

## What are Software Patents?

**EP 803 105** Selling things over a network using a server, client and payment processor.

**EP 807 891** Electronic shopping cart.

**US 6 663 564** Process for controlling body weight

$$\text{Points} = \frac{c}{50} + \frac{f}{12} - \frac{r}{5}$$

# Patents versus Copyright

**Patent:** Exclusive rights to an *idea*.

**Copyright:** Exclusive right to one's own *expression* of ideas.

**Software:** One single program — dozens of ideas. Most of them other's. Like a novel or a symphony, inspiration from older works is essential.

**TRIPS treaty, article 10:**

*Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention.*

**Patent minefield.** Everyday programming day, you infringe some patent. Clearance searches not practical.

## Are software patents legal?

- Computer programs and business methods patentable in the US.
- European patent convention, article 52:

*The following in particular shall not be regarded as inventions within the meaning of paragraph 1: [...]  
(c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers.*

- European Patent Office has granted 30 000 software patents!

## Who wants software patents?

**Microsoft, Ericsson and IBM.** Cross-license portfolios with each other, and lock out smaller players from the competition.

**European patent office.** Patent lawyers in industry and academia.

**Non-practicing companies or “trolls”.** Owns patents. No activity except litigation. Can sue both large and small companies.

## Who are opposing software patents?

- European software companies: MySQL, Opera, SAP.

*SAP has grown big by copyright, and being imitated was never seen as a major problem. We do not need protection by patents but rather protection from patents.*

— Bernard Runge, SAP

- Researchers.

*We find evidence that software patents substitute for R&D at the firm level; they are associated with lower R&D intensity.*

— James Bessen (MIT) and Robert M. Hunt

- Free software people.
- 345 000 people have signed at [petition.eurolinux.org](http://petition.eurolinux.org)

## Current status

**1986** EPO grants process claims that in effect are software patents.

**1998** EPO grants program claims.

**2002** European commission proposed directive “on the patentability of computer implemented inventions”.

**Sep 24, 2003** Parliament votes for amendments to the directive.

3a. Data processing is not considered a field of technology.

5a. Data processing and publication can never infringe a patent.

6a. Use of a patented technique for interoperability purposes is not considered to be a patent infringement.

**May 18, 2004** Council of Ministers produces a “compromise” that deletes all of the Parliament’s amendments.