Panel: Intellectual Property Issues in Software

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ABSTRACT
Intellectual property is an increasingly important issue that affects software engineers and software engineering. This panel addresses a variety of topics related to intellectual property and software, including copyrights, patents, and internationalization.

1 INTRODUCTION
Software products are not developed in a vacuum. The “best” technical solutions cannot be made on technical grounds alone. The social context, the business context, and, increasingly, the legal context are additional important considerations in the development of software systems.

This panel has three primary objectives: 1) to quickly present some of the basics of intellectual property issues as they relate to software; 2) to demonstrate that the issues are international ones but that the laws that apply differ in a number of potentially significant ways; and 3) to lay a foundation for a discussion, both at the panel and through the greater software engineering and legal communities, about ways to improve and manage the process of intellectual property protection as it relates to software.

2 KIRSCH'S COMMENTS
The roles are changing dramatically for patent and copyright protection as legal mechanisms for protecting software and communication technologies. While copyright protection has traditionally been the primary protection method for software, recent case law in the United States and elsewhere has reduced the scope of protection provided by the copyright laws. At the same time, courts, including the U.S. Supreme Court and the U.S. Court of Appeals for the Federal Circuit, have increasingly allowed broader patent protection for these technologies. Given that patents protect the useful, functional features of an invention, as opposed to copyrights protecting only the way a work is tangibly and non-functionally expressed, patents are increasingly becoming the legal protection tool of choice for software and communication technology developers.

Much debate regarding software patents continues within the U.S. Patent Office, the federal government in general and the public at large. While many may question the appropriateness of patent protection for software, in terms of the appropriateness of the incentives it provides to software developers, few question the impact that software patents are having on the software marketplace. For software patent owners, software patents represent a worthwhile way in which to protect the fruits of their labors. For would-be infringers, software patents represent a nuisance at best, and at least an impediment to the expansion into new or existing marketplaces. For everyone, software patents represent powerful legal rights that one cannot ignore. Those who fail to recognize the importance of software patents either as protection of their proprietary knowledge or as a barrier to their use of the proprietary knowledge of others — undoubtedly do so at their own peril.

3 SKULIKARIS'S COMMENTS
Industry appears to consider that copyright in not any more adequate to protect software. There appear also to be good reasons for that. This explains why patent offices, in general, have shifted to granting patents for software inventions, although some years ago software was excluded from patenting. Other factors that influence such shift in policy are the internationalization of economy, technical progress, and, as far as Europe is concerned, a new approach to cross-border jurisdiction. Software is a produce-one sell-many product, involving almost no transportation cost, and leaving no trace as the result of misappropriation. So protecting it is a non-trivial case and patents appear to be the right tool. The European Patent Office (EPO) policy towards software patents constitutes a viable, pragmatic solution to the problem, in the context of
multiple national jurisdictions and legal traditions. Current development both in the EPO and the European Union will pave the way towards a more homogeneous and predictable patenting system, which will offer improved legal certainty for reasonable cost.

4 BIOGRAPHICAL INFORMATION
Greg Kirsch is a partner in Needle & Rosenberg, P.C., a major intellectual property law firm in Atlanta, Georgia. He heads the firm’s software and communication technology patent practice, and represents a number of software development companies and institutions, both large and small. He is a frequent speaker on the subject of patent and copyright protection for software, most recently at the World Computer Congress in Budapest, Hungary. In addition to his law degree, Mr. Kirsch has a degree in electrical and computer engineering, and is an avid computer programmer. He also serves as an adjunct professor of patent law at Emory University Law School.

Yannis Skulikaris has been involved in examining software-related patent applications as well as in the corresponding policy-making procedures with the European Patent Office (EPO) since 1989. He has gained professional experience as information systems consultant and lecturer in European industry from 1982 to 1989. He has presented the EPO’s policy on software-related inventions in numerous conferences throughout Europe. He currently educates patent examiners in the computer field at the EPO’s branch at The Hague. He holds degrees in Physics and Computer Science with special focus on cognitive systems. He currently pursues an LLB (Bachelor of Laws) degree from the Law School at the University of London. His interests include the protection of computer-related inventions, in particular the protection of software, and the legal, social, technological and economic implications of patent protection for emergent technologies.

David Netkin, the panel chair, has served on the faculty at the University of Washington in Seattle, Washington, since 1984. His educational and research interests center on software engineering, with a particular focus in software evolution.