

TO: Our Industry Colleagues
FROM: Andreas Gauger (1&1 Internet AG) and Mårten G. Mickos (MySQL AB)
DATE: 21 March 2005
SUBJECT: Call to Action Against Software Patents

Dear Colleagues:

Software patents increasingly plague our industry and stifle innovation. Strategic and speculative misuse of software patents by large players and by productless entities are rampant. Entire market segments have been transformed into patent thickets. For several years in a row, software-related litigation costs have been growing faster than revenues from software sales. In a recent German survey, a majority of respondents feared that a software patent could take them out of business.

However, software patents are not an unalterable fate. In the European Union, there is an excellent chance of defending the statutory exclusion of software patents, provided that we stand together and take decisive action *now*. Beyond the direct positive effect on a market of 450 million people, this would prove to the world that the problem of software patents can be solved politically over time.

Certain sponsors of NoSoftwarePatents.com own some defensive patents, but let's make no mistake: Only lawmakers can provide us with a reliable line of defense against patent assertions. Until you own so many patents that even the largest player elects to cross-license with you (rather than to search for conflicts with your portfolio), you run the risk of being attacked. And even an infinite number of patents will not help you against patent profiteers without products of their own. Some of those "patent trolls" now dispose of financial resources amounting to tens or hundreds of millions of dollars.

We owe it to the spirited resistance by volunteer activists that the EU has not yet enshrined software patents in statutory law. Last year, our companies decided that it was the right economic choice to complement the efforts of the Foundation for a Free Information Infrastructure with a sponsored campaign that is run by an industry veteran. We have deliberately given the campaign manager of NoSoftwarePatents.com the freedom to play hardball in a heated debate without being restrained by corporate communications policies. Yet the most important breakthroughs have been achieved in constructive discussions with politicians all across the democratic spectrum.

After a controversial decision by the EU Council on 7 March, the European Parliament is now preparing to vote on a proposed directive in early July (second reading). We have various political and psychological success factors on our side. The European Parliament asked the EU Commission to restart the legislative process. The request was declined but shows that many parliamentarians are highly critical of the current proposal. Various national parliaments have backed our most important demands for amendments. The German Bundestag and the Spanish Senado even did so unanimously.

For the next few months, Brussels will be the world capital of lobbyism. Various of the largest corporations, both from the USA and from Europe, know that this may be their last chance ever to impose a US-style software patent regime on the entire First World. They have started a last-ditch lobbying "blitzkrieg" backed by multi-million euro budgets.

We are on the right track, but let's not leave it to chance. A single patent litigation can cost any one of us more than it takes all of us collectively to win this political battle. Please contact us now at partners@nosoftwarepatents.com.

Best regards,

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