

**UNG PIRAT SWEDEN**



**PIRAATTINUORET  
FINLAND**

## Ung Pirat Sweden & Piraattinuoret Finland - Reply to Communication from the Enlarged Board of Appeal Concerning Case G3/08

Ung Pirat Sweden and Piraattinuoret Finland are two youth organisations founded with the aim to bring up issues and controversies on intellectual property issues, digital rights and freedom in information, communication and knowledge on the political agenda.

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Recently the European Patent Board of Appeal has launched a consultation regarding the supposed legal uncertainties surrounding software patents in the European Patent Convention.

This initiative displays that not even the issuer of software patents, EPO, knows what it's doing. Their attempt to solve this issue by looking to the text in the Patent Convention is also unfortunate. As early as in 2003 software patents turned political through the proposed EU directive on software patentability. It is primarily as a political issue software patents should be considered.

For this reason, the EPO has no true mandate to ask about software patent interpretation with respect to already existing legislation

There are three good reasons why the EPO should not decide on this matter:

- a) The creation of software is a necessary part of modern creativity and enterprise. Software patents infringe on the freedom of non-commercial programmers and small enterprises. Studies show that countries where software is patentable have few and large software companies, while smaller enterprises suffer. The question of how SMEs and non-commercial programmers should be protected and encouraged is one of the legislator, not the interpreter.
- b) The dispute surrounding software patents is political, not legal. The question is not whether the law currently permits them or not, but if the law should ever permit them or not.
- c) The fact that the President of the EPO has phrased her questions to the Board of Appeal as if software patents were already a certainty and only the legal scope of them need be decided shows a worrying lack of understanding of this issue. Software patents are in no way a legal certainty. The political debate has still to decide whether software patents of any form should exist.



Because of the above-mentioned reasons, we, the Young Pirates of Sweden and Finland, urge the President of the European Patent Office and the European Patent Board of Appeal to take a stand against the interpretative approach to software patents under already existing legislation. Political issues should be decided by politicians, and interpretation occur only after such legislation exists. Until such a time, the EPO should stop granting software patents entirely due to the uncertainty of the situation.

Yours sincerely,

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