"This is not a banana uni-on"

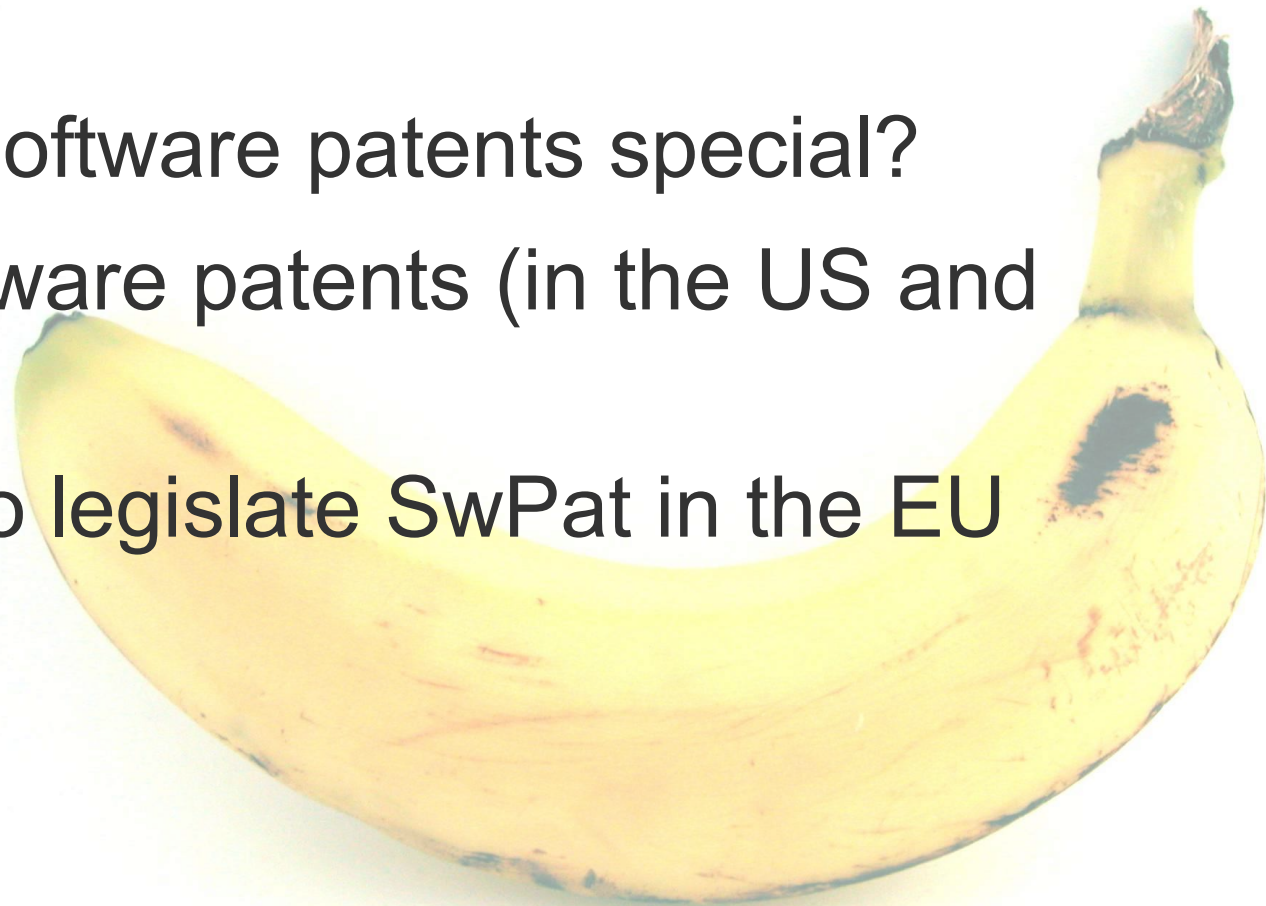## A short introduction to software patents

Introduction

contents:

- ◆ What are patents?

- ◆ Why patents?

- ◆ What makes software patents special?

- ◆ History of software patents (in the US and Europe)

- ◆ The process to legislate SwPat in the EU

- ◆ What next?

- ◆ Conclusion

What are patents

◆ In exchange to disclosure of an invention, the inventor receives a temporary monopoly on it

◆ Using a patent you can legally prevent someone else to produce, sell or use your invention

◆ The duration of a patent is 20 years

◆ You can also give out licenses to the patent

Why have patents?

◆ The reason for having patent law is to promote the advancement of society.

◆ If anyone could just "copy" the invention (e.g. a better mousetrap), the inventor may not be able to profit from it. This might be a reason not to pursue the invention

◆ Patent protection can give an inventor better means to gain from his/her invention

◆ Having the invention available under a monopoly would be better than not having the invention at all.
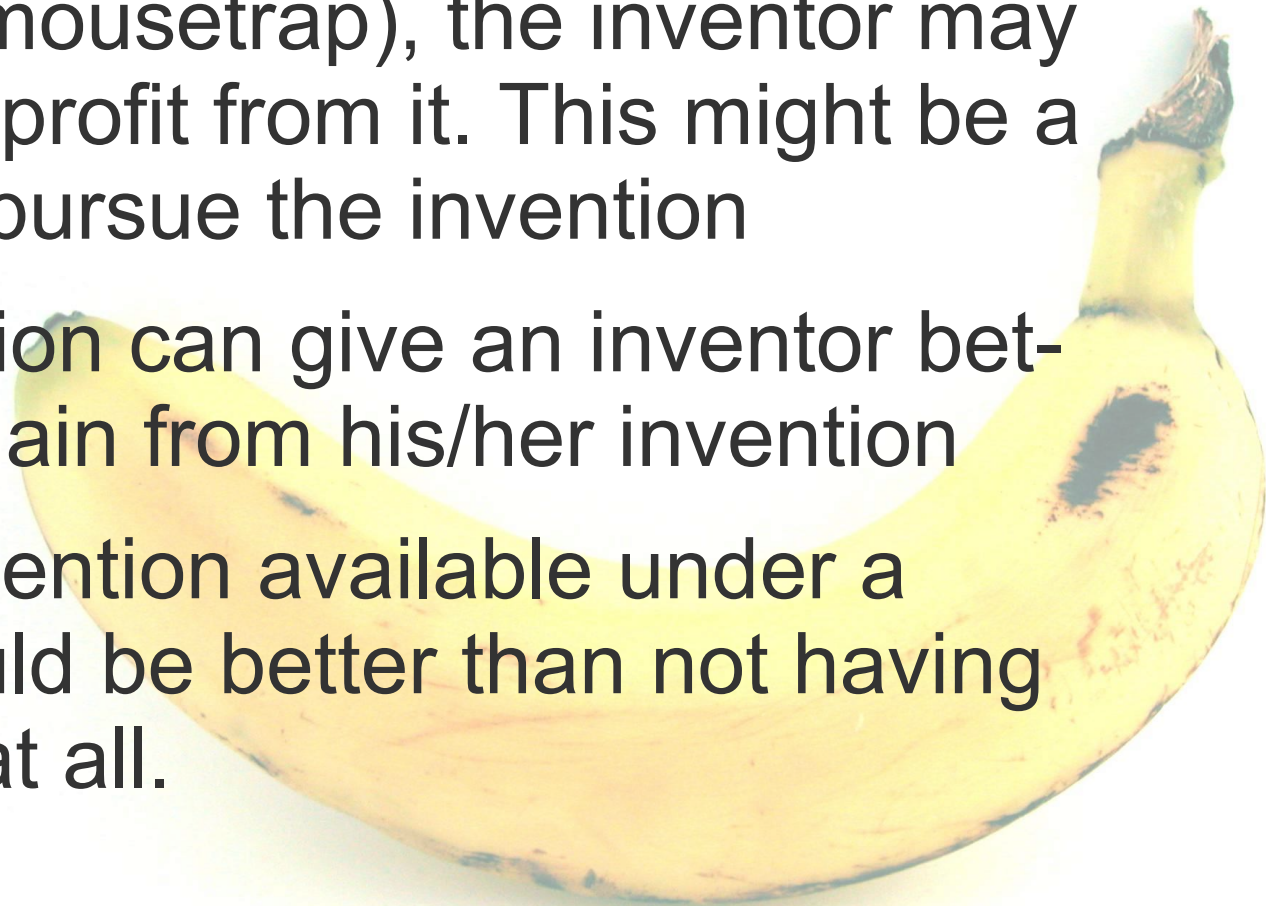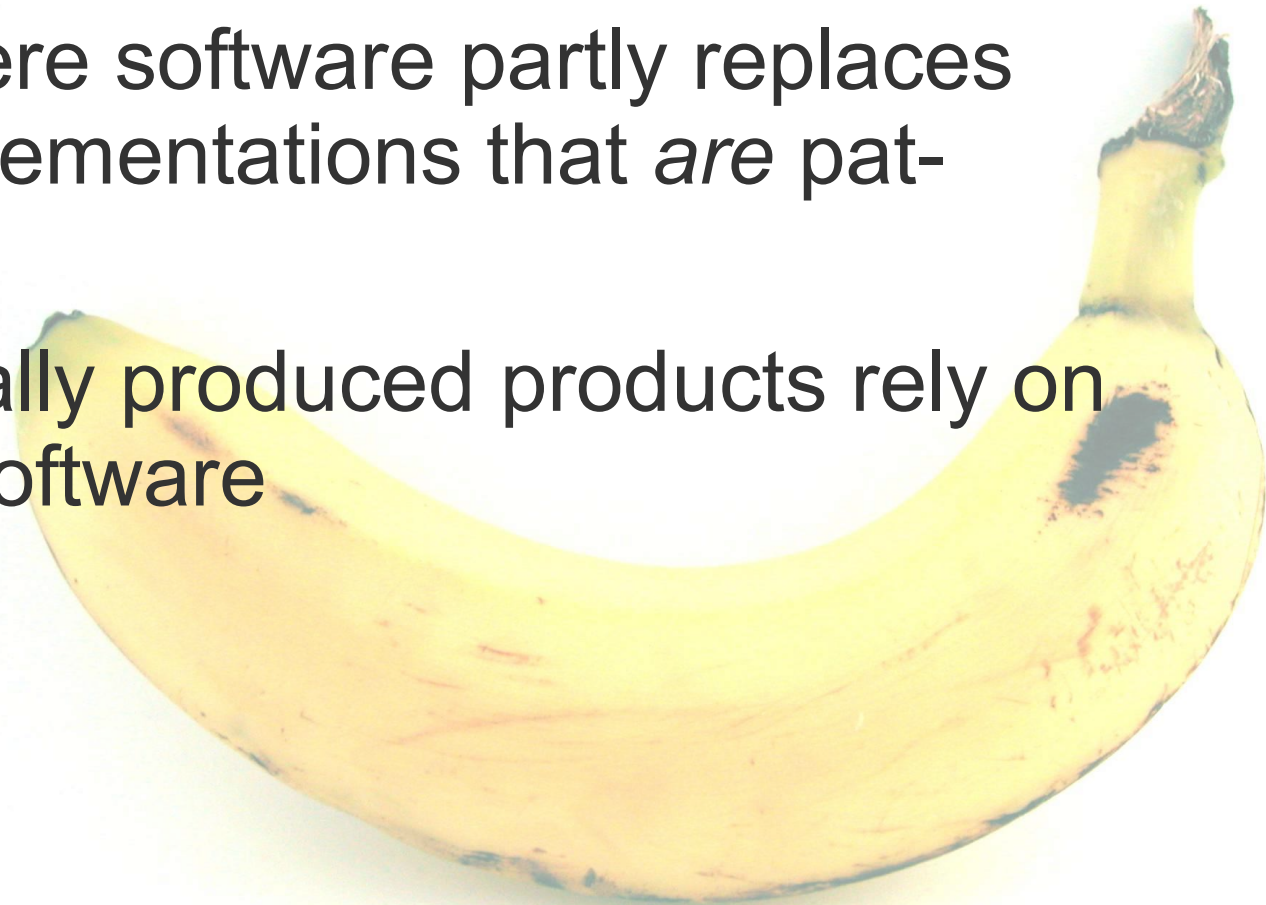
Why is software special?

◆ Software can be considered a from of ex-pression, comparable to mathematics or lit-erature

◆ Software is already protected by copyright

◆ Software development very much builds on the ideas of others

Why could software be considered patentable?

◆ Software (other than mathematics, literature) makes devices *do* something

◆ Examples where software partly replaces hardware implementations that *are* patentable

◆ Many industrially produced products rely on (embedded) software

Objections against software patents

- ◆ Software patents create a legal minefield
- ◆ This is especially bad for SME's
- ◆ This way, innovation is obstructed, not promoted
- ◆ Threat to Free Software projects

History of software patents in the US

- Until the seventies, USPTO did not grant software patents granted

- 1981: Diamond vs. Diehr

- 1990s: Federal Circuit attempts to clarify software patentability

- 1996: USPTO adopts Final Computer Related Examination Guidelines

- In practice, software can be patented
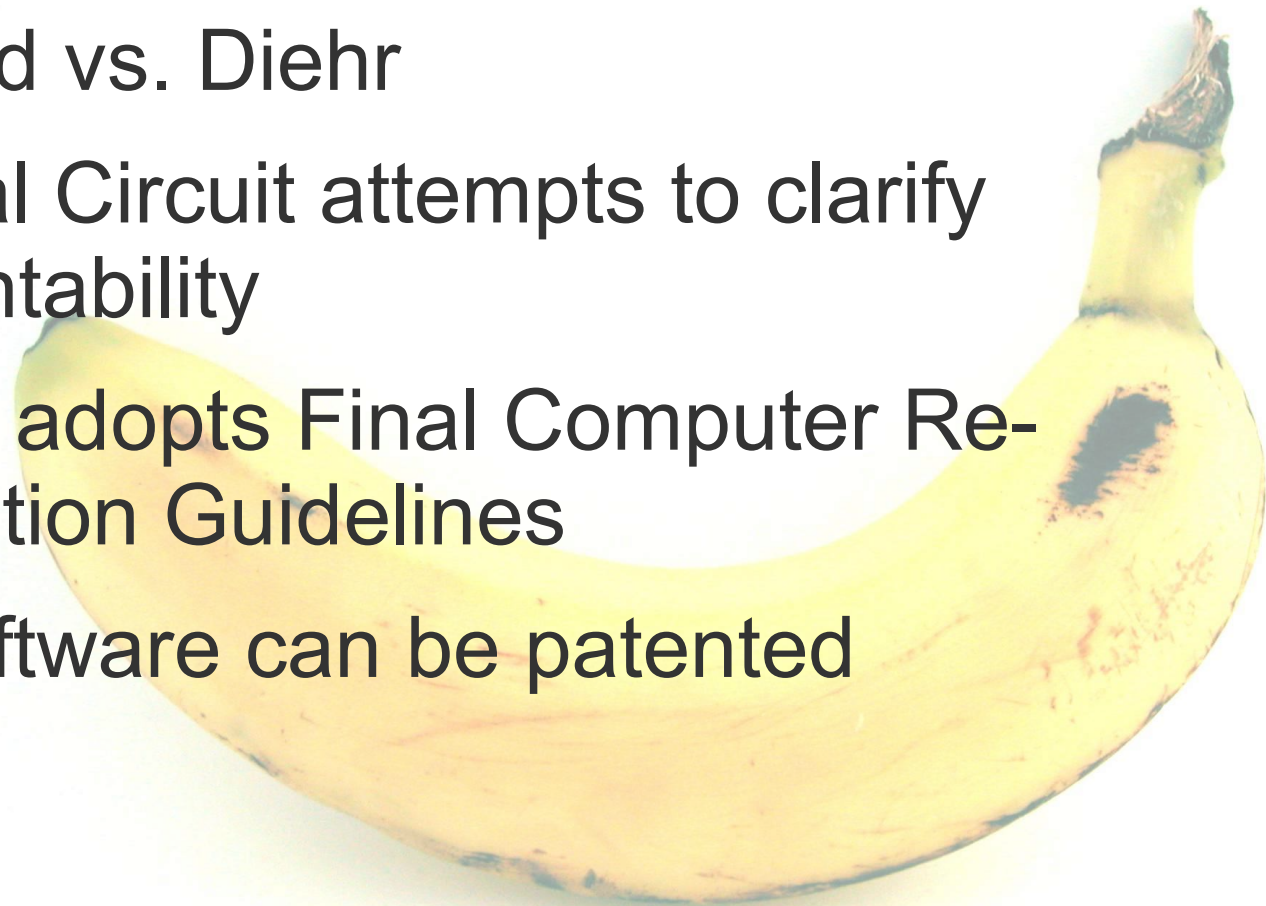
History of Software patents in EU

- ◆ The EPC of 1973 excludes patents on computer software

- ◆ 1986: EPO starts to grant software patents presented in the guise of process claims

- ◆ 1998: EPO authorises program claims

- ◆ 2000: Attempt to delete all the exclusions in the EPC

- ◆ 2002: proposal for a Directive on "Computer implemented inventions"
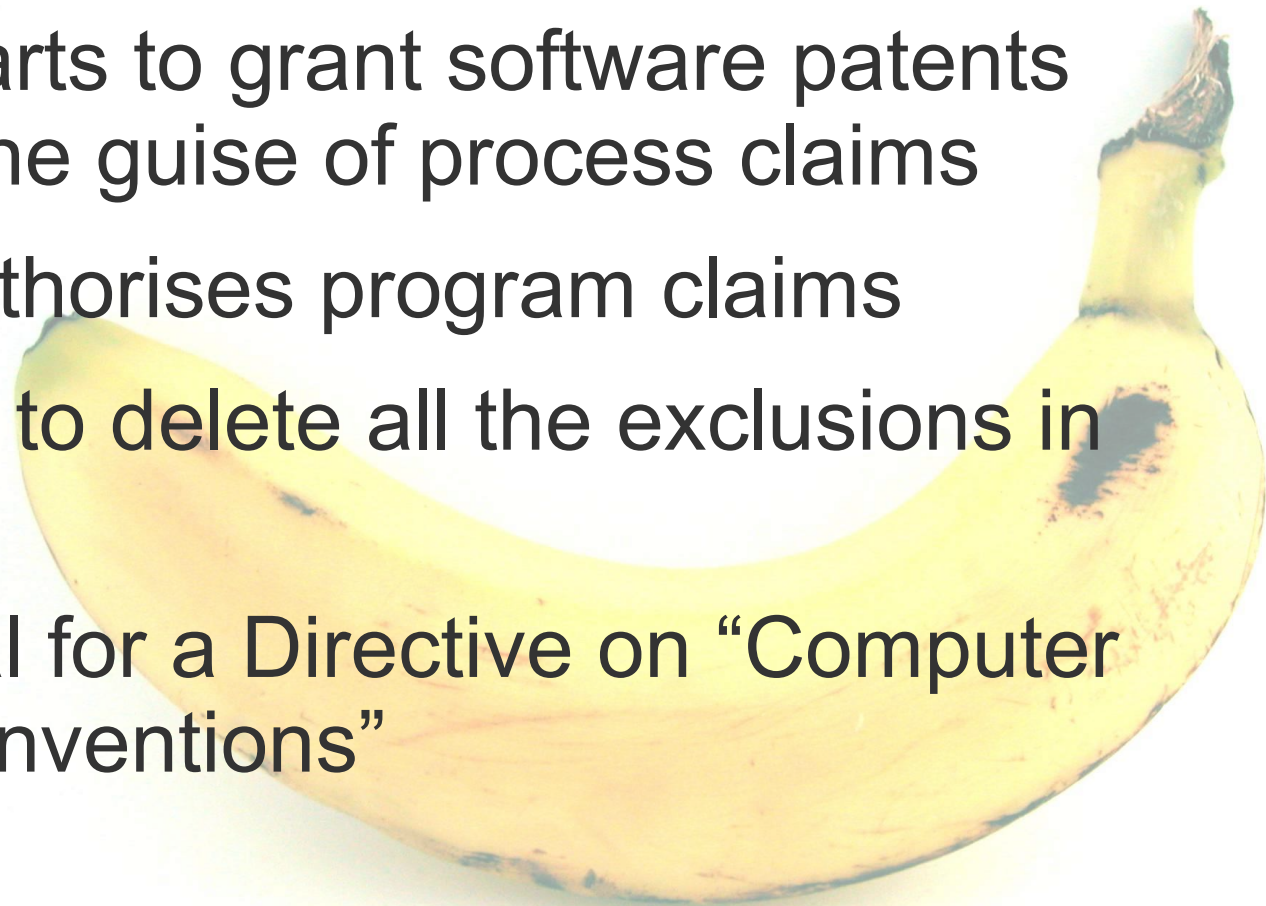
Democracy?

◆ 2002: European Commission proposes directive, Council of Ministers reaches agreement on text

◆ EU Parliament tables and accepts a great number of amendments, posing real limits to the scope of software patentability

◆ Council of Ministers draws up a revision of the directive, almost all essential amendments ignored

◆ Council pushes this proposal text through

◆ The Luxembourg president of the Council of Ministers: "This is not a Banana union"
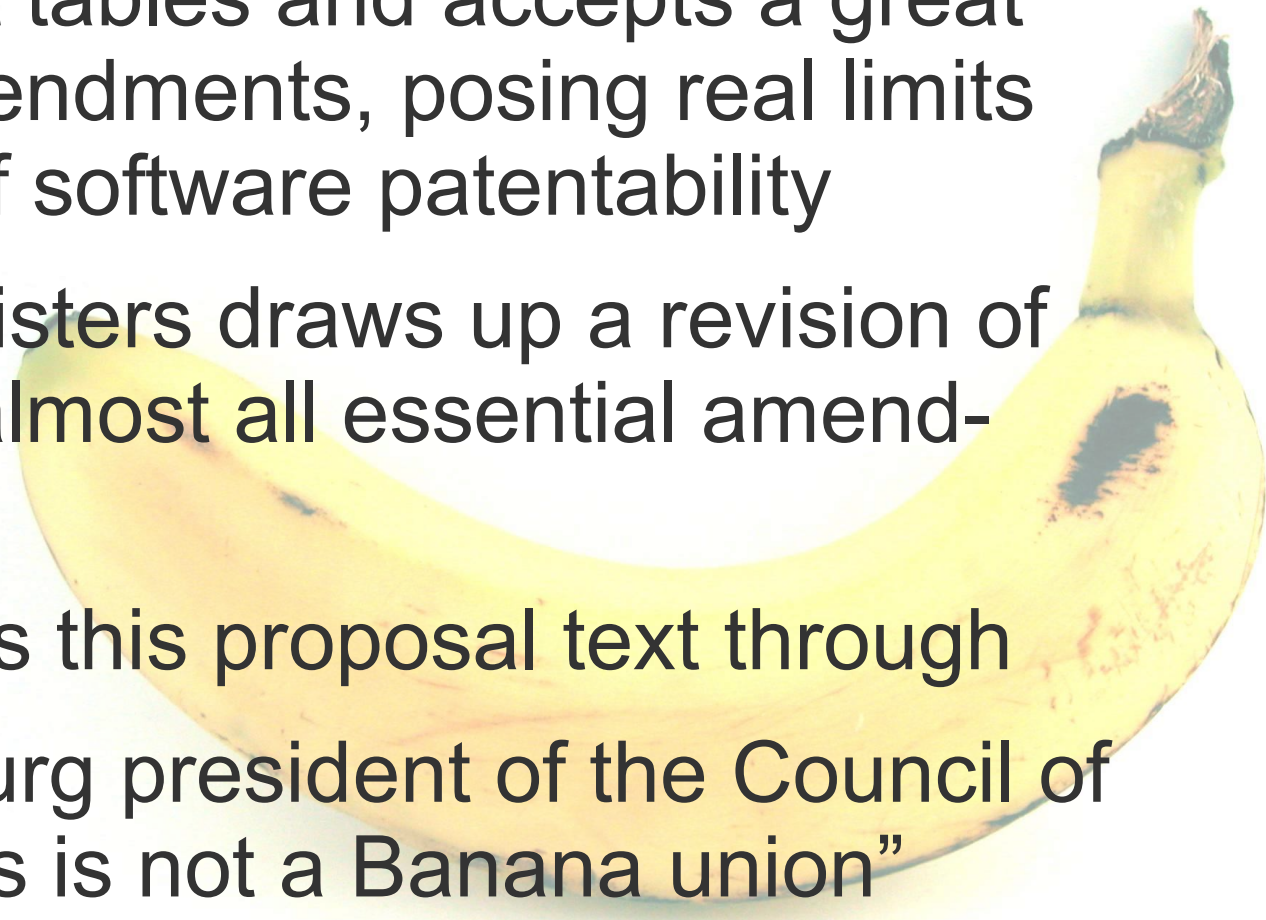
What next

◆ With the proposal agreed on by Council of Ministers, "the ball is in the court of the EU Parliament"

◆ The second reading by the EU Parliament started yesterday (april 15)

◆ Second reading to be completed in 3 months

◆ absolute majority required for adopting amendments or rejecting the proposal
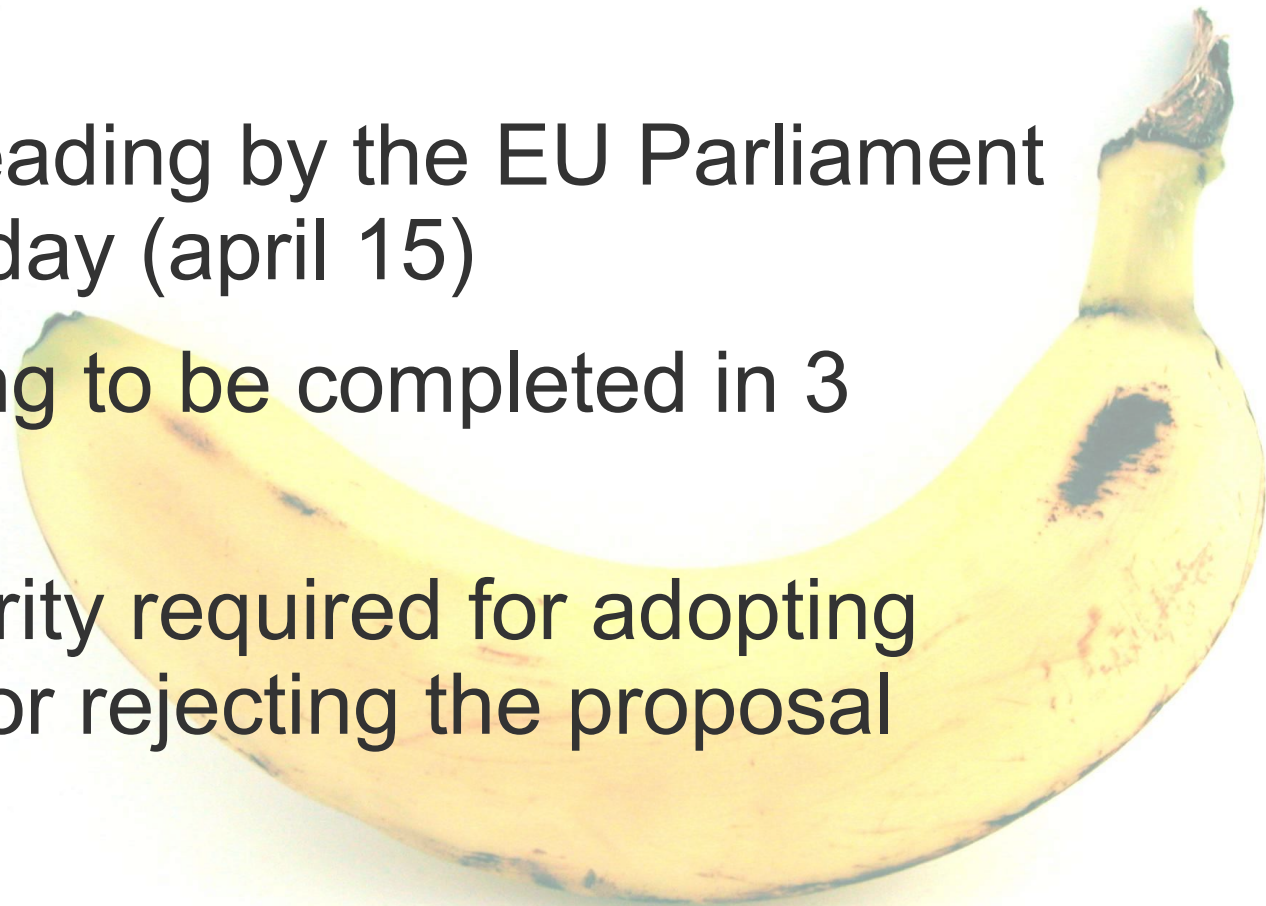
What to do?

- ◆ Read up on the subject
- ◆ Contact your MEP
- ◆ take part in discussions
- ◆ Publicity

More information

◆ Foundation for Free Information Inter-change: www.ffii.org

◆ www.nosoftwarepatents.com

Conclusion