

# Companies' Strategies to Protect New Technologies

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Notes to PowerPoint Presentation

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2. Relevant data on internet penetration, buying online and selling online.

The issues and importance of patents protecting computer-implemented inventions.

The reasons bellow the EU initiative.

The patent protection.

When considering the companies' dimension and market strategy as well as the characteristics of the inventions, patents are not the only means to protect computer-implemented inventions.

3. Accesses to internet correspond to approximately 40% of the population.

4. Southern European countries are clearly bellow the European average.

This means that "B to B" can considerably improve in these countries in the years to come.

5. SME desperately need to improve they performance in doing business online in order to compete with bigger companies in the new economy era.

6. It is clear that supporters of open source software are countless. Still, industry organisations, in particular UNICE, and IP professionals favour the granting of broader and clearer patent protection to computer implemented inventions.

9. As a matter of fact EPO and national authorities and jurisdictions have accepted that computer-implemented inventions can be considered as patentable when they have a technical character, i.e. when they belong to the field of technology.

Recently all programs capable of running in a computer have been considered by definition technical.

10. The proposal addresses therefore the need for harmonization and legal certainty.
13. The proposal also aims in bringing European patent law in line with Japan and US legislations.
16. This somehow lenient approach has also been criticized: it lead to the grant of clearly invalid patents, and to strengthen market positions.
20. As we know, and has illustrated in by the Amazon's one-click patent, patents may prove to be effective means of fencing off an area of technology keeping out competitors, providing basis for granting licences, and facilitating the raining of investment capital.
22. The risks of infringement need to be evaluated: risk that the patent is deliberately infringed (case of weak patents); risk that it will likely be hindered by disguised infringements.

Remedies available to the patent owner: civil sanctions (award of damages and injunctions to cease the infringement), criminal sanctions. Limits to civil sanctions: non awareness and multiple infringements.

23. Patents have however a certain number of drawbacks.

Owner's legal rights are limited:

- monopoly claims may be subject to amendment or invalidation by the courts;
- development patent owners may need to pay royalties to improved patent owners;
- patent owners are required to work their inventions in order to avoid compulsory licensing.

Patents are seen as complex, expensive and difficult to enforce for SME and therefore less valuable than copyright or informal means of protection.

Publicity jeopardises however the R&D investments made.

23. In this case however one must be sure that defensive publication is effective.

This may prove to be a good strategy where there is not room for a very strong competition.

25. Patent and copyright protection are complementary. However, copyrights protect expressions and a copyright would subsist in the expression in any form of the source code or object code but does not subsist in the underlying ideas and principles of the source code or object of a program.

Copyright does therefore not prevent the many possible alternate ways to express the same ideas and principles in different source or object code.

#### CONCLUSION:

That is why the patentability of compute-implemented inventions is, despite its limits and circumstantial disadvantages essential to R&D in this field and e-commerce in general.