

This is a brief response to the consultation paper, 'The Patentability Of Computer-Implemented Inventions'.

As a software developer, I find the idea of software patents abhorrent, for several reasons.

The global information infrastructure depends on the use of open standards. Patents might have made sense in the days when products from one vendor did not interact with products from another vendor. However, computer programs are increasingly interdependent. For example, TCP/IP, the network protocol on which the Internet is based, is in the public domain. If its authors had patented it, we can be sure that the Internet would not exist today. Similarly, the growth of electronic commerce has been made possible by the existence of open standards for secure electronic communication. If Netscape had chosen to charge royalties for the use of its patented SSL technology, it is doubtful that it would have attained its present widespread use in electronic commerce.

As software patents proliferate, it becomes increasingly difficult, if not impossible, for most software companies to determine whether any given piece of code that they are developing infringes on one of the multitude of software patents in existence. The legal risks of writing any computer program could well become prohibitive. This factor alone could cause innovation in the software industry to grind to a halt.

Software patents cause the industry to waste time and effort. In some cases, when a patent covers an algorithm which everyone desperately needs, the industry as a whole works around the problem by creating non-patented alternatives. This is what happened to the encryption algorithm, RSA. (As a result, RSA has not renewed its patent, which expired this year.) This process wastes time and money. Moreover, the result is that the patent does not benefit its owner.

However, it is possible that a patent may be issued for an algorithm that is universally needed, and for which no alternative can be devised. In this case, we can expect several harmful effects. Large companies, which can afford to pay the licence fees, will flourish at the expense of smaller ones. Fewer applications will be developed using the algorithm in question, and they will cost more; it will therefore provide less benefit to society. Not only the software industry, but the world as a whole, will be held to ransom. That is precisely the sort of monopoly power that no company should have.

It is folly to think that software patents could be beneficial to the industry or to society at large. They can only result in hopeless legal quagmires, and in the stagnation of the software industry.

Yours sincerely,
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