An Open Letter to the European Parliament Concerning the Proposed *Directive on the Patentability of Computer-Implemented Inventions*

The undersigned economists have grave concerns about the proposed *Directive on the Patentability of Computer-Implemented Inventions* that has emerged from the JURI committee of the European Parliament and that has been tabled for vote on 1 September 2003. While clothed as an administrative clarification, the proposed *Directive* will provide opportunities and incentives for the construction of extensive portfolios of software patents. The exploitation of these portfolios will have serious detrimental effects on European innovation, growth, and competitiveness.

Unlike most complex technologies, the opportunity to develop software is open to small companies, and even to individuals. Software patents damage innovation by raising costs and uncertainties in assembling the many components needed for complex computer programs and constraining the speed and effectiveness of innovation. These risks and liabilities are particularly burdensome for small and medium sized enterprises, which play a central role in software innovation in Europe as well as North America. Moreover, within the ICT sector, expansion of patent protection has been found to lead to an increase in the strategic use of patents, but not to a demonstrable increase in innovation.

Copyright and other rules of competition permit small and medium sized software enterprises to grow despite the overwhelming resource advantages of large companies. As a recent report from the National Academy of Sciences in the US concluded: "[D]eveloping and deploying software and systems may cease to be a cottage industry because of the need for access to cross-licensing agreements and the legal protection of large corporations." While some small and medium-sized firms will be able to prosper in this new environment, many will not. In particular, validating loosened standards on patentability will cloud the prospects of Europe's ascendant free and open source software industry while preserving the dominance of present market leaders.

We are concerned that the analysis made available to Parliament by the Commission and the JURI committee fails to acknowledge the problems of strategic patenting that have been the growing focus of attention and research in the U.S., as well as the unique characteristics of software development and use.[1] We urge the members of the European Parliament to reject the proposed *Directive* in its present form and to request that the Commission develop an economic analysis that properly considers the potential consequences of software patenting for European software developers and users.

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[1] For a detailed critique of the rapporteur's explanatory statement see http://www.researchineurope.org/policy/critique.pdf

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