

Dear MEP,

On September 1st, directive COD/2002/0047 on the patentability of computer implemented innovations will be presented to the plenary. It is widely believed that this directive will damage our economy but given the resources required to take the directive this far, many MEPs are looking for a list of amendments to fix this directive rather than vote No. At the end of this letter I will do my best to give such a list, but first I want to outline why if all the amendments on this list are not adopted, a No vote will be justified and required.

The term “software patents” is often used but it must be noted that the type of patents created by this directive do not cover complete pieces of software or specific implementations of an idea but ideas implementable through software. Business and teaching methods involving software will be included.

Why is this issue so serious?

When contemplating adding restrictions to software development, we must look at it not only from the point of view of the software industry but every software **using** industry. Negative effects on the quality or price of software will harm almost every company and individual in the European Union. Patents are private property; if legalised now, it will be impractical to revoke them later.

Trying to reduce the damage:

Pro-patent companies say that the EU won't suffer the over-patenting problem that American does because our patent offices will be more conservative about approving applications. This cannot be relied on. A patent is an asset created without raw materials. In a patent system, countries that hand out the most patents reap the largest rewards, also, patent offices get revenue from the applications they approve, not the ones they reject. Increasing patentability is a slippery slope and there is no incentive to consider the affect that restricting use of the technology will have on Europe's citizens and industries.

Incompatible timeframes:

When a patent is approved, it's claims are not made public for 18 months. This gives companies a period of privacy. In the software industry this is long enough for a complete development and marketing cycle. A company could have a new piece of software in widespread use before it's even possible to check if it infringes existing patents. Unbounded legal uncertainty would arise. The twenty year term of patents is also out of sync with the software market. Patents exist to give inventors a head start in developing their idea. In the software industry twenty years is far too long.

Ease of complexity:

Developing most patentable inventions requires an investment in materials, tools, production facilities, testing equipment, safety certification etc. However, software can be developed by anyone with programming experience and a PC, no material limits currently exist. In just a few decades we have been able to develop software packages comprising hundreds of thousands of components. Software is a relatively new industry, thousands of new and old ideas are incorporated into each new product. Companies with enough resources could accumulate near limitless numbers of patents.

Inter-operability:

The need for software packages to inter-operate lends itself to market monopolisation. Systems are more productive if data and user knowledge is transferable between different packages. For a package to compete with the current market leader, it must handle common document formats, and present the user with a recognisable interface. For market competition, new packages must be allowed to build on existing practices. Companies with large patent portfolios would have a legal tool to enforce monopoly status. Governments would have difficulty regulating these legitimate monopolies.

Collaboration and quality:

Software companies currently collaborate to everyone's benefit. For example, MySQL AB develop a database package. Other companies can integrate this database into their own packages (for a fee). This type of collaboration reduces the development time of new products that require a database, and allows many companies to make use of widely tested software. If software becomes patentable, companies will have to ask "*does this code infringe any patents, will it get us sued?*". These questions would be impossible to answer. Collaboration would become a risky practice.

Software development resources:

Software development companies would have to regularly perform patent lookups while developing software, development resources would be diverted to legal issues. Development would have to be done cautiously, thus slowing innovation. Even the threat of a patent infringement charge would damage a small companies trading prices, whether the charge was true or not.

The American solution:

In America, large software developing companies find it impossible to develop new software without infringing a few patents. Companies with large patent portfolios solve this by cross-licensing, thus forming patent sharing agreements. These companies can continue developing software but small and medium sized companies are locked out. Stagnation benefits market leaders, it allows them to maintain their revenues without the burden of competition.

The new American problem:

A parasitic class of intellectual property firm is appearing. These small, usually new firms buy the patents of cash strapped companies and with nothing to lose, start suing anyone that they think they can get money out of. European companies would present an array of new targets for legal action and collection of royalties, a lot of money will start flowing from EU companies to America.

The company development problem:

Laura Creighton, a european venture capitalist, gave testimony at a software patents hearing in the European Parliament in May. She said that investing in small companies would be risky if software patents existed because a cash injection would simply draw the attention of the above noted intellectual property firms. Without such cash injections, companies will find it harder to make the transition from small to medium sized enterprise. By impeding the growth of successful small companies, competition and employment will be hurt, and many innovative products won't reach the market.

Telecommunications research:

One global telecommunications company has claimed that software patents are required to make research economically viable. We are asked to believe that without software patents, research will cease, and an alternative approach will not be found. They omit that many of the telecoms biggest successes (such as VOIP) are based on patent-free technologies funded by agencies like CERN.

To fix this directive:

Please vote Yes for all amendments from the CULT committee. Vote Yes for thirty-three of ITRE committee's forty-six amendments, vote No on numbers 2, 5, 6, 7, 20, 27, 30, 31, 34, 35, 36, 41, and 42. When amendments voting is over, if CULT/Rocard, Greens/EFA and EDD don't all endorse the amended directive, vote No. If any of the CULT committee's amendments are rejected, vote No.

Yours Sincerely,

Ciaran O'Riordan, *on behalf of the people listed on the following page.*