Resolution of syndicom sector ICT

The employees' right to their intellectual property must be preserved

An unpleasant trend that is spreading also concerns the ICT sector. More and more employers are regulating intellectual property rights to the disadvantage of employees when concluding employment contracts. Such contracts often stipulate that employees must assign to the employer the IP rights to their inventions and computer programs, this far more extensively than the law establishes. Because in Switzerland, only the IP rights to inventions and computer programs developed during the employment relationship in fulfilment of contractual obligations belong to the employer by law. Occasional inventions are also regulated by law. The employer can secure with the written employment contract a preferential right on what is not created in fulfilment of the contractual obligations but when performing official business activity.
However, the law does not regulate the IP rights to inventions and computer programs created prior to or during the employment relationship outside of contractual obligations or during leisure time. It is precisely in this area that companies increasingly require employees to assign their IP rights to them.

This phenomenon is particularly widespread in the IT industry and also carries a particularly large number of negative consequences. Anyone who is passionate about programming and tinkering with new, useful apps in his or her spare time must expect to have his or her IP rights to them taken away by the employer.

Having to waive the copyrights of one's own computer programs to the employer to this extent is contrary to the free software culture that prevails in the IT industry. Source code is often made publicly available online by programmers in order to promote innovation and thus ultimately serve society. A large part of the Internet would not exist if a number of programmers had not published their knowledge and work. This freedom no longer exists if the copyrights have to be waived to the employer.

The situation is similar with patents. For example, algorithms are inventions protected by patent law. However, patents can stand in the way of innovation. In fact, patents would be a suitable instrument to strike a balance between private use and public benefit. Patents can both reward inventors and encourage innovation by requiring the disclosure of detailed information about the invention in return for protection. A system that was supposed to serve the distribution of knowledge has unfortunately shifted the actual mechanism and now serves in particular the private benefit of a few.

We therefore stipulate:

If inventions or computer programs were developed prior to the employment relationship or, in the case of ongoing employment, during leisure time, the intellectual property rights must remain with the inventors or programmers.

Programmers should be free to decide to whom and under what conditions they want to make source codes available. This also serves to promote innovation and ultimately the general public.

In addition, the agreements between employees and companies must be clear and comprehensible. Unclear provisions must be interpreted in favour of the employees. In particular, this must not render the economic advancement of the employees impossible.

Innovations are produced collectively; benefits should be shared collectively.