

# EUROPEAN PARLIAMENT

DIRECTORATE GENERAL INTERNAL POLICIES OF THE UNION  
- DIRECTORATE A -  
ECONOMIC AND SCIENTIFIC POLICY  
POLICY DEPARTMENT

Brussels, 9 February 2005

## Seminar

Wednesday 16 February 2005 - 10.00 h - ASP 5-G-2  
**Software Patent - Removing Some Misunderstandings**

The proposed directive on software patents and other computer-implemented inventions has created a lively debate since it was first presented before the European Parliament. The lack of agreement in the Council has opened up the possibility for the directive to be withdrawn. It is easy to lose perspective in the jungle of information surrounding this topic. Therefore, we invite you and anyone who might be interested in this question to a presentation of a briefing paper: *Patenting Software vs. Free Software: What should the European Union do?* drafted by Sandra R Paulsson. In brief the paper addresses:

**Myth No 1:** The criteria for patentability are perceived as diametrically opposed on both sides of the Atlantic. In several documents from the Commission it is said that the U.S. only has two or three criteria for patentability

**Reality:** The criteria for patentability are functionally equivalent. The only difference is that different labels are used but the predicates for patentability are similar. Further there are in fact four criteria in the U.S. (have to fall within one of the classes of patentable subject matters, be new, useful and non-obvious, 35 U.S.C. 101-103).

**Myth No 2:** The distinction between copyrights and patents has been blurred.

**Reality:** The law of copyrights and patents fulfil different functions and are complimentary rather than parallel branches of the law.

**Myth No 3:** European policymakers assert that the most significant difference between U.S. law and EU law is that in Europe there is a requirement of an inventive step (technical contribution) and industrial applicability in order to be patentable, while the U.S. does not require that a patent claim be transformed into an invention.

**Reality:** the legal regimes do not markedly deviate, the U.S. has similar criteria in "non-obvious" and "useful" (see 35 U.S.C. 101 & 103).

**Myth No 4:** Business methods cannot be patented in Europe.

**Reality:** not entirely true, according to EPO's praxis they can be patented as "processes" just as in the U.S.

You and any other person interested are cordially invited to this seminar that aims at helping MEPs and officials of the political groups and committees to have a better understanding of the issues at stake in a field that is intrinsically complex.

Attached are the Briefing Paper and a hand-out with slides summarising the main topics.

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