

## Fighting back in Europe's ideas war

*An organisation has been launched that aims to redress what its founder believes is a one-way argument about intellectual property rights in Europe. Those with an anti-IP agenda are doing all the running, he claims, and European companies will suffer as a result. By Isla Grant*

Simon Gentry is a man with a mission – to get the European Parliament to listen to those who believe that a strong IP protection regime is fundamental to the continent's future. Gentry has been a Brussels lobbyist for 15 years and is now the driving force behind a campaign that aims to mobilise the IP community and influence the type of information that reaches members of the European Parliament (MEPs), who have to approve all European directives before they can become law. His focus is on opening up the debate that surrounds the implementation of IP-related directives and regulations – a debate which in his view has become seriously skewed in favour of Europe's vocal anti-IP lobby.

The Campaign for Creativity has its roots in the fractious passage of the Biotechnology Patents Directive through the EU legislative process in the 1990s. The Directive's aim was to address the ethical aspects of biotechnological inventions and provide the necessary incentives to encourage research and development. As enacted, it creates an explicit legal right to obtain patents for higher organisms, such as plants and animals. Gentry and other interested parties, including the European Alliance of Genetic Support groups, believed that without the protection offered by a strong patent system, the development of new medicines would be hampered. However, this was not a universal view: the Directive's progress was tortuous – it took nearly 10 years until it was finally approved in 1998. Various organisations, notably Greenpeace, set themselves up in opposition to the Directive and lobbied strongly against it. "They bombarded MEPs with faxes and emails with the message that industry wanted to patent life - deliberately

confusing genes with the essence or blueprint of life," says Gentry. Such tactics obviously worked as the Directive had to be withdrawn and rewritten: just one stage in a long process of review, negotiation and amendment.

The Directive was finally enacted after a concerted counter-lobbying effort by its supporters. "By forcing MEPs to confront the reality that without IP protection companies would not have been able to invest in research or partner with academic bodies, they reoriented the argument and got it back to basics," Gentry says. "It was made clear that the IP regime was - and is - not designed to make companies rich. It was designed to create positive benefits for society," he adds.

Now, Gentry hopes to reassemble a similar coalition under the Campaign for Creativity banner. "Our aims are to support and defend the creative and innovative communities by empowering individuals to campaign for strong IP rights in Europe," Gentry explains. He believes that, at the moment, MEPs do not have a clear idea of the way in which intellectual property works and how it should be protected. For years, he says, they have been inundated with "anti-IP propaganda". Just one example Gentry cites is the idea that biotech patents would make research secret. "This is unbelievable to the IP community but the thought stuck with MEPs," he says.

On the face of it the Campaign for Creativity would seem to be knocking at an open door. The EU has enacted a series of IP-friendly pieces of legislation over the years: in early 2004, for example, the European Parliament approved the IP Rights Enforcement Directive that seeks to harmonise national legislation concerning measures, procedures and remedies that protect IP rights in the internal

market. These include rules on the gathering of evidence in commercial infringement cases, and the award of injunctions and/or damages for injury suffered and lost profits.

However, Gentry is not convinced. "The anti-IP lobby fought the Directive but didn't get their teeth into it," he says. Despite this, the final Directive was a long way from what was originally proposed by the Commission. "MEPs were falsely led to believe that police would be kicking down teenagers' bedroom doors in the middle of the night because they had downloaded music from the internet, and the music industry had to concede that limited copying should be permissible." The resulting compromise states that the Directive need not be applied to individuals copying music files for their own use, thus creating a loophole for clever commercial infringers to exploit. Plans for mandatory sentencing in IP criminal cases were also dropped.

At the moment, the main focus of the Campaign is the proposed Directive on the Patentability of Computer-Implemented Inventions. This aims to clarify the current position on software patentability in the European Union, confirming that it is patentable but must involve a technical step. This Directive is one of the most controversial pieces of European legislation of the past 15 years and, Gentry says, it is those who oppose it that are making all the noise. "It is staggering just how one-sided the debate is and I'm concerned that we may lose it," he says. The Directive's opponents, he continues, are claiming that it will kill open-source software and damage small companies. "They say it will allow the patenting of the actual code in which software is written but this is something that is explicitly ruled out in the Directive," Gentry claims.

Parliament has already had one look at the proposals and added a number of amendments that, if they were included in final legislation, would effectively make software patent protection much harder to get in Europe than it is today. Gentry fears that the whole process could go the same way as the Biotech Directive, which has yet to be implemented by a number of member states, including Belgium, France, Germany, Italy, the Netherlands and Sweden. "This lack of implementation has rendered it toothless and created a situation that is holding back research. Pharmaceutical companies are reluctant to invest in something that is not adequately protected."

It is the fear of complacency that drives the campaign forward. "The European IP community is not aware of how serious the situation is," Gentry claims. "I think that what we are actually

witnessing is a full blown meltdown of support for the concept of intellectual property itself, starting with patents but with attacks building on copyright and even trademarks", he says. "What is at stake is the whole basis of the technology and innovative industries."

Because he feels the stakes are so high, Gentry has been disappointed by the lack of active backing he has received so far. Most of the campaign's support is non-mainstream and consists mainly of lone inventors and individual researchers. "The established IP community is so wedded to the regime as it is now that they are disbelieving when someone comes along and says that it all might disappear," Gentry says.

Those that think this is all a little cataclysmic should bear in mind that Gentry has been working for 15 years in Brussels and knows how the system works. "The anti-IP groups have proven their ability to persuade lawmakers that extreme restrictions should be placed on what can and cannot be protected," he says. While he concedes that elected representatives must listen to their constituents, Gentry worries that only one constituency is really interested in getting its views across. "The inability or unwillingness of the IP community to mobilise in defence of the IP regime is leading to a deeply one-sided view of public opinion. We are not losing the argument because our position is weak, we are losing it by default."

There is, says Gentry, a war to be fought and a number of individual battles. "I am not always optimistic about the battles but I am positive about the war." He sees as a precondition to any change the need for a radical shift in the European IP community's consciousness – to put it simply, it should see itself as under serious threat. "I am nervous about reform debates because often they are held in the context of whether to have an IP regime at all. The other side picks up on very real problems with the current system and uses them to fuel the view that the whole system needs to be radically transformed."

For himself, Gentry is sure such a view is wrong. "At the highest level is the concept that intellectual property is fundamentally fair, it is a human right. That is what is being challenged."

If IP owners in Europe do see their rights rolled back in future years, they will regret they did not listen to Simon Gentry when they had the chance. ■

<http://campaignforcreativity.org/camp4creativity/>

[igrant@iam-magazine.com](mailto:igrant@iam-magazine.com)

## Fighting dirty

The emergence of the campaign has clearly raised the ire of the opposing side. Gentry has had his personal contact details put on the internet, and there have been attacks on the campaign's website - one weekend, for example, messages from supporters to MEPs were hijacked and altered. Similar tactics were used when lobbying for the Biotech Directive was underway. Gentry also talks about the mythmaking that goes on. "I have emerged as a mastermind, pulling all sorts of strings," he laughs. But it is a sign, he feels, of the depth of feeling experienced by the individuals involved on both sides of the divide.