

2003/05/07-8 BXL Swpat Conference: MEP Arlene McCarthy's Message

<http://swpat.ffii.org/events/2003/europarl/05/contrib/amccarthy/index.en.html>

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In 2003 on May 7-8 the Greens/EFA and FFII/Eurolinux organised a public conference about the Software Patentability Directive Proposal for whose adoption by the European Parliament MEP Arlene McCarthy as a rapporteur has been pushing. The conference was convened on short notice but yet succeeded in attracting more than 200 attendants, among which were many software developpers and business leaders. The Greens hat announced the conference through various channels, including posters in the European Parliament, since early April. FFII sent out some late mailings to MEPs with a detailed conference program. One of the recipients, MEP Arlene McCarthy, immediately complained about this mailing and said to journalists that Eurolinux was trying to exclude her, the rapporteur, from the discussion. She repeated this complaint at various occasions in and outside the parliament. We use this webspace to distribute McCarthy's messages to our participants and to document her complaints.

Contents

- **McCarthy 2003/05/03: Software Patent Directive Proposal FAQ**

The original text as distributed by MEP Arlene McCarthy, converted from MSWord to PDF.

- **McCarthy 2003/05/03: Software Patent Directive Proposal FAQ¹**

our criticism

- **Lenz Blog: Arlene McCarthy Paper**

Dr. Karl-Friedrich Lenz, professor of European Law, cites and refutes some paragraphs from the note which Arlene McCarthy sent to our conference.

- **IDG Meller 2003/05: Open source lobby struggles in EU patent debate²**

Meller dwells on McCarthy's complaints and largely takes her point of view:

Arlene McCarthy, a member of the legal affairs committee responsible for choosing the amendments to the proposed law to be tabled at next month's plenary session, said she wasn't invited to the event. Joint organizers of the conference from the European Free Alliance, a free software lobbying group, said they did invite McCarthy but admit that the invitation wasn't sent until the beginning of this week. A spokesman for the Alliance said McCarthy was also invited to submit a statement which would have been read out to delegates, but she declined the offer. McCarthy's office said it did submit a statement but that it was never circulated at the conference. "It's not smart to snub the rapporteur on the lead committee responsible for guiding this debate. They won't have done themselves any favors by appearing to "disrespect" McCarthy," said one Parliament official who requested anonymity. Speaking from her office while the conference lunch was in full swing in the street below, McCarthy accused the conference organizers of not wanting to hold an open debate. She also said she will discard extreme amendments submitted by Green MEPs. "I won't accept amendments that exclude patentability per se," she said.

The article also uncritically echoes McCarthy's claim that her proposal would limit patentability and avoid patents on business methods such as Amazon 1Click. The article was resumed by other IDG publications such as Computerwoche.de.

¹<http://swpat.ffii.org/papers/eubsa-swpat0202/amccarthy0305/index.en.html>

²<http://www.idg.com.sg/idgwww.nsf/unidlookup/7D507696B25B253848256D210021B08B?OpenDocument>

- **XDrudis 2003/05/20: Meller's Article on Greens/EFA Conference**³

Xavier Drudis Ferran points out a large number of errors and lack of objectivity in Paul Meller's article about the Greens/EFA Conference on SMEs and Software Patents of 2003/05/08

- **re: IDG article on bxl conference**

Mailing list discussion of Paul Meller's article about the Greens/EFA conference on software patents and SMEs

- **Computerwoche 2003/05/10: Lobbyisten gegen Softwarepatente legen sich ein Ei ins Nest**⁴

German version of IDG report by Paul Meller, further simplified, says that "300 software developpers" followed the invitation of "a group of software lobbyists" to discuss with MEPs "about the disadvantages of software patents" but failed to invite the most important player, Arlene McCarthy, and may pay dearly for this failure; cites McCarthy as accusing the "lobbyists" of unfair discussion practises and warning them that their "too harsh demands" would meet firm resistance.

- **McCarthy complains about 2003/05/07-8 conference**

Having read about McCarthy's complaints to the press and to JURI about unfair treatment by FFII, Hartmut Pilch publishes a letter exchange which Arlene McCarthy and other evidence which puts McCarthy's complaints in context.

- **McCarthy's Gravamen**

similar as above but in German

- **Lenz Blog: Arlene McCarthy Complains**

Professor Lenz finds that MEP McCarthy has no reason to complain.

³<http://aful.org/www/arc/patents/2003-05/msg00188.html>

⁴<http://www.computerwoche.de/index.cfm?pageid=254&artid=48887>

- **Letter to MEPs**

This letter was sent out on 48 hours before the beginning of the conference. It was preceded by letters and a poster campaign from Greens/EFA 3 weeks earlier, which also notified MEPs but did not contain the fully elaborated program.

- **JURI 2003/05/11: McCarthy sends Cashman to complain**

In a JURI session on monday May 11, McCarthy was absent and in her place her party colleague MEP Michael Cashman explained that she was ill and that she had been unfairly treated by Eurolinux, which had conducted a closed discussion, designed to exclude her.

- **McCarthy 2003-02-19: Amended Software Patent Directive Proposal**⁵

Arlene McCarthy, British Labor MEP appointed by the European Parliament's Committee for Legal Affairs and the Internal Market (JURI) to report on the European Commission's Software Patentability Directive Proposal (CEC/BSA Proposal), suggests that the European Parliament should enact the CEC/BSA version with additional safeguards to align Europe on the US practise and make sure that there can be no limit on patentability. McCarthy reiterates the CEC/BSA software patent advocacy and misrepresents the wide-spread criticism without citing any of it. Even economic and legal expertises ordered by the European Parliament and other critical opinions of EU institutions are not taken into account. McCarthy's economic argumentation consists of tautologies and unfounded assertions, such as that companies like Ericsson and Alcatel need software patents to finance their R&D, that SMEs need european software patents in order to compete in the USA, that patents are needed to keep developping countries at bay. McCarthy uses the term "computer-implemented inventions" as a synonym for "software innovations". These "by their very nature belong to a field of technology". McCarthy insists that "irreconcilable conflicts" with the EPO must be avoided. McCarthy says she wants to "set clear limits as to what is patentable" – and that she wants to avoid the "sterile discussions" about "technical effects" and "exclusions from patentability". Yet her proposal stays confined to such discussions. McCarthy demands that all useful ideas, including algorithms and business methods, must be patentable as "computer-implemented inventions". McCarthy proposes to recognise the EPO as Europe's supreme patent legislator and to make decisions of a few influential people at the EPO irreversible and binding for all of Europe.

⁵<http://swpat.ffii.org/papers/eubsa-swpat0202/amccarthy0302/index.en.html>