

Arlene McCarthy MEP and Software Patents

<http://swpat.ffii.org/players/amccarthy/swpatamccarthy.en.html>

Workgroup

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British Member of the European Parliament, Labor/PSE, appointed by the Europarl Committee for Legal Affairs and Internal Market (JURI) in 2002/03 to report on the software patentability directive. In June 2002 Arlene McCarthy published a short report which aggressively promoted the agenda of the European Patent Office (EPO). The paper charged the patent critics of having provided only invalid arguments, but failed to quote or refute any of these arguments. Meanwhile various people from the EPO and patent lobby were in contact with McCarthy and boasted that their viewpoint would prevail and the discussion would soon be over. A hearing arranged by McCarthy and the europarl webspace dedicated to the hearing both offered minimal room for critical views. Arlene McCarthy's draft report of 2003/02/19, her explanatory note of 2003/05/03 and her refusal to accept any amendments which limit patentability or patent enforceability in any way show complete dedication to the interests of patent owners. While staying away from all informed discussions and conferences on software patent questions, McCarthy has actively reaching out to the media in order to present herself as a victim of a "dishonest and destructive misinformation campaign" who is sincerely trying to limit patentability. McCarthy has been serving the recording industry and various projects of the Commission's Directorate for the Internal Market (Bolkestein) with equal fervor. McCarthy's political business model appears to consist in (1) aggressively and unconditionally serving of the Commission and big business (2) obtaining favorable treatment by Commission and Big Business for her electoral region / constituency.

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Already in 2002/02, when rumours about Arlene McCarthy's imminent nomination as a rapporteur on the software patentability directive reached us, insiders told us that her report would almost certainly be pro patent. They saw her appointment as orchestrated by the british patent establishment, which is also pushing the directive at the European Commission. Some say that McCarthy is a "creature of Anthony Howard¹". We have occasionally contacted McCarthy's secretariat in May 2002, partly due to a hearing at the European Parliament², just enough to make sure they are aware of our demands³ and documentation. Unfortunately, Arlene McCarthy has indeed hardly departed an inch from her initial positions, regardless of what arguments were brought forward.

1 McCarthy's Political Interests

McCarthy seems mainly interested in regional politics. She is however also a "governor" of the "European Internet Foundation", a forum with creates opportunities for its members, mainly large corporations and business associations with permanent Brussels representatives, to come into contact with MEPs. Perhaps it is this position as "governor" which has led McCarthy to specify in one of her vitas⁴ that "e-commerce" is one of her fields of interest. For McCarthy, E-Commerce, the Internet and even the patent system seem to be rather remote subjects. Although the Software Patent Directive is the single most prominent subject which has been assigned to her since her accession to the Legal Affairs Commission (JURI), McCarthy has been keeping an extremely low profile. On her websites she never mentions the subject but instead does occasionally mention her ability to successfully lobby for important regional interest groups. It seems that putting one's political skills to the service of potent clients is one of the basic patterns of McCarthyan politics.

Through these regional interest group activities, McCarthy may have come into contact with the venture capital scene. In JURI discussions of spring 2003, she supported her pro-patent viewpoints by citing the positive experience of a couple whose garage enterprise had grown big thanks to speech recognition patents. While we do not know who this enterprise was and whether it survived the dotcom crash, it was indeed commonplace around 1998 for VC investors in the software field to ask for patents.

⁴<http://www.eplp.org.uk/amcc.htm>

2 Suppressing Patent-Critical Views in the European Parliament

McCarthy did everything to prevent the viewpoint of the critics from being given any space in the debate. Her papers either completely ignore them or attack them without quoting any references. In the JURI hearing which she had arranged, initially there was only space for a 5 minute speech of a representative of the Eurolinux Alliance, which had become the organisational basin for a numerically very large group of individuals and companies who oppose software patentability. Even this 5 minute speech was to come only after a sequence of 4-5 statements made by patent lobby representatives. Later, due to the intervention of other MEPs, the hearing setting was slightly improved, but on the hearing website further texts from uninvited patent lobby organisations were published while demands from the Eurolinux side for publication of more papers from patent-critical SMEs were declined. A second hearing, organised by the Greens/EFA 3 weeks later in order to make up for the bias of McCarthy's hearing, was not attended by McCarthy. Several MEPs openly criticised McCarthy for this at the hearing.

Around the time of the Nov 7th hearing, McCarthy tried to stress her "complete open-mindedness". On 2002/11/06 McCarthy underlined this open-mindedness by receiving Jean-Paul Smets (Eurolinux). At a hearing on the following day, she said that patentability rules should be clarified in terms of sample patents. In early december she moreover gave a speech to the JURI committee, in which she suggested that the current patent practise of the EPO produces questionable patents and might indeed need some fixing. This however ultimately did not lead to further discussions or a change of mind.

During the interval from december to february 2002, McCarthy lived in seclusion from her peers, including fellow PSE members of parliament. When her draft report came out in 2003/02/19 and JURI meetings started, she stayed away from many meetings for reasons of illness and regularly complained about lobbying against her at other meetings, apparently attempting to present herself as a victim and trying to shift the focus of the discussion onto alleged unfair treatment of her person. She intensified this approach in early May, when she complained to Hartmut Pilch from FFII/Eurolinux with cc to Daniel Cohn-Bendit MEP and later to various press organs and to JURI that she had received an invitation to a FFII/Eurolinux-organised public meeting too late and that FFII/Eurolinux was trying to exclude her from the discussion.

3 Putting everybody at an equal level of Non-Understanding

McCarthy's policy seems to be consistent with the general strategy of the patent lobby on this issue: avoid discussions as far as possible, and when you do have to discuss, speak a dogmatic language from the EPO which nobody understands, so that you can then safely, from a position of authority, look down on your audience and point out that they do not understand "the law".

The critics of McCarthy's approach have repeatedly tried to ask her to explain her view in terms of a set if example patents. She has consistently refused to answer these

questions. Instead she has either stayed quiet or lectured people with a standard FAQ document which again speaks only in abstract dogmatic terms. She tried to justify this approach by saying to MEPs on 2003/06/16:

We have attempted to set some limits in perhaps a moderately restrictive way, without entirely reinventing patent law, which I would hasten to add, we are not in ability to do that, we are legislators to create framework and laws for interpretation by experts, but we are not experts ourselves.

- **PHM to AMccarthy 03/06/10: Questions based on 2 Example Patent Claims⁵**

Hartmut Pilch of FFII writes publicly to Arlene McCarthy, citing an algorithm claim and a business method claim, both of which have been granted by the European Patent Office (EPO) against the letter and spirit of the European Patent Convention, and both of which have US cousins which have already caused considerable damage. Some of Arlene McCarthy's public statements seem to exclude patents on algorithms and business methods while others seem to make such patents unavoidable. Arlene McCarthy should explain this contradiction in unambiguous terms, based on example patents. Arlene McCarthy did not answer. The closest to an answer was a statement in JURI on June 16:

We have attempted to set some limits in perhaps a moderately restrictive way, without entirely reinventing patent law, which I would hasten to add, we are not in ability to do that, we are legislators to create framework and laws for interpretation by experts, but we are not experts ourselves.

see also 2003/05/07-8 BXL Swpat Conference: MEP Arlene McCarthy's Message⁶ and XDrudis to AMccarthy 03/06/10: Your Note on Directive COM (2002) 92⁷

⁵<http://aful.org/wws/arc/patents/2003-06/msg00047.html>

⁶<http://swpat.ffii.org/events/2003/europarl/05/contrib/amccarthy/swppar1035amccarthy.en.html>

⁷<http://aful.org/wws/arc/patents/2003-06/msg00040.html>

4 Shifting Focus to her Opponents' Impoliteness

McCarthy is said to have studied worked as a research fellow in the political science field at various universities in UK, DE and FR. Her papers written for the Europarl are however very far from scientific papers. Especially the level of reasoning McCarthy's software patentability directive reports would hardly be good enough to pass any exam in first-year university courses. This was said⁸ (in somewhat more polite form) by a group of well-known innovation economists in August 30. In 2003/02/19 McCarthy published, after a year of research by her and her staff, a completely unresearched report of such a poor quality that even those who are backing McCarthy have little reason to feel satisfied. This paper repeats many of those doctrines whose evident flaws had already been pointed out when she presented them in another paper 8 months earlier. McCarthy further ignored criticism of this paper and presented the same flawed doctrines once again in a paper of May 2003. Her approach has been to avoid informed discussions and instead contact journalists or uninformed SME representatives and tell them that she was doing her best to exclude algorithms and business methods from patentability and that a group of "misguided lobbyists", financed by George Soros, was misrepresenting her views.

Meanwhile McCarthy and her allies Malcolm Harbour⁹, Janelly Fourtou¹⁰ and Dr. Joachim Wuermeling¹¹ have steadfastly opposed all amendment proposals which could have effectively limited patentability or patent enforceability in any way.

At discussions within the Legal Affairs Committee (JURI), McCarthy has claimed that software patents are good for "a family enterprise that works on speech recognition and protects itself by means of a patent". Also, she lashed out against "those lobbyists who are abusing the debate as an opportunity to attack [those poor honest hardworking officials from] the European Patent Office."

McCarthy is fully aware of the British consultations, of the meaningless of her "technical contribution" talk (pointed out e.g. by her compatriot Dominic Sweetman in the Europarl hearing), of the uselessness of isolated "speech recognition patents", of the interests of SMEs on this subject, of Mandy Haberman's letter to the European Parliament¹² etc.

In a letter to the Guardian of June 2003, McCarthy even attacks the GNU GPL as "just another form of monopolism". It seems that McCarthy may be interested in arousing flamewars and then presenting herself as a victim of unreasonable invectives. This can be a fairly successful strategy, because politeness standards are very high in the European Parliament and fellow MEPs may feel compelled to come to the rescue of an MEP who is being subjected to heated criticism.

⁸<http://swpat.ffii.org/news/03/ekon0820/swnekon030820.en.html>

⁹<http://swpat.ffii.org/players/mharbour/swpatmharbour.en.html>

¹⁰<http://swpat.ffii.org/players/jfourtou/swpatjfourtou.en.html>

¹¹<http://swpat.ffii.org/players/jwuermeling/swpatjwuermeling.en.html>

¹²which refutes claims about her patent-based family enterprise made by UNICE's Nguyen at the 2002/11/07 hearing

- **Arlene McCarthy: The little fry patently needs protection¹³**

Arlene McCarthy responds to an article on the danger of software patents by Richard Stallman and Nick Hill and reiterates her viewpoint that

1. she is not making software as such but only software inventions patentable and this is very different from the US situation
 2. SMEs need software patents
 3. various institutional disequilibria make it impossible to avoid software patents
 4. she has introduced helpful amendment proposals to safeguard interoperability
- . The fallacies have been pointed out before. The last assertion is a lie in the strictest sense of the term.

¹³<http://www.guardian.co.uk/online/story/0,3605,975126,00.html>

5 McCarthy's friends and counsels from UK/CEC/EPO patent community

Given that a circle of corporate patent lawyers around the UK Patent Office had a decisive influence on the formation of the present directive proposal and that these people are pushing it in the name of the UK government, one could assume that the same UK patent promoters are skilled enough to exert influence on who will be the rapporteur in the JURI (Legal Affairs and Internal Market) commission. Assuming that McCarthy was their choice, one could only congratulate them for this move. The socialist fraction of the European Parliament is the single largest force which could be expected to oppose the directive. At least the French, Belgian and Spanish socialists have already made binding programmatic statements against software patents. McCarthy's potential of splitting the PSE (Europarl socialists) is further enhanced by the fact that she has in the past often voted together with PSE, Greens and Liberals against the Conservatives.

McCarthy's proposals themselves do not look completely ghostwritten. At least the advocacy parts contain unmistakable personal characteristics. Much of the amendment proposals themselves however is reminiscent of Anthony Howard (from CEC) and of industrial patent lawyers. Although some EPO officials have also visited McCarthy and even boasted in semi-public circles that they, together with McCarthy, would quickly get their point of view through the parliament, much of what McCarthy wrote in 2003 is more reminiscent of UK and CEC patent lawyers than of the EPO. Some of McCarthy's amendment proposals go slightly further than most at the EPO would in undermining patentability standards.

6 Campaigning the European Parliament for Music Industry rights



This appeal prepared the ground for another directive which the European Commission had put to the parliament at the request of phono industry and other lobby organisations and for which JF, herself an IP lobbyist with vested family interests (Vivendi, Aventis), got herself appointed as rapporteur. On June 5th 2003, McCarthy, wore a t-shirt “Piracy is not a victimless crime” to help lobby fellow MEPs to support her campaign. The campaign organiser IFPI, organisation of the phonographic industry, celebrated this climax of their campaign with a press release.

While IFPI and Vivendi are not likely to profit from software patents, they may feel some diffuse sympathy to anything that promises control of downstream economy, and they are of course, through various industry lobby organisations, in bed with the patent lobby. This diffuse and cozy sense of belonging to the same group of people is probably, more than any rational policy consideration, what binds McCarthy and the software patent lobby together.

- **McCarthy et al 2003/02/27 demanding “strong sanctions”¹⁴**

On 2003/03/27, MEP Arlene McCarthy published an appeal which calls for signatures to a letter that links copyright infringement to terrorism and calls for strong sanctions against “any infringement of intellectual property”.

¹⁴<http://swpat.ffii.org/papers/eubsa-swpat0202/amccarthy030327/amccarthy030327.en.html>

- **IFPI statement on McCarthy’s IP campaign victory**¹⁵
- **McCarthy @ Labour photo page**¹⁶

As of 2003/07/23, this page contained the photo of Arlene McCarthy with two friends from the music industry and an explanation “Arlene with Jay Berman and Sir George Martin, campaigning for Music Industry rights in the European Parliament”

- **Janelly Fourtou MEP and Software Patents**¹⁷

Janelly Fourtou, member of the European Parliament, French Conservative, has actively promoted software and business method patents in Europe, while pretending that she was “only restating the current law”. Fourtou in particular used every opportunity to push for legalisation of program claims (e.g. “a program, characterised by that upon loading into memory some computing process is executed”), which the European Commission had suggested not to allow. Jean-René Fourtou, husband of Janelly, former top manager of Aventis (pharma), is currently the CEO of Vivendi Universal. Vivendi is involved in cooperation negotiations with Microsoft. In 2002/12 J-R became the head of the International Chamber of Commerce (ICC), an organisation with a very active patent arm (IP Commission) which is lobbying for expansion of the patent system worldwide. In 2003, Fourtou became the rapporteur of a new IP enforcement directive, which, if enacted according to Fourtou’s proposal, may allow the Fourtou family to earn many thousands of EUR by suing people, either on the grounds of patents or copyright. This directive proposal is once again based on documents from BSA and once again claims to be “only harmonising the status quo”. Fourtou finds the proposed measures still not draconian enough.

¹⁵<http://www.ifpi.org/site-content/press/20030605b.html>

¹⁶<https://www.copernicus.co.uk/WiaB2/ViewPage.cfm?Page=2923>

¹⁷<http://swpat.ffii.org/players/jfourtou/swpatjfourtou.en.html>

7 McCarthy and Microsoft



- phm 2003-08: McCarthy, Plooijs in Seattle with EIF¹⁸

McCarthy and a few other MEPs travel to Seattle to visit Microsoft together with the European Internet Foundation, a EU lobbying group financed by large corporations and designed to facilitate communication between MEPs and the Brussels representatives of these corporations.

At the EIF dinner after the software patentability hearing of 2003-11-07¹⁹, McCarthy shared the table with a Brussels representative of Microsoft.

In her letter to the Guardian, McCarthy spreads Microsoft FUD about the GNU GPL, saying that it is just another form of monopoly and implying that non-free software needs patents.

At the OECD Conference on Aug 29 in Paris, Marie-Thérèse Huppertz, who has been lobbying for software patents on behalf of Microsoft, cited this McCarthy letter to the Guardian as an example of the thinking of a true European patriot.

8 McCarthy's Reelection



8.1 Rebellion in McCarthy's Electorate

- Rebellion in Arlene McCarthy's constituency²⁰

¹⁹<http://swpat.ffii.org/events/2002/euoparl11/swpparl02B.en.html#lobb>

²⁰<http://swpat.ffii.org/news/04/amcc0113/amcc040113.en.html>

Parts of the Labour party and electorate of Arlene McCarthy's district are asking to have her replaced. McCarthy responds by pointing to her affiliation with the regional venture capital scene (= patent movement) and claiming merits in bringing special EU funds to her regions.

8.2 Which region/cities elected McCarthy?

Arlene McCarthy is a Labour MEP for Chester and Merseyside.

Her constituency covers the following counties: Cumbria, Lancashire, Chester, Cheshire. Cities and major towns include: Manchester, Wigan, Blackburn. Preston, Carlisle, Bolton, Bury, Rochdale, Oldham, Stockport, Crewe, Macclesfield, Runcorn.

8.3 By what mechanism was McCarthy elected?

In the previous election (2000) Arlene McCarthy came 1st on the labour party preference list. This time, she came second. She may have been promoted to second place as a result of the Labour party rules which attempt to balance representation of women and men.

see UK Members of the European Parliament²¹

The MEP local elections are done on a proportional representation system. The party selects a list of candidates in preference order via an internal selection process.

The north west region has 9 MEP candidates. If Labour, Conservative and Libdems each had 33% of the votes, each would have 3 MEPs. The three at the top of the list for each party will be selected.

8.4 Upcoming elections

Internal party selection has been done. Public election is in 2004.

McCarthy is at the top of the Labour list, competing mainly with Conservatives and Liberal Democrats.

- **Lancashire MEPs²²**

A list of current MEPs with whom Arlene McCarthy shares the constituency

²¹<http://www.psr.keele.ac.uk/area/uk/meps.htm>

²²<http://www.thislancashire.co.uk/lancashire/bury/info/mep.html>

9 Some relevant pages

- **Labour Party - Arlene McCarthy Member of the European Parliament for the North West**²³

The site contains quite a few press releases, including one from 2003/02/18 about protecting young girls from harmful breast implants, but nothing about patents as of 2003/03/07, if the search engine is working correctly.

- **McCarthy Quarrel with green MEPs over failed CEC directive on corporate takeover**²⁴

Arlene McCarthy supported a proposal by European Commission for a directive to liberalise the stock market with the effect of facilitating hostile takeovers. This met with resistance from a wide alliance of forces, including the German government. When the directive failed in the European Parliament, Arlene McCarthy published a letter in the Guardian in which she accuses the Greens of naively playing into the hands of the Germans. Two green MEPs sent letters which reject McCarthy's "ludicrous accusations". The directive proposal was from Frits Bolkestein, the DG Internal Market Commissioner whose software patent directive proposal McCarthy supported with similar fervor a year later.

see also

- **Europarl 5: Arlene McCarthy**²⁵

McCarthy biography as specified on the Europarl website:

... Worked with the Socialist Group in the European Parliament (1989-1992

and with Mr Ford, former Leader of the European Parliamentary Labour Party (1990-1992). Lecturer in politics, Institute for International Politics and Regional Studies, Free University of Berlin (1991-1992). Principal European Liaison Officer, Kirklees Metropolitan Council (until 1994). The obligatory "Declaration of Financial Interest" was still missing from this page as of June 2003.

²³<http://www.arlenemccarthy.labour.co.uk/>

²⁴<http://www.jeanlambertmep.org.uk/downloads/letters/0108takeovr.htm>

²⁵http://www.db.europarl.eu.int/ep5/owa/whos_mep.data?&ilg=EN&iucd=2173

- **Arlene McCarthy**²⁶

This page extensively and favorably reports on McCarthy's Europarl activities but, except for a hint to interest in "e-commerce", does not mention her involvement in questions of software or patents:

Labour Spokesperson and Government Link on the Legal Affairs and Internal Market Committee and a substitute Member on the Regional Policy, Transport and Tourism Committee. Arlene is actively involved in the debate on the future of European grants for the UK and works closely with the Labour Government on the development of regional policy in the UK. ... Arlene wrote the Parliament's report on the reform of European regional funds post 2000. ...Arlene has successfully led a campaign in defence of local textile companies to stop duties being levied that could lead to major job losses locally. As draftsman for the Parliament's Budget Report in 1997 she lobbied successfully for an additional £40 million for the coalfield areas. Special interests: EU regional and industrial policy, urban regeneration, e-commerce.

- **Kirklees Metropolitan Council**²⁷

One McCarthy vita reads:

Before her election as a Euro MP, Arlene McCarthy was in charge of running European programmes at Kirklees Metropolitan Borough Council, attracting substantial amounts of money.

This must have been 1992-94.

²⁶<http://www.eplp.org.uk/amcc.htm>

²⁷<http://www.kirkleesmc.gov.uk/>

- **Arlene McCarthy PR “hits out” against “dishonest ... bullying ... lobbyists”²⁸**

In response to last week’s wave of protests against her software patent directive proposal, Arlene McCarthy MEP, rapporteur of the European Parliament for the EU Software Patent Directive Proposal, has circulated a press release which “hits out against claims made by opponents to the new EU law”. McCarthy, speaking in the name of UK Labour and partially of the parliament as a whole, calls on fellow MEPs to “back EU plans for patents for inventions” later this month, warning them not to be misled by a “dishonest and unconstructive campaign”, “orchestrated” by a group of “lobbyists”, who are “bullying” parliamentary staff and “putting at risk jobs in the growing software industry”.

- **Arlene McCarthy 2003/09/01: “The Myths - The Truth”²⁹**

In response to the wave of protests against the proposed software patent directive COM(2002)92 2002/0047 in late August 2003, the European Parliament’s rapporteur for this directive, Arlene McCarthy MEP, has published a “Factsheet” which attempts to explain that she has been a victim of a “misinformation campaign” and is in reality championing the protesters’ cause. We republish the paper with comments here.

- **Economists Slam McCarthy Software Patent Directive Proposal³⁰**

On September 1st, the plenary of the European Parliament will decide about a law proposal which would establish software patents in Europe. A group of economists from Europe and US specialising in patent questions have published a letter to members of the European Parliament calling them to reject the proposal, accompanied by an analytical paper which casts severe doubts on the reasoning behind the directive and on the methods employed by its proponents.

²⁸<http://swpat.ffii.org/news/03/amcc0902/swnamcc030902.en.html>

²⁹<http://swpat.ffii.org/papers/eubsa-swpat0202/amccarthy030901/amccarthy030901.en.html>

³⁰<http://swpat.ffii.org/news/03/ekon0820/swnekon030820.en.html>

- **XDrudis to AMccarthy 03/06/10: Your Note on Directive COM (2002) 92³¹**

Xavier Drudis Ferran from Catalan Linux Users Group (CALIU) informs Arlene McCarthy MEP of his analysis of the FAQ which she had distributed to the participants of the FFII/Eurolinux conference in the Dorint Hotel in Brussels on 03/05/07-8, points out some fallacies in this document and invites McCarthy to engage in the dialogue about whose absence she has been complaining to journalists. This letter remains unanswered.

see also 2003/05/07-8 BXL Swpat Conference: MEP Arlene McCarthy's Message³² and PHM to AMccarthy 03/06/10: Questions based on 2 Example Patent Claims³³

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³¹<http://aful.org/wws/arc/patents/2003-06/msg00040.html>

³²<http://swpat.ffii.org/events/2003/europarl/05/contrib/amccarthy/swppar1035amccarthy.en.html>

³³<http://aful.org/wws/arc/patents/2003-06/msg00047.html>

³⁴<http://swpat.ffii.org/news/03/amcc0902/swnamcc030902.en.html>

³⁵<http://swpat.ffii.org/papers/eubsa-swpat0202/amccarthy030901/amccarthy030901.en.html>

- **Arlene McCarthy 2003/06/18: The Need for A Directive**³⁶

Explanatory Statement by Arlene McCarthy. Slightly revised version of her draft report of February, without corrections but with additions, e.g. mention of a small company in an unemployment blackspot in South-west England which benefitted from voice recognition related software patents.

- **Arlene McCarthy 2003/06/17 Voting List**³⁷

supports all amendments that further weaken limits of patentability and strengthen patent enforcability even beyond the CEC proposal, opposes all amendments that provide a means of limiting patentability or patent enforcability.

- **McCarthy 2003/06/12: Letter to the Guardian**³⁸

Arlene McCarthy, Member of the European Parliament for UK labour and rapporteur of the JURI committee for the software patent directive proposal, has for the first time directly answered arguments from critics in a letter to the british newspaper The Guardian. Yet the basic questions, e.g. what should be patentable and how McCarthy's proposals achieve this, remain unanswered. McCarthy reiterates demagogic statements of whose untruth she is well-informed and even resorts to lies in the strictest sense of the term, such as saying that she introduced a provision to allow decompilation. McCarthy moreover attacks the GNU General Public License in an apparent effort to shift focus to unrelated subjects and incite flamewars with the free software community. We analyse McCarthy's fallacies and the political context of her letter.

³⁶<http://www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//TEXT+REPORT+A5-2003-0238+0+DOC+XML+V0//EN&L=EN&LEVEL=2&NAV=S&LSTDOC=Y#Content597c68>

³⁷<http://swpat.ffii.org/papers/eubsa-swpat0202/amcc030617/amcc030617.en.html>

³⁸<http://swpat.ffii.org/papers/eubsa-swpat0202/amccarthy030612/amccarthy030612.en.html>

- **McCarthy 2003/05/03: Software Patent Directive Proposal FAQ**³⁹

Arlene McCarthy, member of the European Parliament and rapporteur of the Legal Affairs Commission (JURI) on the Software Patentability Directive Proposal explains her point of view in a FAQ manner. She asked us to distribute this document to the participants of a conference which we organised in Brussels. In a nutshell, she says that

1. Software patents, as granted by the European Patent Office (EPO) at present, are needed for various reasons, e.g. protecting Europe against competition from Asia, allowing European SMEs to compete in the US, etc
2. The EPO is granting software patents but not patents on non-technical algorithms and business methods.
3. The current proposal is designed to ensure that the EPO's practise is followed throughout Europe in a uniform manner and that a drift toward patenting of "non-technical algorithms and business methods" is halted.

We debug McCarthy's questions and answers one by one. It seems that many of McCarthy's proclaimed objectives could be achieved only by voting in favor of a series of CULT, ITRE and JURI amendment proposals which unfortunately have not enjoyed the support of the rapporteur.

- **2003/05/07-8 BXL Swpat Conference: MEP Arlene McCarthy's Message**⁴⁰

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 developers 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.

³⁹<http://swpat.ffii.org/papers/eubsa-swp0202/amccarthy0305/amccarthy0305.en.html>

⁴⁰<http://swpat.ffii.org/events/2003/euoparl/05/contrib/amccarthy/swppar1035amccarthy.en.html>

- **McCarthy 2003-02-19: Amended Software Patent Directive Proposal**⁴¹

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.

⁴¹<http://swpat.ffii.org/papers/eubsa-swpat0202/amccarthy0302/amccarthy0302.en.html>

- **MEP Arlene McCarthy 2002-06-19: Report on the CEC/BSA Directive Proposal⁴²**

In a democratic Europe, one would expect the legislative power, such as the European Parliament, to critically monitor the activities of the executive and judicial powers, such as the European Commission (CEC) and the European Patent Office (EPO), and to correct their shortcomings. The british Labor MEP Arlene McCarthy, as a rapporteur to the European Parliament's Committee for Legal Affairs and the Internal Markt on the proposed software patentability directive COM(02) 92, however merely reaffirms the beliefs of the patent lawyers who have been dominating the dossier at the CEC and the EPO. McCarthy's report disregards the opinions of virtually all respected programmers and economists and fails to correctly identify the controversial issues. Yet at the end McCarthy asks a few questions which provide us with a certain hope that eventually a more open debate can be brought about. Please read our answers below.

10 possible affiliations and sources of influence

McCarthy is involved in regional industrial policies in northwestern England and in the venture capital scene and thereby is probably frequently exposed to the "venture capital requires patents" fallacy.

- **European Internet Foundation⁴³**

An organisation of which McCarthy is a "vice governor" and many other MEPs hold similar posts. EIF is financed by business and associate members. Associate members are business associations like EICTA, BSA etc, except maybe for CECUA and one university. Fee is 500 euros/year for associations, + cost of participation to each event. EIF frequently organises events which are attended by MEPs and permanent Brussels representatives of member associations and companies.

- **EURIM⁴⁴**

UK-based lobbying association which operates in a very similar way as EIF

⁴²<http://swpat.ffii.org/papers/eubsa-swpat0202/amccarthy0206/amccarthy0206.en.html>

⁴³<http://www.eifonline.org/site/index.cfm?BID=16&SID=1&LG=2&HOMEP=1>

⁴⁴<http://www.eurim.org>

- **Committee of the Regions**⁴⁵

An organisation which is closely related to McCarthy's work and which has written a paper which strongly warns against software patents. The CEC/BSA software patentability directive mentions this paper because the COR is a EU organisation whose opinion must be consulted. McCarthy's own reports fail to mention the COR paper as well as other papers written by EU institutions, except for those that argue in favor of software patents. At least in the patent context the COR does not seem to be a source of authority for McCarthy.

- **The UK Patent Family and Software Patents**⁴⁶

Much of the lobbying for software patents in Europe has been done by British patent lawyers and patent officials wearing the hat of the European Commission or the British government. Most of the law-drafters and alleged "independent contractors" for the European Commission (CEC) were members of the British patent family. The UK Patent Office (UKPO) was the first national patent office to officially follow the European Patent Office (EPO) in allowing direct patent claims to computer programs in 1998. The UKPO has also succeeded in keeping its hand on the British government's patent policy, in moderating a public consultation which showed strong public opposition to software patentability, and, most admirably, in interpreting this public opinion as a legitimation basis for (1) establishing software (including business method) patents in Britain and (2) pushing Brussels to establish them in all of Europe. The UK Patent Family appears to be the strongest single force behind the European Commission's software patentability directive project.

- **Software Patents in the USA**⁴⁷

The US government has an official policy of pushing for extension and strengthening of patentability everywhere in the world, and Britain has a tradition of aligning itself with the US, on patent matters also. The Blair government has further strengthened this constellation, and McCarthy appears to be a close follower of Blair. The Conservatives also support this position by default. Criticism has come only from the Liberal Democrats.

⁴⁵corswpatcusku

⁴⁶<http://swpat.ffii.org/players/uk/swpatuk.en.html>

⁴⁷<http://swpat.ffii.org/players/us/swpatus.en.html>

- **UK Gov't Promoting Patent Extremism in the European Parliament**⁴⁸

The UK Government's Foreign Office is circulating a "briefing to UK MEPs", in which it instructs british members of the European Parliament to back Arlene McCarthy's position and vote (1) against any attempt to define what is technical or otherwise limit what is patentable (2) against Article 6a which allows converters to be written when standards are patented (3) for JURI Art 5 which forbids publication of descriptions of patented inventions on the Net. The intervention of the government comes at a moment where McCarthy has shown nervous reactions in view of dwindling support in her party group. The government statement can be attributed to the UK Patent Office and its policy working group, consisting mainly of patent lawyers from large corporations. This group has been determining the software patent policy of the UK and largely also of the EU during recent years.

11 Questions, Things To Do, How you can Help

- **How you can help us fight patent inflation**⁴⁹
- **If you are located in the North-East region: Contact local political parties for ideas on how to make McCarthy's software patent activities known in the region. Start a discussion to raise awareness in all local LUGs.**
- **Contact your EuroMPs through UK Keele MEP list**⁵⁰ **or through the FFII support tool**⁵¹.
- **FFII/Eurolinux 2003/04 Letter to Software Creators and Users**⁵²

⁴⁸<http://swpat.ffii.org/papers/eubsa-swpat0202/ukrep0309/ukrep0309.en.html>

⁴⁹<http://swpat.ffii.org/group/todo/swpatgunka.en.html>

⁵⁰<http://www.psr.keele.ac.uk/area/uk/meps.htm>

⁵¹<http://www.ffii.org/ffii-cgi/ffieintragcgi?l=en>

⁵²<http://swpat.ffii.org/letters/parl034/swxparl034.en.html>