letters

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PATENTLY CONFUSING

I read the article entitled 'Patently absurd' in the July issue with some concern. The main thrust of the feature was that the granting of patents in the field of computer software is being badly managed. The author even went to the extreme of referring to the 'murky world of patenting laws', 'sinister and self-interested motives' and even to 'a badly policed jungle where might is right and lawmakers are out of their depth'. Words worthy of a thriller!

As a patent attorney I am concerned that this is overly negative and can easily lead the reader to misunderstand the position in Europe. I must confess that I agree the position in the US has swung very much in favour of the applicant for a patent. The US courts have made it quite clear that there is no bar to patenting computer software even for business methods so long as a 'useful, concrete and tangible result' is achieved.

Hence, not only large software houses but also many small businesses have woken up to the fact that protection is available for their ideas embodied in software. The problem has been that this awakening has caught out the US Patent and Trade Mark Office and it is taking steps to improve the quality of the examination process.

The position in Europe is, I believe, much better. The procedure for granting patents in Europe before the European Patent Office and the UK Patent Office generally takes much longer. Under European practice a patent will only be granted for an invention, which is a technical advance.

It is generally acknowledged that it is more difficult to get a patent in Europe than in the US. Unfortunately (or in some minds fortunately) there has been very little litigation in Europe in the field of software. This can be attributed partly to the time delay in getting patents granted in Europe. However, I believe that the main reason is the bias in the US towards the patent owner: under the US system there is a strong assumption that the patent is valid and the courts will try to interpret the patent as being valid once granted by the US Patent and Trade Mark Office.

With regard to the global issue, the patent laws as they exist are restricted to national jurisdictions. Thus a software dealer or manufacturer must consider the US law if the US is a market for the software or if the Internet is involved. Also, because of the global nature of the Internet, any Internet developer providing a commercial presence on the web must give due consideration to the situation in the US.

DR JOHN COLLINS

NIALL MAGENNIS replies >

Dr Collins was also kind enough to clarify some issues covered in our feature. The first was our definition of 'obvious/non-obvious' as used in patent law. In Europe any public disclosure anywhere in the world, by whatever means, of the technology prior to the filing of a patent application will invalidate a patent so long as it discloses sufficient detail to enable someone to understand and make the invention.

The situation in the US is more complex. There, the patent system is based on the principle that the first person to invent something is entitled to a patent, whereas in Europe the first person to file a patent for an invention not previously in the public domain is entitled to a patent. The US operates a 12-month grace period during which disclosure of the invention by the inventor(s) will not invalidate a subsequently filed patent.

Also we said that 'an idea or a process may not be patented'. While it is correct to say that ideas on their own are not patentable, an idea or process can be patented if it is embodied in a physical product. Software certainly comprises a physical product when carried by a medium such as a floppy disk or an FTP protocol signal over the Internet. This is the physical entity that is purchased: software as an idea is not what is purchased.

PLAYING FINANCIAL RUSSIAN ROULETTE

Deciding the time was right to buy a PC, I searched all of the main brands, but in the end decided to build my own.

I created a spreadsheet with ratings and prices for the various products suitable for my PC. That came out at £1,620 inc VAT, which was above my £1,500 limit. Having 14 weeks before I started my A-Level computing course I thought I'd wait a bit until the price decreased and then I could start building... but this was not to be.

Within a few days, the hard drive I was planning to buy increased by a few pounds, and then the memory shot through the roof, jumping by almost £50. I dropped the spec to something a little less nippy costing £1,550 and contemplated starting – but I disciplined myself as, once again the prices of components rose.

Why is it that the components fluctuate so much when the demand and supply does not change much – especially with RAM? Surely individual components should fall in price rather than increase. I have decided to hold

back from building a PC at the moment and will use the school facilities.

STUART HOLYWELL

SCOTT MONTGOMERY replies ›

There's always a bit of financial Russian roulette involved in building a PC from scratch, and you regularly find yourself stung by prices dropping mere days after you've parted with your cash. The reason for these fluctuations range from varying exchange rates, to geographical disasters hitting the producing countries. Computer fairs are a good place to pick up some bargains, but apart from that it's all patience and opportunity buying. Follow the prices for the parts you want and when you think they've bottomed out, buy them – and don't look back...

POWER OF A COUCH POTATO

PCs are getting cheaper, Internet access is now more or less free and almost half the homes in this country are connected. Like the video recorder, the PC has become a standard household item. But that could all be about to change, due to the power – or lethargy – of the couch potato who has no interest in computers or the net, because 'it ain't on TV'. So, if they won't get off their backsides, the new technology must come to them. And what better way could there be to reach them than through their TVs?

In the near future TVs will not only show endless repeats, but also function as computers, DVD recorders and phones. The computers in these new combinations will be like many TV programs – dumbed down (half the population still haven't worked out how to program their videos yet). When the new, do-it-all, TVs begin to make an impact, their prices will fall rapidly until almost every home has one. Is it possible that the common PC will become a specialist item? If so, it follows that it will have a specialist price. Still, we'll all be happy to pay more for our PCs if it means one couch potato can use their TV to look at and talk to another couch potato, eating pizza. Won't we?

ALAN AITCHISON

NIK RAWLINSON replies ›

I don't doubt that the PC as we know it will become a specialist item. Even today there is little incentive to buy a fully-fledged computer when something like a Dreamcast or PS2 will do everything you need. As for programming the video, let's hope that the TV-connected net appliances of the future will be as foolproof as a toaster or we're in for trouble. *See Reviews p71*

LETTER OF THE MONTH

I WANT TO BREAK FREE...

I had to reply to Richard Lee's letter, 'Deny responsibility and let the users suffer' in the July issue of *PCW*. I agree that buying proprietary software is like buying a car with the bonnet welded shut: if it breaks down, you have to pester the manufacturer for a fix. If they don't give you one, you're out in the cold.

The software market is a free one; so it follows that if licence agreements that disclaim warranty are prevalent, it is because computer users have decided it doesn't matter that they will be helpless in the event of a software fault. We have accepted such licence agreements, and so we must take at least part of the blame for today's problem.

There is an alternative to proprietary software: GNU-style free software (see www.gnu.org). 'Free' in this instance refers to freedom, not price. Here, the bonnet is not welded shut; users have source code available and are free to take the software to any programmer and pay them to fix it, just as it is possible to take a car to any mechanic. The developers of free software almost always disclaim warranty, but that doesn't matter in this instance as users are not helpless – they can have the software fixed themselves in the unlikely event that the developers are unwilling to do so. Not being able to sue the developer is a small price to pay for such freedom.

So a strong argument for not forcing software developers to give users warranties is that, if such a law were passed, free software development would have to cease. Free software developers usually work collectively; no one individual or company has exclusive control over what goes in. Such people cannot afford to take responsibility for their own and others' mistakes. A law such as Mr Lee describes would also curb software development in academic institutions and in non-profit settings. It would be possible to force only large software companies to give warranties, but this is discriminatory: everyone is entitled to equal treatment under the law.

Consumers have power over businesses in a free market. If we want to solve the problem of proprietary software with no warranty, we must all choose software that doesn't have these problems. I have moved over to Linux for this and many other reasons. I no longer use any proprietary software at home, because I do not want to support companies that deny me freedom.

ANDREW MEDWORTH

CLIVE AKASS replies ›

Open-source software is not yet ready for the mass market, as Linux guru Linus Torvalds recently admitted; users who can barely cope with Windows cannot be expected to mess with source codes and version control. Warranties seem a good idea but they would bog down development: I'd rather have a 98 per cent working Windows 2000 now than a perfect, legally watertight version in 2020. Warranties are not workable because you cannot guarantee the unguaranteeable: no-one can be absolutely sure complex software is bug-free. Products are, in practice, released when the bug level is considered tolerable. Commercial pressure being what it is, that is too early too often. But if a product simply does not work you still have recourse to the law.

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