Through a Glass, Darkly

The EU – Pouring Trouble on Oiled Waters

Robert L. Glass

This column is about a big battle between an international government and a major computer manufacturer. The main thrust of the column is this – the European Union and Microsoft are going through several rounds of a highly-expensive boxing match where the basis for the battle is how much information about its software products Microsoft has to give its competitors.

In one corner, wearing EU-colored trunks, is the EU's antitrust agency, which is levying fines of unimaginable size on Microsoft for not providing its competitors with the information it thinks those competitors are entitled to.

In the other corner, wearing Microsoft-colored trunks, is Microsoft and its technical and legal staffs, which are resisting those fines and claiming that they've already given out more information than they need to / should have to / owe anyone.

The purse for this boxing match is huge. Back in 2004, the EU levied a fine against Microsoft of \$613 M. In July, 2006, they upped that with another fine of \$357 M. We're talking upwards of \$1 B in fines here. The news media is talking in terms of \$4 M per day in fines (e.g., [Keizer 2007])! Those are numbers bigger than my imagination can grapple with!

So what's the billion dollar issue here? What is Microsoft not doing that the EU wants them to do?

The primary subject matter is "protocol documentation." The EU wants Microsoft to provide its competitors with the same kinds of information Microsoft has internally for building software that plays nicely with its operating systems. Microsoft says that it has already done what it needs to do, saying they "have spent three years and many millions of dollars" providing just what the EU has asked for. The EU says that it is not only too little but it is too late.

Now here's where I'm going to go out on a pro-Microsoft limb. I'm deeply troubled by an idea here that seems to underlie the EU case – that software companies should provide internal interface documentation to competitors. I'm a strong believer in not tinkering with the internals of packaged software products. It's a lesson I learned the hard way over 30 years ago, and one that newby software engineers seem to have to keep re-learning (with respect to customizing ERP products, for example). You rely on informally-obtained internals information to modify a packaged product, and you buy yourself a heap of future trouble. Every time the package is modified, you have to reintroduce the changes you have made. That's an error-prone prospect, made even

worse by the fact that the package may have been modified in the same general area to meet new and very different needs of the package vendor. Working with officially documented interfaces is just fine, I am saying; but working with undocumented ones, the ones the package vendor has not promised to keep sacred, is bigger trouble than most software folks ever want to sign up for.

So I think the EU is not only asking for information here that Microsoft shouldn't be forced to give up; they're asking for information that Microsoft's user community should NEVER use, even if they manage to get it.

I've implied in the preceding that I think the EU is behaving in some fairly irrational ways. Let me broaden that implication. Consider this. The EU is concerned, as are all of us, with the pollution caused by automobiles in a carbon dioxide emission damaged, "inconvenient truth" world. What are they doing about it? According to an article in a recent newspaper [The Times 2007], it's this: The EU is requiring "all new cars to be fitted with devices that tell drivers when to change gears, what speeds to drive at, and even when to pump up their tires."

Do you see such laws as being as intrusive as I see them? I would make the case, here, that this same attitude toward drivers and auto manufacturers is being manifested in the EU's actions toward Microsoft. They're getting involved in things that should be none of their concern. And people are going to be paying a high price for that (the newspaper article says the EU auto requirements will increase the price of a car by \$5000).

It's not just Microsoft that's involved here, in fact. According to a recent article in the magazine CIO Insight [Downes 2007], "Microsoft's legal battles are only the first wave of tech suits – Google, Yahoo!, eBay, and Intel have all been recently upended by foreign courts and regulators." The problem is, the article says, "there are still substantial variations in how different countries regulate competition and protect intellectual property." It goes on, "mergers approved in the U.S. have been rejected by the EU, for example, even though the standards for reviewing them are largely the same."

So what do I see as the problem here? The EU is behaving in irrational ways, ways that are costing various companies around the world (and, eventually, us – their customers) huge amounts of money. And, worse yet, they're asking those companies to do things that, ultimately, are not even in the best interests of those for whom they think they're doing them. EU – I want to thank you for trying to help me out. Now please get off my side!

References:

Downes 2007 – "A Tale of Two Microsofts" ("The Legal Jungle" column), CIO Insight, Jan., 2007; Larry Downes

Keizer 2007 – "EU Threatens Microsoft With New \$4 Million Per Day Fine," ComputerWorld Operating Systems (online), Feb. 3, 2007; Gregg Keizer

The Times 2007 – “Car-Makers Splutter as EU Cleans Up Emissions Act,” an article from The London (?) Times but reprinted in The Australian newspaper, Jan., 2007 (unfortunately, I have lost the specifics, including the precise date, for this article)

“Through a Glass, Darkly,” is a Biblical expression for the unclear way in which we see the world around us.

Robert L. Glass is president of Computing Trends, publishers of The Software Practitioner newsletter, and an Honorary Professor of Software Engineering at Griffith University, Brisbane, Australia. He has been active in the field of computing and software for over 50 years, largely in industry (1954-1982 and 1988-2005), but also as an academic (1982-1988 and 2005-present). He is the author of over 25 books and 90 papers on computing subjects, Editor of The Software Practitioner, Editor Emeritus of Elsevier’s Journal of Systems and Software, and a columnist for several periodicals including Communications of the ACM (the “Practical Programmer” column) and IEEE Software (“The Loyal Opposition”). He was for 15 years a Lecturer for the ACM, and was named a Fellow of the ACM in 1998. He received an honorary Ph.D. from Linköping University in Sweden in 1995. He describes himself by saying “my head is in the academic area of computing, but my heart is in its practice.”