not feel that their work will be 'ripped off'. For many of the anti-corporatist developers contributing to Linux, this helps induce a powerful work ethic. These developers work as professional software engineers during the day,

and contribute to the open source, gift-economy by night. Since they themselves have benefited in one way or another from open source software, they feel compelled to assist by releasing their software or enhancements back into this community, repaying their peers on the one hand, and helping all computer users on the other. Further, their reputation is on the line, as their source code is online. Unlike closed-source systems, ugly, inelegant bug-ridden code cannot be disguised. Since the Linux kernel and a large part of the core applications are released under the GPL, all source code extensions to these software systems, by law, must be made available. This has the following ramifications:

- 1) No single vendor (say Red Hat or SuSe) can conquer the market with the heavy-handed techniques available to closed source vendors, as any 'proprietary' extensions they make to the OS, they have to release to all their competitors. Thus vendors such as Compaq do not have to bow in obeisance to a single vendor because they hold the golden keys to the kingdom that the source code represents. They can take their business to a competitor at a 'drop of a hat.'
- 2) No organisation, such as IBM or Microsoft, can buy Linux 'out'. This is because the source code is not owned by anyone, and, to re-state, any 'proprietary' extensions they make to the OS, they have to release to all their competitors
- 3) The GPL has absolutely no impact on companies wishing to produce closed-source, commercial applications for Linux, as these aren't extensions to the Linux source itself, merely applications. Thus Oracle, Corel et al. can port to Linux and charge for their software as per normal

This licence, in effect, guarantees an open playing field for all contenders, and produces the desired effect of

continual Vendors thus have to differentiate on the quality of the add-ons they ship with their distribution, the quality of their manuals, and the quality of end-user and enterprise support. Consumers are guaranteed that the open source platforms they are making a strategic commitment to, will exist for as long as there are users; they can never evolutionary dead-ends. The same cannot be said for the products from commercial vendors, where operating systems and tools are orphaned as a matter of course, sometimes as a tactic to force users to purchase upgrades. These issues were well covered by an assessment of Linux and open source which has done a great deal to bring these to the attention of MIS managers, Microsoft's 'Halloween' documents (12.) Therein, Microsoft claims that 'Linux represents a best-of-breed UNIX, that is trusted in mission critical applications, and - due to its open source code - has a long term credibility which exceeds many other competitive OS's.'

While Linux is generally considered a strong contender for the server backend, it is also coming sharply into focus as a viable workstation platform. Among the benefits of using Linux on the desktop are its stability; no more system crashes at inopportune moments leaving users agonising over lost productivity. Also the fact Linux workstations can be 'locked-down' i.e where users cannot delete desktop icons and remove Start menu items or install illegal, unlicensed or unapproved applications. Also, Linux systems are virtually immune from virus attacks, thus reducing greatly this wasted effort and expense. And finally, saving the equivalent of \$350 per workstation (price of NT Workstation licence) in a 100 desktop organisation every 3 years (average time for new NT licence to appear) is nothing to bemoan.

Among the many questions potential users of Linux ask is: 'Can I easily introduce a Linux system into your current network/office environment'? In response, issues such as network protocols, document formats and data storage need to be

considered. Linux comes ready to install into any TCP/IP (standard Internet), IPX (Novell) and Appleshare (Mac) network. It also operates with standard intranet HTTP and FTP web-services and document download protocols. If you are considering using Linux as a workstation, then all major Linux office suites come with support for inter-operating with Microsoft Office 4.x, 95, 97 and 2000 suites. Users are Word and Excel documents can be safe in the knowledge that most of their documents are portable to the new platform, although sometimes there are some formatting quirks as can be expected in any 'importing' scenario. Further, if you're currently using Corel's WordPerfect Office Suite, then you'll find the Linux version an almost exact replica. Your document standards, templates and macros should all work, as is, and your operators will not require retraining. As Lotus Notes/Domino is in widespread use in many legal firms, it may be worth mentioning that Lotus have recently announced support of the Linux platform for the Notes/Domino servers, with a version becoming available later this year. While details have not been released, it is very likely that all customised databases built into Notes will be easy to migrate to this new platform. Lotus have also stated that they will support the Notes client on Linux with the next generation, Java based interface. Most people need a core of perhaps a dozen major application types (word processors, spreadsheets etc) available on a platform, for it to be of use. It's probably been a well kept secret, but Linux has probably all the serious business and personal productivity applications you may ever need. What's more, quite often these are available at no cost or in open source format. Office suites are perhaps the most common requirement of people who use computers as personal productivity tools. Linux currently has four main office suites from which to choose from. The main contenders are:

- Applixware 4.4.1 (Priced at USD\$79.95): the suite includes

a spreadsheet, word processor, presentation graphics and database and is designed to enable document exchange with Microsoft Office 97.

- Corel WordPerfect for Linux (List CDN\$50, free for personal use) will perhaps become the most popular office suite for Linux, due to brand-name recognition. Also, WordPerfect has a strong following amongst the Legal profession. If you've ever used any of the modern Windows or Macintosh word processors, you'll be right at home. This version has all of the features of WordPerfect for other platforms, including drawing and charting modules, auto-correct and spell-as-you-go highlighting, spelling and grammar checking, tables, mail merge, outlining, lists and style sheets. WordPerfect for Linux is the beginning of a full featured product range that Corel is releasing for Linux over the next few months. Eventually, they have committed to ports of all their mainstream apps like CorelDraw etc. WordPerfect for Linux is downloadable from <http://linux.corel.com/>
- StarDivision StarOffice 5.0 (POA; free for personal use) StarOffice is perhaps the 'slickest' of the office suites for Linux, and of considerable interest to many potential users due to its 'no-charge' licence for personal use. Perhaps due to this slickness, it requires more resources than the aforementioned competitors. The product is also available for the Windows platform, and has garnered a substantial following in Europe (it's developed in Germany.) It too has all the main apps you would expect from an office suite, and is downloadable from <http://www.stardivision.com/>
- KOffice from KDE This is a new application suite, with spreadsheet, a couple of word-

processors (general & scientific/document layout) personal organiser, presentation slide-show system and more. KOffice is open source freeware, and is targeted primarily for the KDE desktop environment (one of several for Linux.) It's perhaps the newest (and thus least complete) contender, but as with many open source software projects, holds solid promise for rapid improvement. Download from <http://www.kde.org/>

Use of Email and Internet/Intranet Discussion Groups are by now a core activity within most organisations. Many of the office suites (Applixware, KOffice) come with their own email clients (POP/IMAP) which are quite useable. Alternatives are plentiful on Linux, which isn't surprising, as it's the first OS built via the Internet. Many people use text based mailers like elm, pine and mutt, which are powerful, but complex for beginners. One of the more popular GUI mailers is the IMAP/POP client that ships with Netscape Navigator. Netscape also provides for a convenient Usenet news-reader too. For web browsing, Netscape Navigator has been on Linux for a few years, and from the sounds emanating from Mozilla.org (the central development site for Netscape Navigator) Linux is the development platform of choice for developing new versions of Navigator. Navigator looks and works the same on Linux as on Windows, and it's open source and free. <http://www.netscape.com/> for the latest versions.

As a way to pump-prime the use of Linux in your organisation, here are a few ideas for possible solutions to your IT requirements:

- Linux makes an excellent file and print server for Windows, Novell and MacOS based networks. With SAMBA installed on Linux, you can provide robust, quality file server for corporate departments, workgroups or Small to Medium Enterprises, which will work 'out-of the

box' with Windows 3.11, Windows 95/98 and Windows NT, 3.x/4.x. Furthermore, recent benchmarking by Ziff-Davis (8) has shown SAMBA (running on Linux) to be up-to 250% faster than Windows NT 4.0 Server on the same hardware platform.

- Internet Gateway: This is one of the things that Linux was figuratively born to do. By installing any Linux distribution on a x586 or x686 class machine, you will instantly get, the World's best web server (Apache), a cgi-perl capable system with SQL database capabilities (for e-commerce solutions), an Internet standard email server, an Internet standard discussion group server (NNTP), an Internet standard File Transfer server (FTP), Multi-link PPP (which will allow simultaneous use of multiple modems to the ISP, (thus achieving ISDN level bandwidth, without the cost,) IP Masquerading (which allows you to use a single IP address from your ISP for many workstations, Proxy Servers, Web and NNTP Caches, IP packet filtering and firewall software (for network security) and much, much more. In fact, a package like Red Hat Linux 5.2 comes with 1,500 separate applications and utilities

- Modem Servers: Linux, in combination with a 16-port serial board from a company like Cyclades (13), makes a great low-cost terminal server for your remote users who need a remote-access (RAS) modem pool for mobile laptop users or branch offices

- Fax Gateway: If you install Linux and the free Hylafax (14) software on a low-end PC with a modem, you can create a cheap fax server solution for your site, for those who need network enabled faxing. The users can just 'print' to the fax server from any Windows productivity software, and

have it sent of as a fax

- Thin Client/NC systems: Take the NC concept further and deploy a thin-client network of Linux workstations. These are low cost to install, minimal cost to maintain networks. All you need to do is combine a Linux-based file server, a powerful Windows NT based Application Server (like Citrix WinFrame) and as many Linux based x586 class PCs as are needed. You can serve files from the Linux server, install all your client's normal Windows applications on the NT application server, and have your client's users run use these applications on their low-cost, PCs running the high performance Linux operating system. This style of solution produces all the known advantages of NCs and thin-client computing (such as absolute zero administration and minimal user 'futzng') at a cost of around \$1000 per desktop user, and markedly reduced support costs.

Linux is a continual work-in-progress, with 'snapshots' taken at specific, highly stable points. Its ability to slot in, chameleon-like, into your network, and onto your users desktops is a great advantage. While Linux may not suit every user or organisation (perhaps no platform can,) there is little doubt that it is not only here to stay, but making inroads into all major IT markets. In a war of attrition against all the competitors, it has nothing to lose. It may therefore be prudent for all IT professionals working in the legal community to not only be aware of Linux, but to try it for themselves. They only need a spare PC, a cheap Linux distribution and a few hours of time.

Resources: Linux has some of the best resources on the 'Net: Here's a smattering:

- Linux Australia <http://www.linux.org.au/>
- LinuxToday news site <http://linxtoday.com/>

- Australian Vendors of Specialised Linux Products and Services <http://www.linux.org.au/ausvendors.shtml>
  - Excellent Linux Search Engine <http://www.google.com/>
  - Freely Redistributable Software in Business <http://www.cyber.com.au/misc/frsbiz/>
- Con Zymaris ([conz@cyber.com.au](mailto:conz@cyber.com.au)) is Managing Director of Cybersource Pty. Ltd. in Melbourne, Australia. He has been working with computers since 1979 and now uses Linux almost exclusively for all computer needs.
- 1 The Cathedral and the Bazaar, Eric S. Raymond <http://sagan.earthspace.net/~esr/writings/cathedral-bazaar/cathedral-bazaar.html>
  - 2 The Open Source Definition <http://www.opensource.org/osd.html>
  - 3 Caldera <http://www.caldera.com/>
  - 4 Pacific High Tech <http://www.turbolinux.com/>
  - 5 Red Hat <http://www.redhat.com/>
  - 6 SuSe <http://www.suse.com/>
  - 7 CheapBytes; Linux System Labs <http://www.cheapbytes.com/http://www.lsl.com.au/>
  - 8 ZDNet: The Best Windows File Server: Linux! <http://www.zdnet.com/sr/stories/issue/0,4537,2196106,00.html>
  - 9 Cobalt Micro Thin Servers <http://www.cobaltmicro.com/>
  - 10 Uniform Commercial Code Article 2B Revision WebSite <http://www.law.uh.edu/ucc2b/>
  - 11 GNU General Public License <http://www.gnu.org/copyleft/gpl.html>
  - 12 The Halloween Documents <http://www.opensource.org/halloween.html>
  - 13 Cyclades <http://www.cyclades.com/>
  - 14 HylaFAX Home Page <http://www.hylafax.org/>
  - 15 Australian Personal Computer: Linux Pocketbook Available in most newsgroups that sell Australian Personal Computer magazine

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# The Dawn of a New Dark Age Censorship and amendments to the Broadcasting Services Act

Brendan Scott, Gilbert & Tobin

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The coming change in balance of power in the Senate has prompted some shameless initiatives by the Federal Government in relation to censorship (not the Government's preferred term "content regulation"). Suddenly this year we've seen a rush of censorship across the board and the advent of new proposals for censorship of the internet. These proposals fly in the face of technical advice received by the Government and are being rushed through with very little time for community comment. On 21 April, the Government introduced its *Broadcasting Services Amendment (Online Services) Bill*. The Bill sets out a proposed scheme for the regulation of internet content. In short the scheme is intended to move all "objectionable" content out of Australia and to block access to such content outside Australia. The proposals are more reminiscent of censorship in, say, a totalitarian

regime rather than an enlightened Western democracy.

### **ECONOMIC REASONS WHY THE BILL IS BAD**

It doesn't take too much effort to realise that everyone pays for content they acquire. If you force someone to divest themselves of content that their users want, you force them to buy that content as their users want it. If you're a small ISP, all of a sudden you're going to find yourself having to pay to download data that you previously could provide your end users for free. If the scheme is successful, the content will still be available, just forced out of Australia. Small business ISPs will have to pay carriers for that content and those carriers will, in turn, be forced to pay foreign carriers to acquire the content. In this equation everyone on the Australian side of the ocean loses out. It also means that small ISPs are the ones who have to cushion everyone else's fall.

Forcing the content out of Australia also means that inbound traffic into Australia is increased. Australian carriers are currently forced to buy content from US carriers, but must give Australian content to the US carriers for free. One of the justifications for this is that traffic is 70:30 in the US carriers' favour (exact figures vary). Recently this ratio has been gradually improving, putting pressure on US carriers to move to a fairer interconnection regime. At an APEC conference on internet financing in Japan in March this year US carriers were at pains to justify why they shouldn't pay for other people's content. Increasing traffic inbound into Australia knocks the leg out of Australian carriers' arguments for US carriers to play fair.

Interconnection payments play a fundamental role in shaping the information economy. That the Government can contend that this regulation won't inhibit the