

**STATEMENT BY THE
FREE SOFTWARE FOUNDATION EUROPE (FSFE)
TO THE 13th SESSION OF THE
STANDING COMMITTEE ON THE LAW OF PATENTS (SCP)
ON FUTURE WORK**

(Geneva, 23-27 March 2009)

Mr Chairman,

We have followed the debates of this week with great interest. Our thanks go to you for your able chairmanship, and the Secretariat for their hard work to facilitate the dialogue. Regarding the future actions resulting from the work of the [SCP/13](#), we have a few concrete proposals and comments.

As a cross-cutting issue between [exceptions and limitations](#) and [patents and standards](#), we think that WIPO should have a working group on interoperability issues with a focus on Information Technologies (IT). Standards are the dominant tool to achieve interoperability, which then drives competition, innovation and economies of scale. Yet in our experience, the existence of standards alone can be insufficient to achieve interoperability if there are no surrounding activities, such as interoperability testing and engineering. There are also other ways to achieve interoperability outside formal standardisation, such as shared code bases, often on the grounds of the [Free Software model](#).

Interoperability is an essential requirement for future trends in IT, which are based on modularity, re-combination, and re-use. Only through interoperability will the IT industry be able to sustain its high level of innovation, and only through interoperability will other sectors of economy be able to reap the benefits of ICT-enabled innovation and economies of scale.

FSFE sees a strong public need for interoperability which in all likelihood outweighs the potential innovative effects of patents. In our view this public interest justifies an exception on the ability to enforce patents against interoperability. This exception would provide legal safety for the entire IT sector against abusive patenting strategies that threaten to take entire markets hostage today.

Secondly we think that it would be to the benefit of WIPO Member States to make use of the criteria highlighted in document [SCP/12/3](#) for the economic rationale of patenting. The first step would be an assessment of how different areas meet the “[three step test for inclusion in the patent system](#)” of demonstrated market failure to provide innovation, demonstrated positive disclosure from patenting, and effectiveness of the patent system in the area to disseminate knowledge.

Further fine-tuning of the patent system may be necessary in line with this facts-based application of the economic rationale for patenting, such as an area-specific adjustment of parameters like cost, time and scope of patents in order to best meet the requirements of each area. A study by the secretariat might be a good start in order to understand the differences between the areas.

Lastly we would like to reflect upon the various remarks that have been made by different Member States throughout the week on the necessity to harness an encompassing set of tools for innovation to address pressing challenging for humankind, such as health, climate change or food security.

The ability to meet these challenges will depend on WIPO's ability to bring all innovative instruments to bear, including Open Innovation Models, Free Software, and [Open Standards](#). Two examples can help to highlight the pervasiveness of these tools.

Several Member States have suggested that the dissemination of patent information be based on the Open Innovation Model associated with the on-line encyclopedia Wikipedia. A quoted reason for this request was the understanding that the complexity of the subject matter makes it unlikely that any individual party could provide all the information. Without undervaluing the task of disseminating patent information, areas like health, climate change or food security are likely of even greater complexity, increasing the need for application of Open Innovation Models.

Secondly, considering the power consumption of computational centres around the world and the increasing use of software in all areas it will for instance be harder to meet the challenges of climate change under exclusion of Free Software innovation. Free Software is defined by a unique level and granularity of user control for all layers of the software, allowing to enable or disable components as needed, and providing more effective power consumption control and allowing for optimisations that are not possible with proprietary systems. These advantages of Free Software for Green IT should be embraced on all levels, WIPO included.

Over the past years, various Member States have repeatedly requested that WIPO become inclusive of all methodologies to foster innovation, including Copyright, Patents, Free Software and Open Innovation Models. Many Member States successfully employ a wider mix of methodologies on a national level already, such as Germany, which as part of its response to the financial crisis [decided to invest](#) 500m EUR into the focus areas Green IT, IT-Security and Free Software. Other examples exist from various Member States around the world, spanning all regional groups.

We therefore humbly submit to the Secretariat that now would be the time to begin thinking about concrete ways of ensuring these tools for innovation are fully integrated into the knowledge and capacity building initiatives of WIPO. Further information from the Secretariat on these areas, case studies illustrating their practical application “in the wild” in varying contexts, relevant to both the developed and developing world, can only serve to inform the debates of all of WIPOs activities and committees.

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