

Business Software Alliance and Software Patents

<http://swpat.ffii.org/gasnu/bsa/index.en.html>

Workgroup

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BSA is an organisation founded in the USA and currently without official status in most European countries, controlled by Microsoft and a few other large members. BSA is specialised on copyright enforcement and, until recently, was uninterested in patents. Representatives of BSA in Europe have even pronounced themselves skeptical or hostile to software patents in public. However, during a recent campaign for the introduction of software patents in Europe, BSA's new *director of public policy*, Francisco Mingorance, became a close friend of the European Commission's patent lobby and even had a privileged opportunity to participate in the drafting of the directive proposal. Moreover, under Mingorance's direction, BSA became a supporter of extreme pro-patent positions. This is apparently not because Mingorance or BSA want software patents, but because it is Mingorance's job to entertain good relations with the European Commission, which again married the European Patent Office as a part of a strategy to transfer power from Munich to Brussels.

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*<http://www.ffii.org/~phm>

- **Introduction¹**

Why all this fuss about software patents and the European Commission's proposal of 2002-02-20 to legalise patents on computer programs? How did BSA get in there?

- **Business Software Alliance Comments to the European Commission Consultation Paper on the Patentability of Computer-Implemented Inventions²**

Philippe Tamussino, independent legal counsellor to BSA, applauds the EU patent department's consultation paper and says that the BSA, which represents a lot of software companies, including those in the opensource business, is very much in favor of software patents. Does not supply any examples but only abstract reasoning, basically applauding what is written in the EC paper and reiterating a few nice-sounding formulas that are frequently heard on patent lawyer congresses and that could be viewed as political formulas designed to avoid offending BSA members while pleasing the single most important member of BSA, Microsoft. It should be noted that some BSA representatives have in the past expressed opposition to software patents, and that the primary concern of BSA is copyright enforcement. Moreover BSA is concerned with establishing regimes that can be accepted by the vendor as well as the customer and gaining moral support for these regimes. Software patents are not a regime that can add to the moral acceptance of the software IP system. This paper is apparently contrary to the interests of many if not most BSA members and not based on any process of opinion formation within BSA.

- **Jamal Labeled, president of BSA France, warns that software patents unfairly put small companies at a disadvantage.³**

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²<http://localhost/swpat/papri/eukonsult00/bsa/index.en.html>

³<http://www.freepatents.org/news/e56410/e57028/viewEntry>

- **Commentaire du CLUSIF à propos de la campagne du BSA⁴**

an highly esteemed french organisation of computer security experts accuses BSA of irresponsible and illegal behavior in France, saying that the are conducting guerilla-warfare for copyright enforcement and violating other people's rights without being legally accountable, since they still are only an American organisation. Therefore also the name "BSA France" is fraudulent, CLUSIF says.

- **Francisco Mingorance⁵**

Apparent author of the European Commission's software patentability draft proposal. An expert in patent law affairs, with little affinity to the world of software, abruptly hired by BSA as a director of European public policy, immediately granted privileged access to the European Commission.

⁴<http://www.grd-publications.com/art/ls036/ls036058.htm#clusif>

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