



Are Software Patents prejudicial to Copyright ?

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Abstract : This short speech intends to summarize the differences between these two intellectual properties and to explain the advantages and drawbacks of these two systems for the developer and the entrepreneur. Designed as distincts and complementary property systems, it appears in practice that software patents can empty copyright of a large part, or even the whole part, of its value. We'll use the american experience to show in which manner the copyright protection, historical protection for softwares and freely given to every entrepreneur, is more and more hurt by the expansion of software patents, which are mainly aimed at and used by multinationals.



Copyright

- What is protected : the whole software (and not single parts), even if there's nothing innovative in it
- Duration : life of the author + 70 years

Strengths	Weaknesses
<ul style="list-style-type: none">• Protects against piracy and direct imitation• Free of charge• Worldwide protection• Historical and successful protection for software• Interoperability issues are taken in account	<ul style="list-style-type: none">• Has lost almost all its value in countries with software patents (USA, Japan)

Patents

- What is protected : algorithms
- Duration : 20 years

Strengths	Weaknesses
<ul style="list-style-type: none"> • Protects against competitors using the innovative ideas of your software • Reimburse the R & D costs (not true in the case of software) • Anglo-saxon VC funds often ask for patents before investing in a startup 	<ul style="list-style-type: none"> • Incompatible with the software innovation cycle • Exclude independent SMEs from the competition (need for lawyers to write the claims, high fees to file a patent, exclusion from patent pools...) • No disclosure of knowledge (no source code) • Local protection • All basic software “bricks” (algorithms) are already owned by non-european companies • High costs of transaction • Monopoly prices instead of market prices for the consumers



IMPACT OF SOFTWARE PATENTS ON COPYRIGHT

- 1. There's no way to know if one's software exactly infringes on a patent or not (no source code given in the patent claim)**
- 2. It's impossible for the average SME to find all the patents related to its software (need for a patent department with experts working full time in coordination with developers)**
- 3. We can consider that each european software infringes at least a few dozen patents (as patents last 20 years, today basic software components are still patented)**
- 4. Copyright doesn't protect from patent litigation**

=> Copyright won't have any value in courts

=> SMEs will lose the only protection designed for them

=> European companies will be put in a situation of total juridical uncertainty



EUROPE IS CATCHING UP WITH THE USA THANKS TO COPYRIGHT

A few examples :

- The Opera browser :

Opera ASA, a small european software company (less than 200 employees), is developing the most advanced internet browser for the main mobile phone manufacturers (Nokia, Sony, Ericson...). Such a leading position in mobile internet access (soon for everyone with UMTS) is a chance for Europe to avoid a non-european monopoly on such a key technology.

Opera is the most innovative browser of the market and has received many coverage in the USA where patents forbid competition on the browser market (now a Microsoft monopoly).

The Opera team is composed of well-known internet pioneers such as Hakon Wium Lie who chose Europe to develop innovative softwares without the threat of patents.

More info : <<http://www.opera.com>>

- Graphic Converter :

Graphic Converter is a graphic application which has received more awards than any other software in the history of the Apple computers, and is quoted by Apple on its website as a killer application. Created by an independent german coder (now paying the maximum german wealth tax), Graphic Converter converts more than 180 graphic file formats.

Such an application is illegal in the USA due to the high number of patents it infringes, nevertheless Apple simply now prefer to sell european softwares with its computers.

More info : <<http://www.lemkesoftware.de>>



- The Bat! and PowerMail :

The Bat! and PowerMail, two innovative european softwares acclaimed by the european and american magazines, are the kind of sharewares you can't find anymore in the USA : softwares from independent companies on strategic markets.

According to recent surveys the email software is the most frequently used application after the word processor for the average user. TheBat! and PowerMail have introduced many innovations which benefit to the productivity of the user and are designed with a bullet-proof security.

The most part of the customers for these two applications comes from the USA where software patents have killed the small innovative email applications.

More info on The Bat! : <<http://www.wska.com>>

More info on PowerMail : <<http://www.ctmdev.com>>

About Europe Shareware :

Europe Shareware is a company which translates, promotes and distributes sharewares. Our catalog actually counts more than 80 sharewares from around 50 european authors for Atari, Macintosh, Java and Windows systems.

Founded the 5th january 2000 in France, Europe Shareware steadily developed its activities and is now present in France, Spain and North America.

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