

What's Patently Wrong about Software "Inventions"

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Interview with Richard Stallman at the occasion of his visit to Zergze, Poland, in November 2001.

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1 The Text

Jacek Szafranski: Recently the WIPO and its lobby have managed to persuade a number of governments outside the U.S. to adopt the DMCA in their countries. There are efforts to expand its applicability over Canada, Japan, New Zeland, Latin America, and Europe.

Richard Stallman: This is the law that was used to arrest Dmitry Sklyarov, because it prohibits the program he has said to have participated in writing – a program that transforms an encrypted e-book into an open public format that you can access in any sort of way. It used to be that Americans had to worry about being arrested for outrageous reasons when they visited the Soviet Union; now it's the reverse. In the US there are ads on TV and in the Boston subways now, asking people to rat on their co-workers to the information police, which is known as the Business Software Alliance – an evil organization that should be put out of existence. Any independently developed software for certain jobs might be prohibited by the DMCA law. But certainly any free software for these jobs appears to be prohibited by the DMCA. Now, they're a fairly narrow range of jobs. But they're very important jobs: jobs such as watching a DVD movie; playing a Real Audio stream or any other encrypted music format; or reading an e-book. Free software for these jobs is prohibited by that law, and I'm sad to say that the European Union has recently adopted a directive to the same effect, which probably means that the same disgusting prohibition is going to be inflicted on you. Unless you can manage to stop Poland from entering into EU, which I would certainly want to do if I were a computer user in Poland. But an even worse prohibition comes from applying patent law to the field of software. It's important to realize that this is not a matter of patenting programs. No: if it were a matter of patenting individual programs, it wouldn't matter much and it wouldn't be a problem. But instead what they patent are ideas: an algorithm, a technique, a feature, a data format – that is, ideas that can be explained in words and that are fairly general. That's what's making it so dangerous, since when you're writing a program you can get sued for having written it, since you use the idea that was patented by somebody else. Now, nobody can write a useful program without using existing ideas. Nobody is such a genius that he can reinvent the entire field of computing and use no already known ideas – it's simply impossible. Even if you could do this, the users wouldn't recognize it, so they would reject your software. The best way you can understand the harm done by software patents is to make an analogy with another field: symphonic music. The reason why this analogy works is that programs are long and complicated; symphonies are also long and complicated. In any program – just as in any symphony – many ideas are used. The patent system is supposed to exist for the purpose of promoting progress. But because a program or a symphony is so complex and large, patents in those areas get in the way of progress, because anyone who tries to do any sort of work runs afoul of the existing patents. Imagine that in the 1700s the governments of Europe had decided to “promote the progress of music” by allowing musical idea patents. Suppose that any musical idea—a certain progression of chords, a four-note motif, or using certain instruments together by themselves, those and many other ideas that you could describe in words—could have been patented. Now, imagine it's some years later and that you are Beethoven. You want to write a symphony and not get sued for it. You'd be going to have to carefully check every piece of that symphony to make sure you're not infringing any of the thousands of musical idea patents. It's

going to be very hard – in fact, much harder – to write a legal symphony than to write a good-sounding symphony. Of course, the patent holders would have said: “Oh, what’s the matter? Do you have to steal our ideas? Why don’t you make up your own ideas?” Beethoven had a lot of new musical ideas, as composers go. But he had to use a lot of customary ideas that were already in use. If they had been patented, he would have been out of luck. You could say: “Why not invent a completely new language of music that uses none of the existing ideas?” Well, Pierre Boulez said he would do that, and who listens to Pierre Boulez? The point is, if you invent a totally new language of music, it’s so unfamiliar to the listeners that it wouldn’t make any sense to them. It’s the same with software. Today, we already have free software packages that are missing important features or that were driven underground by patents in the U.S. Right now there is a big battle over whether to have software patents in Europe. It’s extremely important to get involved in this battle immediately because software patents are terribly dangerous to all programmers. In a country which has software patents, writing a program becomes somewhat like crossing a minefield: each design decision might step on a patent and explode your project.

JS: There has been a lot of media lobbying in the U.S. Parliament recently to further limit computer users’ freedoms. What do you think about Senator Ernest “Fritz” Hollings’ recent draft proposal on Security Systems Standards and Certification Act?

RMS: The SSSCA draft proposal requires “any interactive device” to host a specially designed copy-restriction system and prohibits connecting to the net any computer that doesn’t have it. It basically secures the movie companies – Disney in particular – exactly what they want. It doesn’t look like that law will have much of a chance of passage, but it shows how the media companies want to take away our freedom.

JS: So you think it won’t be passed...

RMS: It won’t, but it doesn’t mean we should relax our vigilance, you see, because some modified version might be passed.

JS: There is a widespread opinion that it’s a sequel to the DMCA, which is considered too lax by some circles...

RMS: Yes, the DMCA is bad enough. We should fight to repeal the DMCA in the U.S.

JS: Another controversial piece of legislation is the recent W3C proposal – the “reasonable and non-discriminatory” proposal to adopt and make available certain allegedly “open” Internet standards under a commercial license fee...

RMS: Don’t call it “reasonable and non-discriminatory.” You see, the World Wide Web Consortium is proposing to issue standards that are covered by patents which you have to pay a fee to implement. They are calling these for-a-fee patent licenses “reasonable and non-discriminatory”, which is a lie, because they are neither. They

are discriminatory because they discriminate against free software. If you think free software is a good thing, you would also consider these licenses unreasonable. I don't think "RAND" is a good term for them. Therefore I propose the term UFO, for "uniform fee only" licenses. That's an accurate description of these licenses: they demand a uniform fee, but no other conditions. They are not non-discriminatory, and they are not reasonable. In any case, this became a deep political issue. Thousands of people in the free software community wrote to the World Wide Web Consortium saying: "Don't do this." As a result, they seem to be at least looking for some alternative. They've put the Free Software Foundation's General Council on the advisory committee which is thinking about what to do here. So they seem to be at least listening somewhat, but I can't say that we have had a victory yet on this issue. What they may have to do is simply omit from their standards certain important features.

JS: The European Commission scheduled a meeting of the EU Member States for June this year to discuss a revision of the European patent legislation. These developments taken together suggest that the global tendency is to further promote the abuse of intellectual property rights for the sake of unilateral profit.

RMS: Please do not combine the DMCA and patents as if they were one thing. They are completely unrelated issues. Never mix up copyright issues with patent issues; you will not understand anything if you do that. If you want to understand copyright issues, or if you want to understand patent issues, the first thing to do is never link them together because every detail is different. They have nothing in common. Anything you could name about either one of them is not true about the other.... Patents and copyright restrictions are not driven by the same motives – they are driven by different companies for different reasons. Their social effects are completely different also.

JS: How do you want to coordinate your action in the US with the activities of the European Free Software Foundation or similar organizations in Europe?

RMS: I don't think there is any use coordinating them, because the decisions are being made separately. There have to be separate actions in each place. What we do to try to change things in the US is separate from what people in Europe have to do to prevent software patents in Europe. The situation is totally different. In Europe there is government support for rejecting software patents; in the US there is not. Things are much better shaped in Europe and the community is more mobilized in Europe. What we should focus on is the EU patent decision, because that's the place where we have a hope of winning. Everyone in the world should say to the activists in Europe: "What would you like me to do?" and we should all help. That's what I do: I try to help them in this regard.

JS: Some software companies solve the patentability issue by releasing their products under different licenses for different applications – for commercial applications

under a commercial license, and for applications like free software development under a free license.

RMS: That can only solve a tiny fraction of the problem. You see, if there is a patent system, then we may convince a few patent holders to give a license for free software. But most patent holders will not give a license for free software. So the existence of a patent system is very bad for free software. That's the public policy decision that we have to focus on: there must not be a patent system for software. Now, in countries where the patent system is applied to software we try to convince individual patent holders to give a license for free software, and once in a while they do. But it's rare. Those individual patent holders have spared us – they've given us parole. But what we say about those individual patent holders is a side-issue. The important issue is: does patenting get applied to software, which is a public policy legal issue – that's where we have to focus our attention.

JS: What do you think about work by Noam Chomsky – I mean his political work and views – how does it fit into your philosophy?

RMS: I don't have as complete and overall philosophy as he does. I agree with some of the things he says. I've seen things that he said that I didn't agree with. But certainly what he says about the engineering of consent² seems valid. Recently Chomsky gave a speech about what it means to oppose terrorism which I was very impressed by, because he essentially said that we should put an end to terrorism, and that includes the terrorism against the US but also the terrorism committed by the US... and I agree.

JS: In your lecture today, you've also said that multinational companies are a danger to democracy. Do you see your movement as part of a more general movement targeted against multinational corporate system increasingly dominating public life?

RMS: It's not targeted against anyone – it is a way that we can use computers in freedom. In fact, the free software movement has existed since 1984, and I saw it as a movement against something tyrannical, reminiscent of the book "1984", although it was a coincidence that it was in that year that I started the movement... I saw it not as a fight against any particular organization, but as a campaign to replace an ugly way of life with a clean way of life.

JS: Could you say that the free software project is mainly a social program?

RMS: Yes. Anybody is welcome to join the world of free software. There is no company that we seek to put an end to. There are companies that are doing bad things now, which we would like to put an end to. If those companies can stop doing those bad things and be successful while respecting people's freedom, that's fine. Today, the most important problem for free software is software patents. One reason why

²(Edward S. Herman, Noam Chomsky. Manufacturing Consent. Pantheon Books, 1988)

that's the most important problem is that it software patents can prohibit people to write free software to solve other problems. Whatever we want to do to solve any social problem, we can do it more effectively if people understand it and think it's important. So in the case of software patents, the more people are aware of freedom as a goal and how software patents get in the way, the more they are going to do to lobby against software patents. People who see the ultimate goal of freedom for computer users will make decisions to solve the problem instead of making decisions to accept the problem and live with it. In the long run, if you make the decision to accept a situation of being dominated it just ends up draining you over time. If you make the effort to solve the problem then it stops draining you. People who think that it's going to be beneficial, in some narrow economic sense, to accept someone else's domination are mistaken in the long term. If you accept a system based on domination, the people who dominate you know this, and suck out as much as they can get. They take advantage of your weakness. If they see that you stand up strong for your freedom, they won't dare try.