Foundation for a Free Information Infrastructure
Software Patent Work Group

April 2005

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Call for Action III

In September 2003 the European Parliament voted to reaffirm the exclusion of software from patentability. Meanwhile, the Commission and Council have ignored this vote and set new precedents in undemocratic lawmaking. The undersigned call on the various players to do their part in remedying the situation.

We are concerned that

1. In recent years, the European Patent Office (EPO) has, in contradiction to the letter and spirit of the written law, granted more than 30,000 patents on rules for computing with conventional data processing equipment, below termed "software patents". These patents are as broad, trivial and damaging as their US counterparts.
2. In September 2003 the European Parliament voted to reaffirm the exclusion of software from patentability by codifying the original interpretation of the law, and to clarify the terminology of the TRIPs treaty by recourse to the traditional theory of technical invention, as found especially in the German caselaw from 1976 to 2002. The vote came after 19 months of deliberation in 3 committees and was based on broad participation and an extensive research literature. Yet the Commission and Council have refused to even discuss the problems addressed by the Parliament. Instead they have attempted to force the discredited EPO practise through a second reading in a new parliament, with tighter time constraints and higher majority requirements.
3. The Council's text pretends to exclude software patents, but in fact only makes existing exclusions meaningless and prevents any effective limitation of patentability. Most of the wordings used therein do not serve any purpose apart from soothing the consciences of ministers and parliamentarians.
4. The Council's decisionmaking was dominated by the very civil servants who run the EPO, and pushed through against the will of national parliaments. During the process, both the Council and the Commission have set troubling new precedents for undemocratic lawmaking in the EU.

For these reasons we call on the responsible legislative players to act as follows.

1. We urge the EU Council to explain, by answering the FFII's 23 questions, how its claimed "common position" on software patents of 7th of March 2005 came about.
2. We urge the European Patent Office to immediately stop granting patents on business methods and data processing rules and to revert to a correct interpretation of Article 52 of the European Patent Convention, as generally practised at the EPO before 1986.
3. We urge the members of Europe's national parliaments to take legislation on patent matters into their hands. In the short term, clear signals must be sent to prevent national patent offices and patent courts from allowing program claims.
4. We urge the members of Europe's national parliaments to bring the EU Council under control. At the very least, political agreements must be subject to parliamentary ratification, especially when they contain last-minute amendments.
5. We urge the members of the European Parliament to reaffirm the Parliament's clear position of September 2003, including everything that is needed to close the loopholes, or, failing that, to reject the directive entirely.

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