# How software patents are delaying the future

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# Free Software Foundation Europe

- Independent NGO

- Software Freedom

  - Public awareness

  - Policy

  - Legal

- Financed through donations

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# How the world has changed

- The Internet

- The World Wide Web

- Free Software (use, study, share, improve)

...are all thriving without patents

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# What is a patent?

- A monopoly on an idea – power to exclude others

- Policy tool

  - Incentive to innovate

  - Copyright?

- Social contract

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# Are patents effective?

- Do patents on software give rise to innovation that wouldn't have occurred otherwise?

- Is granting a monopoly the only way to obtain innovation?

- Opportunity costs: What follow-on innovation are we passing up?

  - Tax on today's users and inventors

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# So, what's a software patent?

- Endless debate

- Practical approach:
    - If a patent can be infringed by software alone
    - Or if an infringement can be removed by changing only the software in a product
    - Then we're dealing with a software patent.

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"If people had understood how patents would be granted when most of today's ideas were invented, and had taken out patents, the industry would be at a complete standstill today."

(Bill Gates, 1991)

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# Two disconnects

- Long patent duration vs fast innovation cycles

- Low hurdles for innovation vs broad patents

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# Uncertainty

- You're infringing *something* - most ideas are patented

- It's practically impossible to find out what you're infringing

- Do you really want to know?

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# Software patents vs competition

- Big corporations cross-license

- Small businesses can't play the game

- Patent holders gain control over competitors

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# Software patents vs competition

- Situation made worse by uncertain patent boundaries

- Litigation is prohibitively expensive

- Increase competitors' costs through
  - FUD
  - Aggressive licensing campaings

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# Software patents vs innovation

- Litigation risk & costs make it costly to innovate

- Empirical data: Competition promotes productivity growth. Patents don't. *(Boldrin/Levine 2012)*

- Google/Motorola & Microsoft/Apple-Nortel: 17 billion USD spent on ammunition rather than R&D

- Mass aggregators

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# Summary

- Patents aren't a good fit for software

- Software patents create uncertainty

- Software patents hurt competition

- Software patents reduce innovation

- No indication that they're necessary

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# Where next for Europe?

- "Unitary patent" proposal would increase EPO's power to interpret the rules

- Proposal would move patent system farther away from political control

- EPO practice is to grant patents on software

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# Heading towards 2020

- Patent system understood as one tool of innovation policy, among many others

- Patent system under political control, responsive to needs & circumstances

- Evidence-based policy making

  – No more patents on software

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# Are software patents paying off for **your** company?

# Thank you!

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# Sources

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