

Mrs Arlene McCarthy  
Member of the  
European Parliament  
Bat. Altiero Spinelli - 13G218  
60, rue Wiertz  
1047 Bruxelles

21 January 2003

Dear Mrs McCarthy,

RE: PATENTABILITY OF COMPUTER-IMPLEMENTED INVENTIONS

The Legal Affairs Committee will soon consider your report on the Commission proposal for a directive on the patentability of computer-implemented inventions. We would like to take this opportunity to reiterate users views on this important for European industry dossier.

UNICE has supported the broad intention of the Commission proposal to remove ambiguity and legal uncertainty surrounding the patentability of software-related inventions. This harmonisation initiative is important for Europe's innovation and economic development in a market that will otherwise be dominated by the USA and Japan, if European companies are to be excluded from access in this market.

However, UNICE feels that there are certain crucial elements not sufficiently taken into account by the Commission proposal and should be stressed more clearly during consideration by the European Parliament.

UNICE endorses the intention of the proposal (Article 2(b)) to ensure that patents are available for inventions of technical character.

However, the definition of "technical contribution" in Article 2(b), a central condition for the patentability of computer-implemented inventions, imposes an **undue restriction** on the scope of protection by requiring the technical contribution itself to be non-obvious. In many circumstances an increase in speed or a reduction in use of resources would be obvious. UNICE's position is that: (i). as a minimum, the technical contribution should comprise new technical element(s); and (ii). the claimed invention as a whole (including technical and non-technical features) should, either by its technical and/or its non-technical features, be non-obvious.

UNICE believes that the exclusion of claims directed to program products (Article 5 of the Commission proposal), even when they relate to a perfectly patentable invention having a technical character, takes away a significant part of the economic value of the patent. Besides, it is acknowledged that patent and copyright protection are complementary and that the exercise of a patent covering a computer-implemented invention should not interfere with the freedoms granted under copyright law by Directive 91/250/EEC. However, copyright protection for isolated software is not enough because it would mean that the use and distribution of a piece of software stored as a file (e.g. on a disk or downloaded from the Internet) in other than the original expression could not be prevented as a direct infringement. This can only be achieved by patent protection of isolated software.

In UNICE's view, this provision should also include the protection of a program stored as a file on a data carrier (e.g. disk) or transmitted as a signal (e.g. in the form of a "*computer program product*").

The Danish presidency compromise proposal has to a large extent tightened up the legal wording of the Commission proposal making it more consistent and including a provision that would allow program products to become eligible for patent protection. In this sense, we urge you during consideration of the proposal to ensure that it is worded in such a way as to deliver the intended result with clarity and certainty.

We remain at your disposal if you wish to discuss any aspects of our comments further.

Yours sincerely,

*(original signed by)*

Jerome P. Chauvin,  
Director, Company Affairs Department