

## Big Government, Big Business and Big Trouble

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One of the enduring myths of the modern age is that big business and big government are, or ought to be, natural enemies. This myth is an article of faith all across the political spectrum, from the progressive left to both the neoconservative & neoliberal right. Progressives dream that big government, once rid of "corporate corruption" will free us of big business' clutch, while neoconservatives and neoliberals have the opposite dream, that companies like Microsoft will liberate us from the tyranny of state. One hopes that two particular news items of the last week will put the myth to rest, two new bills before Congress which paint a chilling picture for us as citizens and as consumers. The first is the Consumer Broadband and Digital Television Promotion Act (CBDTPA). The second the Peer-to-Peer Piracy Prevention Act (P2PPPA). The bills are extensions of the already intrusive Digital Millennium Copyright Act (DMCA), Hollywood, unsatisfied with the tools of the DMCA, has put on the bulls' rush for DMCA part 2, which will legislate that the electronics, books, movies and music you buy will no longer be your own. The CBDTPA will require that ALL electronics sold in the US have hardwired copy protection, standards to be agreed upon by the entertainment industry, the electronics industry and the FCC. Absent from any considerations are the actual consumers, whose discretionary income supports the entertainment and electronics businesses and whose tax dollars support the bureaucrats and politicians who presume to rule us. The P2PPPA will legalise cyberterrorism by the entertainment business in support of their copyright claims.

### With Friends Like These, Who Needs Enemas

Both measures were introduced by Democrats, with full support from Republicans, like the DMCA, the measures are broadly popular with politicians from across the spectrum. Both new bills are disturbing, and for the same reason, they each presuppose that we, the informational consumers, can not be trusted with the data we buy. As such, in the future, our informational appliances will spy on us (by logging all of our informational usage) and informational providers will be free to take whatever private measures they deem necessary to enforce their claims (I'll address this presently). Congressman Howard Berman's (D-California) bill, the P2PPPA, is truly evil, as it raises a slew of dangerous questions that all seem to get the same answer "Don't worry, you're safe." What good is a law that allows data brokers the right to take private countermeasures to enforce their claims without granting them the right to monitor? Beyond that, the information industry will now be empowered to attack your data, both the data you buy and the data you self generate, to enforce their claims against you. If you, like myself, archive your email correspondence, you will need regularly back it up off the hard drive as Hollywood will be empowered to crash your hard drive for what **THEY** judge to be an improper use of information. I have read the constitution before, I have even read my convoluted state constitution, they both grant me due process, if you have a claim against me, you are free to action me and we can hammer the matter out in court. Now data suppliers can feel free to attack you to enforce their claims without having to deal with those pesky courts.

The entertainment business has had rapid response from Congress on all their demands, from Congress' midnight theft of the intellectual property rights of musicians in 1999, to the DMCA, and Congress' continuous altering of copyright laws to benefit the distributors of information over consumers and even the actual producers of the information that they're selling. The progressives (and to a lesser extent, the anarcho-socialists) amongst you will argue that this proves the system is corrupt and that the solution is publicly financed elections and a host of new regulations to control corporations, but the cure is worse than the actual problem. Large organisations move slowly, when they move quickly the result is normally something like Nazi Germany. It is difficult for the federal government, given its ponderous size, to control the actions of individuals, big business is, and has always been, the natural ally of big government.

It is the same for all big business, across industries, they may not get the response that the big media industry has received, but Congress has in the last ninety years acted to protect the interests of large business over consumers and smaller competitors. With the entertainment business, however, there is a lot more at stake, they get a quicker response than other industries for a reason, that reason is the product they distribute, data. When dealing with physical items, there are scarcities to overcome, the less common the product, the higher the price that a distributor can command, hence auto makers produce limited edition models that carry a higher price tag. A blight in the world's coffee crop and the price of coffee goes up, steady demand with a diminished supply means higher prices. It is the law of supply and demand, and it is inexorable, and this is bad news for one industry in particular, the one industry where there are no natural (not since the dawn of the network age) scarcities to exploit. The infotainment business.

All data, words, pictures, film, music, etc., can be expressed as a series of zeros and ones, which means, in a sense, that Sony, AOL Time-Warner, Sun Microsystems, IBM and Microsoft are in the same business, data brokering, and that is why Congress acts so quickly for them. Whether the information being sold is news (publishing), multimedia or software, these businesses deal in information. Congress (big government) acts rapidly on their behalf because of the fringe benefits. Restrictive laws to enforce industry views of copyright law will radically increase the monitoring of personal information, you can not have the one without doing the other. The reason is that the information industry believes that copyright law allows them to charge on a pay per use basis. That you, as an informational consumer, are not allowed to back up the information that you purchased, and if that data (or the medium it was shipped on) is damaged, corrupted, or otherwise destroyed, you are required to repurchase the data rather than simply restoring it from your backed up copy. Even if the damage is the fault of the data supplier, you the consumer are still required to pay for the replacement/repair (as consumers are regularly required to pay to upgrade defective Microsoft software). How can the informational business ensure that you aren't using backed up copies of the data you bought from them without extensive monitoring of your system? Any system of extensive data monitoring will include self generated data, how else to ensure that you aren't a data thief? This includes monitoring emails, after all, you could easily be transmitting copyrighted data to others via email. But this means that people will scan personal emails meant for close friends, relatives, spouses, lovers, etc. The government's claim that it will be the watchdog, however, is a flat out lie. Washington downplays this aspect because if the American people were fully informed on the extent of the monitoring involved, the resulting outrage would endanger the jobs of anyone that voted for them.

### The Future of Data Consumption

The two proposed bills would drastically increase the data monitoring of individuals, and this IS a constitutional crisis, because for the first time, by an act of Congress (the P2PPPA), private interests will potentially be empowered to enforce their interpretations of the law by use of electronic coercion. This means that the entertainment business would no longer need lobby Congress as extensively as they do at present, because in the future (presuming the bill passes), no matter what Congress dictates, what will be important is the industry's interpretation of the law. No more courts means no more judicial oversight, and no more constitutional protections for American citizens. What happens if a copyright holder doing monitoring, such as the Church of Scientology, elects to use the information for blackmail purposes (a practice which they've been accused of in the past) and there are no courts to protect the citizens? How do we control the manner in which the privately gathered intelligence is used? Will copyright holders/distributors begin exchanging information for money? A brave new world indeed.

There are other problems with these two bills. The technological questions surrounding the CBDTPA alone are a nightmare. How do you deal with limited informational appliances such as CD players? How are they to be hardwired? Does this mean that in the future CDs will come with digital signatures that the CD player will recognise? How do you update the CD player to recognise new signatures? Will the new chipset disable the use of consumer burned CDs? Does this mean that we'll be forced to continuously buy new hardware that has an up to date chipset? That last would be one way of getting hardware makers to agree, because they will be the ones charged with sorting through this nightmare. VCRs will, of course, be illegal in this new world, as there is no practical way of controlling them. Informational appliances such as TiVo will now be de-networked, as people will no longer be allowed to burn DVDs of content they recorded to the hard drive. What of peripheral manufacturers? There are going to be some nightmarish questions of what can and can not be burned onto a CD/DVD. How about scanners? It is no secret that in recent years wedding photographers have been cheating their customers by asserting copyright claims after the fact (and while I am all for photographers getting copyright protection, surely wedding photos are the very definition of a work for hire), and forcing their customers to pay even more for the privilege of letting others see the work. How will the scanner know what is protected and what is unprotected? Will old fashioned cameras be outlawed in favour of digital ones?

Looking at the informational spectrum, while the entertainment end of the spectrum is publicly celebrating, the software/data end is more pensive. Some members of the informational economy see problems with allowing the technologically inept make everyone's technology choices. In theory, they would have a voice, but even they have to know that entertainment businesses hold more sway in the debate. Beyond that, many software companies forego copyrighting in favour of more open standards (open source, etc., generically referred to as copylefting), what happens to them in an informational world where copyright is everything?

This is not to say that all the software industry is reluctant, because there is one company that embraces the brave new world of intrusive digital rights management. One company that has an overarching vision of how DRM should be handled. That company is Microsoft, and their system of DRM is code-named Palladium. Be afraid. Be very afraid.

### **From Virtual Monopoly to Virtual Government**

Shortly after Bush took power, the new Justice Department met with Microsoft officials, and suddenly, despite holding a winning hand, the Justice Department announced that it was dropping most of the successful antitrust lawsuit, and settled for some irrelevant restrictions that would in no way hinder Redmond's monopoly, nor in any way interfere with their stated intention of extending that monopoly. Sometime later, news of Microsoft's DRM Operating System, Palladium, spilled out. Palladium's biggest backers? The federal government and Hollywood, of course.

If you look at the End User License Agreement (EULA) that MS currently distributes (both with Windows XP and security updates) you will find this little poison pill, "*You agree that in order to protect the integrity of content and software protected by digital rights management ('Secure Content'), Microsoft may provide security related updates to the OS Components that will be automatically downloaded onto your computer. These security related updates may disable your ability to copy and/or play Secure Content and use other software on your computer. If we provide such a security update, we will use reasonable efforts to post notices on a web site explaining the update.*" In other words, to install a software patch to correct a problem created by the incompetence of Microsoft's programmers you need to agree that your computer is no longer yours. Microsoft is assuming for itself the root privilege on your machine and that is the basis for Palladium, a new type of computer that will identify you the end user to the "trusted" third party (Microsoft) in EVERY internet transaction, for validation purposes. The practical meaning is that Microsoft will be assuming for itself the right to levy taxes, not just here in the U.S., but worldwide. Beyond that, as Microsoft will now be the root owner of your machine, ALL software will need a valid license from Microsoft to function on the Palladium platform. Don't want to play ball? That's OK, you don't have to, but your software will only work unhindered on end users that have removed themselves from the system. Have a look at this article on The Register ( <http://www.theregister.co.uk/content/4/25891.html> ) website for one view of this dark Gatesian future.

You say that you'll protect yourself and stick it out with you current machine for a few more years and buy a non-Palladium "enhanced" machine? I hope you have no interest in buying books from Amazon, or auctioning things on eBay, or buying CDs from any online service, or banking online, or paying bills online, because MS will be needed to verify the transaction whether or not you want them to. Of course, for providing you this "service" they, the trusted third party, will be charging a fee to parties one and two, which really means you as the party you're doing business with is just passing the cost onto you. They could not hope for the scheme to work in a free market, of course, because there are less restrictive ways of creating more secure transactions over the internet. That is where the Hollywood and the U.S. government will come in. Naturally you will insist that I am being conspiratorial, but, how about this little news nugget from Wired ( <http://www.wired.com/news/business/0,1367,54141,00.html> ). The government of Peru is on the verge of passing legislation that will mandate the use of open source software by the government, because open source software and operating systems are inexpensive and relatively secure, in other words, they are nothing like Windows. In the midst of the debate, with other poor Latin American countries looking on, to see how Peru's experiment goes, Microsoft has enlisted the aid of the U.S. ambassador to Peru to help defeat the legislation. Excuse me? Aren't we spending millions of dollars to keep them from spreading their monopoly? Why are appointed officials then intervening on their behalf around the world? It's the information stupid.

Undoubtedly you wonder why I would have all these concerns about a law I believe to have long outlasted whatever use it ever had. If the federal government wanted to end the Microsoft monopoly, it could do so tomorrow, by barring the purchase of Microsoft based solutions by government at all levels, and standardising government data exchanges on non Microsoft file formats. The antitrust case was a waste of money, and as the federal government spent the entire time of the trial further standardising on Microsoft solutions, what was the point? Now we are faced with a situation where Microsoft and the federal government have entered into a collusionary deal, the government gets use of the data gathering capacities of Palladium and MS gets promoted to Chief Information Officer of the U.S. What good is antitrust law when the party we should be suing is the government itself, which we can't because it possesses limited sovereign immunity.

The federal government has no qualms about promoting Microsoft to the status of a virtual government, and when the time comes, will declare Palladium (or its successor) to be the official standard, and strong-arm the citizenry into compliance, while Hollywood cheers them on. Why? Because Palladium is the ultimate spyware, the ultimate weapon to turn against the citizens, now our financial and interpersonal transactions will be an open book. The ultimate collaboration between big business and big government, one can not survive without the other. Big businesses absent strong all encompassing central government do not bring us the world we are facing, because absent reams of regulations and regiments of bureaucrats, smaller competitors always topple larger less mobile ones. Neither is big government truly possible without big business, because without private generators of wealth, there are no tax revenues to support the state, and the eventual result is the Soviet Union, where everything is made with bad concrete and no one really works and no one really gets paid. Both the CBDTPA and the P2PPPA were introduced by Democrats, and widely supported across party lines and even political philosophies. That is how it should be, big business and big government are allies, not competitors, learn the lesson while there is time.

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