

Economists Slam McCarthy Software Patent Directive Proposal

<http://swpat.ffii.org/journal/03/ekon0820/index.en.html>

Workgroup

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On September 1st, the plenary of the European Parliament will decide about a law proposal which would establish software patents in Europe. A group of economists from Europe and US specialising in patent questions have published a letter to members of the European Parliament calling them to reject the proposal, accompanied by an analytical paper which casts severe doubts on the reasoning behind the directive and on the methods employed by its proponents.

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1 Details

- **Economist's Letter**¹

economists expressing dismay at the economic reasoning in McCarthy's report and calling on MEPs to reject the CEC directive proposal

- **Economist's Letter PDF version**²

PDF version, lists more signatories:

Paul A. David, Oxford Internet Institute and Stanford University

Giovanni Dosi, Scuola Sant'anna Superiore

Dominique Foray, IMRI Universit Dauphine

Alfonso Gambardella, Scuola Sant'anna Superiore

Aldo Geuna, SPRU, University of Sussex

Bronwyn H. Hall, University of California, Berkeley and Scuola Sant'anna Superiore

Dietmar Harhoff, Ludwig-Maxmilians-Universität München

Peter Holmes, SEI, University of Sussex

Luc Soete, MERIT, University of Maastricht

W. Edward Steinmueller, SPRU, University of Sussex

- **Critique of McCarthy's Rationale for the Proposed Directive**³

critique on which the letter is based.

- **Arlene McCarthy 2003/06/18: The Need for A Directive**⁴

The text which sparked the economists' criticism: Arlene McCarthy's exposure of the aims of the directive.

Explanatory Statement by Arlene McCarthy. Slightly revised version of her draft report of February, without corrections but with additions, e.g. mention of a small company in an unemployment blackspot in South-west England which benefitted from voice recognition related software patents.

¹<http://www.researchineurope.org/policy/economistsletter.htm>

²<http://www.researchineurope.org/policy/patentdirltr.pdf>

³<http://www.researchineurope.org/policy/critique.htm>

⁴<http://www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//TEXT+REPORT+A5-2003-0238+0+DOC+XML+V0//EN&L=EN&LEVEL=2&NAV=S&LSTDOC=Y#Content597c68>

- **Economists 2003/08: Software Patent Directive based on Faulty Reasoning⁵**

A group of economists who study patent questions criticise the rationale with which Arlene McCarthy MEP and the European Commission's Internal Market Directorate their proposals for a European Directive "on the Patentability of Computer-Implemented Inventions".

2 Media Contacts

mail: media at ffii org

phone: Hartmut Pilch +49-89-18979927 More Contacts to be supplied upon request

3 Permanent URL of this Press Release

<http://swpat.ffii.org/journal/03/ekon0820/index.en.html>

4 Annotated Links

- **Economists 2003/08: Software Patent Directive based on Faulty Reasoning⁶**

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- **Software Patent Events Wednesday 2003/08/27 12.00-16.00⁷**

letter to MEPs citing the economists' petition

- **OECD Paris 2003/08/28-29: Conference on IPR, Innovation and Economic Performance⁸**

Some of the economists are participating in this conference on thu-fri
Aug 28-29

⁵<http://swpat.ffii.org/papers/eubsa-swpat0202/ekon0308/index.en.html>

⁶<http://swpat.ffii.org/papers/eubsa-swpat0202/ekon0308/index.en.html>

⁷<http://swpat.ffii.org/letters/meps038/index.en.html>

⁸<http://swpat.ffii.org/events/2003/oced08/index.en.html>

- **2003/05/07-08 BXL: Software Patents: From Legal Wordings to Economic Reality**⁹

Some of the economists spoke at this conference

- **Information Economy and Swpat Conference Paris 20020610-1**¹⁰

Some of the economists spoke at this conference

⁹<http://swpat.ffii.org/events/2003/europarl/05/index.en.html>

¹⁰<http://swpat.ffii.org/events/2002/ifri06/index.en.html>

- **JURI votes for Fake Limits on Patentability**¹¹

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.

¹¹<http://swpat.ffii.org/journal/03/juri0617/index.en.html>

- **From AllVoice to AllPatent: Milking the Speech Recognition Business with Parliamentary Support**¹²

Arlene McCarthy's favorite software SME, mentioned in her text and in various speeches in the European Parliament, apparently the model of future European software business as promoted by McCarthy's directive proposal.

Allvoice Computing PLC, originally a text-processor service company based in Devon, UK, has obtained two broad and trivial patents in US and UK on the logics of interfacing between speech recognition and word processing. Allvoice tried to sell this interface as a standalone software product, but was apparently more successful in extracting rents from producers of full-fledged speech recognition software, such as IBM and Lernout & Hauspie, by means of patent litigation. Meanwhile Allvoice's business seems to be focussing on patent enforcement. Allvoice's director John Mitchell has also become a patent-political activist and an archetype of a business model which british parliamentarians are promoting in UK and EU.

- **30 Scientists 2003/05: Petition against Software Patent Directive**¹³

30 famous computer scientists sharply criticise the European Commission's proposal to legalise software patents in Europe.

- **Call for Action**¹⁴

The European Commission's proposal for the patentability of software innovations requires a clear response from the European Parliament, the member state governments and other political players. Here is what we think should be done.

- **Eurolinux Petition for a Software Patent Free Europe**¹⁵

¹²<http://swpat.ffii.org/patents/effects/allvoice/index.en.html>

¹³<http://swpat.ffii.org/papers/eubsa-swpat0202/komp0305/index.en.html>

¹⁴<http://swpat.ffii.org/papers/eubsa-swpat0202/demands/index.en.html>

¹⁵<http://petition.eurolinux.org/>

- **FFII: Software Patents in Europe**¹⁶

For the last few years the European Patent Office (EPO) has, contrary to the letter and spirit of the existing law, granted more than 30000 patents on rules of organisation and calculation claimed in terms of general-purpose computing equipment, called “programs for computers” in the law of 1973 and “computer-implemented inventions” in EPO Newspeak since 2000. Europe’s patent movement is pressing to legitimate this practise by writing a new law. Although the patent movement has lost major battles in November 2000 and September 2003, Europe’s programmers and citizens are still facing considerable risks. Here you find the basic documentation, starting from the latest news and a short overview.

¹⁶<http://swpat.ffii.org/index.en.html>