

What happened to last year's winner?

The Campaign for Creativity became the Innovation and Creativity Group, but habits of deception die hard.

In 2005, the Campaign for Creativity (C4C) was the undisputed winner of the Worst Lobby Award. Over 7,000 voters gave the thumbs-down to this fake 'grassroots' campaign. Behind a mask of diversity was a campaign run by London-based public affairs firm Campbell Gentry. Under the direction of Simon Gentry and supported by software giants like Microsoft and SAP, this campaign lobbied Members of the European Parliament (MEPs). Its aim was to secure a parliamentary majority for US-style software patents, granting large corporations stronger intellectual property rights over software.

In July 2005, with a landsliding majority, the Parliament voted against the software directive. By the end of 2005, the C4C had transformed itself into the Innovation and Creativity Group (ICG), with the former seemingly disappearing without a trace.¹ The Innovation and Creativity Group makes no reference to its links with the much-criticised C4C.² When asked by CEO about this relationship, Simon Gentry, the key figure of C4C and now Secretary of the ICG's board, confirmed that the Innovation and Creativity Group was intended as a follow-up to the C4C campaign³. As with C4C, the Innovation and Creativity Group is run by Simon Gentry from the Campbell Gentry headquarters in London.

While in charge of the C4C, Gentry refused to disclose the campaign's funding sources. At the time, there were strong indications that Microsoft provided financial backing. Apparently quite different is the ICG, which on its website, promises full transparency: "Contributions in kind, in manpower and financial resources will be comprehensively declared on this site. This information will be updated quarterly."⁴ At the time of writing, there is no actual data about funding sources on this website. While this is contrary to the website's claims, it does, however, represent decisions taken during the shift from C4C to ICG. For example, at the end of 2005 Gentry asked C4C supporters whether the new group should accept financial contributions from companies and at what amount should the contribution be made public.⁵ Referring to the feedback received and citing concerns about "harassment", Gentry concluded: "We will therefore not make our list of supporters public. You also want us to respect the right of companies to make donations in private."⁶

Given this background, it seems highly unlikely that full transparency about ICG funding will be forthcoming. In October 2006, when asked by CEO about the current lack of data, Gentry claimed that "no contributions, in funding or manpower have been received. Neither, for that matter has the ICG undertaken any lobbying activity."⁷ Yet without mandatory transparency obligations for EU lobbyists it remains impossible to independently assess Gentry's claims. However, the transformation of the C4C into the Innovation and Creativity Group does not appear to have been particularly successful. The group's low profile and activity level indicate that Gentry may indeed have failed to secure significant corporate donations. Yet in terms of reporting on its financial donations, at the very least Campbell Gentry, Simon Gentry's public affairs firm, is contributing 'in kind' and this is not mentioned on the ICG website.

The ICG does not define itself as representing any sector in particular, so leaves questions about what kind of organization it is. This is different to the C4C who claimed to represent artists, musicians, designers, engineers and software developers. The ICG site does list five MEPs as members of the group, three of which are on the board. All of these MEPs are known as strong supporters of US-style software patents. Yet, their level of

involvement in the Innovation and Creativity Group, seems limited. For example, MEP Malcolm Harbour's assistant, told CEO that Harbour "has not attended any meetings, and does in fact not know of any that have taken place."⁸

The ICG's board also includes software firms, patent lawyers, former Microsoft chief lobbyist Marie-Therese Huppertz and Jonathan Zuck, President of the Association for Competitive Technology (ACT). Over the past year, the Washington-based ACT appears to have taken on the C4C's role as the primary lobby group promoting US-style software patents in Europe, for instance in the battle around the controversial European Patent Litigation Agreement (EPLA).⁹ Despite their close links with Microsoft, they regularly claim to lobby on behalf of the interests of SMEs.¹⁰ When asked about Jonathan Zuck's involvement in the ICG, an ACT spokesperson told CEO that "Mr. Zuck was asked to participate in ICG during its formative stages" and agreed to do so, but that his understanding "is that the organization is moribund and unlikely to be revived in the near future."¹¹

This recent evidence asks the questions, has Mr. Gentry fallen from grace with the uncovering of the C4C and has this prevented Microsoft and other giants from funding his initiatives? While this would be good news for all supporters of transparency and ethics in EU decision-making it is too early to draw such conclusions. What is clear is that it was the lack of mandatory lobbying disclosure rules for EU lobbyists that allowed Gentry to orchestrate his deceptive lobbying efforts in the first place. Regarding the case of patents on software in particular, the issue has clearly not gone away with the C4C's demise.

Furthermore, in this case, citizens were able to exercise vigilance and uncover the deception behind C4C's lobbying activities. This is only possible in a few cases, and demands a great deal of resources given that information is not easily accessible. With the thousands of lobbyists operating in the EU, general rules are needed if citizens are going to be able to scrutinise the parliamentary decision-making process and shed light on the activities of groups such as the C4C/ICG. In January 2007, the European Commission is expected to present its final proposals for an EU lobbyist register, a unique opportunity to make financial disclosure obligatory for all EU lobbyists.

MEPs on board

In July 2005, talking about the parliamentary debate which took place the day before MEPs voted on the software directive, Gentry noted how, "a number of MEPs excelled in putting the case for our side of the argument. In particular, Arlene McCarthy, Socialist, Sharon Bowles Liberal Democrat – and a patent lawyer – followed by Malcolm Harbour – Christian Democrat, all of whom laid out the case effectively and clearly. There were of course many others supporting our case but these three stood out."¹² Two of them, Bowles and McCarthy (together with Conservative Paul Rübig) sit on the ICG board, and Harbour (with Dutch MEP Toine Manders, a former patent lawyer) is listed in the group's membership.

The software directive's rapporteur, Socialist MEP Arlene McCarthy was much criticised by anti-patent groups for pursuing the agenda of big business. McCarthy has been in the parliament since 1994 and until 2005 was on the board of Sovereign Strategy, whose services include, "counselling and influencing/shaping domestic and European public policies." It was from Malcolm Harbour's office and email address that the C4C sent emails to all MEPs on June 2005 inviting them to free ice cream and a chat on the wonders of the software patents. The ICG Chair Sharon Bowles is a patent lawyer at Bowles Horton, a patent attorney firm specialising in electronics and has major companies on their books. Bowles actively tried to get the software directive through and she is now working with MEP Klaus Lehne who is the biggest defender of Internal Market Commissioner McCreevy's controversial proposal for a single patent law in Europe.¹³

C4C Reincarnates

After the vote in the Parliament in July 2005 which rejected the software directive, Gentry announced in the C4C blog¹⁴

that they had decided to review the objectives, structure and focus of the campaign,¹⁵ and asked supporters for feedback on the future group. In November 2005, Gentry announced in the same blog that “in the coming weeks a new body – successor to the Campaign for Creativity – will be unveiled” and asked people to contact him if interested in playing a role.¹⁶

When asking supporters for feedback, Gentry described a four-phase decision-making process for the campaign's future. This involved open consultation among supporters, a more structured paper gathering the comments, supporters commenting on this paper and a final paper setting the conclusions. Although the final two phases have remained confidential, a summary of the first two could be viewed on the old blog site of the campaign until the end of October 2006.¹⁷ Among the key points was a decision to move from primarily being a campaigning organisation to more information and education work. From the statements made by Gentry it appears that this shift in emphases is partly based on fears of counterproductive campaigning as he perceives to be great strength in anti-patent groups. It was also decided that the group should continue to promote views among political leaders (ie lobby).¹⁸

¹ The C4C website (campaignforcreativity.org) redirects to Campbell Gentry site, where the only mention is an outdated statement: “Campbell Gentry is delighted to be working with the Campaign for Creativity to defend intellectual property rights in Europe. For more information about the campaign please visit www.campaignforcreativity.org”. And if you click <http://campaignforcreativity.org> then you are redirected to the site of Advocacy on line, which hosts ad-hoc internet lobbying campaigns.

² <http://www.innovationandcreativity.org>

³ Email from Simon Gentry, 27 October 2006

⁴ <http://www.innovationandcreativity.org/funding.htm>

⁵ Whether to make supporters names public was also discussed. Compiling the replies Gentry listed as a key point “You are content to have corporate sponsors and to make ‘significant’ donations public. However, you are concerned about potential harassment (a number of examples of harassment by the supporters of anti-IP groups were provided – and we have plenty of our own!). We will therefore not make our list of supporters public. You also want us to respect the right of companies to make donations in private to protect them and their staff from harassment.” “The future: Phase II consultation open now”, posted on 12 September 2005. (<http://europeansoftwarepatents.blogspot.com/>)

⁶ Gentry posed a concrete question: “This approach would fall short of the demands for total transparency sought by some critics of the Campaign for Creativity. Are you content to ignore these demands for transparency?” “The future: Phase II consultation open now”, posted on 12 September 2005. (<http://europeansoftwarepatents.blogspot.com/>)

⁷ Email from Simon Gentry, 27 October 2006

⁸ Email from Amy Etchells, Parliamentary Assistant to Malcolm Harbour.

⁹ Critics argue that the proposed European Patent Litigation Agreement (EPLA) will de facto legalise software patents. See <http://www.a2e.de/ffii/eplai/index.en.html>

¹⁰ ACT was set up in 1998 in response to the antitrust action against Microsoft and has since directed its lobbying efforts to help the software giant. The ACT took also part in the EU debate over the antitrust ruling on Microsoft.

¹¹ Email from Mark David Blafkin, ACT Vice President for Public Affairs, 27 October 2006.

¹² Posted on Wednesday July 6 2005 “The fat lady sang sweetly – A personal message”

¹³ See endnote 9.

¹⁴ Since the end of October 2006, C4C’s old blog site (<http://europeansoftwarepatents.blogspot.com/>) can not be seen any longer in the web. It is, however, on filed at CEO.

¹⁵ Posted on Tuesday August 16 2005 “You’re invited”(<http://europeansoftwarepatents.blogspot.com/>)

¹⁶ Posted on November 22 2005, “New body to promote understanding of intellectual property” (<http://europeansoftwarepatents.blogspot.com/>)

¹⁷ (<http://europeansoftwarepatents.blogspot.com/>)

¹⁸ Posted on Tuesday August 16 2005 “You’re invited”(<http://europeansoftwarepatents.blogspot.com/>)