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## **e-Patents threat EU knowledge economy, parliament votes June 30, 2003**

### **Introduction**

The European Parliament will vote on a disputed directive about patenting software on June 30. Both developers from Small and Medium sized Enterprises (SME) and Free and Open Source Software are furious and reject it.

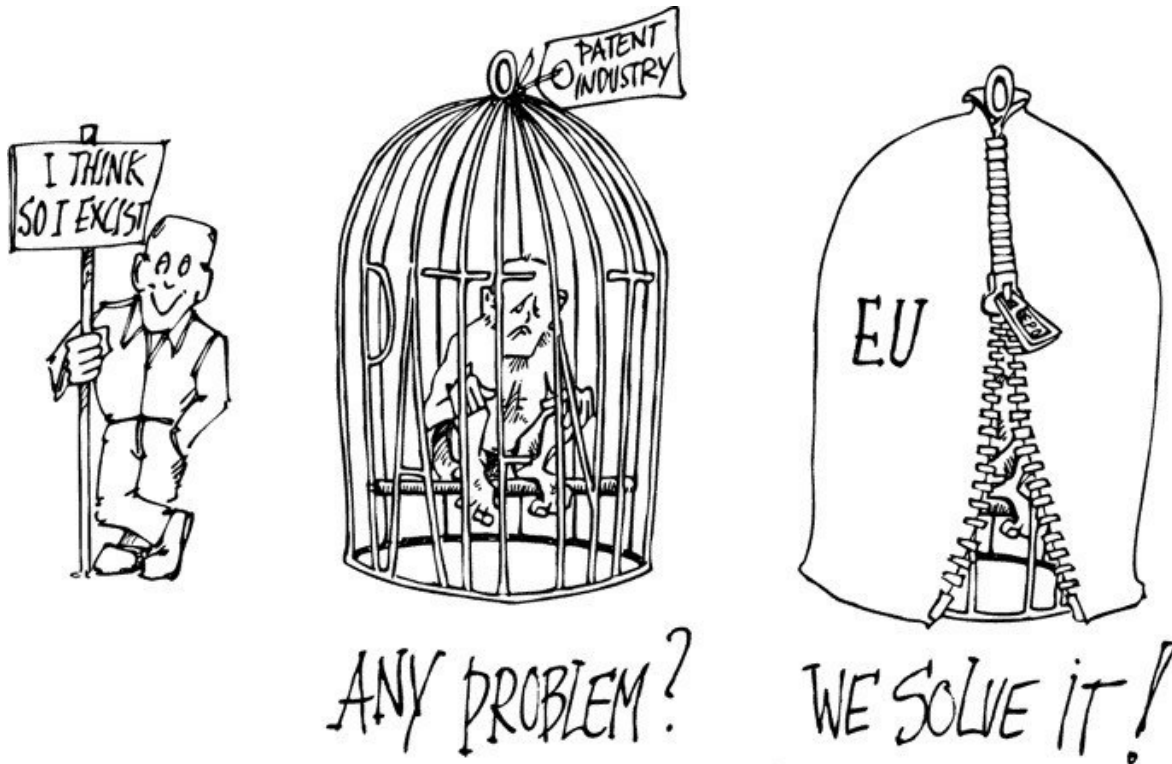
Writing software looks like something very technical to many people, but for programmers writing software is like writing a book with characters and words or composing music with notes. They don't think software patents are needed because copyright offers enough protection. In particular they are afraid software patents undermine their, by copyright obtained, property.

### **Block your competitor**

In the United States, where patents don't need to have a technical "nuts and bolts" character, the results of software patents begin to show their draw back. Amazon has a trivial patent on "1-click ordering", where information from a cookie (a standardized way a server leaves a piece of text on your computer) is sent along. This software patent without doubt serves one goal: blocking competition (Barnes & Nobles). However this software patent has a blocking affect on e-commerce in general, far beyond selling books on line, it harms consumers at the same time. EU-rapporteur Arlene McCarthy (labour), who is responsible for the directive publicly states she is opposed to software patents. This may be sincere but experts demonstrate "1-click ordering" is patentable in Europe too.

### **Harmonizing? Or covering mistakes?**

Then why proposing a new directive when permitting only copyrights to software is the best and easiest way according to current law? The official reason for this directive is "harmonization", but it looks the proposed directive tries to cover a patent mess. The European Patent Office has drifted away from law. Now, the Commission has proposed directive COM(2002)92, against the opinion of professionals and economic studies, to cover for these irregularities. The directive would allow software, currently under copyright, to be patentable, contrary to the European Patent Convention from 1973 (which wouldn't be changed). Since the EPO has already illegally granted more than 30.000 patents on software, mostly to USA or Japan companies, the directive, while legalizing them, would leave foreign companies at a competitive advantage over European software houses.



## Saying is not acting

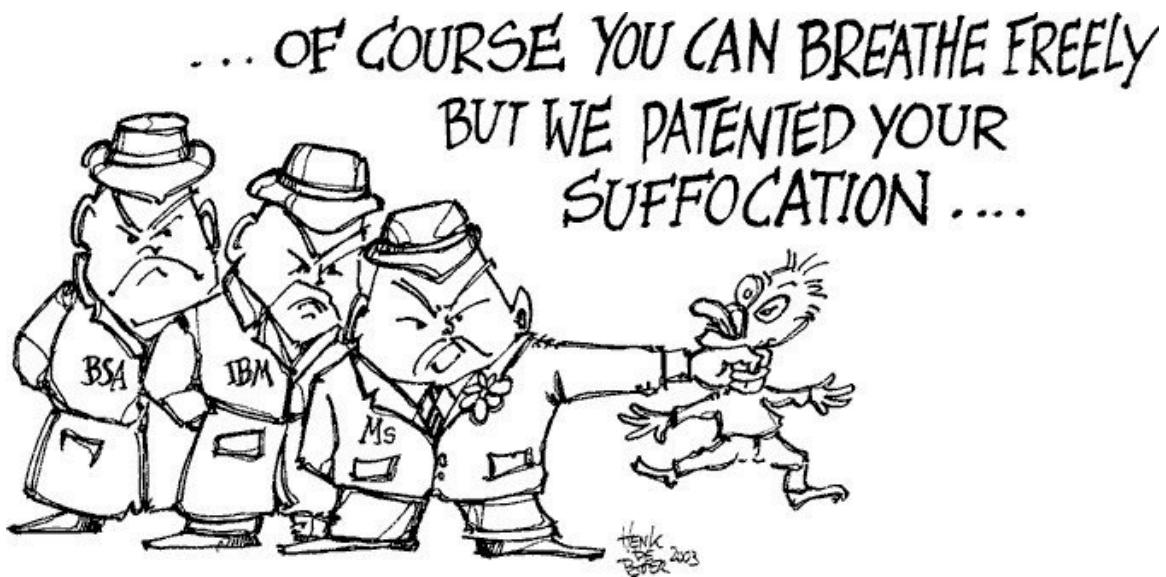
Legalizing software patents in the EU is also inconsistent with the e-Europe strategy and the will to lead the world knowledge economy in the next decade: Free and Open Source Software will suffer from it and the widest used license, the General Public License, is even incompatible with software patents.

The economical impact of Free and Open Source software is hard to measure. To mention just one group: worldwide there are 35 million internet servers. 25 million depend on Open Source Software. If software patents paralyse SME's and Free and Open Source Software and proprietary software from monopolists is needed to replace it, the effect is devastating for EU and world economics. Since we don't have software monopolists in Europe the software industry will collapse further in order to grow outside EU.

Amendments are used to improve the proposed directive. Amendment (ITRE-15) was accepted in JURI (legal affairs and internal market commission) and should protect when exchanging data between system while a software patent is applicable. Internet protocols like TCP/IP and HTTP are in public property. Microsoft and IBM are building a toll booth for some new proprietary protocols and software patents are the tools to force internet users passing by to pay. It is questionabe if such an amendment really offers protection.

## And the winner...

Parties that benefit from software patents are besides EPO some multinationals seeing it as a way to monopolize their market position. Other multinationals use them defensive and feel they are forced to patent software. Some, like Sun Microsystems, even don't like them but need to patent software when cooperating with third parties. IBM has the record with 10.000 software patents. The US Trade Representative lobbies in European countries to harmonize with the US system. A huge amount of money, estimated on tens of billions of Euro's, flow over the ocean to developers of shrink wrap software packages every year. Finally on the seamy line of our community we find companies, patent lawyers and individuals exploiting the blocking effect of software patents within the legal framework to bargain with corporate giants and competitors.



## Patents replace R&D

McCarthy did not copy the conclusions from high quality studies ordered by the EU. A recent and respected quantitative study is "An Empirical Look at Software Patents" by Bessen & Hunt. They conclude: "Software patents as an investment are not an addition to research and development but form a replacement for R&D". This should be a very alarming conclusion. During the EU JURI voting on June 17 McCarthy suggested to lower the patent threshold for SME's. Bessen & Hunt is very clear on this: "We can reject naïve arguments that more patents, relaxed standards, or lower patenting costs lead to more R&D".

On May 8 there was a hearing in Brussels with a diversity of speakers. MySQL's CEO complained every day a patent lawyer walks in his office with an accusation. An entrepreneur stated firm: "I want to compete based on innovation, not based on the amount of patent we own". A capital investor said after a capital injection her clients were destroyed or swallowed by competitors using software patents as their weapons.

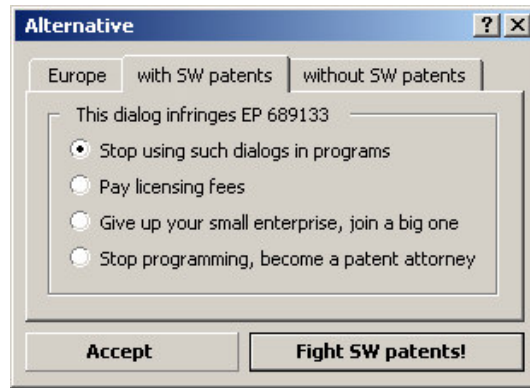
After this hearing a clear message was formulated: "Software patents decrease innovation and competition and put European industry at risk" and advised the European parliament to: "reject or rewrite the proposed directive" and "bring the European Patent Office under democratic control".

A special speaker was Richard M. Stallman, founder of the Free Software Foundation who made himself very meritorious from 1984 on an international level. During a later announcement he said: "Software patents are like landmines for programmers. At each design decision, there is a chance you will step on a patent and it will destroy your project. Considering the large number of ideas that must be combined in a modern program, the danger becomes very large".

On June 23 it was announced Richard Stallman together with Noam Chomsky and Hans Blix is given a honorary degree at the Free University of Brussel for his merits. It is very ironic to realize the voting on June 30 in the same city can damage the same work he is honored for.

## Software patents in daily life

Software patents are not only a political or developer issue. Once legalized they will influence our daily life. A representative example is patent EP689133, described as: "the 3 dimensional use of your computer desktop". In other words: ordinary dialogue boxes with tabs. Who doesn't use them when for example giving a print command?



The patent owner Adobe sued Macromedia for infringing. Macromedia had to pay \$2.3 million. Who is next? Thinking this is a fight between giants is wrong, they have a habit to settle it outside the court by cross licensing. EP689133 is just one of 30.000 waiting to be legalized in Europe.

### Turning back the clock to 1973?

To quote MEP Malcolm Harbour on behalf of his group and the directive's shadow rapporteur Juergen Wurmeling during the recent JURI session: "And I think from all the lobbying and the many emails that many colleagues have dealt with, I think there is now emerging a general view, that doing nothing is not an option... .. This is an entirely new field. And whenever we have to deal in this Parliament, between issues where we have a crossover between technology and legislation, there are always going to be difficulties."

Is this another way to say: "Doing nothing is not an option. Forget about copyrights, adopt the directive and let the community pay the immense price of 30.000 mistakes made by EPO"? On the other hand rejecting the directive makes 30.000 patents worthless which is hard to explain to software patent holders.

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