Saving Europe from Software Patents[1]

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Imagine that each time you made a software design decision, and especially whenever you used an algorithm that you read in a journal or implemented a feature that users ask for, you took a risk of being sued.

That's how it is today in the US, because of software patents. Soon it may be the same in most of Europe.[2] The countries that operate the European Patent Office, spurred by large companies and encouraged by patent lawyers, are moving to allow patents covering mathematical computations.

To block this move, European citizens must take action, and do it soon—by talking with their national governments to raise opposition to the change. Action in Germany, Sweden, Finland, the Netherlands, and/or Denmark is especially important, to join a campaign already under way in France.

Patents have played havoc with free software already. During the 1980s, the patent holders for public key encryption entirely suppressed free software for that job. They wanted to suppress PGP too, but facing public criticism, they accepted a compromise: adding restrictions to PGP so that it was no longer free software. (We began developing the GNU Privacy Guard after the broadest patent expired.)

Compuserve developed GIF format for images, then was stunned when Unisys threatened to sue them and everyone else who developed or ran software to produce GIFs. Unisys had obtained a patent on the LZW data compression algorithm, which is one part of generating GIF format, and refuses to permit free software to use LZW.[3] As a result, any free software in the US that supports making true compressed GIFs is at risk of a lawsuit.

In the US and some other countries, free software for MP3 is impossible; in 1998, US developers who had developed free MP3-generation programs were threatened with patent lawsuits, and forced to withdraw them. Some are now distributed in European countries—but if the European Patent Office makes this planned change, they may become unavailable there too.

Later in 1998, Microsoft menaced the World Wide Web, by obtaining a patent affecting style sheets—after encouraging the WWW Consortium to incorporate the feature in the standard. It's not the first time that a standards group has been lured into a patent's maw. Public reaction convinced Microsoft to back down from enforcing this patent; but we can't count on mercy every time.

The list could go on and on, if I had time to look through my old mail for examples and space to describe them.

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[1] From LinuxToday, 16 May, 1999

[2] The European Patent Office, used by many European countries, has issued quite a number of patents that affect software, which were presented as something other than software patents. The change now being considered would open the door to unlimited patenting of algorithms and software features, which would greatly increase the number of software patents issued.

[3] Unisys issued a cleverly worded statement which is often taken to permit free software for making GIFs, but which I believe does not do so. I wrote to their legal department to ask for clarification and/or a change in the policy, but received no reply.

On the issue of patents, free software developers can make common cause with most proprietary software developers, because in general they too stand to lose from patents. So do the many developers of specialized custom software.

To be sure, not everyone loses from software patents; if that were so, the system would soon be abolished. Large companies often have many patents, and can force most other companies, large or small, to cross-license with them. They escape most of the trouble patents cause, while enjoying a large share of the power patents confer. This is why the chief supporters of software patents are multinational corporations. They have a great deal of influence with governments.

Occasionally a small company benefits from a patent, if its product is so simple that it escapes infringing the large companies' patents and thus being forced to cross-license with them. And patent owners who develop no products, but only squeeze money out of those who do, can laugh all the way to the bank while obstructing progress.

But most software developers, as well as users, lose from software patents, which do more to obstruct software progress than to encourage it.

People used to call free software an absurd idea, saying we lacked the ability to develop a large amount of software. We have refuted them with empirical fact, by developing a broad range of powerful software that respects users' freedom. Giving the public the full spectrum of general-purpose software is within our reach—unless giving software to the public is prohibited.

Software patents threaten to do that. The time to take action is now. Please visit `www.freepatents.org` for more information, plus detailed suggestions for action. And please take time to help.

Richard Stallman is the founder of the Free Software Foundation, the author of the GNU General Public License (GPL), and the original developer of such notable software as gcc and Emacs.