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## The Quiet War Over Open-Source

By Jonathan Krim

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Every day now, it seems, we do battle with technology. If it isn't spam, it's worms. If it isn't the worms, it's viruses, or hacking, or identity theft. Sometimes, it's the gadgets and software we buy that are still too hard to use.

But as technology in general, and the Internet in particular, drives deeper into the fabric of daily life, battles also rage behind the scenes. They are struggles for control over how the Internet should work, over who sets the rules for its pipes and gateways and who owns the material that moves through them. These are the wars fought with armies of corporate lobbyists, technologists and citizen activists but largely ignored by the general public. And none is larger, or carries higher financial stakes, than the issue with the eye-glazing name of intellectual property.

Consumers are getting a taste of this right now, as the major record companies sue hundreds of people for stealing their works by using file-sharing programs. On another front, "open-source" software, which relies on collaboration and sharing of computer code rather than traditional for-profit development and distribution of programs, is capturing the attention of cash-strapped governments and businesses as a less-expensive alternative to commercial products.

Open-source software has been embraced by some companies that are building businesses around it. But it is the bane of others, including the industry's most powerful player, **Microsoft Corp.** The world's largest software maker is lobbying furiously in state, national and international capitals against laws that would promote the consideration or use of open-source software.

So alarmed agents of Microsoft sprang into high gear in June after a surprising quote appeared in **Nature** magazine from an official of the **World Intellectual Property Organization (WIPO)**. The official said that the Switzerland-based group of about 180 nations, which promotes intellectual-property rights and standards around the globe, was intrigued by the growth of the open-source movement and welcomed the idea of a meeting devoted to open-source's place in the intellectual-property landscape.

The proposal for the meeting had come in a letter from nearly 60 technologists, economists and academics from around the world, and was organized by **James Love**, who runs the Ralph Nader-affiliated **Consumer Project on Technology**.

Love and others argue that in some areas, such as pharmaceuticals or software that powers critical infrastructure or educational tools, developing nations in particular would benefit from less restrictive or alternative copyright, patent or trademark systems.

In short order, lobbyists from Microsoft-funded trade groups were pushing officials at the **State Department** and the **U.S. Patent and Trademark Office** to squelch the meeting. One lobbyist, **Emery Simon** with the **Business Software Alliance**, said his group objected to the suggestion in the proposal that overly broad or restrictive intellectual-property rights might in some cases stunt technological innovation and economic growth.

Simon insists that his group does not oppose open-source software, or discussion of the issue, but fights to defend the notion that a strong system of proprietary rights offers the best avenue for the development of groundbreaking software by giving its inventors economic incentive to do so.

And he said that the BSA's governing board, composed of several companies in addition to Microsoft, unanimously opposed the letter and the meeting.

The U.S. government, which wields considerable clout in WIPO, might not have needed prodding from Microsoft to demand that the idea of an open-source meeting be quashed.

**Lois Boland**, director of international relations for the **U.S. Patent and Trademark Office**, said that open-source software runs counter to the mission of WIPO, which is to promote intellectual-property rights.

"To hold a meeting which has as its purpose to disclaim or waive such rights seems to us to be contrary to the goals of WIPO," she said.

She added that the WIPO official who embraced the meeting had done so without proper consultation with the member states, and that WIPO's budget already is strained and cannot accommodate another meeting next year.

Boland said that if groups such as Love's want an international forum for discussion of open-source, they need to find another organization to host it.

The WIPO official, **Francis Gurry**, did not return numerous calls for comment, but the organization has said it no longer has plans for an open-source gathering.

The meeting dust-up is further inflaming an argument that has the fervor of religious debate.

Open-source proponents note that its software is here to stay, gaining adoption within the federal government and elsewhere. And they argue that many open-source models rely on property rights through licenses, but apply them in less traditional ways.

More broadly, though, they envision a world in which the Internet is the connective tissue that creates a public commons, a place where art and technology should be shared as well as bought and sold. Why, they ask, should that not be debated with vigor?

But open-source is not just a political challenge. It strikes a starkly different, and sometimes opposite, pose from that of traditional capitalist systems.

And that prospect quickly draws the lobbyists, even if the public isn't tuned in.

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