

## Europe's Software Patent Law Could Lead to Serious Complications

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The European Parliament changed a draft patent law to exclude the U.S. practice of granting patents for business methods. A "patent war" could ensue — but not right away. The directive won't be implemented before at least 4Q05.

## NEWS ANALYSIS

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### Event

On 24 September 2003, the European Parliament gave initial approval to the Directive on the Patentability of Computer-Implemented Inventions. However, the Parliament added 90 amendments, many designed to forbid the U.S. practice of patenting business methods and software.

### Analysis

The directive aims to harmonize rules for issuing patents for "computer-implemented inventions," defined as a combination of hardware and software. Critics of the original draft claimed its ambiguous wording would have allowed most software to be patented as in the United States. The amendments proposed by Parliament would prevent patents for "business methods," such as the U.S. patent granted to Amazon for "one click shopping," and for algorithms in software programs. The amendments would also allow a grace period to determine the state of the art, which would favor smaller companies that apply for software patents.

A European Union (EU) directive is the only reasonable approach for harmonizing laws across Europe and for moving toward a single patenting system. Member states' patent offices and the European Patent Office already grant patents for software but use different criteria for deciding what can be patented. However, the directive has a long way to go before it becomes law. The amended bill now goes back for review to the European Commission (which drafted it), and Parliament will then vote on it again. If approved, the Council of Ministers must then vote for the final version before it becomes law. After that, each country must implement the directive in national legislation. Although the proposed amendments largely remove the ambiguity in the original draft, it remains unclear whether the Commission will accept them and continue with the legislative process.

If the amended directive becomes law, the significant differences between the U.S. and European approaches to software patenting raise the prospect of a patent war. Potentially, this could have big implications for Web site operators as disputes arise over which country a patent can be enforced in — it might even become illegal to access a European e-commerce site from the United States. Even if the amended directive survives relatively unchanged, enterprises will not see any changes in European patenting law until at least 2005. An EU directive can't be implemented in national laws before 4Q05 at the earliest. This vote will have no short-term impact on the open source software movement or on others who see software patents as a threat.

**Analytical Sources:** Debra Logan, Andrea Di Maio and Nikos Drakos, Gartner Research

### Recommended Reading and Related Research

- "European Officials Should Rethink Software Patent Proposal" — Instead of software patenting, EU policy makers should focus on creating a single EU-wide patent and remove the power of national patent offices. **By Debra Logan**
- "Unified European Patent Legislation: Act Now Before It's Too Late" — The EU should move to a single patenting system that makes patents easy and reasonably inexpensive to obtain. **By Debra Logan**

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