Results from NZCS Quick Poll of Members

The New Zealand ICT Profession's View of Software Patents

April 2010

Introduction

The New Zealand Computer Society Inc (NZCS) is the professional body for ICT Professionals and is a non-profit charitable organisation focusing on ICT education and professionalism. The Society has been deeply involved in all areas of ICT at all levels for the last 50 years and works with industry, academia and Government to bring about positive change in this area for the benefit of all New Zealand.

The Society is constitutionally independent and forms positions on matters of interest based on the principle of what is best for New Zealand, and best for the ICT sector as a whole. We engage in active ongoing discussion and consultation with all stakeholders, however our position can be viewed as truly independent and free from influence.

Background

At the end of March 2010 the Commerce Select Committee reported recommended changes to the Patents Act back to Parliament. This followed a comprehensive consultancy through the Select Committee process, which has been ongoing for some time.

The Commerce Select Committee considered all related issues in depth, and one of the recommendations from the process was to remove patentability of software. The Society considered this matter carefully and formed a view that this was appropriate.

Quick Poll

During 14-16 April 2010 the NZCS conducted a quick poll of members to ascertain the general viewpoint of the ICT Profession as it related to the issue of Software Patents. This poll was conducted online, with an invitation to participate emailed to all members currently on the NZCS member's mailing list.

It should be noted that the poll was to ascertain whether the ICT Profession supported the Society's position of supporting the Select Committee Recommendation removing the patentability of software. It did not ask respondents their views on software patents directly, however the response was conclusive, hence we believe it can be relied upon as a solid indication of current viewpoints.

Note, however, that the purpose of this poll was to get an indication of the views of the ICT Profession, hence it was not designed to be a fully scientific poll on the issue of Software Patents. The Society is of the view, however, that the indication was significant regardless, and hence have no plans to follow up with a formal scientific poll.

The following pages contain the poll responses, with personal information removed.

The quick poll had a Margin of Error from overall membership, representing ICT Professionals from across the sector, of 7%.

Question 1: How knowledgeable do you believe you are in relation to the pros and cons of software patents in New Zealand?

This question ascertained that **69% of respondents** believed they either understood the concepts or fully understood the issues, with **14%** not at all knowledgeable.

This does indicate that further discussion and debate amongst the profession may be necessary.
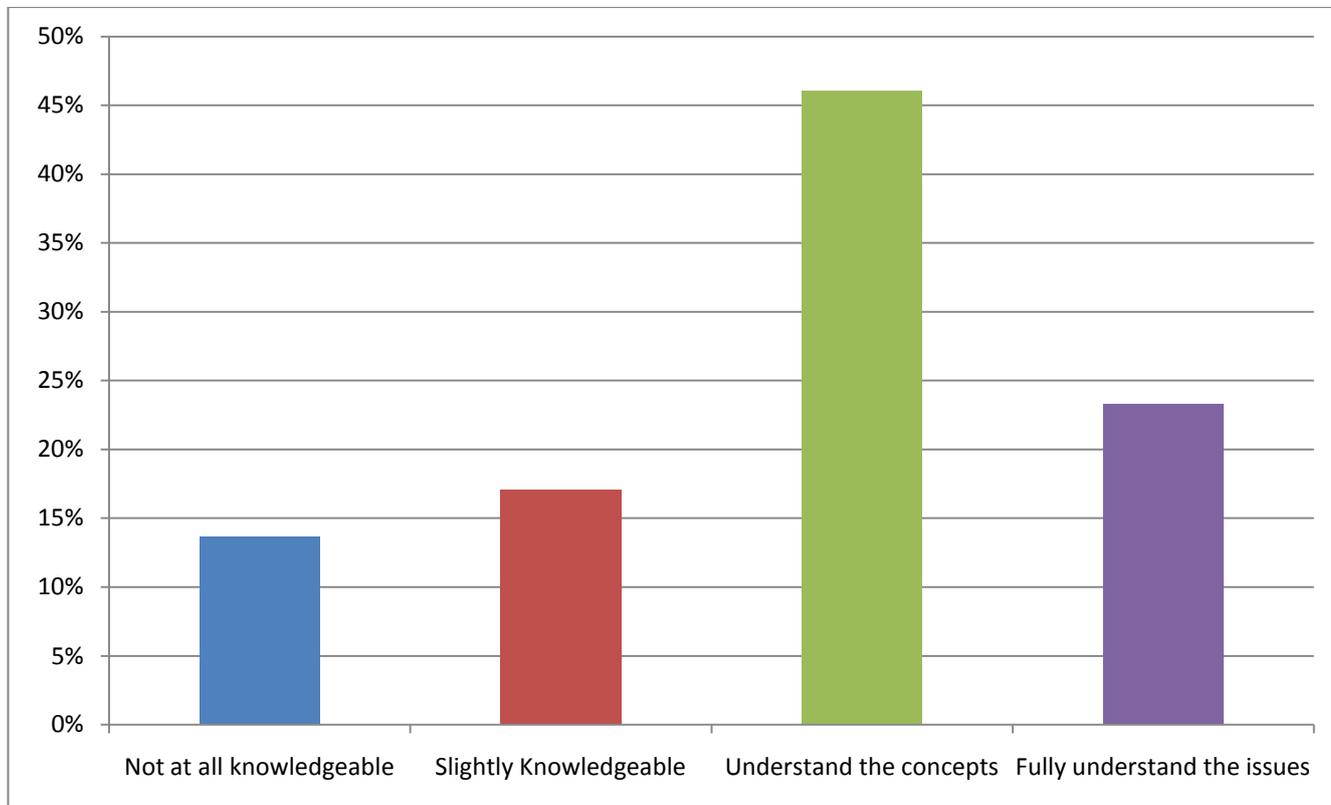

Figure 1: How knowledgeable are you in relation to software patents?
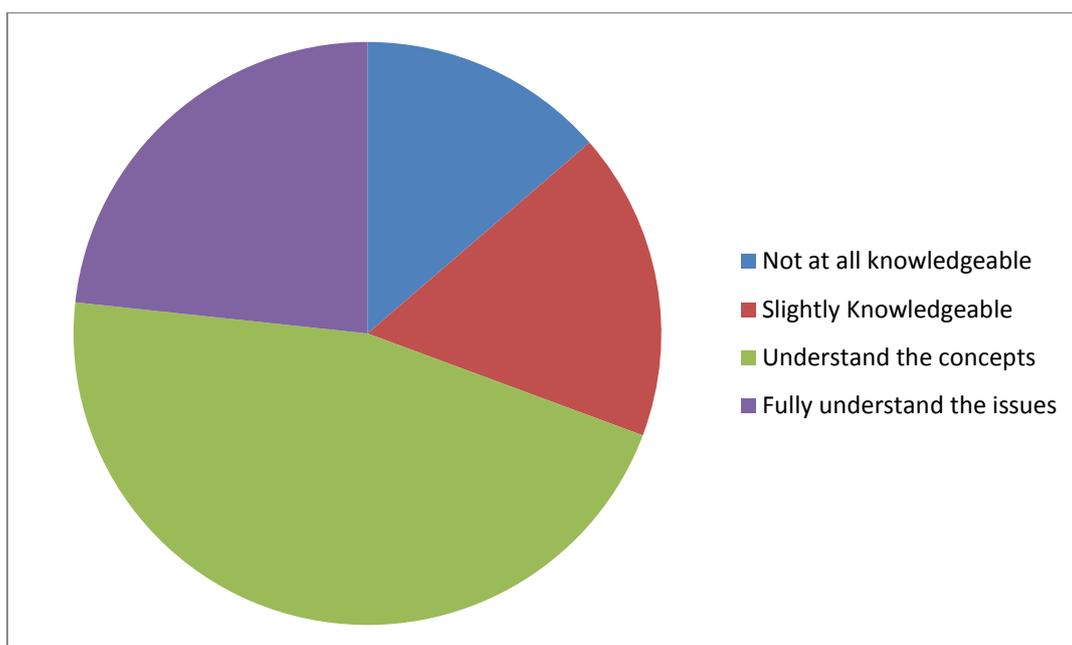

Figure 2: How knowledgeable are you in relation to software patents?

Question 2: Do you think it's appropriate for the Society to take a position on software patents, given the Commerce Select Committee's recommendation that software be removed from the Patents Act?

This was conclusive. **96% of those with a view believed the Society should take a position** on this issue. This shows that this is an issue of concern to the ICT Profession, hence the reason the Society has taken a position on this issue.
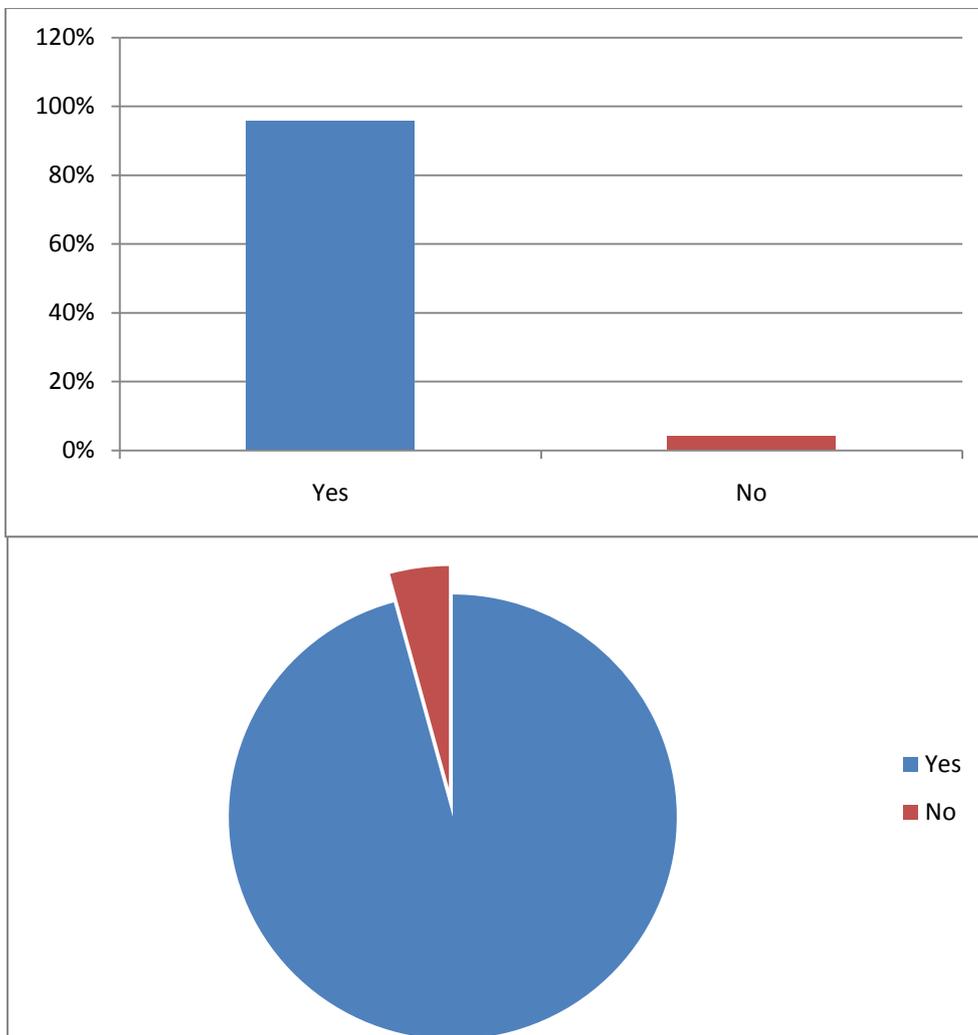
Figure 3: Should NZCS take a position on software patents? (Respondents with a view)
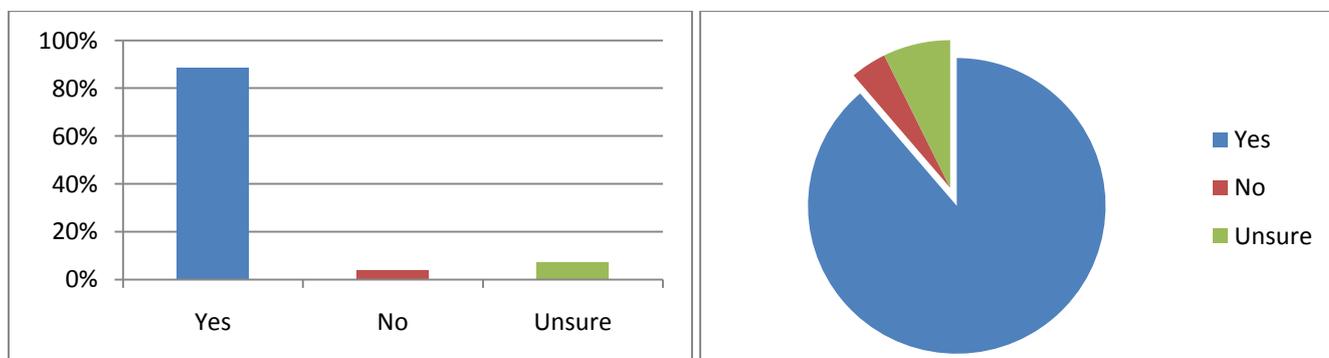
Figure 4: Should NZCS take a position on software patents? (All respondents)

Question 3: If the Society was to take a position, do you believe this should be IN SUPPORT or AGAINST the Commerce Select Committee's recommendation to remove patentability of software? To clarify, do you believe software should be excluded from the Patents Act?

This was conclusive with **81% of those with a view supporting the Select Committee's recommendation to remove patentability from software**, which mirrors the Society's previous informal consultation.
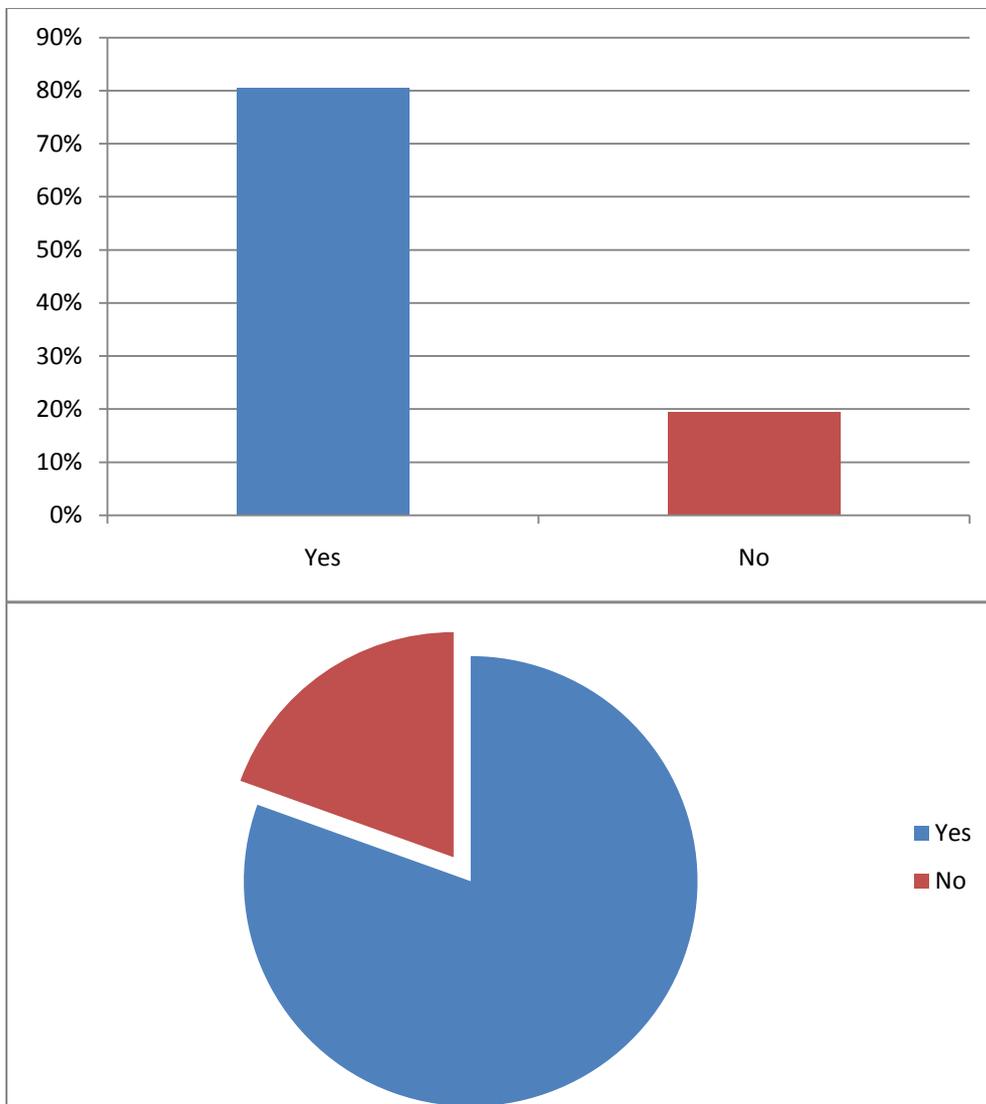

Figure 5: Should NZCS support the removal of patentability of software? (Respondents with a view)
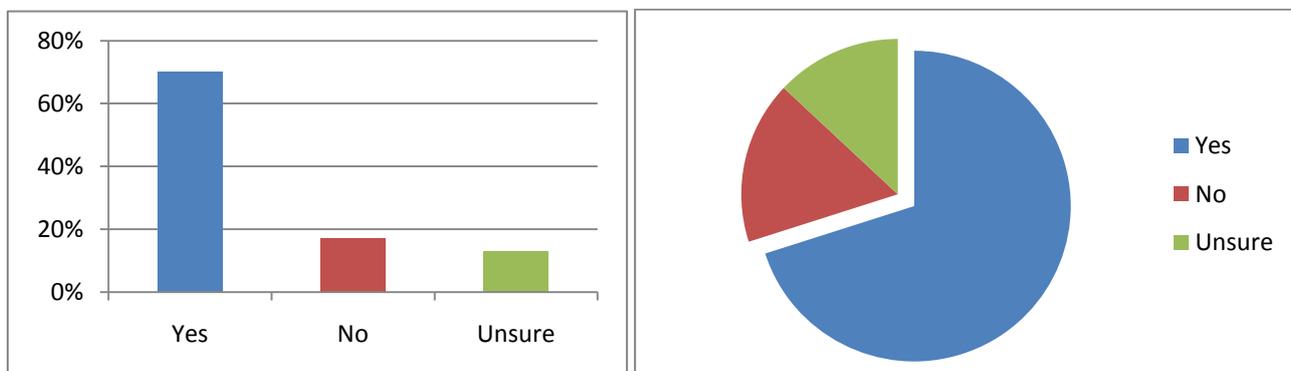

Figure 6: Should NZCS support the removal of patentability of software? (All Respondents)

Question 4: Feedback and Comments Received

Below is a full list of all feedback and comments received during the recent poll of NZCS members on Software Patents.

This has been separated into Feedback SUPPORTING the removal of patentability, Feedback NOT SUPPORTING the removal of patentability, and neutral feedback related to the patents issue.

All identifying information has been removed from the feedback, as well as any comments not related to the software patent issue.

Feedback SUPPORTING the removal of patentability of software

The following feedback was received SUPPORTING the removal of patentability of software:

- I strongly believe that software should not be able to be patented in New Zealand. I marketed software in New Zealand for many years, mainly on behalf of North American companies and are comfortable with my knowledge of such issues in the marketplace - I make no pretence to expertise about the legal issues surrounding software patents. Software patents seem to be used for defensive purposes by those who want to close a marketplace for their own products, and perhaps thwart a new entrant

- Copyright provides most of the protection needed for software. If an elegant software patent regime could be designed to prevent some of the ridiculous past claims then I would consider it.

- As a practitioner I believe that software should not be patentable. I believe there are much greater benefits and commercial gains to be made if there are no software patents. Software patents are dubious at best, given prior art, and in my experience simply used as a means of restricting trade. I believe the Society should support the removal of software patents

- Software is in a sense easy to create - once you have a problem, you can try solving it, unlike other inventions. There are also many ways of solving a problem using a piece of software. Hence, the question of patentability becomes an issue. If we need protection, we should find a new way for this technology.

- I believe it should be technically possible to patent a truly original way of doing something, but software rarely does this. If a patent were awarded it should be awarded to the CONCEPTUAL DESIGN, not the software, which should instead be protected by copyright. Perhaps in future, it will be reasonable to patent software. There is not enough space in this field to expand my thoughts on the pre-conditions that would allow that.

- Copyright is appropriate for an intangible item of intellectual property, in the same way as for books, films etc. Patents are not appropriate and stifle innovation.

- The Commerce Select Committee heard extensive submissions both for and against software patents, in an open and democratic process. Based on the evidence placed before it, the Committee unanimously recommended excluding software patents from the Bill. Any new evidence, which may cause this recommendation to be overturned, must be presented in a similarly transparent forum. I invite the Computer Society to call for continued transparency and explicitly reject behind-closed-doors lobbying.

- Patenting software restricts the development of IT innovation and restricts the ability for technology organisations to grow.

- In my view the NZ copyright laws provide an adequate framework to protect genuine software IP. Given this, removing software from the patents arena has good potential to encourage innovation and its application around software - and that has got to be a good thing.

- Copyright is extremely important, and suits software better.

- Software patent seem to be mainly used by large companies to tie up the resources of small companies.

- Software moves on with changes very quickly - copyright is necessary but not so patents because of the transient nature of s/ware

- Even though the patents process was designed to benefit society as a whole there is a wealth of evidence to suggest that wholesale abuse of that process with software patents in particular is damaging the growth and innovation we expect to see within the IT industry. This wastes the resources of both large and small players in the IT industry... time and money that could be better spent on true innovation and growth rather than yet another artificial financial market instrument.

- To clarify my answer (Yes) to the last question: there are patentable systems which cannot work without software, or more precisely, cannot operate without a computer element running a control algorithm that is patentable, e.g. the Eurofighter - it is unstable without computer control.

- Software patents are likely to do more damage than gains to NZ software developers who are protected by copyright and intellectual property rights. Software patent discourages repeated change and improvement scopes.

- Software patents impede a lot of innovation and just creates lots of "broken windows". It does not make sense for an industry with six-monthly innovation cycles.

- Firstly, thanks for soliciting the opinions of the membership. This is a Good Thing. Secondly, I consider myself reasonably well informed on the issue, and *strongly* oppose the patentability of software, for reasons too complicated to discuss here. Cheers.

- Software ought to be covered by copyright, like a book, and not subject to patents.

- Many software patents protect trivial functionality and get in the way of independent implementation.

- The Committee heard the full range of views. Their unanimous recommendation was to ban software patents. This decision puts us in line with the European Union. In the US, the entire future of software patents in doubt with a major Supreme Court decision ("Bilski") expected any week now.

- Having had the dubious honour of being a software patent inventor my view is that they are pointless and divisive! Thanks and well done on the initiative!

- I feel that we cannot both support innovation and software patents, so if we want to push an innovation agenda, the ICT sector (small and medium businesses specifically) needs to be able to innovate taking an unreasonable amount of risk indemnifying their customers against attacks from foreign patent holders.

- Software patents can be a great handicap for open source projects.

- I strongly believe the society should be supporting the conclusion of the Commerce Select Committee, and that patents should be excluded. I commend the NZCS on taking this as a serious issue.

- International experience has been that software patents are used almost exclusively to stifle innovation and threaten competitors. Large overseas companies with sizeable patent portfolios will be at a massive advantage over smaller local companies, which could seriously damage New Zealand businesses.

- Protection for software developers should be made via the Copyright Act.

- good

- I have seen enough unnecessary legal battles that has affected many technologies, while working for the giants in software development. They seldom resulted in a judgement that allow one party (the legal owner) to develop it as it should, but keep dragged till both parties get tired and come to an settlement or just drop it. In my opinion, this happens because software patents is something unreal, and it is not possible to decide who owns it. For that reason, I think it should be excluded for the betterment of software industry.

- Software patents are tantamount to a restriction in trade, especially for the smaller independent shops that are not partnered by the big players. These companies amount for a large proportion of the people employed in IT and are crucial to the NZ economy. This argument has been raging in Europe for many years see http://www.nosoftwarepatents.com/ for years worth of material relevant to this subject. However, I expect there will be much lobbying in NZ from the likes of [company name removed].

Feedback NOT SUPPORTING the removal of patentability of software

The following feedback was received NOT SUPPORTING the removal of patentability of software:

- As I am a junior in a junior position I do not know much of patents in the software branche around the world and neither in NZ. However, I beleive that patent is important in general as the owner of the software should have a patent right to its product as do other product developers e.g. coca- cola, music rights, brand rights etc. Kakite ano

- I do not think it is as simple as software patents Yes or No - needs to be on a case by case basis so assuming that then answer has to be No. Although I no longer develop software I did for 11 years earlier in my career.

- I am strongly opposed to removing patentability. I own a software company which started developing own products three years ago and in my mind it is vital to have patents. Inititally without a patent we actually experienced that the developers we engaged turned around on us and claimed it was their idea. Not pretty. Now we have the patent and this makes it much easier to talk to third parties about capital, and resources. An NDA does not work, patents are vital in the start up phase

- There are certainly arguments that can be made both ways. Indeed in our dynamic western market economies arguments could be had about whether the patent system is still relevant or should be massively overhauled- shorter time periods, much higher bar for inventive step etc... But, it is terrible that we should think about singling out Software, OUR INDUSTRY, to lose patent protection. This puts OUR INDUSTRY at a disadvantage as against others. A disadvnatage in raising venture capital etc..

- The patent system is flawed, but rather than removing them in respect of software, we should aim to fix the system, in particular the high cost of defending a patent. Whether a NZ software house choses to invest in a patent to protect their IP, or to adopt the opensource model is a decision for them, and should not be imposed on them. Removing software from the patents removes this choice. As well as the international treaty obligations that NZ has, we must also IP development.

- It should be possible to patent software - it is after all an IP.

- I believe that software should be kept in the patents act because of all the ideas that are there that go un-developed, they should have equal rites to ones that are and the protection they get under the copyright act.

- Patents cover innovation that are difficult or impossible to protect properly by copyright. Software examples could include codecs, innovative UI concepts, protocols, filtering, optimisation technology, 3D photo stitching techniques, etc â€¦ in general copyright would protect only a specific implementation of any of these, not the innovation itself.

- A Software should be never be Excluded from the patents Act Because the the originality of the Software will be Lost.

Additional Feedback related to the Software Patent issue

The following additional feedback was received regarding software patents:

- I think we should look at developing a more global region concept of patents i.e. Australiasia patents etc

- Understanding when to patent and what can be patented is incredibly difficult and expensive. However IP protection when creating a program is vital to the survival of a software developer. It would be great, whatever the conclusion, for NZCS to publish a brief synopsis of how to best protect software IP, and even to provide template documents regarding copyright protection etc.

- I do feel that there has been a huge amount of press coverage which takes an US view of the whole topic. Were this as litigious a society as them, it would be valid. However, it would be good to see a more level-headed approach.

- None I am waiting to attend a couple of seminars to see how this will affect our future generation of technologist and hobbiest that contribute mostly to what they love doing.

- The concept of software patents is not limited to NZ. software by its very nature is global and hence the issue of patent-ability should be addressed by a global court.

Other Feedback Received

- Note the above question is unclear, even with the clarification it is possibly confusing, the first part should not be phrased as a question or phrased as a separate question, as does yes me "in support" or "against".

- This survey might take 30 second to finished, but to get a quality answers it need more background reading. The synopsis is far then enough. Thank You