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Position on Software Patents

Computer implemented inventions must not be protected by patents

Position of the Greens in European Parliament on the directive on the patentability of computer implemented inventions

The Greens support protection of software (be it free or proprietary) by means of the copyright - which is currently the case under a 1991 directive. In the European legal tradition, expression of ideas, information, ... enjoy the protection of the copyright, while patents protect technical inventions. Copyright and patents are two different legal systems, for the sake of simplicity one can say that the first is for the world of ideas while the second system applies to the material world.

Software patents are much more than a technical issue : it is an issue of culture, of knowledge because software patents would open the door to patenting knowledge for the first time in the EU. This would be a dangerous precedent.

Software patents an economic issue : they harms SMEs and hinder innovation. They reinforce monopolies. Not only are patents very expensive to obtain and to maintain, but the patent system means that one has to pay IPR lawyers to claim and defend one's rights. Patent holders can legally attack other companies and software developers to claim ownership of algorithms. Those who can afford it build up patents portfolios, which they use to dictate law to others. To use patented algorithms, developers have to pay - the patent holder can legally refuse to sell. SMEs cannot afford such a lost in money and in time, let alone free software developers and scientific researchers.

Software patents are a European-wide political debate : across the EU, communities and individuals who oppose software patents share the same concerns and express these concerns publicly.

The Greens seize the debate on this directive to question the illegal practice of the European Patent Office (EPO), based in Munich, which has been granting patents since 1986, and is yielding the benefits of it... while the Patent Convention (1973) explicitly bans software patents (article 52 c EPC). The EPO has already been the target of criticism by EP in the resolution on the marker gene of breast cancer. During the vote on the software patents directive, the European Parliament adopted several amendments questioning the transparency and democratic accountability of the Patent Office.

The Greens support the legal harmonisation in order to clarify the legal protection of software and to create a secure environment for software developers. Invention can of course be patented, meaning a teaching about a relation from cause to effect in the implementation of controllable forces of nature. In order to be patented, the invention must be new, non-obvious, and destined at an industrial application. A software is not an invention.

This definition of invention is very similar to the position that the European Parliament adopted in September 2003 during the first reading of the directive - to the anger of the rapporteur Mrs. McCarthy, a social-democrat MEP from the UK.

The Greens now call on the Council of Ministers that meets on 17/18 May (Council Competitiveness) to take in account the result of the vote in European parliament, that modifies the text of the European Commission and refuses software patents. The second reading is expected next Autumn.

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