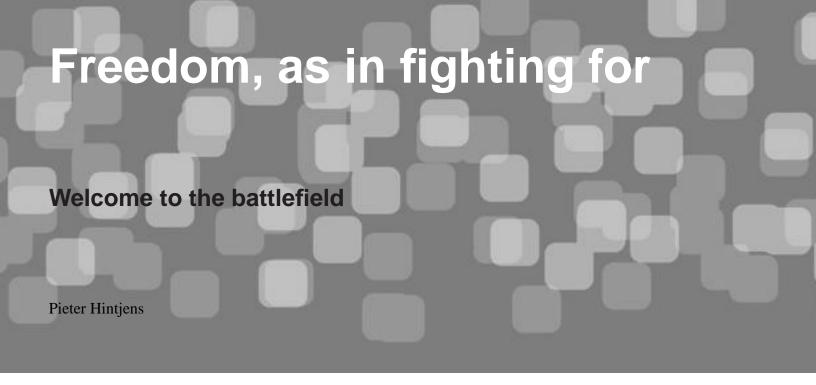This is a **low resolution**, **black and white** version of the article you downloaded. To download the whole of Free Software Magazine in *high* resolution and color, please subscribe!

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Freedom, as in fighting for

Welcome to the battlefield

Pieter Hintjens

T he battle between individual rights and the powers of the State is reaching a frenzy across the globe. Never before has technology given us such freedom to create, to invent, and to escape traditional boundaries. And never before has technology given the State such a chance to control us. In this series of articles exclusive to Free Software Magazine, I'll take you into some of the warzones and show you what it's like at the front-line...

The rise of the machines

As a teenager, I once played a Vic-20 cassette in a normal player and listened to the sounds it made. This was the first time I heard what machine voices sounded like. Ten years later in the nineties, to millions like me around the world, the machine voices of our modems were our Pavlov's bell, signalling our connection to the wide world of bulletin boards, gopher sites, access points, remote shells, FTP sites, and finally web sites.

If there is a single sound that represented the rise of the age of the machines, it was the sound of a modem blasting its square waves across crude copper wires, creating a circuit, carrying bits, bytes, kilobytes, megabytes down the ether to our PCs.

Fast forward ten more years and the machines have literally taken over our lives. I can't complain. Every technological wet dream I ever had has come true. My huge music library is digital, my friends are online, across the globe, my family are a mobile phone call away. The crutches of the physical world have fallen away, and we run free, carried by wave upon wave of chattering digital devices.

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The bitter irony is that the same technology that gives us Google has also enabled the rise of a new kind of autocracy, one based on the same information systems that I, as a programmer, helped build.

The virtual walls

The European Union (where I live) is going to build the largest database in the world. Well, that's what they say. I think there are larger databases, but this one is going to be pretty huge anyhow. The idea is that every time you apply for a visa to any Schengen country, your data will be registered centrally. Today it's a mess. You can ask for a visa from the Spanish embassy, and if they say "no", you pop down the road to the French embassy and try there. This is such a big loophole that millions of people from warm countries still manage to sneak into Europe every year.

I'm often impressed by the courage of immigrants, who basically leave everything behind to start a new life in a cold, strange, basically hostile country. Most never regain any kind of prosperity. I've seen Congolese bankers and managers work as van drivers. They do it because at least their kids will get a chance at a decent education, and a life without violence.

You'd think that the EU, starving of young people, with huge ranks of pensioners to feed and look after, would welcome these immigrants with open arms. After all, they are people who have crossed deserts and oceans and mountains. They are by definition the most ambitious, the hardest working, the toughest. You'd think that the US model, where generation after generation of immigrant has kept the economy vibrant and healthy, would inspire Europe to at least offering a green-card style programme.

You'd be wrong. Europe's elite considers immigrants to be alien, dirty, and noisy, and wants to keep them out. So, Europe is going to build a wall, the largest wall ever seen, that will protect Europe's long borders from this wave of unwanted humanity. It can't build a physical wall of stone and mortar, as China did during the Chin dynasty. So, it's building a virtual wall, from databases and computers.

The mandarins

Europe's Great Wall, which will track the comings and goings of its unwanted aliens, is just one of many projects. Politics, you see, is not a single-minded thing. It's all about ambitious individuals who spend their days and nights hacking their own systems to try to get more budget, more power, more leverage.

Somewhere, in an office in Brussels, sits a man. He is not elected, he is a permanent part of the EU structures, a nameless mandarin who works for the Commission. He has been pushing to get the Great Wall project approved. There was huge resistance from the privacy and human rights organisations. National governments opposed his ideas, sensing that their electorates would distrust such a plan. But he was prepared for that. The plan is now a "Directive", and will soon be put onto paper by his people, presented by the Commission to the Council for a vote, and thus to the Parliament.

The European Parliament, who quite hate the Commission and Council, will try to change, or reject the directive. Our mandarin expects this; so, like a good negotiator, he has

added a number of very extreme clauses and based the entire directive on the "need to fight terrorism".

Sometime next year, this directive will come before the Parliament, which will have only a week or two to study the large and complex text. Parliament votes on ten or more directives each month. Most votes follow party lines. The mandarin has spent considerable effort, money, and political favours, in making sure the leaders of the two main parties will promote his cause and force the MEPs to vote correctly. They will insist on a public show, for their parties, in which they will "force" the Council of Ministers to accept a "compromise agreement", taking out all of the extreme articles and leaving just the essentials behind.

The directive will pass, almost unnoticed by the media. Large businesses will tender for the project, and several billion Euro will be budgetted for the work.

The genius who designed the Great Wall is now promoted as the man to make it work. He has a new salary, assistants, travel expenses, and for the four or five years it will take to build this system, plus ten years of running it, he will live like a king. You'd think that our political systems were driven by some higher purpose than the amoral self-interest of individuals, but this is what it comes down to: a few people who manipulate the system into spending billions on dubious projects so that they can take their direct or indirect cut.

My story about the Great Wall of Europe is true, though I've imagined the main character, and the story is not yet finished. The directive has not yet been given any "legal basis", it's still just a well-developed plan. Like many plans—including a similar one to finger-print and ID every EU citizen—it depends on darkness and obscurity, on stealth and surprise.

The European elite

The "new Europe" has brought many good things. We have a single currency, simpler VAT rules, free movement, and straighter cucumbers. But the new Europe has also created an elite of professionals who do nothing other than manipulate and exploit the European structures for their own use. These people are primarily the professional lobbyists, the political lawyers, and the mandarins.

All states have such cliques. At the EU level this elite has grown so rapidly, and accumulated so much power, that

there are no counterweights. We are entering an era in which laws are made by bureaucrats, not elected lawmakers or judges. To some extent the same has happened in the US and other countries, but the EU is unique in lacking the checks and balances that stop such elites from going too far. A good example is the patent cartel. This consists of: the European patent office (EPO), a body created by treaty but which operates independently of the EU structures; a species of lawyer specialising in "intellectual property"; a special kind of consultant who divides his time between working for the EPO as a patent examiner, for businesses as patent advisors, and for the EU commission to draft patent legislation; and finally, specialised firms that have amassed patents (especially software and business process patents) in the US, along with considerable amounts of funding.

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The patent cartel is a classic example of a new European elite, busy hacking the system in order to reap great profit. European businesses are mainly unprepared for the introduction of US-style software patents and there is going to be a boom for the people who control key software patents, if only these can be legalised. Few voices seem to warn: "software patents rob copyright holders of their intellectual property". All the eyes are on the money.

Blurring the past

The European Parliament once said, in a report:

- "The only effective international instrument for the comprehensive protection of privacy is the European Convention on Human Rights."
- "It is binding on the three institutions which pledged to comply with it in the Formal Declaration adopted during the Nice European Council: the Council, the Commission and the European Parliament."
- "Article 8 lays down in law the fundamental right to the 'protection of personal data'. This would have

protected individuals in those cases involving the processing of their data, something which invariably does when [non-voice] forms of communication are intercepted."
- "Even if the intelligence service merely records data such as the time and duration of calls and the numbers dialled, this represents a violation of privacy" (under Article 8 of the ECHR).
- "Any act involving the interception of communications, and even the recording of data by intelligence services for that purpose, represents a serious violation of an individual's privacy. Only in a 'police state' is the unrestricted interception of communications permitted by government authorities."

These extracts come from the European Parliament's 2001 Final Report on Echelon (`http://cr.yp.to/export/2001/09.07-europe.html#1`) a surveillance system built by the USA, UK, and other countries.

Exactly four years later, the EU Commission drafted a "Data Retention" directive that forces all ISPs and telecom providers to register voice call data, email data, and all other internet communications. The law was drafted and passed in three months, in a single reading in the European Parliament, demonstrating the raw and unfettered power that the Commission bureaucrats now wield.

Where just four years ago Europe was proud to say, "we have a convention that protects the rights of all people, while the US protects only US citizens and spys on all the rest", today Europe is a 'police state', in its own definition and words.

The bogeyman that lets people force such laws through with little resistance or inspection is terrorism, of course. But, the Data Retention Directive makes no mention of this word, justifying the law only as a measure to fight "serious crime". We are in an age in which the past is blurred into a cliche, in which spin is replacing history, in which democracy means voting in reality TV shows, not participating in government. Technology has accustomed us to ever faster change, and taught us to forget rapidly. This meme is now firmly rooted in the political world as well.

The insurgents

Needless to say, there are people who have understood the dangers of allowing such accumulation of power to fall into

the hands of a small group of unaccountable, selfish, and amoral individuals.

I started working with one such group, the FFII, last summer, fighting an attempt by the Council and Commission to ram through a directive that would have enabled software patents. The FFII mostly consists of professionals, small software producers, students, patent experts and activists. I made a donation and became a member. The FFII asked me to speak at some presentations, which I did. Some people seemed surprised that a businessman would speak out against software patents. As more and more businesses began to support the FFII, and come and speak in the Parliament, it became painfully obvious that while our movement could stage dozens of live business people, all saying the same thing: "software patents will destroy our businesses and the jobs we provide", the pro-swpat movement consisted mainly of professional lobbyists paid by Microsoft, SAP, and some other large firms.

> What we **do** is mainly lobby against bad laws and for good ones, mostly in the "intellectual property" arena. We are the only organisation that tries to effect a political solution to the soft patent problem. We work a lot with the European Parliament: this is, in the whole EU political structure, the only representative body

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At the end of November, the FFII asked me to take over its presidency. I'll briefly mention what this movement does, and why. The FFII fights for open standards, copyright, and competition. We are, essentially, fighting against the vested interests that want to turn the digital playfield into segregated monopolies and properties. We rely on individual donations and memberships, and on donations from businesses and other organisations. It is painfully obvious that "soft patents", i.e. broad patents on abstractions, rather than hard inventions, are bad for business. So, when we fight soft patents, it's not from a free software perspective, but a pure economic one.

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In my next article for Free Software Magazine I'll show you the life of an FFII lobbyist. How does a small, underfunded, overworked group of determined individuals challenge billion-Euro laws? I'll tell you. Maybe one day you'll find yourself in Brussels, inside the Parliament building, speaking to an MEP, and changing the world, one mind at a time.

Conclusion

The last twenty years have brought us a new world of gadgets and information beyond our wildest dreams. But the same technology that makes our lives such fun is also forming the basis for a new kind of technological police state, based on a subversion of the European process by a new political elite. Software patents are a key example of how a small group is distorting the European process so that it can claim ownership of large parts of our common wealth.

This was the first article in the "Freedom, as in fighting for" series, that will examine the dark side of the European Project, and explore the lives of those who are fighting on the side of freedom and liberty.

Copyright information

About the author

Pieter Hintjens is the CEO of iMatix Corporation, and the author of numerous free software tools published by iMatix. He wrote his first GPLed software (Libero) in 1992. His team is currently working on what has been called: "the most secret open source project ever". He is also the president of the FFII, an information rights organisation based in Munich, with chapters in 20 countries.