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Honourable Paul Martin, Prime Minister of Canada,

Honourable Paul Bonwick, Parliamentary Secretary to the Minister of Human Resources and Skills Development,

Honourable Reg Alcock, President of the Treasury Board and Minister responsible for the Canadian Wheat Board

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On Wednesday I read an article in Canadian New Media[1] suggesting that Paul Bonwick, MP, will be pushing forward WIPO copyright treaty ratification. This article also indicated that Prime Minister Paul Martin supported this move.

The third MP I am copying is Reg Alcock. When I was asking a few years ago who in the parliament best understood the Internet, and the Open Source movement that many see as co-dependent with it, his name was mentioned many times. My hope is that the three of you can get together to discuss Open Source so that it is better understood. Understanding Open Source causes a new understanding of the nature of computer software and the Internet, and this is required background information to have before evaluating key sections of the WIPO copyright treaties.

Tuesday evening I was at a social gathering where I met someone who works at DFAIT. We had a great conversation about deficits. He spoke highly of how Mr Martin influenced policy changes so that we now have a surplus on the "balance of accounts". At the same time he indicated we still have a trade deficit in "invisibles". I am not an economist or someone who knows the terminology used by DFAIT, but I do spend a lot of time thinking about intangibles and non-rivalrous goods such as works of the human mind including computer software.

We have a deficit in "invisibles", and I have a suggestion for how to solve that problem: adopt modern Internet business models that will reduce the cost of our usage of "invisibles", focusing on models which will keep this money in Canada. Unfortunately the suggestion that we should quickly ratify the WIPO treaties suggests that Canada may do the opposite and instead protect pre-Internet business models from the positive innovative, transformative and competitive effects of the Internet.

Modern Internet business models were the subject of a March 1 press release[2] where I extended an offer I gave in 2002. In 2002 the offer was for free consulting time to customers wanting to switch from legacy "software manufacturing"[3] software to software created using Free/Libre and Open Source Software (FLOSS)[4] methodologies. This year's press release further suggests:

> Incumbent content and "software manufacturing" industrial associations in Canada such as CRIA and CAAST (Canadian Alliance Against Software Theft) wish to place the blame for current problems on their own customers, and create considerable customer relations problems by suing their own customer base. FLORA Community Consulting wishes all creators to acknowledge that the source of their problems is not lawlessness of their customers, but

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1 Canadian New Media for March 3, 2004. CNM is a publication od Decima Publishing Inc. http://www.decima.ca/publishing/

2 Press release launching the "Make it legal: don't litigate, use creative licensing" campaign http://www.flora.ca/makelegal200403.shtml

3 I explain what "software manufacturing" is in my short history of computer software in my submission to Heritage committee on their Section 92 copyright act review. http://www.flora.ca/copyright2003/section92.html#history

4 I provide references to definitions for terms such as Free Software, Open Source Software, Free/Libre and Open Source Software (FLOSS), Creative Commons and "commons-based peer production" at http://www.flora.ca/floss.shtml

their own failure to embrace new business models that are better suited to the Internet era and the expectations of new economy consumers.

The WIPO copyright treaties[5] were signed in 1996 which was a time before most policy makers and academics began to understand the transformative effects of the Internet. As Clayton Christensen, author of "The Innovator's Dilemma" would suggest, the Internet is a disruptive technology that should have been predicted to disrupt a few current businesses. As with other disruptive technologies it would have a positive influence on the economy as a whole, so it is ill advised to enact policy to protect legacy business models from this disruptive change.

My focus on Internet public policy is not on the hardware aspects of the Internet which are relatively well understood, but the software aspects. An important first step is trying to understand the nature of software. While the "software manufacturing" subset of the software sector promotes treating software as a product, many researchers disagree. Software is not a product or technology at all, but can be seen as a form of technology knowledge, as a service, or as a form of policy.

Law professor Lawrence Lessig[6] introduced me to the software as policy concept ("code is law") and it is this understanding of software that I focus on. If software is a form of policy, then when software is publicly distributed and affects the lives of citizens should we not be looking at the political sciences for the best techniques to create transparent and accountable public policy? FLOSS provides that transparency and accountability.

The Internet also has important economic impacts. The business models that work best are those that harness the power of peer production and/or peer distribution. In the software industry most of the largest to the smallest software companies have either fully or partially adopted FLOSS licenses and business models. Other sectors involving works of the human mind such as music are only beginning to make use of these methodologies, and I highlight a Toronto indie music label using Creative Commons licenses in my press release.

The methodologies I am speaking of all provide the most viable solution to the form of copyright infringement most often talked about around the Internet. It does this by making specific forms of communication legal and royalty-free, removing any incentive to infringe copyright. The Internet can then be used as an important tool to communicate works in ways where the Internet is understood as a great opportunity for creativity and innovation rather than a threat.

Software is also useful by what it does for people, not what it is. Software is most useful for the economy when it makes people more productive, and does so at the lowest cost. For the vast majority of the economy software is an expense, not an asset. When economic analysis focuses on royalty payments, patents and other aspects of legacy "software manufacturing" they are focusing not on activities that are an asset to the economy, but are focusing on expenses that are a drag on the economy.

In the case of Canada we are also talking about an aspect of the Canadian economy that will always be the source of a trade deficit with the USA. The USA had a head start on the "software manufacturing" business model over every other country, being the source of that methodology. Software business models are heavily influenced by "network effects" that in software manufacturing create and sustain monopolies which far better software is unable to topple. It is no coincidence that the most successful company in the software manufacturing methodology, Microsoft, is continuously being brought up on anti-trust and competition policy violations all over the world.

As an Internet consultant who spends much of his time thinking and talking about these new methodologies, the WIPO treaties seem entirely out of touch. Specific sections such as legal protection for Technological Protection Measures (TPM) are seen as drastic solutions to problems that

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5 Text of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty can be found at http://www.wipo.int/copyright/en/index.html

6 Law professor Lawrence Lessig is the author of "Code and other laws of Cyberspace" which is very influential to peoples thinking around the nature of software as a form of policy http://www.lessig.org/

are largely created by legacy business models. These solutions have considerable unintended consequences that are far more harmful to the rights of creators and other citizens than the problems they claim to solve. Many researchers have noted that Legal protection for TPM is not the use of technology to protect copyright, but a replacement of copyright where the policy determining what you can do with a work is enacted by software vendors rather than parliament.

   I believe that one of the issues we are dealing with is a battle over who will control Information and Communications technology. In my article offering my perspective as a digital copyright reformer on Sheila Copps[7] I expressed it this way:

> In its simplest form, the thinking goes like this: if private citizens being able to control ICT allows them to infringe copyright and illegally distribute the works of others, then the solution is to take the control of ICT away from private citizens.

   I fundamentally believe that 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. Creators need to be understood as creative citizens, and from the perspective of control of ICT cannot be differentiated from other citizens. What critical sections of the WIPO treaties are asking parliaments to do is take this control away from creators and other citizens, and hand it over to third party intermediaries such as "software manufacturing" vendors and the "content industries".

   My advise is to not to rush to ratify the treaties, but to instead question the validity these treaties. These treaties were the result of a rush to regulate a new media that is not adequately understood. It would be far easier to renegotiate these treaties to bring them in-line with more modern understandings of the Internet and software than to implement this backward-looking policy and have to watch the resulting economic harm and increases in Canada's deficit in "invisibles".

   I offer my own services[8], free of charge to parliamentarians, as a resource to help understand these issues. I have spoken with a number of MPs and policy makers over the last few years. I was hired by ICT branch of Industry Canada to do a a review of software patent issues[9] , as well as being hired in January to offer a workshop at Copyright Policy Branch of Heritage Canada on TPMs. My most recent submission to Heritage Committee[10] includes a table at the end that is a summary of my activities over the last few years in this area of policy.

   I look forward to future discussions with you.

Thank you.

   I created an MP package a few months ago which included the following:
1. A printed copy of my submission to Heritage Committee

2. A printed copy of my most recent letter to my own MP[11]

3. A copy of the OpenOffice.org[12] 1.1 and TheOpenCD.org[13] CD

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7 Perspective of a digital copyright reformer on Sheila Copps, MP. http://www.flora.ca/russell/drafts/copps-ndp.html This article includes a policy comparison with Hamilton-born and successful Canadian entrepreneur Bob Young.

8 Full contact information for me can be found at http://www.flora.ca/#contact

9 A Review of Software Patent Issues http://www.flora.ca/patent2003/

10 submission to House of Commons Standing Committee on Canadian Heritage in relation to their section 92 review of the copyright act http://www.flora.ca/copyright2003/

11 Letter to the Honourable John Manley in November 2003. http://www.flora.ca/russell/drafts/manley200311.html (HTML version) http://www.flora.ca/russell/drafts/manley200311.pdf (PDF version)

12 OpenOffice.org is a FLOSS replacement for Microsoft Office. Information can be found at http://www.openoffice.org . I offered a presentation "Office Suite Productivity in Government" in 2003 hilighting this suite and its native file format which is the OASIS open office XML standard. http://www.flora.ca/rwl2003/

13 This is a CD of many high-quality Open Source programs for Microsoft Windows. http://www.theopencd.org