

From: Richard Shea [e-mail redacted]  
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To: Bilski\_Guidance  
Subject: Against software patents

As a software professional I would like to add my voice to those who are NOT in favor of software patents. As an entrepreneur I can say definitively that software patents are a brake on innovation. And not just because of knowledge about specific software patents, but also out of fear that some unknown software patent might become an issue in the future.

Software patents hurt individuals by taking away our ability to control the devices that now exert such strong influence on our personal freedoms, including how we interact with each other. Now that computers are near-ubiquitous, it's easier than ever for an individual to create or modify software to perform the specific tasks they want done -- and more important than ever that they be able to do so. But a single software patent can put up an insurmountable, and unjustifiable, legal hurdle for many would-be developers.

The Supreme Court of the United States has never ruled in favor of the patentability of software. Their decision in *Bilski v. Kappos* further demonstrates that they expect the boundaries of patent eligibility to be drawn more narrowly than they commonly were at the case's outset.

The primary point of the decision is that the machine-or-transformation test should not be the sole test for drawing those boundaries. The USPTO can, and should, exclude software from patent eligibility on other legal grounds: because software consists only of mathematics, which is not patentable, and the combination of such software with a general-purpose computer is obvious.

Thank you,  
- Richard Shea