Submission to the House of Commons Standing Committee on Canadian Heritage[1] in regards to its section 92 copyright act review and report[2].

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1 Information on the Standing Committee on Canadian Heritage can be found on their parliamentary committee website

http://www.parl.gc.ca/InfoCom/CommitteeMain.asp?Language=E&CommitteeID=3274&Joint=0 (accessed October 13, 2003)

2 The latest version of this document is available as http://www.flora.ca/copyright2003/ . It is made available in OASIS open office XML (http://www.oasis-open.org/committees/tc_home.php?wg_abbrev=office) , Portable Document Format (PDF) http://www.flora.ca/pdf.shtml and as HTML (http://www.w3c.org/MarkUp/)

3 Full contact information for the author can be found at his work website of http://www.flora.ca. He is a self-employed businessperson who focuses on Free/Libre and Open Source Software (FLOSS, see note 17) from a technical, business and public policy perspective.

His personal website which includes commentary related to copyright policy is at http://www.flora.ca/russell/

4 I considered using the Free Documentation License http://www.fsf.org/copyleft/fdl.html (accessed October 27,

Introduction

When I read a notice in July 2001 about a consultation process on Copyright reform in Canada, I did not realize that I would be joining into a process that would become a large focus of my time. Very soon after the notice I formed an on-line forum (Canada DMCA Opponents[5]) which was used to discuss and encourage many submissions to that process. Since that time I have had the opportunity to speak to many other people in this process, including many creator communities. I have had had coverage in the media, and even had an opportunity to discuss copyright with the Heritage Minister as part of a televised Ministers Forum on Copyright around the 2003 Juno weekend[6].

This submission is intended to be an update of copyright reform experience from discussing this important area of law over the past 2 years. I hope that I will be given the opportunity to talk to the members of the standing committee on Canadian Heritage to discuss some of the ideas I offer.

There are 4 major sections to this submission:

1. Perspective of author on copyright policy.
   In this section I discuss the authority that I draw upon for analyzing this area of policy, and a few example problem areas.
2. The Free Software movement as a creators rights movement
   In this section I introduce and clarify the roll of the Free Software movement within copyright reform.
3. Section 92 review of the Copyright Act
   In this section I highlight specific areas of the section 92 report, offering recommendations.
4. Author participation in Copyright and related policy events
   This is a listing of events relating to this area of policy that I have participated in over the last two years.

Primary recommendations of this submission

I have two major recommendations for copyright policy makers working on digital copyright reform. These recommendations are to hold off on major changes to copyright policy until two important themes have been adequately studied and understood by policy makers.

The first is a phenomena referred to as "commons-based peer-production"[7] or "open collaborative models for the production of public goods"[8]. This is a model for the creation of works that is very

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2003), but in this case I wanted people to use any ideas presented here in their own writing.

5 The Canada DMCA opponents forum became the basis for the current Digital-copyright.ca website and forum. The announcement can be seen at http://www.digital-copyright.ca/discuss/1

6 Information on the Heritage Minister's Forum on Copyright from April 4th, 2003, can be found at http://www.pch.gc.ca/progs/ac-ca/progs/pda-cpb/forum/index_e.cfm (accessed September 23, 2003)

7 Yochai Benkler, Coase's Penguin, or Linux and the Nature of the Firm, http://www.benkler.org/CoasesPenguin.html (accessed October 31, 2003)

8 This is the term used in a suggestion of a meeting about this model with members of the World Intellectual Property Organization (WIPO). This meeting is discussed in more detail below.

different than modes of production that are currently well known. While reading academic papers on this topic I believe that this third way of organizing their production after markets and firms may turn out to be as important to a future knowledge economy as the creation of the corporation was for the industrial economy.

While there is much talk about how the Internet has facilitated massive amounts of copyright infringement, I do not agree with the suggestion that this is the most critical issue for creators in digital copyright reform. Creators need to have two sets of rights protected in copyright. The first, and most important, is their right to create and distribute their works under their own terms, including choosing their own business model. The second, and more often spoken about, is their economic right to receive royalty payments for works when this is the business model they have chosen.

The tools chosen by the intermediaries[9] to solve problems of the second type may have the unintended consequence[10] of creating problems of the first type. The proposal to create protection of technological protection measures is one such proposal which will end up granting further control to intermediaries over the creation and distribution of works, since creators will be using tools that would be created by and under the control of intermediaries. It has been suggested that legal protection of technological protection measures is not a protection of copyright, but a replacement of copyright where the balance offered by the Copyright Act is replaced by software created by intermediaries.

Revision History

October 30, 2003	Created revision history, added section "Primary recommendations of this submission", added section "Larger public policy context" and added heading for "International context" before previous text.
November 3, 2003	More proofreading, changes to "primary recommendations" section.
November 5, 2003	Added reference to article "Vietnam embracing open-source products"at 30

Perspective of the author on copyright policy

The authority that I draw upon in my thinking about copyright policy are two articles from the United Nations Universal Declaration of Human Rights (UNUDHR)[11], specifically article 19 and article 27.

Article 19.

9 Central to my analysis of copyright is a recognition that there are not 2 but 3 constituencies in copyright: creators (authors, software developers), intermediaries (publishers and other non-creator copyright holders) and citizens (audiences, users).

10 While I believe that these consequences are unintended by policy makers, I also believe that these consequences are intended by the intermediaries who seek to retain all rights in copyright by amassing rights that were previously held by creators or citizens.

11 United Nations General Assembly (10 December 1948), Universal Declaration of Human Rights

http://www.un.org/Overview/rights.html (Accessed September 14, 2003)

> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
>
> Article 27.
> 1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
> 2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

From these articles I draw a number of interpretations that form the principles from which I will evaluate policy suggestions.

As one example, there are 3 constituencies in copyright reform: creators, intermediaries and citizens. Intermediaries include those middle-persons between the creator and their audiences, including non-creator copyright holders such as publishers and employers. I interpret the declaration as only recognize there being a justification for rights to be granted to creators and citizens.

I strongly believe that copyright policy should involve the delicate balance of the rights of creators and citizens, with intermediaries receiving no rights directly but only privileges granted to them on behalf of (and for the benefit of) creators or citizens.

Quick note about language

Many persons who talk about patents, copyrights, and trademarks will lump them together under the term "intellectual property". In creating a group to talk about patents, copyrights and trademarks the working group at the World Summit on the Information Society has started to use the PCT acronym to mean "Patents, Copyrights, Trademarks". In their IPR Name DISCLAIMER they state the following (edited to correct minor spelling errors and remove external references):

> This working group has come to recognize that the term "intellectual property rights" carries bias and encourages simplistic over generalization. Therefore this working group does not carry the name IPR. In particular, this group does not endorse the legal school of thought, which advocates that productions of the mind shall be treated in a similar way as real estate property. This legal doctrine implicitly backs the concept that copyrights should last for ever. This working group deals with patents, copyrights, and trademarks and related issues. We believe that those issues should be dealt with as distinct conceptual issues. The use of the acronym PCT in the URL of this working group shall not be construed as implying that those issues must be dealt with, with the same global legal and cultural framework.
>
> If the IPR acronym is used, we encourage people to give to this acronym the meaning of "Intellectual Productions Rights" instead. This is meaning of the IPR acronym that has been adopted in this site, wherever IPR is used. For convenience, this site is also accessible through the URL : WSIS-IPR which was the URL of the non-public preliminary versions. We also encourage everyone involved in the WSIS to use the word "intellectual property" with utmost

precaution.[12]

Creator/citizen control of ICT tools

In a world where Information and Communications Technologies (ICT) are used to communicate works under copyright, these tools must be under the control of the user. These users include both creators using ICT tools to create and communicate their works, as well as citizens using ICT tools to receive and enjoy these works.

On my personal homepage[13] I state this very firmly as follows:

> Any 'hardware assist' for communications, whether it be eye-glasses, VCR's , or personal computers, must be under the control of the citizen and not a third party.
>
> Corollary: The "content industries", such as the motion picture and recording industries, are not legitimate stakeholders in the discussion of what features should or should not exist in my personal computer or VCR, any more than they are a legitimate stakeholder in the production of my corrective eye-glasses. If a member of a content industry doesn't like the technology that exists in a given market sector, be it consumer electronics in the home or personal computers, they can simply not offer their products/services into that market.

This interpretation of copyright policy appears to be in direct contrast with many of the recently discussed reforms which favor granting intermediaries rights over creators and citizens. There are reforms that grant intermediaries additional power in contractual negotiations with creators under "work for hire" regimes where copyright is granted automatically to the intermediary unless the creator is able to negotiate the retention of their creative rights.

Work for hire is not the most extreme example of recent policy that may circumvent creators' rights. The most extreme example of this problem is the concept of "legal protection for technological protection measures" (LpfTPM).[14] This is the source of a considerable amount of controversy in copyright reform today, and the source of the bulk of the 700 submissions to the 2001 round of copyright consultations.

Rather than protecting copyright, LpfTPM is more appropriately thought of as a replacement for copyright. In this case the rules of what can and can not be done with a work are set by intermediaries in technology, rather than the rules being set by democratically elected governments in acts of parliament. Central to the interpretation of this area of law by some countries is the granting of

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12 IPR name disclaimer http://www.wsis-pct.org/ipr-disclaimer.html (accessed October 17, 2003)

13 Russell McOrmond, personal homepage http://www.flora.ca/russell/ (September 14, 2003)

14 Legal protection for Technological Protection Measures (TPM) is a term used to discuss what is referred to under article 11 of the WIPO Copyright Treaty (adopted in Geneva on December 20, 1996) http://www.wipo.int/clea/docs/en/wo/wo033en.htm#P88_11974
This concept will be discussed in more detail later.

monopoly control over ICT tools to these intermediaries.

The expected outcomes of these reforms are discussed in very emotional ways by those that oppose them for good reason. If intermediaries are granted full control and veto power over the creation and use of ICT tools, then the ability of these intermediaries to circumvent both article 19 and article 27 of the UNUDHR will be trivial.

A simple thought experiment can demonstrate the problem. In 1982 in testimony to the United States House of Representatives on why the VCR should be illegal, Jack Valenti said, "I say to you that the VCR is to the American film producer and the American public as the Boston strangler is to the woman home alone"[15]. If Jack Valenti, president of the Motion Picture Association of America (MPAA), had been successful in convincing the United States to ban the VCR (and all derivative tools such as the camcorder and inexpensive video editing hardware/software), would the current visual arts community exist today? I would suggest that creators of these types of works would at this point either be working for MPAA members, likely under even more oppressive "work for hire" situations than creators are subjected to today, or not working at all.

Royalty payment as a single business model, not a right

Part of the protection of the material interests of creators must be a recognition of the right of the creator to determine the business model under which their works will be exploited. Far too often the collection of per-unit royalties are promoted as the only way to receive material benefit from works when in fact collecting per-unit royalties are simply one business model among many.

This problem is obvious when discussing the extension of a collective society[16] beyond administrating the works of its members to claiming the right to administrate entire classes of works. This is what we are seeing in the private copying[17] section of the Copyright Act where collective societies are claiming the right to collect royalties based on all music, whether or not the copyright holder is a member of the society and regardless of the business model being used by the musician.

In an article I recently authored for Canadian New Media discussing the blank media levy that is part of the private copying regime, I wrote:

> I would find it reprehensible if CAAST[18] managed to get added to this regime such that all the

15 Hearings before the subcommittee on courts, civil liberties, and the administration of justice of the House of Representatives, ninety-seventh congress, second session, on
H.R. 4783, H.R. 4794 H.R. 4808, H.R. 5250, H.R. 5488, and H.R. 5705
HOME RECORDING OF COPYRIGHTED WORKS
APRIL 12, 13, 14, JUNE 24, AUGUST 11, SEPTEMBER 22 AND 23, 1982
http://cryptome.org/hrcw-hear.htm (accessed on September 14, 2003)

16 The term "collective society" is defined part 2 (Definitions) of the Copyright Act http://laws.justice.gc.ca/en/C-42/

17 Private Copying is PART VIII of the Copyright Act

18 The Canadian Alliance Against Software Theft (CAAST) http://www.caast.ca/ is a lobby group promoting a royalty-based business model known as "software manufacturing". Their claim is that "CAAST is committed to

> blank CDs I buy end up subsidizing my competitors (and in some cases, my arch enemies). I already pay to the recording industry for media used to store software.[19]

I would consider it a violation of both my moral and material rights in any software I create to have such a regime imposed on software. It would infringe on my right to determine my own business model, and infringe on my right to have my work being part of an international open collaborative method for the creation of public goods. The business model and collaborative methodologies I have chosen is dependent on the protection of my moral and material rights through copyright and related laws, but are not compatible with per-unit royalty fees or a royalty-fee based collective society.

The Free Software movement as a creators rights movement

When talking to different creator communities I have found it very useful to introduce the community that I am from. Many misconceptions about our community exist, and many creators incorrectly believe that we are somehow not supportive of their rights or copyright in general.

Software history

The origins of our movement can be found in the formation of the software sector generally. Prior to the 1960's software was always bundled with hardware as part of an integrated device. You had a device that could do word processing, but it could not be easily reprogrammed to do other work. Hardware was obviously manufactured, distributed and sold on a per-unit basis and thus the bundle of hardware and software was marketed that way.

In the 1960's the software sector formed with the separation of software from hardware. At this point two very different camps were formed. There were those who felt that software should be treated the same as hardware, with those in the "software manufacturing" movement relying almost entirely on business models from the manufacturing sector. This subset of the software industry was very successful from the 1960's up to today.

Another group of people noticed that software, being intangible and naturally non-rivalrous, has very different attributes than hardware. They felt that there was no need to arbitrarily limit software and software business models to those from the manufacturing sector, and think of per-unit royalty payments as simply one business model among many.

Formation of Free Software Foundation

Some software creators from "software manufacturing" alternatives started to notice various threats to their ability to create software. Some hardware and software manufacturers were claiming monopolies on the interfaces between software and their products, locking out all other software

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reducing software piracy in Canada through education, public policy and enforcement."

19 Russell McOrmond, Content industries on slippery slope with demand for blank media levy, http://www.flora.ca/cnm20030207.shtml (accessed September 23, 2003)

creators from being able to create software that could interface with that hardware/software. In order to protect the creative rights of these software creators, the Free Software movement was formalized in 1985 with the formation of the Free Software Foundation (FSF)[20].

The FSF promotes the development and use of free (as in freedom) software. The understanding of meaning of the word 'free' is very important to understanding the movement. To quote from the Free Software Definition[21]

> We maintain this free software definition to show clearly what must be true about a particular software program for it to be considered free software.
>
> ``Free software'' is a matter of liberty, not price. To understand the concept, you should think of ``free'' as in ``free speech,'' not as in ``free beer.''
>
> Free software is a matter of the users' freedom to run, copy, distribute, study, change and improve the software.

Many people in public policy circles have started to use the phrase "Free/Libre and Open Source Software" (FLOSS[22]). This clarifies the meaning of the word 'free' with the use of the French word "libre" which contrasts with the word "gratis". This also includes the work from the related Open Source movement.

Protecting creators' rights through political alliances

Most creators know that that they do not have a lot of political influence. In order to protect their rights they need to make alliances. Many creators have made alliances with non-creator copyright holders in the belief that all copyright holders share interests and values.

The Free Software movement thinks very differently. Rather than believing that the largest threat to creators is private citizens infringing their rights, they believe that the largest threat comes from intermediaries infringing their rights. Rather than believing that the greatest threat to their craft comes from citizens not paying royalty fees for the use of their works, the free software movement believes the greatest threats come from intermediaries imposing limits to their ability to create and distribute works on the creators terms.

Rather than creating alliances with non-creator copyright holders, they have created alliances with computer users. In fact the FSF describes themselves as being "dedicated to promoting computer users' right to use, study, copy, modify, and redistribute computer programs."[23]

As part of that alliance with users to have users and software creators mutually help protect each others rights is the removal of one of the largest incentives for software users to infringe a software authors rights: the per-unit royalty payment. Free Software creators do not charge per-unit royalty

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20 Free Software Foundation, http://www.fsf.org/fsf/ (accessed September 14, 2003)

21 Free Software Definition, http://www.fsf.org/philosophy/free-sw.html (Accessed September 14, 2003)

22 I offer an explanation of the term and its origins on a web-page at http://www.flora.ca/floss.shtml

23 ibid 15

fees, but instead get paid under a host of alternative business models that do not rely on per-unit royalty fees[24].

Most important question: Who controls creation and use of ICT tools

While the intermediaries have many people convinced that the most important copyright issue today is the non-payment of royalties by private citizens, the largest threat to creative rights is elsewhere. The largest threat is to a creators right to create works and to communicate them under their own terms. The primary cause of this threat is legislative changes relating to the digital communication of works without adequate analysis of the consequences.

Traditionally the interface between a creators work and their audience is governed by the laws of nature in the form of sound and light waves, or some other stimulus, being received by our human senses. No third party, whether it be a government or an intermediary, can exert control over these interfaces. When works are created and communicated digitally you have additional interfaces[25] governed by software to worry about. You have interfaces between the real world and electronic media in recording or display devices, interfaces between hardware and software, interfaces between different parts of software(Application Programmer Interfaces), and interfaces between software over networks. Without giving adequate analysis of the consequences governments have been extending copyright and patent laws[26] to these interfaces and upsetting any rights balance in the process.

In order to restore basic creator and citizen independence from third parties we must ensure that these computing interfaces are not offered any type of legislated monopoly, whether in copyright or

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24 While a discussion of these alternative business models are outside the scope of this submission, I am a consultant for businesses and policy makers that wish to learn more. I also have a "Get Legal - become Free!" offer of free consultations and support to move away from illegally copied software to legal free/libre software. http://www.flora.ca/rates.shtml#getlegal

25 These interfaces were discussed in the European Union Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs: http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31991L0250&model=guicheti (accessed Oct 31, 2003)

> Whereas the function of a computer program is to communicate and work together with other components of a computer system and with users and, for this purpose, a logical and, where appropriate, physical interconnection and interaction is required to permit all elements of software and hardware to work with other software and hardware and with users in all the ways in which they are intended to function;
>
> Whereas the parts of the program which provide for such interconnection and interaction between elements of software and hardware are generally known as 'interfaces`;
>
> Whereas this functional interconnection and interaction is generally known as 'interoperability`; whereas such interoperability can be defined as the ability to exchange information and mutually to use the information which has been exchanged;
>
> Whereas, for the avoidance of doubt, it has to be made clear that only the expression of a computer program is protected and that ideas and principles which underlie any element of a program, including those which underlie its interfaces, are not protected by copyright under this Directive;

26 More details on the issues in patent law, along with my recommendations, can be found in my patent report that was commissioned by ICT branch of Industry Canada. http://www.flora.ca/patent2003/ (accessed October 31, 2003)

patent law. This is something needed to protect creators rights and citizen communications rights as well as many other rights that are dependent on these rights.

Reduction of Software copyright infringement

There is quite a bit of talk about software copyright infringement committed by the average software user. Traditional "software manufacturing" lobby groups send out studies yearly[27] suggesting that this is a very serious problem.

There are, however, serious problems with the methodologies used by these studies, and one of the best solutions to the problem is completely ignored by these "software manufacturing" groups. Both of these issues highlight differences between "software manufacturing" and peer produced FLOSS software.

To illustrate:

> David Fay, consultant for International Planning and Research Corp. which conducted the study, explains the method as follows:
>
> "We estimated PC shipments by province within Canada. And from that we estimated the amount of software that was required, or the demand for software, and we compared that against software shipment data which we built up from actuals of BSA member companies. And then estimated the other parts to fill out the industry total."[28]

I replied in a letter to the editor[29] saying:

> According to this, all my PC shipments were all 'estimated' to have some demand for the software of CAAST members. I installed not a single piece of member software on any computer I currently own for either my business or home computers since I run an almost 100% Open Source/Free Software shop.
>
> These bogus statistics may simply indicate that Canadian citizens are more advanced in their understanding of the software market and have moved faster than Americans to dump the products of "Software Manufacturing". Best solution to the so-called "Software Theft" problem? Use Free Software![30]

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27 The Business Software Alliance has their so-called 'Global Software Piracy Study' http://global.bsa.org/globalstudy/ (accessed October 15, 2003)

28 Geoffrey Downey, Piracy by numbers http://www.itbusiness.ca/index.asp?theaction=61&sid=50371 (accessed October 15, 2003)

29 I copied my letter titled 'Proud Free Software Canadian counts as "pirate" by CAAST' to a public forum which is archived at http://www.canopener.ca/pipermail/discuss/2002-October/000653.html

30 A group of consultants got together to create a campaign to promote this alternative to the CAAST/BSA "Truce" campaign in the form of the "Get Legal, become free" campaign. http://www.flora.ca/rates.shtml#getlegal (accessed October 31, 2003) , http://www.stay-legal.org/ (accessed October 31, 2003)

There has been a variety of media articles on this theme such as from Ben Stocking, "Vietnam embracing open-source products" (Oct 30, 2003 in The Murcury News) http://www.siliconvalley.com/mld/siliconvalley/7139304.htm

In this reply I gave a hint to the best solution to so-called "software theft". With FLOSS software we do not charge per-unit royalty fees so no private citizen will ever have an incentive to infringe on our copyright. We get paid for our work through means other than royalties, and our customers adhering to our license agreements becomes much more simplified (trivial for the average user). This is in large contrast to the expensive process of license management and inadvertent infringement which is very common with "software manufacturing". The movement away from royalty fees truly is a win-win situation for the industry and our customers.

Infringement still a problem, but with intermediaries

While FLOSS solves a problem relating to infringement by private citizens, this does not mean we no longer need to protect our works from infringement. The current legal battles surrounding The SCO Group[31] provide an example of the problems we must deal with.

Important to this case is a lack of understanding of FLOSS methodologies either in the media or in the courts. With all the lawsuits and counter-lawsuits it is far too easy to loose the forest for a single relatively insignificant tree.

This is a case involving allegations by SCO against the Linux Kernel[32] project of copyright infringement. To understand the case you first need to understand how FLOSS projects work. With all the lawsuits and counter-lawsuits it is far too easy to loose sight of the forest for a single relatively insignificant tree.

As with most FLOSS project the Linux kernel is the open collaborative work of literally hundreds of software developers[33]. Each of these software developers retain copyright on their own contributions. In order for all these different contributions to be compiled together as one program each contribution has to be offered in a license agreement that is compatible with each other. In the case of the Linux kernel all contributions must either be licensed under the GNU General Public License version 2[34], or in a license agreement that is compatible with the GPL[35]. These software developers may also offer

(accessed November 5, 2003). This article discusses how that nations solution to software piracy is to eliminate Microsoft.

31 There is much in the media written about The SCO Group http://www.sco.com/ (accessed October 15, 2003). One summary can be seen at http://sco.iwethey.org/ (accessed October 15, 2003). My own weblog contains many articles relating to SCO http://weblog.flora.ca/search.php3?query=+SCO+ (accessed October 15, 2003)

32 The Linux kernel is the core program that interfaces between the hardware and the rest of an operating system part of a Linux Distribution such as RedHat Linux, Suse Linux, and many more. It is important to remember that the Linux kernel is one program among many that make up what people commonly think of as Linux. More information about the kernel can be found at http://www.linuxhq.com/ (accessed October 15, 2003) which includes the full source code and revision history for this program.

33 As an example the CREDITS file in Linux version 2.5.25 lists 443 unique contributors, with that file representing a small subset of the people who have contributed to this project.

34 The full GNU General Public License can be read at http://www.fsf.org/licenses/gpl.html (accessed October 15, 2003). It should be noted that for the Linux kernel the developers have only collectively agreed to version 2 of this license and not any future versions.

35 The Free Software Foundation provides a sample list of GPL compatible licenses

their contributions to different users under multiple license agreement terms with the GPL compatible license being one of many, and many software developers do this.

In the current court cases there is a dispute as to whether The SCO Group is one of those hundreds of contributors. The SCO group have thus far not disclosed what part of the Linux kernel is allegedly under their copyright, not allowing individuals or distributors of Linux to remove any potentially infringing code. There is also a dispute as to whether The SCO Group intentionally contributed the code in a license agreement that was compatible with the GPL, making any use of that code in the Linux collection not infringing of their copyright.

What is not under dispute is the copyright of the hundreds of intentional contributors to Linux. What the SCO has asked for is a royalty payment for their contribution, but for one contributor to request a royalty payment is an infringement of the rights of those hundreds of other copyright holders. Where The SCO Group has made the situation difficult by not disclosing what part of Linux they consider to be under their copyright so that the origins of that software could be investigated, the other contributors to Linux are offering the most transparent and accountable access to their software: the full public disclosure of their source code contribution under a FLOSS license.

The misinformation from Darl McBride, CEO of The SCO Group, can be seen in his "Open Letter to the Open Source Community"[36] where he suggests that there are "intellectual property" problems that exist in the current Linux software development model[37]. The problem for companies like The SCO Group is that Linux is protected by copyright and license agreements which do not allow them to infringe the rights of hundreds of software developers in the way that they are trying to do. They are trying to misdirect people into thinking that copyright law is in their favor when the facts are otherwise.

In a response to this letter Eric S. Raymond and Bruce Perens clarify the situation[38].

> In fact, leaders of the open-source community have acted responsibly and swiftly to end the DDoS attacks just as we continue to act swiftly to address IP-contamination issues when they are aired in a clear and responsible manner. This history is open to public inspection in the linux-kernel archives and elsewhere, with numerous instances on record of Linus Torvalds and others refusing code in circumstances where there is reason to believe it might be compromised by third-party IP claims.
>
> As software developers, intellectual property is our stock in trade. Whether we elect to trade

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http://www.fsf.org/licenses/license-list.html#GPLCompatibleLicenses

36 One copy of his letter was published by Linux World at http://www.linuxworld.com/story/34007.htm (accessed October 15, 2003)

37 It has been reported that SCO has gone so far as to make the laughable claims the GNU GPL license is unconstitutional. SCO Claims Linux GPL Is Unconstitutional, by By Jay Lyman http://www.ecommercetimes.com/perl/story/31975.html (accessed October 31, 2003). SCO is demonstrating a lack of understanding of copyright and contract law in trying to suggest that if a group of creators (the peer production participants in Linux) use a license agreement authored by a third party (in this case the GNU GPL, authored by the GNU Project) that it is this third party and not the creators who must enforce their copyright.

38 Eric Raymond and Bruce Perens, Response to SCO's Open Letter http://lwn.net/Articles/48478/ (accessed October 15, 2003)

> our effort for money or rewards of a subtler and more enduring nature, we are instinctively respectful of concerns about IP, credit, and provenance. Our licenses (the GPL and others) work **with** copyright law, not against it. We reject your attempt to portray our community as a howling wilderness of IP thieves as a baseless and destructive smear.

Larger public policy context

The international open collaborative methodologies used in FLOSS are not limited to only being used to create software[39]. The recommendations I have been making using software as an example have implications for copyright policy generally.

In his paper on peer production law professor Yochai Benkler offered the following:

> For regulators, the implications are quite significant. In particular, the current heavy focus on strengthening intellectual property rights is exactly the wrong approach to increasing growth through innovation and information production if having a robust peer production sector is important to an economy's capacity to tap its human capital efficiently. Strong intellectual property rights, in particular rights to control creative utilization of existing information, harm peer production by raising the costs of access to existing information resources as input. This limits the capacity of the hundreds of thousands of potential contributors to consider what could be done with a given input, and applying themselves to it without violating the rights of the owner of the information input. This does not mean that intellectual property rights are all bad. But we have known for decades that intellectual property entails systematic inefficiencies as a solution to the problem of private provisioning of the public good called information. The emergence of commons-based peer production adds a new source of inefficiency.[40]

International context

The discussions that Heritage Committee members are having and the exposure that they are receiving of peer production methodologies is not unique to Canada. This discussion is happening at a variety of different paces in most countries in the world. To give an example of the discussion I will mention two venues associated with the United Nations: the World Summit on the Information Society (WSIS) and the World Intellectual Property Organization (WIPO).

World Summit on the Information Society[41]

The summit is being held under the high patronage of Kofi Annan, UN Secretary-General, with the International Telecommunication Union taking the lead role, in cooperation with other interested UN agencies[42]. The draft declaration of principles included the following:

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39 For an introduction to how FLOSS methodologies are being used elsewhere, please read an article in the November 2003 issue of Wired Magazine: Open Source Everywhere, by Thomas Goetz http://www.wired.com/wired/archive/11.11/opensource.html (accessed October 16, 2003)

40 This advise is part of the conclusions by Yochai Benkler: Coase's Penguin, or Linux and the Nature of the Firm http://www.benkler.org/CoasesPenguin.html (accessed October 31, 2003)

41 http://www.itu.int/wsis/ (accessed September 30, 2003)

> 24A. Choice among software applications contributes to increased access and enhanced diversity for software users. Multiple software development models exist which help promote this principle, including open source which is a valuable model that supports more affordable access to ICTs.[43]

More specific references to Open Source software is included in the action plan[44], and were an integral part of the participation of a number of delegates.

A few countries who have established "software manufacturing" sectors in their domestic economy have lobbied hard to remove any mention of Open Source at WSIS, or to outright promote "software manufacturing" (using the term "proprietary software"[45]).

The justification given for the opposition to FLOSS is that WSIS must promote "technology neutrality" and "software choice". The problem with this justification is that FLOSS is neither a technology nor a choice of software product or vendor.

FLOSS is is a vendor, software and technology neutral open collaborative methodology for the production of software. In most of the processes by which goods are produced, methodology matters -- especially to governments. Suggesting that FLOSS methodologies reduce software choice is like suggesting that requiring that construction workers adhere to safety standards removes housing choice.

I have been tracking this event both in the public media and through a public mailing list[46] hosted by the Linux Professional Institute[47] which is an accredited participant at the summit. The Free Software Foundation[48] is also accredited.

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42 Basic information about WSIS http://www.itu.int/wsis/basic/about.html (accessed October 17, 2003)

43 Draft Declaration of Principles WSIS/PC-3/DOC/0002

http://www.itu.int/wsis/documents/listing.asp?lang=en&c_event=pc|3&c_type=o|

44 Draft Plan of Action, WSIS/PC-3/DOC/0003 (for URL see note 33)

45 The problem with the term "proprietary software" to reference software created using "software manufacturing" methodologies is that all software not in the public domain, including FLOSS software, is proprietary under the most basic legal definition of the word. The use of the term "non-proprietary software" to talk about FLOSS leads to confusion around the fact that most FLOSS software has more copyright holders (more proprietors), not less. FLOSS methodologies do promotes open vendor neutral and non-proprietary computing interfaces.

46 The Linux Professional Institute WSIS mailing list is on-line at http://list.lpi.org/mailman/listinfo/wsis (accessed October 25, 2003). This website includes publicly accessable archives of past discussion.

47 The Linux Professional Institute (LPI) http://www.lpi.org/ (accessed October 25, 2003) serves the community of Linux and open source software users, vendors and developers, in the interest of increasing and supporting professional use of such software throughout world. As part of their work they offer vendor/distribution neutral Linux skills certification. LPI was formally incorporated as a Canadian non-profit in October 25, 1999, and is headquartered near Toronto.

48 FSF Europe provides a page http://fsfeurope.org/projects/wsis/ (accessed October 28, 2003) which documents some of their participation.

World Intellectual Property Organization (WIPO)

WIPO describes its mandate in the following terms:

> The World Intellectual Property Organization (WIPO) is an international organization dedicated to promoting the use and protection of works of the human spirit. These works intellectual property are expanding the bounds of science and technology and enriching the world of the arts. Through its work, WIPO plays an important role in enhancing the quality and enjoyment of life, as well as creating real wealth for nations.[49]

Given this description of itself, it should follow that WIPO would support the use and protection of works of the human spirit in open and collaborative ways towards the creation of public goods. A letter from 63 experts and stakeholders was sent to Kamil Idris, Director-General of WIPO, requesting that WIPO host a meeting on open collaborative development models[50].

Unfortunately while such a meeting clearly falls within the mandate of WIPO, some special interests have been able to derail meeting organization thus far[51]. Many reports have put the blame on the United States, quoting Lois Boland, the U.S. Patent and Trademark Office (PTO) acting director of international relations, suggesting that WIPO is "clearly limited to the protection of intellectual property. To have a meeting whose primary objective is to waive or remove those protections seems to go against the mission."[52]

The failure of a representative of the US government to be able to determine the difference between copyright protection, which FLOSS relies on, and royalty-based business models shows just how much education of policy makers is needed.

Section 92 review of the Copyright Act

A small sampling of issues discussed in the report on the provisions and operation of the copyright act will be highlighted.

A.1.2 Authorship of photographs

I believe the treatment of photographers as different from other creators is not only based on a treatment of photography as an industrial operation, but also issues relating to privacy that do not belong in the copyright act at all. When discussing this section the most often heard justification is

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49 http://www.wipo.int/about-wipo/en/ (September 30, 2003)

50 Letter is available as plain text http://www.cptech.org/ip/wipo/kamil-idris-7july2003.txt (accessed September 30, 2003) or as a PDF file http://www.cptech.org/ip/wipo/kamil-idris-7july2003.pdf

51 Law professor Lawrence Lessig http://www.lessig.org/ (accessed October 31, 2003) wrote about this in his article in CIO Insight: Open-Source, Closed Minds http://www.cioinsight.com/article2/0,3959,1309203,00.asp (accessed October 31, 2003). He also wrote about this issue earlier in his own BLOG http://www.lessig.org/blog/archives/001436.shtml (accessed October 31, 2003)

52 Washington Post, The Quiet War Over Open Source by Jonathan Krim http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&contentId=A23422-2003Aug20 (accessed October 31, 2003)

that the subject of photographs should have rights in relation to these works to protect their privacy.

I very much understand the call for privacy. I have gone to photographers galleries and noticed the portfolios available on the walls and in albums. Have the permission of the subjects been granted? Some of these pictures are of a personal and sometimes graphic or sexual nature. While a subject may want to have such a picture made for their spouse, there should be protection to ensure that these photographs are not ever displayed to any other audience. Creators rights in the photograph should not allow a photographer to display a work without permission being granted by the subject.

I do not believe that the medium of expression should be a determining factor. Whether the art form is a photograph or a painting, the subject should retain the same rights.

Recommendation: Section 10 of the Act should be amended to provide photographers with the same authorship rights as the creators of other artistic works. This committee should make further recommendations to strengthen privacy protection to protect the rights of subjects of any artistic work, regardless of medium or tools used in creative process.

A.1.9 Linking

There is a need to keep public policy technology neutral, which is not the case for any discussion of linking.

A person who provides a link should not be held responsible for the content at the destination site any more than a company producing a telephone directory should be held responsible for any illegal activities that may happen over that phone line. Only the maintainer of the content that is referred to by a "link" (URL, or Universal Resource Locater) has control over the content, and thus should be the only individual that should be held liable in any way for the content.

Related to this topic is the subject of "deep linking" where some technologically unaware companies have suggested that if websites link directly to content on their website, rather than going through their homepage, that this is a violation of their copyright. The maintainer of a website has complete control over what content is returned with a given URL that refers to their website. A competent web administrator can return different content for the same URL depending on any type of rules that they wish to set, such as a multitude of ways to verify authorization to access the requested content.

The copyright act is an entirely inappropriate place to deal with a problem that can best be understood as a human resources problem at a few Internet content companies.

Recommendation: consider discussions of linking, including deep linking, as topics outside the scope of copyright reform.

A.1.13 Rights management information

Recommendation: Do not protect rights management information beyond a recognition of an intent to infringe in a court case where infringement had already been established.

A.1.15 Technological protection measures

I have addressed this issue generally elsewhere in my submission, and will only add a quick note about the practical implications of LpfTPM, and how the US interpretation of this law harms TPM research itself.

The US implementation disallows public cryptographic discussions required to improve TPM technologies. If we divide people who work on cryptography in an old "western" movie style we would have "white hat" cryptographers and "black hat" cryptographers. Legal protection for TPM would essentially put a prohibition on "white hat" cryptographers, disallowing them the tools and experience needed for them to create better TPM's. On the other hand, the "black hat" cryptographers are not going to be discouraged by the legality of breaking TPM's and will have both the tools and the experience far superior to the "white hat" cryptographers. Rather than ensuring that TPM's are strong and that the information that they are intended to protect are kept secret, LpfTPM only ensures that TPM's will be weak and easily circumvented by "black hat" cryptographers.

An analogy can be made to a game of chess chess where only one side is allowed to allowed to practice which will ensure that they will always win.

Recommendation 1: Do not offer any protection on Technological Protection Measures beyond the breaking of TPM's being recognition of an intent to infringe in a court case where infringement had already been established.

Recommendation 2: Before moving forward on any of the digital copyright issues, Canadian policy makers must adequately investigate open collaborative models for the production of public goods. Canada should not only be pushing to ensure that this conversation happens at WIPO as discussed earlier in this submission, but that domestic resources be tapped to adequately understand these issues.

A.1.16 Term of protection

Term of protection was discussed in previous submissions, so I will not include all that discussion here.

Recommendation: The term of protection should not be tied to the lifespan of the creator, but to the nature of the creation. Term should be a limited number of years from first publication regardless of the time of the death of the creator. The number of years should be tied to the nature of the work such that software receives a much smaller (say 20 years) copyright while literature would receive a larger period. A maximum of 50 years would be offered for any type of work.

A.1.19 Traditional knowledge

There is much discussion in whether or not traditional notions of copyright can apply to TK. It may be useful to draw some parallels to the discussions around the open collaborative creation of public goods which also question some of the business model assumptions of current copyright. At the 2003 Annual General Meeting of the Creators Rights Alliance a person went to the microphone during a TK panel and suggested that some of the ideas from the "copyleft" concept may apply to TK.

On the other extreme there was a suggestion that since TK relates to works where the creators have

been dead for a long time, the solution would be to make copyright have an infinite term. The immediate image that comes to mind is the use of nuclear weapons to swat a fly. It is critical that current assumptions around copyright be questioned before trying to apply this regime for different types of works.

This is also an area of copyright reform that would benefit from policy makers having more experience with open collaborative models for the creation of public goods. Canada should become strong promoters of having conferences like the one suggested for WIPO, and should ensure that domestic policy makers are well aware of these models.

A.3.4 ISP liability

There is currently an attempt to have ISP's held responsible for acts of their customers that they can not reasonably monitor or have any control over. In order to protect the privacy and communications rights of citizens, ISP's should be required to have less intervention in the non-technical operations of network connections, not more.

ISP's should be expected to help law enforcement agencies in the investigations of crimes, but all the safeguards and judicial oversight that exists outside the digital communications arena should still apply. An ISP should be no different than a landlord who may open the door of a tenants home for the police with a court order, but are not allowed to do so simply because some private citizen (or company) claiming that there are stolen goods inside has requested it.

Recommendation 1: ISP's should not be held liable for the actions of their customers, or for actions (such as caching) which are a normal part of the technological operation of an ISP. Only when an ISP is also the publisher of content should they incur liability (as a publisher, not as an ISP).

Some discussions have gone to the detailed level of who a HTTP cache benefits (the sending website, the receiving ISP, or the receiving user) and thus who should be held liable. Like much of the discussion in copyright reform these details often overlook the fact that caches are largely under the control of the sending site. If the copyright holder does not want their website in a cache then they should properly configure their own software to indicate this. These technological details are changing all the time, while laws change very infrequently.

Recommendation 2: There should be an attempt to ensure that legislation in this area (and others) remain technology neutral.

B.2.2 Computer programs

It appears to require reminding that while copyright is an appropriate form of protection for software, that there needs to be limits to allow the continued creation of software. There must also be limits to ensure that ICT tools that are governed by software remain under the control of their owners (the users of the tools, including creators of non-software works) and not third parties (the creators of the tools).

The most fundamental digital copyright issue today is not the collection of royalty payments for existing works contrary to the media attention the Napster case received, but the need to protect the rights of creators to create and communicate works to fellow citizens. A precondition to protecting creators rights in digital media is that creators (users of communications tools) be in control of these

tools. The delicate balance between the rights of creators and the rights of fellow citizens in the Copyright Act would be circumvented if third-party intermediaries are given exclusive rights over the basic means of communications.

Recommendation: Computing interfaces of any type, whether they are human-computer interfaces, hardware-software interfaces or software-software interfaces should not be offered any form of exclusive right. The ability to reverse engineer any existing interface should be protected in law to ensure that a lack of documentation by the creator of an interface can never be used as a way to circumvent any prohibition on interface monopolies.

It may be appropriate to clarify that this recommendation is a further recommendation against Legal protection for Technological Protection Measures which has been used as a back-door to granting exclusive rights on computing interfaces in legal jurisdictions that otherwise do not grant such rights.

B.2.3 Contractual limitations on exceptions and uses

Far too many contractual agreements are of a complexity that the average layperson is not able to understand what they are agreeing to. When it comes to software "shrink-wrap" licenses, very few people read the agreements to determine what rights they may be waiving.

One solution for citizens is to try to choose methodologies such as FLOSS where a large number of programs use the same license agreements rather than "software manufacturing" where different versions or different customers of the same program are under different agreements.

Generally we need to move away from thinking of Patents, Copyright or Trademarks as a form of property. What is owned by a copyright holder is not an idea or even an expression of their work, but very specific limited exclusive rights set out by the copyright act.

It should not be possible to have a contractual license agreement offered by a copyright holder that takes rights away from the user of a work that relate to a limitation on an exclusive right. If there is a statutory exception to copyright, it should not be taken away through contract law. There are two philosophical strands to fair-dealing/fair-use[53], and I clearly fall under the strand that believes that fair dealings is an inherent component of the copyright bargain.

Recommendation: The act should clarify that limitations on exclusive rights under the copyright act should not be negotiable under copyright license agreements, and any attempt on the part of a licensor to negotiate away the user right is void.

An issue related to contractual limitations is the concept of warranties. A growing number of people feel that software "products" should have some of the same protections where it comes to warranty that other products do. Most software license agreements, whether FLOSS or non-FLOSS, will clearly state that there is no warranty offered by the copyright holder.

I believe that requiring a warranty on all software is the wrong solution to the problem. While I agree that software created by "software manufacturing" is lacking in accountability or transparency to the users of this software, I believe the solution is to move to software created by FLOSS methodologies. While FLOSS software creators may not directly offer warranties, these

53 These two philosophical strands were discussed in a posting from Samuel Trosow to the Digital-copyright.ca forum http://www.digital-copyright.ca/discuss/2106 (accessed October 20, 2003)

methodologies include transparency and accountability by allowing full public peer review, third party software audits and third party warranties. Customers who wish to pay a third party to warrant the software that they use are able to do so with FLOSS, where only the manufacturer of "software manufacturing" has the level of access to the software required to offer a warranty.

B.3 A Special Regime for Music: Private Copying

There are a number of concerns with this special regime for music. My largest concern is that this imposition of a business model onto all creators of a category of work may be imposed outside of music. As I have written elsewhere I consider this government imposition of a business model to be an infringement of a creators rights. As with digital copyright issues there is a need for policy makers to adequately investigate open collaborative models for the production of public goods which can include music and not just software.

While I am not a creator of music, I feel there is an injustice against musicians by having this regime imposed on them. The music industry is already too centralized and focused on "superstars" that receive more than their fair share of the rewards in this craft. We see many starving artists and musicians at the same time as governments are further protecting some of the business models which promote this problem.

The standard business models of the recording industry are not in the interests of the musicians other than the "superstars". Recording industry expenses are measured in a per-musician or per-song basis, while their revenues are measured in a per-copy basis. This encourages the industry to maximize profit by minimizing expenses through minimizing music choice while trying to maximize the number of copies sold for the musicians that are the chosen few.

I feel I need to clarify that generally I am supportive of the concept of collective societies and collective administration of rights under copyright. In some ways FLOSS methodologies can be seen as a form of collective administration of rights by creating common license agreements which easily facilitate the creation of collections of software which can be formed without negotiating with individual copyright holders.

Under the private copying regime the choice of whether a musician's works are part of the collection is not a decision offered to the musician. The benefits of this collective administration are not returned to the musicians whose works were enjoyed, nor are the royalties only collected from those who have enjoyed the work. The collective administration of music rights works well where payment to the collective society is based on a play-list which ensures the right member-musicians are being payed the royalties. The private copying regime makes use of intermediary industry special interests manipulatable measurements of "air time" and "record sales" to determine who receives payment.

This regime will discourage music fans from paying musicians, and there is already a growing feeling that with the blank media levies that music is already paid for and thus there is no reason to pay additional royalty fees by buying the music.

While the purpose of law often stated by lawyers is to create certainty, the current private copying regime creates uncertainty. The regime appears to legalize things which most people believe should be illegal, and does not make legal what people believe should be. As examples if I download music

from the Internet without paying any musician a required royalty fee and put the music on a blank CD where I paid the levy, this appears to be legal. On the other hand if I purchase a CD and make a personal copy onto a hard disk or portable MP3 player, this appears to be an infringement.

As a final point this regime would be less offensive if the money was collected and dispensed by a government agency that was fully accountable to all citizens who are stakeholders in such a policy, not just a private group of intermediaries. The private copying regime currently works against the "no taxation without representation" principle.

Recommendation: The private copying section of the act should be revisited with a view towards removing it from the act. There is a need to return back to first principles and determine what problems this regime was intended to solve and look for solutions that do not create more problems in the process.

Author participation in Copyright and related policy events

This is a summary of events that have happened from July 2001 to date that are related to this submission I am making to the ongoing copyright reform process. While most of the events relate specifically to copyright reform, there is also a strong tie between copyright and other Free/Libre and Open Source Software policy areas such as patent reform. My hope is that by listing these events that this will entice Heritage Committee members to be interested in further discussions on these topics.

Date	***Description***
July/August, 2001	Received notice about Copyright Reform process, and created the Canada-DMCA-opponents forum to discuss it[54]
August 5, 2001	Announced the Canada-DMCA-opponents forum to the departments[55]
September 13, 2001	Sent in first submission to the departments[56]
September 15, 2001	Joint submission with Electronic Frontier Foundation and others[57]

54 The first message of the canada-dmca-opponents@flora.org message is archived at http://www.digital-copyright.ca/discuss/1

55 Industry Canada published my announcement at http://strategis.ic.gc.ca/epic/internet/incrp-prda.nsf/vwGeneratedInterE/rp00093e.html (accessed October 12, 2003)

56 Linked version of my submission at http://www.flora.ca/copyright-2001.shtml (accessed October 12, 2003) with Industry Canada publishing at http://strategis.ic.gc.ca/epic/internet/incrp-prda.nsf/vwGeneratedInterE/rp00704e.html

57 Electronic Frontier Foundation http://www.eff.org/ authored a submission http://www.eff.org/sc/20010915_efc_eff_cpdci_comments.html (accessed October 12, 2003) that was then co-signed by a number of relevant Canadians and Canadian organizations.

58 I published my reply at http://www.flora.ca/copyright-2001-cmpda-reply.shtml (accessed October 12, 2003) with Industry Canada publishing it at http://strategis.ic.gc.ca/epic/internet/incrp-prda.nsf/vwGeneratedInterE/rp00813e.html (accessed October 12, 2003)

Date	*Description*
October 23, 2001	I send in a reply[58] to the Canadian Motion Pictures Distributors Association (CMPDA) submission
October 29, 2001	Guest speaker at J.S. Woodswoorth Secondary School to talk about Open Source Software and copyright reform.
February 22, 2002	Speaker at a professional development day[59] for local high-school teachers.
March 19, 2002	This was my first meeting with people from the Copyright Policy Branch[60] of Heritage Canada. This meeting was a simple introduction of some of the ideas I bring to the table[61] I had other follow-up meetings including one meeting where I did a live demonstration of Mandrake Linux[62] and the OpenOffice.org[63] office productivity suite.
March 26, 2002	Presentation of topic to a high-school computer class[64]
April 04, 2002	Article published in the Ottawa citizen titled 'The Anti-Copyright Crusader'[65] which provided a good summary of some of the events in digital copyright reform.
April 11, 2002	I attended the consultation meeting hosted by the departments in Ottawa. I met many more people from the departments for the first time, including Claude Gagné[66] from ICT branch.

59 I made notes and my slides available via http://weblog.flora.ca/article.php3?story_id=114 (accessed October 12, 2003)

60 Copyright Policy Branch have a website at http://www.pch.gc.ca/progs/ac-ca/progs/pda-cpb/

61 I published notes from that meeting at http://www.digital-copyright.ca/discuss/318

62 MandrakeSoft has offices in Montreal http://www.mandrakesoft.com/ . I was told that Loris Mirella of CPB was donated a copy of Mandrake during the consultation meeting in Montreal.

63 I am on the volunteer marketing team for this Office Suite which can be downloaded for free from http://www.openoffice.org/

64 I made notes and my slides available via http://weblog.flora.ca/article.php3?story_id=129 (accessed October 12, 2003)

65 Peter Hum, Ottawa Citizen (Tuesday April 4, Page F6). I provide a copy of this article at http://www.flora.ca/citizen-20020404.phtml (accessed October 12, 2003)

66 Claude Gagné had been very instrumental in helping bridge the knowledge gap of Open Source inside the Canadian government. The Innovation Directorate of the ICT branch page on Industry Canada http://strategis.ic.gc.ca/epic/internet/inict-tic.nsf/vwGeneratedInterE/it06794e.html lists her portfolio as: Intellectual Property, Open Source & Internet, promotion of French on the Internet, and language software

Date	*Description*
April 29, 2002	Meeting with ICT related persons across Industry Canada (Business and Regulatory Analysis, ICT, IPPD, SchoolNet Program) organized by Claude Gagné. I was a guest there to talk about FLOSS and copyright reform.
May 10, 2002	Meeting with ICT Branch Management, co-presenting with Joseph Potvin. My topic was: Introduction to open source methods and software[67].
May 28, 2002	Presented at the Open Source Solutions Showcase[68] hosted by PWGSC. Following this showcase each meeting some of the organizers would get together to discuss next steps in promoting Open Source within the Canadian government. Out of these discussions the GOSLING (Getting Open Source Logic INto Governments) group[69] was formed. I had already met Joseph Potvin (Architecture & Standards Directorate, GTIS, PWGSC) a few times previous and help organize this event.
June 28, 2002	Birds of a Feather (BOF) session at the Ottawa Linux Symposium on Open Source & Copyright Reform[70].
August 10, 2002	Submission to CRTC call for comments on a proposed policy framework for the distribution of digital television services[71]. I felt that including discussions relating to anti-circumvention in a submission to the CRTC was necessary.
September 06, 2002	ITBusiness.ca published an article on GOSLING: Linux group hatches plans for the public sector[72]
October 2, 2002	Co-presented to the Ottawa-Canada Linux Users Group with Joseph Potvin[73]. Joseph Potvin gave a talk entitled: Economics of the Open Source Business Model. My presentation was titled: From Raymond to Stallman: Open Source equality or Free Software public policy?

67 Slides used for that presentation are on-line at http://www.flora.ca/ict-20020510/ (accessed October 15, 2003)

68 While this event was advertised within the government, the only externally accessible information site is at http://www.flora.ca/osss2002/ (accessed October 12, 2003). A few of the slide presentations presented are linked via that site including my own.

69 GOSLING is an informal group of people acting as private citizens trying to promote open source in the government. The participants come from all sectors of the economy including public, private, volunteer and education. We now host a website for people to find out more about us at http://www.goslingcommunity.org/

70 Publicity for the session is at http://weblog.flora.ca/article.php3?story_id=196 (accessed October 12, 2003). Rather than slides I used a simple page of links http://www.flora.ca/ols2002.shtml (accessed October 12, 2003)

71 Submission is published on-line at http://weblog.flora.ca/article.php3?story_id=223 (accessed October 12, 2003)

72 References to this article can be found via http://weblog.flora.ca/article.php3?story_id=241 (accessed October 15, 2003)

73 A summary of our presentations including a link to my slides is at http://weblog.flora.ca/article.php3?story_id=248

Date	*Description*
October 10, 2002	Ottawa Citizen published an article titled 'A piece of the action'[74] discussing GOSLING.
October 15, 2002	Part of a round table panel discussion on 'Open Source vs Free Software'[75] at the Platform for Community Networks forum in Montreal. Many government representatives were present including Claude Gagné from ICT branch.
October 29, 2002	Rabble Rumble[76] debate with Susan Crean on copyright reform. It was broadcast live on October 29 from Ryerson University, this debate was co-sponsored by the CAW-Sam Gindin Chair in Social Justice and Democracy and the Ryerson School of Journalism. It was the first in a series of Gindin Debates. Susan and I had already met before we were invited to debate. One thing that was noticed as part of this debate is that we had more ideas that we had in common than we differed.
November 21, 2002	Meting at Consumer Affairs branch to discuss FLOSS.
December 11, 2002	Computing Canada published an article titled 'The pros and cons of open source computing'[77] that included references to GOSLING and the BSA/CAAST 'software manufacturing' piracy study flaws.
December 18, 2002	My open letter to the Canadian Coalition for Fair Digital Access (CCFDA)[78] was published in a few ITBusiness.ca magazines.
February 07, 2003	Article I authored on the private copying levy titled 'Content industries on slippery slope with demand for blank media levy' published in Canadian New Media[79].

(accessed October 15, 2003)

74 References to this article can be found via http://weblog.flora.ca/article.php3?story_id=256 (accessed October 15, 2003)

75 Information about that theme can be seen on the GlobalCN website at http://www.globalcn.org/en/article.ntd?id=503&sort=1.21.11 (accessed October 15, 2003). My notes from the forum are available via http://weblog.flora.ca/article.php3?story_id=253 (accessed October 15, 2003)

76 The debate was aired live and is now archived at http://www.rabble.ca/rumble/ (accessed October 12, 2003). This includes our written submissions and replies to each others submissions.

77 References to the article can be found at http://weblog.flora.ca/article.php3?story_id=309 (accessed October 15, 2003)

78 I include references to the magazines that published this letter at http://weblog.flora.ca/article.php3?story_id=320 (accessed October 15, 2003)

79 With permission I am publishing this article on my own website at http://www.flora.ca/cnm20030207.shtml (accessed October 15, 2003)

Date	*Description*
February 21, 2003	First meeting with my group of Algonquin College students. I signed up to be a "customer" for 5th-term projects for Computer Studies students[80]. In this project the students will be developing a tool to convert Corel Quattro Pro spreadsheet files to the OASIS open office XML[81] standard used by OpenOffice.org Calc[82]. My involvement with this project is specifically to promote FLOSS methodologies within the educational system.
February 27, 2003	Taped debate on copyright reform on The Docket[83] between David Basskin, Allison Outhit and myself.
March 6, 2003	Guest speaker in a University of Toronto graduate course on Knowledge Media Design[84] talking about FLOSS and copyright reform.
April 02, 2003	Article quoting my position on 'software manufacturing' statistics being invalid was published in ITBusiness.ca[85]: Piracy stats flawed: open source proponent
April 4th, 2003	I participated in the Minister's Forum on Copyright[86] as a member of a creator community.
April 14, 2003	At the last moment I was substituted in to talk at NRC's Government on the Net 03 conference[87]. I was on a panel discussion[88] alongside Joseph Potvin (GOSLING, PWGSC) and Eben Moglen (Columbia Law School, legal council for the Free Software Foundation)

80 Students are in the Computer Technology - Computing Science 0006X program. http://www.algonquincollege.com/cs/fulltime.htm (accessed October 26, 2003)

81 The OASIS open office XML technical committee hosts a website at http://www.oasis-open.org/committees/tc_home.php?wg_abbrev=office (accessed October 16, 2003)

82 Information on the Calc spreadsheet functionality of OpenOffice.org can be found at http://www.openoffice.org/product/calc.html (accessed October 16, 2003)

83 I provided a summary and link to the show at http://weblog.flora.ca/article.php3?story_id=357 (accessed October 12, 2003)

84 Information about this course is available on their website http://kmdi.utoronto.ca/kmd1000/ (accessed October 19, 2003)

85 My link to the article and follow-up discussions is at http://weblog.flora.ca/article.php3?story_id=379 (accessed October 15, 2003)

86 I provided a summary and link to further information on the Heritage site at http://weblog.flora.ca/article.php3?story_id=382 (accessed October 12, 2003)

87 Government on the Net is a yearly conference hosted by the National Research Council http://govnet.nrc-cnrc.gc.ca/govnet03/ (accessed October 15, 2003)

Date	*Description*
April 30, 2003	Scheduled to present at Real World Linux[89] in the government track, but due to SARS I did not attend. My slides[90] for this event have been used for other less formal presentations.
April 23, 2003	Introductory meeting for the Advisory Committee for Computer Systems Technician & Enterprise Network Specialist Programs at Algonquin College. I am sitting on this advisory committee to help Algonquin include FLOSS methodologies in their programs.
May 8, 2003	I set up and attended a meeting between Reg Alcock[91] (MP), Brian Behlendorf (co-founder of the Apache Software Foundation[92]) and Joseph Potvin (Public sector co-founder of GOSLING)
May 9, 2003	There was a number of events relating to Open Source in Government including an event hosted by PWGSC in Place du Portage III, and the 1-year anniversary of GOSLING[93].
May 22-23, 2003	I attended the public portion of the 2003 Annual General Meeting of the Creators' Rights Alliance[94] on an invitation from co-president Susan Crean.
July 9, 2003	Presented a slide-show presentation on software patent issues[95] commissioned by ICT branch of Industry

88 I provide my personal notes from that panel discussion via http://weblog.flora.ca/article.php3?story_id=393 (accessed October 15, 2003)

89 Real World Linux http://www.realworldlinux.com/ (accessed October 15, 2003) is a yearly event held in Toronto focusing on Linux and FLOSS solutions.

90 My slides are available at http://www.flora.ca/rwl2003/ (accessed October 15, 2003)

91 Reg Alcock is the MP for Winnipeg-South http://www.reg-alcock.parl.gc.ca/ (accessed October 15, 2003). Reg has shown an interest over the years in Internet and FLOSS public policy.

92 The Apache Software Foundation http://www.apache.org (accessed October 15, 2003) is the organization managing the Apache HTTPD project. According to the Netcraft survey http://news.netcraft.com/archives/web_server_survey.html (accessed October 15, 2003) Apache HTTPD represents 64.61% of the web-servers on the Internet.

93 The announcement for this event was published at http://weblog.flora.ca/article.php3?story_id=402 (accessed October 15, 2003). The panel discussion hosted by PWGSC included David Reid (Heritage, Director General's office), Brian Behlendorf (Apache), Bruce Catley (PWGSC), Jérôme Thauvette (PWGSC), Joseph DalMolin (e-cology), Claude Gagné (Industry Canada, ICT Branch, Innovation Directorate).

94 I published a summary of Thursday http://www.digital-copyright.ca/discuss/1888 and Friday http://www.digital-copyright.ca/discuss/1889 (accessed October 12, 2003)

95 Paper and slide-show are available at http://www.flora.ca/patent2003/ (accessed October 12, 2003)

Date	*Description*
July 19, 2003	Guest speaker at a Linuxfest[96] on the topic of "Why FLOSS" which focused on the public policy and social aspects of FLOSS methodologies.
July 24, 2003	Hosted a Birds of a Feather (BOF) at Ottawa Linux Symposium on Getting Open Source Logic INto Governments (GOSLING)[97]
September 8, 2003	I was invited to a special meeting of the Creators' Rights Alliance[98] to talk about Free/Libre Software.
October 3, 2003	Attended the first day of the Comparative IP & Cyberlaw Symposium[99] at Ottawa University.
October 7-8, 2003	The GOSLING Community had a booth at GTEC[100] this year in the 'Open Source Lab'. Joseph Potvin helped organize the lab.
October 8, 2003	I was a guest speaker at a School of Management class at Ottawa University at the request of John Nash[101]. The class was on e-Government with my presentation focusing on the public policy aspects of Free/Libre Software given Lawrence Lessig's suggestion that 'Code is Law'.

96 This Linuxfest was held at Ottawa University http://oclug.on.ca/wiki/index.php/LinuxFest (accessed October 17, 2003). These events happen approximately twice yearly with the largest being one associated with the Open Source Weekend http://www.osw.ca/ (accessed October 17, 2003) each January.

97 The OLS website includes the summary of the session http://www.linuxsymposium.org/2003/view_abstract.php?talk=193 (accessed October 12, 2003). I published my slided at http://www.flora.ca/ols2003/ (accessed October 12, 2003)

98 I provided a summary of the meeting at http://www.digital-copyright.ca/discuss/2022 (accessed October 12, 2003)

99 Information about this symposium is published on-line at Ottawa University http://www.commonlaw.uottawa.ca/tech/html/symposium.html (accessed October 12, 2003)

100 Information about the event was published on our website http://www.goslingcommunity.org/gtec2003-participate.shtml (accessed October 12, 2003)

101 John Nash is a full time Professor http://www.management.uottawa.ca/Staff/Details.asp?StaffID=86 as well as a member of the GOSLING community.