

Panelists grapple with IP

MANY—BUT NOT ALL—AT SUMMIT SAY PATENTS SPUR INNOVATION

By Darryl K. Taft in CAMBRIDGE, MD.

THE QUESTION OF WHETHER INTELLECTUAL property protection promotes or inhibits innovation is complex, but the answer was nearly unanimous from panelists at the Association for Competitive Technology's Intellectual Property & Technology Summit here last week.

"Defining innovation broadly, I think IP is in support of development," said Keith Maskus, an economics professor at the University of Colorado, in Boulder.

IP and innovation

- ▶ **CompTIA** Supports strong IP protection and patents for software
- ▶ **Intellectual Property Owners Association** Says IP promotes innovation and supports patent protection for software
- ▶ **Larry Rosen**, open-source legal expert Says he believes patents of software should be eliminated
- ▶ **Keith Maskus**, economics professor, University of Colorado Says IP promotes innovation

"I believe IP does promote innovation. Where it doesn't is where the system breaks down," said Dana Colarulli, government relations and legislative counsel for the Washington-based Intellectual Property Owners Association.

Melanie Wyne, director of public policy at the Computing Technology Industry Association, in Oakbrook Terrace, Ill., said that having worked for a software startup, she knows the value of patents. "The second question venture capitalists ask you after 'What's your software do?' is 'How many patents do you have?'" Wyne said.

Despite the seemingly united front presented by many industry leaders,

the idea of IP patents is anathema to many others.

"I'm here to represent the attitudes of many, many, many people around the world who think that for the software industry, patents are not the creative engine, they are the caboose," said Larry Rosen, former general counsel for the San Francisco-based Open Source Initiative and a leading open-source supporter.

Rosen pointed to the open-source community's relationship with industry standards bodies such as the World Wide Web Consortium and the Organization for the Advancement of Structured Information Standards and the petition several open-source leaders sent to OASIS objecting to the organization's latest IP policy.

"We're saying if you want to work together on software standards, then you need to make those standards available to the public," Rosen said.

According to Rosen, patents typically come long after the fact and "serve as a disincentive rather than an incentive" to innovation.

Rosen noted that IBM, a leading OASIS contributor, recently stated it was going to make its OASIS-related patents royalty-free.

"Well, that shows that patents are not detrimental," CompTIA's Wyne said. "IBM had a smart business reason to make that change."

Rosen replied, "I respectfully disagree." The bigger companies are the ones that can afford to fight legal battles regarding IP, Rosen said.

However, speaking at the recent Linux on Wall Street conference in New York, Karen Copenhaver, executive vice president and general counsel at Black Duck Software Inc., in Waltham, Mass., raised the issue of the open-source community rising up to defend itself legally.

"Most companies had never given a software indemnity before, and the reason why they shouldn't for open source is that it was built in the community, and I believe the community needs to defend it," Copenhaver said. **e**

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