



## ***Sheet on the software patents (1/2)***

### **In favour of software patents**

#### *What ?*

- The European Commission wants to allow software patenting.

#### *Why ?*

- To encourage the European software firms to innovate more by giving them a monopoly over their inventions so that they can cover their research costs.
- To ratify more easily TRIPS international agreements.
- To legalize the European Patent Office's illegal practices.

#### *How ?*

- Delete softwares from the list of non-patentable matters of the Munich Convention (art. 52(2)).
- Power transfer from national offices to the European Patent Office (EPO), which is an independent organism of the EU.
- Abandon of all democratic control on the EPO's practices.

#### *Who ?*

Lobbies that are behind this reform are:

- Industrial property professionals and other jurists.
- European Patent Office (EPO).
- Multinational companies of the software market (IBM, Microsoft...).



## **Sheet on the software patents (2/2)**

### **Against software patents**

#### *Why ?*

- A software is an immaterial good, its creation is only issued from the work of mind such as mathematics.
- Prohibitive cost on deposit (38000 Euros) : barrier for innovative Small and Medium Enterprises.
- Biased examinations: EPO's budget comes from the number of patents. Consequently, there is an incentive to accept a maximum of patents without taking into account technological innovation criteria.
- Necessity for software authors to take on jurists' services to avoid any patent violation : reactivity and time to market are strongly penalised.
- The average cost of a software patent lawsuit is 500 000 USD (Source: USPTO).
- By creating a new juridical risk, the software patents threaten the free protection offered by the copyright.
- Software innovation cycle lasts 3 years when a patent lasts 20 years.
- The patent is a tax evasion tool.

#### *Who ?*

- European software commercial firms.
- Software SMEs and Shareware authors.
- *Logiciel Libre* companies and programmers.

#### *Proposed solutions*

- To keep and promote the copyright.
- To put in place a *sui generis* right similar to utility models which allow a short-term (3 to 5 years) protection and a flexible licence system for protecting technological innovations.
- To apply a democratic control on the EPO and to reform its mode operantis in order to avoid any further illegal drifts.