Opting out

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OK, I'm not just bragging here, but I've had two relevant papers published this month. One came out just a few days ago: an op-ed in the San Francisco Chronicle on the US Trade Representative[1]. The article basically explains that the US Trade Representative has authority to proselytize US intellectual property law throughout the world, and this has produced some perverse outcomes, because the USTR is comfortable calling any law involving information an intellectual property law.

To save you the trouble of clicking through, here's a sample from the column:

> ...data gathered during clinical trials of new drugs are not protected by copyright, patent or trademark in the United States. But as a rule of bureaucratic procedure, the Food and Drug Administration restricts use of test results finding that a brand-name drug is safe when considering the safety of identical generic drugs. Even though it is hard to argue that this FDA rule is an intellectual property law, the trade representative is using its authority to press for comparable rules restricting the approval process for generic drugs in other countries.
>
> It doesn't take much sleuthing to follow the money back to the U.S. pharmaceutical manufacturers on the trade agency's advisory panel, who can maintain monopolist profits while a generic drug is blocked from the market in Guatemala, Malaysia or any of the dozen other countries that the trade agency is pressuring to adopt U.S.-style restrictions on generic drug approval.

More on this in a few columns.

My second publication this month is a study of the genetic causes of bipolar disorder[2]. Genes are data, so if you want to publish a genetic paper these days, you need a computer geek to lend a hand.

I'm not just telling you this to show off, but to point out an interesting fact about modern opponents to certain classes of patents.

One pundit explains:

> I have encountered many people who had strong, emotional reactions against patents and copyrights. Remarkably, though, few of them had ever been

[1] http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/02/17/EDR1V0LCD.DTL

[2] http://www.nature.com/mp/journal/v13/n2/abs/4002012a.html

> sued in court. And fewer still had ever written a book or cut an album. In short, they hadn't been hurt by so-called trolls, and they didn't own much worth pirating. [From a C—net editorial[3]]

There is a common belief that all practitioners want to have the most protection the law allows for their work. It's only those leeches who have nothing to protect who believe that the protections are too strong.

But for most of patent law, the exact opposite is true: the people most opposed to the patenting of software are programmers. The people most opposed to the overuse of pharma patents are doctors.

Why? Because if you get a patent, then everybody else does too. A stronger patent law means your work gets more protection, but you run proportionately more risk of infringing a patent in the course of your own work. Remember: the first to invent gets a patent, the second to invent gets sued. Many very sane, very innovative people don't want to take the risk implied in that.

So back to me: I am a practitioner in software. I've got a library of stats functions, that has a number of features that I've never seen before in another product [[notably the model-as-object concept, which I won't go into now]]. Under a naïve reading, I did valuable, imitatable work, and therefore I should be petitioning the government to grant me a monopoly on my product. Otherwise the developers of the R statistics package could just read my essays explaining the process and implement the same concepts. Depending on how you want to spin it, they could steal my concept, or they could learn from my work.

And frankly, I'm fine with it either way. If they reimplement my concept, I'll have one more tool at my disposal that works the way I think.

[3] http://www.news.com/Why-I-love-patents-and-copyrights/2010-1008_3-6182429.html