

Sun Microsystems, Inc.
MS PAL 1-521
2550 Garcia Avenue
Mountain View, CA 94043-1100
415 960-1300
FAX 415 336-0530

November 5, 1992



HAND DELIVER

Professor Barry E. Carter
Georgetown University Law Center
600 New Jersey Ave., N.W.
Washington, D.C. 20001

Dear Professor Carter:

Bob Loeffler of Morrison & Foerster suggested that I write to you in your capacity as an advisor to President-Elect Clinton's transition team.

Sun Microsystems is the world's leading supplier of high-performance computer workstations. According to Forbes Magazine, Sun is the nation's second leading exporting company -- preceded only by Boeing -- as measured by the percentage of its total revenues derived from export sales. We are also the nation's largest employer of Unix software engineers, and play a leading role in the computer industry advocacy group known as the American Committee for Interoperable Systems (ACIS), of which I am chairman.

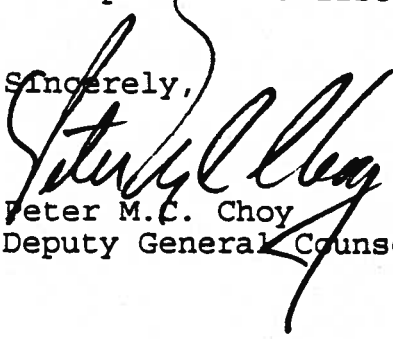
Sun has strongly held views on the role intellectual property protection should play in promoting U.S. competitiveness in the global computer industry. In particular, Sun believes in a scope of protection for computer programs under copyright law which balances incentives for developers with the public interest in competitiveness, open systems and incremental innovation. Sun believes, as its fellow members of ACIS believe, that the over-protection of technology under intellectual property law may lead, in the words of a U.S. Court of Appeal, to "monopolistic stagnation" in the industry.

The Clinton administration will soon have responsibility for reassessing the intellectual property policies taken by the U.S. Government in multilateral negotiations such as NAFTA and the Uruguay round of GATT. I would appreciate an opportunity to discuss further with you the views of Sun and ACIS. As I happen to be in Washington on other business, I would like to take the opportunity of contacting you to arrange a brief introduction and meeting during my current stay. If this is not convenient, I can be reached upon my return to Mountain View on Monday at (415) 336-2482.

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Enclosed for your reference is a fact sheet on
ACIS, the ACIS Statement of Principles and a list of ACIS
members.

Sincerely,



Peter M.C. Choy
Deputy General Counsel

Enclosures

ACIS

American Committee for Interoperable Systems

M/S PAL1-521
P.O. Box 391837
Mountain View, California 94039-1837
Phone: (415) 336-0289
FAX: (415) 336-0530

FACT SHEET AMERICAN COMMITTEE FOR INTEROPERABLE SYSTEMS (ACIS)

Organization:

ACIS is a voluntary organization of more than 20 corporations in the computer industry. Members include Amdahl Corporation; Bull H.N. Information Systems Inc.; NCR Corporation; Seagate Technology Corporation; Storage Technology Corporation; Sun Microsystems, Inc.; Unisys Corporation and Western Digital Corporation.

Purpose:

The organization supports policies and principles of intellectual property law that provide a balance between rewards for innovation and the belief that computer systems developed by different vendors must be able to communicate fully with each other. This ability to communicate is termed "interoperability," and involves the interchange of information that benefits all computer users.

Activities:

The first general membership meeting was Dec. 5, 1991. Already, the organization has filed amicus briefs in several high-profile court cases; commented to the House and Senate subcommittees with jurisdiction over intellectual property issues; and addressed the U.S. delegation to W.I.P.O. on the proposed protocol to the Berne Convention.

Panel of Academic Advisors

Howard Anawalt, Professor of Law at the University of Santa Clara; Ralph Brown, Professor Emeritus of Yale Law School; Gideon Frieder, Dean, School of Engineering and Applied Science, The George Washington University; Allan Gottlieb, Professor of Computer Science and Director of the Ultracomputer Research Laboratory at New York University; Peter Jaszi, Professor of Law, Washington College of Law, American University; Gearold Johnson, Professor of Engineering, Colorado State University; Dennis Karjala, Professor of Law at Arizona State University; David Lange, Professor of Law at Duke University Law School; L. Ray Patterson, Professor of Law at the University of Georgia; Jerome Reichman, Professor of Law at Vanderbilt University; and Pamela Samuelson, Professor of Law at the University of Pittsburgh.

Contacts:

Chairman of ACIS is Peter M.C. Choy, Deputy General Counsel, Sun Microsystems, Inc., (415) 336-2482. Other steering committee members include Greg Handschuh, Vice President for Legal Affairs, Amdahl Corporation, (408) 746-7034; Norton Cutler, Assistant Chief Counsel, NCR Corporation, (513) 445-2911; and W. Russell Wayman, Corporate Vice President and General Counsel, Storage Technology Corporation, (303) 673-4920.

ACIS

American Committee for Interoperable Systems

STATEMENT OF PRINCIPLES

The American Committee for Interoperable Systems is a voluntary association of individuals and organizations concerned with the future of the computer and communications industry. ACIS was created by its members to support policies and principles of intellectual property law providing for a careful balance between the goals of strong protection and rewards for innovation, and the goals of interoperability, fair competition and open systems. Our paramount concern is that intellectual property protection not be improperly extended in scope or practice in ways which would impede further innovation and development in this critical industry.

ACIS recognizes and supports the role which standards bodies play in the movement toward open systems. We are aware, however, of the fact that proprietary systems continue to have an important and often dominant role in the information technology marketplace. ACIS members therefore support the following principles:

- Computer programs and other computer-related inventions comprise valuable intellectual property and deserve strong legal protection by means of intellectual property law. However, intellectual property law is not intended to protect investment as such. In order to qualify for protection, a computer program or computer-related invention must meet the requirements of one or more of the various forms of protection, failing which, no amount of money spent in its development should make it protectable.
- Both copyrights and patents offer viable forms of legal protection for software.

In the case of copyrights, however, protection should not be improperly extended to the computer processes implemented by the software apart from the expression contained in the software, and, where the process and the expression cannot be conceptually separated, even the expression should not be protected. Further, the scope of protection under copyright should be a function of the range of alternate expression available to the author of the software, consistent with sound programming practice.
- In the case of patents, rigorous examination for novelty and non-obviousness, based on the best available prior art, is necessary to ensure that such patents are not improperly granted.
- Copyright law is not a trade secret law, a law to protect inventions or a general misappropriation law. It does not restrict the ability of others to perceive, view, observe, study, and analyze distributed copies of computer programs, nor does it restrict the ability of others to reproduce all or part of a lawfully-obtained program as a step in the development of competing products that are not substantially similar in terms of protected expression.
- The rules or specifications according to which data must be organized in order to communicate with another program or computer, i.e., interfaces and access protocols, are not protectable expression under copyright law.
- So long as the expression of the author is protected, nothing in copyright law should prevent or discourage the development of interoperable (competing or attaching) products or systems. On the contrary, copyright law should promote innovation and competition in furtherance of consumer welfare.

ACIS MEMBERS

Advanced Micro Devices, Inc.
Amdahl Corporation
Bull HN Information Systems, Inc.
Chips and Technologies, Inc.
Clearpoint Research Corporation
Color Dreams, Inc.
Comdisco, Inc.
Emulex Corporation
Forecross Corporation
The Fortel Group
Fujitsu Systems Business of America, Inc.
Informix Corporation
Intelext Systems, Inc.
Johnson-Laird, Inc.
Kapor Enterprises, Inc.
Landmark Systems Corporation
NCR Corporation
Ocel Communications Corporation
Oracle Corporation
Phoenix Technologies, Ltd.
Plimoth Research Inc.
Seagate Technology, Inc.
Software Association of Oregon^{1/}
Software Entrepreneurs Forum^{2/}
Storage Technology Corporation
Sun Microsystems, Inc.
Systems Center, Inc.
3Com Corporation
Unisys Corporation
Western Digital Corporation
Zenith Data Systems Corporation

^{1/} The Software Association of Oregon consists of 430 members; the majority (73%) are software development companies and companies in associated industries. The remaining members are professionals with interests in software development.

^{2/} The Software Entrepreneurs Forum consists of over 1,000 software entrepreneurs and developers.