

Software Patents and European Lobbying

*Benjamin Henrion <bhenrion@ffii.org>, FFII (BE)
Jeroen Dekkers <jeroen@ffii.org>, Vrijschrift (NL)*

*Sun 31 July 2005
What The Hack Conference*

*“ This directive is **only** about patentability of medical scanners,
intelligent vaccuum cleaners, or advanced braking systems ”*

-- (Irish Presidency, Council Press Conference, 18th May 2004)

Table of contents

1. Introduction
2. Why a directive?
3. History of the directive
4. Viva Propaganda
5. Lobby Frenzy
6. Xparty
7. Future
8. How did we do?
9. Who to lobby?
10. New directives

1. Introduction

- ⇒ whois FFII.org
 - 3000 software companies
 - 90000 supporters
- ⇒ 4000 wiki pages
- ⇒ people all over Europe
- ⇒ mailing-lists
- ⇒ swpat RSS news feed

2. Why a directive?

⇒ 1973: European Patent Convention

⇒ Art 52.2:

*“Are excluded from patentability:
(c) schemes, rules and methods for performing
mental acts, playing games or doing business,
and programs for computers.”*

⇒ Art 52.3:

*“The provisions of paragraph 2 shall exclude
patentability of the subject-matter or activities ...
only to the extent to which a European patent
application or European patent relates to such
subject-matter or activities as such.”*

2. *Why a directive? (2)*

- ➔ Program for computers “as such”
- ➔ EPO has delivered more than 30k software patents
- ➔ Remove “program for computers?”
- ➔ 2000: attempt to remove it failed
- ➔ Start a directive to make software patentable!
- ➔ Directive on “**Computer implemented-inventions**”
- ➔ What The Name?

3. History of the directive

- ⇒ **Feb 2002:** Commission proposal
 - Collusion Commission/BSA discovered
- ⇒ **Jun 2003:** JURI vote in favor of swpat
- ⇒ **Sep 2003:** Parliament votes to forbids software patents, only ABS-style patents
- ⇒ **May 2004:** Council of ministers votes for swpat and business methods
- ⇒ **Nov 2004:** Poland realises
- ⇒ **Dec 2004:** Thank Poland!
- ⇒ **March 2005:** Restart + Banana Republic + Refusal
- ⇒ **July 2005:** Parliament rejects the directive

4. *Viva Propaganda*

- ⇒ Council text: unlimited patentability for software
 - Art 5.2: you cannot claim a patent on a computer program unless ... [blabla something which is **always true**]
 - so you can always claim a patent on a computer program !!!
- ⇒ Parliament have 3 monts to get 367 votes over 732 to change the text!
- ⇒ Mega-corporations moves to Brussels!
- ⇒ Red alert!

4. Lobby Frenzy

- ➔ Pile of 5cm of pro-patent letters
- ➔ Astroturfing
- ➔ Proxies
- ➔ SMEs full paid travel
- ➔ Many lobbyists hired in Brussels
- ➔ Nice meals
- ➔ Nice leaflets
- ➔ Huge budget (estimated to 30M EUR)

4. Lobby Frenzy (2)

- ➔ Campaign for Creativity
- ➔ Who are they?

We now have hundreds of supporters across the UK who are concerned that the creative industries are not eroded and that it adapts to new technologies in a calm and sensible way. You can contact Simon at simon.gentry@campaignforcreativity.org

Who do we represent?

We represent the interests of our supporters - whether they work in the fields of decorative arts, design, engineering, IT, music or the performing arts.

Although our campaign represents individuals, we do have a number of companies and organisations that support us. They include :

3D-ID
Action Images Ltd
Glold
Invalope
SAP
Softwide Ltd
Think Big
Tripperlight
Microsoft
WIBU-SYSTEMS AG
CompTIA

We now have hundreds of supporters across the Union working to ensure that it is not eroded and that it adapts to new technologies in a calm and sensible way. You can contact Simon at simon.gentry@campaignforcreativity.org

Who do we represent?

We represent the interests of our supporters - Europe's creative communities whether they work in the fields of decorative arts, design, engineering, IT, music or the performing arts.

4. Lobby Frenzy (3)

- ⇒ Campaign for Creativity Video
- ⇒ What do they say?

4. Lobby Frenzy (4)



4. Lobby Frenzy (5)

- ➔ Business Software Alliance (BSA)
- ➔ Spam all patent holders at EPO
- ➔ Print SME names with patents at EPO

taint.org: BSA Spams Patent Holders

Spammed postcards in the post this morning. I was surprised I'd never received anything from the BSA before. It was an email with a list of names and addresses from the European Patents database, and a letter. So a lot of these letters have been probably been sent to SMEs.

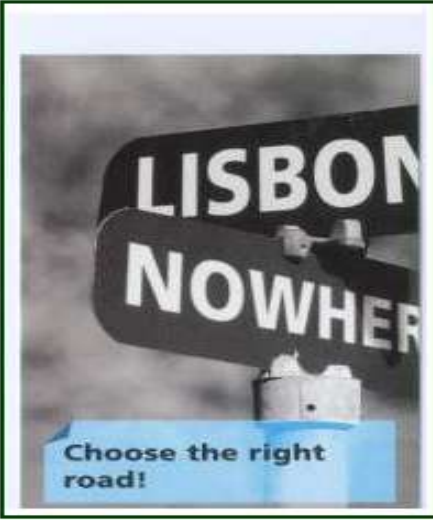
...**ance**, the draft directive is being turned around to protect SMEs' intellectual property assets'.

...however the BSA's letter has an important message for European representatives (your MEP and your MEP's office) in the next few weeks. Let them know that the European Union is not for all.

...MEP at the address given on [this page](#).

...ME's don't benefit from patents. Few patents are maintained and defending them is crippling.'

...the position of rapporteur for the directive. Please *do* write!



5. Xparty

- ⇒ Bits about the JURI vote
- ⇒ Goal: 367 votes
- ⇒ Politicians follows
- ⇒ 21 amendments
- ⇒ Sell a compromise package
- ⇒ Race for collecting 37 signatures
 - ALDE (Duff)
 - EPP (Buzek-Roithova)
 - PSE
 - Greens

5. Xparty (2)

- ⇒ Pro-patent lobby: vote for the Council version
- ⇒ Problems
- ⇒ Pro-patent lobby starts to be afraid
- ⇒ BSA + EICTA monday meeting?
- ⇒ EPP wants to reject
 - ALDE wants to reject
 - GREENS rejects by default
 - PSE wants to reject
 - So let's reject!

6. *Future*

- ⇒ Yet Another Victory Against Software Patents
- ⇒ A battle won, but not the war
- ⇒ EPO still out of democratic control
- ⇒ Integration inside the Community Patent?
- ⇒ Need to grow
- ⇒ Sign www.economic-majority.com!

7. How did we do this?

- ⇒ Grass roots lobbying, community-driven organisation
- ⇒ Wiki and mailing-lists for almost everything
- ⇒ Be honest and consistent

8. Who to lobby?

- ⇒ Commission
- ⇒ European Parliament
- ⇒ Council
 - National parliament/governments

9. New directives

- ⇒ IPRED2
- ⇒ Copyright extension
- ⇒ DRM
- ⇒ Data retention
- ⇒ Yet another patent directive

10. What do we need?

- ⇒ Strong European organisation
- ⇒ Build a network of people and national organisations
- ⇒ We need YOU!