Free Software: the threats

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1- Software patents

In France, as in Europe, software is not patentable because it is regarded as belonging to methods and algorithms – in the same way mathematics are.

And yet, for several years, big companies have been pushing the idea of patent, pretending it would foster innovation. In fact, the effect is the opposite: because the innovation cycle in software is very short, and since a software patent forbids access to a method, it impedes innovation instead of stimulating it.

Contrarily to the French copyright ["droit d'auteur"] (which today protects software creation), software patents are discriminatory against software publishing SMEs (whether free or proprietary): they cannot afford to finance anteriority researches and disputes in order to protect their software, nor can they commercialize it without risk. The principle of patent is intrinsically incompatible with Free Software. It implies significant implementation costs and restrictions of use. If it were introduced in Europe, it would sharply slow down the Free Software development and use.

The US Patent and Trademark Office itself gets now back to a doctrine of non patentability of software as such. It would thus be absurd that the EU patent system evolve toward software patentability.

Our ICT sector needs to be protected from software patents. That is why we must oppose what is merely a Trojan Horse for a bunch of major software publishers, mainly outside Europe, which will be the only ones, along with specialized lawyers, to benefit from the legal insecurity it creates.

2- Bundled sales and vendor lock-ins

At the moment, free access to the market doesn't actually apply to Free Software. With regards to the consumer market, Free Software faces coalitions between software publishers and hardware vendors, despite the fact that their behavior is punished by the

French Consumption Legislation ["Code de la consommation"] and despite the negotiations led by the DGCCRF[1] to end this situation.

There is also discrimination regarding the access to public orders and to public services and more generally to public data. This discrimination is the consequence of the data formats in use: public authorities and public services do not always choose open formats which can be implemented by any programs. Now, as a consequence of closed format choices, access to documents is restricted to users of proprietary software capable of reading them. For example, calls for tenders by administrations, made using closed formats, can prevent Free Software users from accessing public orders. In a similar way, the format chosen by some public services to diffuse their content makes access by Free Software users impossible (e.g. Radio France, France Television). The problem is the same with public information (geographic maps, official documents...).

As an answer to many Internet users' request, this year, the French National Assembly[2] decided to broadcast its live session ["La séance en direct"], in an open format, in order to guaranty to all an equal access to the French Parliament's debate. Such initiatives must be encouraged. That is in fact the purpose of the "General Interoperability Framework" ["Référentiel Général d'Interopérabilité"], announced long before. Its validation has been expected since summer 2006.

3- EUCD Directive / DADVSI law

The French "law on authors' rights and related rights in the Information Society" ["Loi sur les Droits d'auteur et Droits Voisins dans la Société de l'Information"] is the transposition of the EUCD 2001/29/CE directive. It was adopted in 2006 and gave birth, on behalf of fighting against counterfeiting, to excessive extensions of copyright. This law has introduced in our legislation clauses which undermine the neutrality of technology, that is the principle according to which technology in itself is neither good nor bad: only the use one makes of it can be acceptable or reprehensible.

Through the fallacious argument that the users of a free program could modify it in order to make illegal copies, this law denies access to Free Software authors to the market of the multimedia readers intended to read protected works. As a consequence, the discrimination the Free Software developers and users have to face, increases.

Practically, the DRM ("Digital Restrictions Management") legal protection makes legally very hazardous the elaboration of independent, Free software, capable of reading a protected movie or a musical work. Free Software users are de facto prevented from accessing the on-line music selling platforms whenever musical works are protected by DRM.

Moreover, the DADVSI law contains clauses referred to as "Vivendi clauses". They criminalize the peer-to-peer platforms not containing DRM, under the pretext that they are,

1 DGCCRF: French governmental administration dealing with Consumption, Competition and Treachery Suppression ["Direction générale de la consommation, de la concurrence et de la répression des fraudes"]

2 The French National Assembly is the lower house of the French Parliament (http://en.wikipedia.org/wiki/National_Assembly_of_France).

among other uses, used to exchange works without permission. DRM and Free Software being intrinsically incompatible, these clauses also represent a serious concern for Free Software. It is an attempt to censor Free Software authors - to deny them the right to use the P2P technology- while only the users' actions may infringe the intellectual property of some authors and their legal beneficiaries, and while Free Software authors, by definition, are not able to prevent them from doing so.

As a consequence, this law is discriminatory. It unfairly burdens Free Software authors with a heavy legal insecurity. Some of them chose to go into exile, following the example of the Azureus peer-to-peer project manager, who migrated to the United States – a country which, like many other countries facing the numerous perversions this law causes, increasingly discards the mirage of DRM.

A revision of the DADVSI law is unavoidable.

4- So called *"Trusted Computing"* (treacherous computing)

In addition to the claims made on behalf of proprietary rights, which do not exist in European Law, or on the deceptive pretext of fighting counterfeiting, exaggerated claims, made on behalf of software security, grow in number in order to try to justify the implementation of new obstacles to fair competition.

Some dominant players like Microsoft try to restrict interoperability with their software only to "certified software" complying with their own criteria. They force to take very expensive certification tests which, de facto, excludes the voluntary authors and the SME. The outcome of such an approach is the so called "Trusted Computing" which, in fact, uses technical means to prevent non certified software to implement interoperability, that is to say communication between two independent programs. Such practices and mechanisms have to be rejected.

And as explained in 2005 in a report on the security of information systems by French member of parliament Pierre Lasbordes, *"the emergence of this trusted computing would lead to a very limited number of companies imposing their security model to the whole world, by allowing or not applications to be run only on given PCs, through the delivery of digital certificates."*[3] that brings, in addition to the risks for privacy and national security, obvious issues regarding fair competition.

3 "L'émergence de cette informatique de confiance conduirait un nombre très limité de sociétés à imposer leur modèle de sécurité à la planète, en autorisant ou non, par la délivrance de certificats numériques, des applications à s'exécuter sur des PC donnés."