

Divided European Parliament rushed to vote on software patent directive

<http://swpat.ffii.org/news/03/plen0620/index.en.html>

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Due to requests from the Socialist Group (PSE) of JURI rapporteur Arlene McCarthy, the European Parliament protracted the planned vote on software patentability from September 1 to July 1, just 13 days after McCarthy won the vote in the Legal Affairs Committee (JURI).

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1 European Parliament divided on software patents vote next week

The European Parliament Legal Affairs and Internal Market (JURI) committee voted last tuesday on the software patents directive COM(2002)92. The committee passed the rapporteur's draft with some modifications. The resulting report shows the opposing views in the committee. One third of the members opposed to the report, and only 3 amendments from the opinions of the Industry and Culture committees passed (2 of them despite the opposition of the rapporteur).

The result of the vote was found to be contradictory, and as British Andrew Duff MEP (Cambridge, UK, Liberals, ELDR) wrote, contrary to available opinions:

While I see the value of harmonising European standards, in its current form the Software Patentability Directive proposed by the European Commission unquestionably seeks to widen the patentability criteria laid down in 1972. As you are probably aware, both the Economic and Social Council of the European Union and the German Monopoly Commission¹ have strongly criticised the Directive, as have Liberal Democrats in this country². The Research Directorate of the European Parliament also produced a study³ that is critical of the attempt to construct a regime that does not explicitly limit the extent of patentability. It seems that we are on the verge of adopting a patenting regime modelled on that of the United States, at the very moment when critics in that country have begun to be forceful and articulate in condemning it. Regardless of the conclusions of the JURI Committee, along with my Liberal Democrat peers I will be working to amend the Directive as it stands.

Miquel Mayol i Raynal (Regionalist, Perpinyà, Spain) MEP lamented “that small and medium enterprises are being ignored, being them that generate most employment in Europe, and that a petition with over 140000 signatures and another with 30 of the most leading European computer scientists is disregarded”. For him “blocking competition and free creativity in software is not good for consumers or cultural diversity, and it is a serious problem for the European economic fabric.”

While claiming to restrict patentability and clarify the law without changing it, the committee rejected all amendments (passed in other committees, and presented in JURI too by MEPs from PSE, EFA/Greens and GUE/NGL) which would have defined the meaning of key terms such as “technical” and “invention”. Piia-Noora Kauppi MEP (Conservative, Finland) also endorsed these amendments after declaring in a panel at the Dorint hotel in Brussels, May 7th 2003⁴ that the European Patent Office “has

¹<http://swpat.ffii.org/papers/eubsa-swpat0202/mopoko0207/index.de.html>

²<http://www.ffii.org.uk/libdems.html>

³<http://swpat.ffii.org/papers/eubsa-swpat0202/dgiv0206/index.en.html>

⁴<http://swpat.ffii.org/events/2003/europarl/05/07/index.en.html>

been running wild”. Carles-Alfred Gasòliba i Böhm MEP (Liberal, Spain) stresses the necessity of these delimiting amendments:

Patents for material apparatus and processes represent an incentive for research and development of new technical solutions which otherwise would not be profitable to invent but would be profitable to produce from someone else’s research, without spending on laboratories, prototypes and experiments. Intellectual activities such as programming do not need this expense in empirical research. Instead, the expensive part is composing many rules and procedures in a coherent solution, effort which is already covered by copyright.

Therefore these two kinds of innovations must be separated, so that patents are granted only for new uses of controllable forces of nature, and not for data processing. Other amendments that should pass would be those ensuring interoperability, and that use and distribution of software is covered by copyright, not by patents.

The JURI report even allowed claims to programs on its own, on media or signal (patents forbidding publication or distribution of software, not only its use or inclusion in devices), despite the European Patent Convention stating that programs for computers are not inventions and therefore not patentable as such. Bernhard Kaindl, developer at SuSE Linux AG was worried about this decision:

Leading JURI committee members are not satisfied with putting the software industry at risk. They also want to make sure that every programmer will run afoul of patents as soon as he publishes a program on the web. While CULT and ITRE introduced safeguards for the freedom of publication, Arlene McCarthy is flatly ignoring these safeguards and instead recommending “compromise amendment 1”, which makes publication a direct infringement. It seems almost entrepreneurially irresponsible to go on selling Linux distributions under these conditions. If one of thousands of programs in our distribution infringes on one of tens of thousands of broad and trivial software patents granted by the EPO, we can be sued and forced to take our CDs from the market. [...] At a moment where public administrations are introducing free/opensource operating systems or using them to pressure Microsoft into price reductions, Arlene McCarthy and her allies seem to be joining Microsoft in its crusade to suppress free software. [...] Arlene McCarthy herself has openly attacked the GNU General Public License as “just another form of monopolism”. McCarthy and her ally Dr. Joachim Wuermeling have declined all invitations for dialog from our side and refused to reply to our questions. They are of course not obliged to talk to us. However, strengthening monopolies by handcuffing competitors is about the worst thing a government can do against itself.

The lack of clarity was already criticized by Reinier Bakels, one of the experts appointed by the JURI committee itself for a report, at a conference on May 8th 2003 in

the European Parliament. The rapporteur was asked⁵ to test her rules on given examples offered in an attempt at debate, but declined.

SAP developer Dr. Bernhard Runge does not need the test:

SAP has grown big by copyright, and being imitated was never seen as a major problem. We do not need protection by patents but rather protection from patents. SAP had to pay exorbitant extortion sums to some individual patent owners (among them professors from well known US-universities) with high criminal energy.

[...]

Our patent lawyers have meanwhile persuaded some people in the management that the EU directive is a good idea, because it would allow us to play the software patent game in Europe as well. But I think they are wrong and their thinking will not prevail in the company.

Contrary to what some of the directive's proponents say in public, this directive make algorithms and business methods patentable. How could it be otherwise? What else can there be to patent in our software, if not algorithms and business methods?

The Greens/EFA called the JURI decisions “disastrous” in their press release and cite their co-president Daniel Cohn-Bendit:

This patent report is an insult even to the principle of free trade. Pretending to protect inventors and their inventions, it instead allows multinationals to lock up the market.

Given these strong concerns in all political camps, there is ground for doubt on the chances for the report to pass the plenary next week.

2 Media Contacts

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More Contacts to be supplied upon request

3 About the Eurolinux Alliance – www.eurolinux.org

The EuroLinux Alliance for a Free Information Infrastructure is an open coalition of commercial companies and non-profit associations united to promote and protect a vigorous European Software Culture based on copyright, open standards, open competition and

⁵<http://aful.org/wws/arc/patents/2003-06/msg00047.html>

open source software such as Linux. Corporate members or sponsors of EuroLinux develop or sell software under free, semi-free and non-free licenses for operating systems such as GNU/Linux, MacOS or MS Windows.

4 About the FFII – www.ffii.org

The Foundation for a Free Information Infrastructure (FFII) is a non-profit association registered in Munich, which is dedicated to the spread of data processing literacy. FFII supports the development of public information goods based on copyright, free competition, open standards. More than 300 members, 500 companies and 40,000 supporters have entrusted the FFII to act as their voice in public policy questions in the area of exclusion rights (intellectual property) in data processing.

5 Permanent URL of this Press Release

<http://swpat.ffii.org/news/03/plen0620/index.en.html>

6 Annotated Links

- **Europarl to press ahead quickly with swpat decision, thanks to PSE⁶**
- **Re: Europarl to press ahead quickly with swpat decision, thanks to PSE⁷**
- **L'Observatoire: fiche de procédure⁸**

On thursday 2003/03/19 the voting date was changed from September 1st to July 1st, the first possible opportunity, only 13 days after the JURI vote.

- **programmation de travaux parlementaires pour la session⁹**

as of 2003/06/26 this page said that the vote would be on monday 30 as the 5th and final item of the last session of a long day's work. Last modification had been 2003/06/25 19:58

⁶<http://aful.org/wws/arc/patents/2003-06/msg00139.html>

⁷<http://aful.org/wws/arc/patents/2003-06/msg00142.html>

⁸http://wwwdb.europarl.eu.int/oeil/oeil_ViewDNL.ProcViewByNum?lang=1&procnum=COD020047

⁹<http://www3.europarl.eu.int/ap-cgi/chargeur.pl?APP=IRIS+PRG=REPRIEF+FILE=REPRIEF+SESSION=JUL-03+D>

- **Heise News-Ticker: EU-Parlament zieht Abstimmung über Softwarepatente vor**¹⁰

Heise Newsticker reports about strange Europarl procedure, cites FFII as source.

- **Brevetabilité logicielle : le vote du Parlement européen avancé au 30 juin**¹¹

The French press agency [Transfert.net](http://www.transfert.net) reports about the strange procedures at the EP, cites FFII.

- **Abstimmung auf Druck von SPE vorgezogen**¹²
- **Re: Abstimmung auf Druck von SPE vorgezogen**¹³

¹⁰<http://www.heise.de/newsticker/data/anw-20.06.03-003/>

¹¹<http://www.transfert.net/a9011>

¹²<http://lists.ffii.org/archive/emails/swpat/2003/Jun/0074.html>

¹³<http://lists.ffii.org/archive/emails/swpat/2003/Jun/0078.html>

- **JURI votes for Fake Limits on Patentability**¹⁴

The European Parliament’s Committee for Legal Affairs and the Internal Market (JURI) voted on tuesday morning about a list of proposed amendments to the planned software patent directive. It was the third and last in a series of committee votes, whose results will be presented to the plenary in early september. The other two commissions (CULT, ITRE) had opted to more or less clearly exclude software patents. The JURI rapporteur Arlene McCarthy MEP (UK socialist) also claimed to be aiming for a “restrictive harmonisation of the status quo” and “exclusion of software as such, algorithms and business methods from patentability”. Yet McCarthy presented a voting list to fellow MEPs which, upon closer look, turns ideas like “Amazon One-Click Shopping” into patentable inventions. McCarthy and her followers rejected all amendment proposals that try to define central terms such as “technical” or “invention”, while supporting some proposals which reinforce the patentability of software, e.g. by making publication of software a direct patent infringement, by stating that “computer-implemented inventions by their very nature belong to a field of technology”, or by inserting new economic rationales (“self-evident” need for Europeans to rely on “patent protection” in view of “the present trend for traditional manufacturing industry to shift their operations to low-cost economies outside the European Union”) into the recitals. Most of McCarthy’s proposals found a conservative-socialist 2/3 majority (20 of 30 MEPs), whereas most of the proposals from the other committees (CULT = Culture, ITRE = Industry) were rejected. Study reports commissioned by the Parliament and other EU institutions were disregarded or misquoted, as some of their authors point out (see below). A few socialists and conservatives voted together with Greens and Left in favor of real limits on patentability (such as the CULT opinion, based on traditional definitions, that “data processing is not a field of technology” and that technical invention is about “use of controllable forces of nature”), but they were overruled by the two largest blocks. Most MEPs simply followed the voting lists of their “patent experts”, such as Arlene McCarthy (UK) for the Socialists (PSE) and shadow rapporteur Dr. Joachim Wuermeling (DE) for the Conservatives (EPP). Both McCarthy and Wuermeling have closely followed the advice of the directive proponents from the European Patent Office (EPO) and the European Commission’s Industrial Property Unit (CEC-Indprop, represented by former UK Patent Office employee Anthony Howard) and declined all offers of dialog with software professionals and academia ever since they were nominated rapporteurs in May 2002.

¹⁴<http://swpat.ffii.org/news/03/juri0617/index.en.html>