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Sent: Saturday, September 25, 2010 5:07 PM
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Subject: Feedback on Software Patent Guidance

To whom it may concern:

I am writing to give my feedback on the viability of software patents. As a senior software engineer with 15+ years experience in the industry, I have seen first hand how patents actually stifle software innovation, not encourage it. Some of the most exciting innovations in software have come not from traditional R&D sources, but from the open source community. Technologies which are free from patents, and software sans DRM is almost always more popular and leads to more incidental economic growth than closed, patented algorithms and systems.

Software patents hurt individuals by taking away our ability to control the devices that now exert such strong influence on our personal freedoms, including how we interact with each other. Now that computers are near-ubiquitous, it's easier than ever for an individual to create or modify software to perform the specific tasks they want done -- and more important than ever that they be able to do so. But a single software patent can put up an insurmountable, and unjustifiable, legal hurdle for many would-be developers.

The Supreme Court of the United States has never ruled in favor of the patentability of software. Their decision in *Bilski v. Kappos* further demonstrates that they expect the boundaries of patent eligibility to be drawn more narrowly than they commonly were at the case's outset. The primary point of the decision is that the machine-or-transformation test should not be the sole test for drawing those boundaries. The USPTO can, and should, exclude software from patent eligibility on other legal grounds: because software consists only of mathematics, which is not patentable, and the combination of such software with a general-purpose computer is obvious.

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Kurt