

European Conference on Innovation and eBusiness

Keynote speech by Former EP President Pat Cox

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I am very pleased to be here today and I thank you for the invitation to discuss emerging trends in public governance of e-business and innovation. All systems of governance, public and private, share in common the feature that their leadership disposes of a limited stock of capital with which to plan and execute change. Like all scarce resources this must be deployed wisely. This weekend in France and next week in the Netherlands the European Union and its system of governance faces a moment of definition. It would be tempting for me to digress into the substance of that matter but I will avoid the temptation to do so here today. However, permit me a tentative conclusion in the event that the outcome was not positive for the Constitutional Treaty. The Union and its key leaders would be catapulted into a period, hopefully not an orgy, of introspection on the future and how we should organise our affairs, something this Treaty was designed to address and foreclose for some years to come. The energy, the capital, expended on such an exercise will be at the cost of using it for alternative initiatives. Europe needs to move from a long period of introspection to consolidation and innovation. Foremost among these is how to lift the European economy from stagnation and excessive unemployment.

The European Commission under President Barroso has proposed a number of initiatives to sharpen the focus of our economic reform process from Research and Development policy, through Information and Innovation policies to a new approach to Transatlantic Partnership with the USA in the regulatory, knowledge economy and trade fields. Without serious structural economic reform in member states and good budgetary management by them, these necessary conditions for progress, championed by the Commission, would not on their own be sufficient to reverse trend but they remain potentially significant European added value to growth, if adequately funded and well implemented.

Decisions in the EU system of governance are widely prone to be misunderstood or misrepresented, as is evident in my view from the current polemics surrounding the referendum campaigns. The European Commission has the right of legislative initiative in the EU but it is, subject to the Treaties, the Council of Ministers and the European Parliament which decide. This is masked by the almost universal practice in Member States of taking national credit for popular and successful European policies while blaming it on Brussels in the event of controversy. In the latter case of laying blame the States engage in the pretence of being the passive and innocent recipients of policy rather than frankly acknowledging their active and indispensable role as legislators. I mention this central but limited role of the Commission in EU governance and law making

because it brings me to a case in point for this morning, namely the protection of intellectual property in the knowledge economy.

In 2002 the European Commission proposed to codify and harmonise the established current practice on computer implemented inventions (CII) in member states, to reduce from twenty five to one the regime which should apply. What started as a short and simple proposal to make life easier for innovators has transformed in the European Parliament, which I had the honour to preside until this time last year, into a concerted movement to eliminate patentability from the software component of computer implemented inventions. Such inventions are ubiquitous in the information age and crucial to safeguarding the future of e-business and innovation.

Take the example of the European car industry. It is a leading innovator with an increasing part of its added value related to in-car intelligent systems. Our cars are safer and more environmentally friendly due in no small measure to their on-board intelligence including anti-lock braking systems, airbag controls, navigation systems, headlight controls, fuel injection, air-conditioning, sensors and hybrid electric power trains. All these inventions are the product of high quality human capital, research and development expenditure which fosters innovation, and they are a leading edge example of Europe's competitive advantage. All are patent protected. Increasingly such technical improvements rely on the development e-business and software. These are at risk of being reduced to zero value as intellectual property.

Another area where European know-how is world class is in medical imaging and scanning equipment such as X-ray and MRI. The imaging methodology is almost entirely software but one where European based players have successfully and profitably differentiated themselves from their competitors through world class innovation. Companies such as Siemens, Philips, Agfa and Kodak are major investors through their R&D programmes in designing new and better equipment and processes. The software component at the heart of these high tech products is at risk of being reduced to zero value as intellectual property.

In telecommunications the old hard-wired exchanges have yielded to sophisticated and innovative software-driven systems. Alcatel is a European and global leader in its field that invests 13% of its turnover in R&D and innovation. All of their products use software, which, if abandoned by European lawmakers, will diminish their leading global position and the winners will be their non European competitors.

The same picture emerges for European producers in the audiovisual sector from CD players to TVs and DVDs. All EU member states plan to switch over from analogue to digital tv platforms, starting with Finland in 2007. Increasingly the emphasis in planning and policy formulation for the e-business sector is on integrating communication platforms in the home and in business. The

integrating mechanisms are almost entirely software driven and increasingly so. They are the product of leading European R&D and they rely on strong governance structures to secure a return on investment. These systems are at risk of being reduced to zero value as intellectual property.

Mobile telephones and aircraft navigation systems, both technologies in which leading European companies excel, together with lift controls and even the refrigerators and washing machines in our homes all profit from the strength of Europe's innovation in the e-business sector and make use of computer implemented inventions. Today such inventions are found in all fields of technology and e-business. In many and in a growing number of cases the innovative part of a new product or process lies in a computer program. These inventions have brought enormous benefits to society. They are the product of constant effort and investment both in their development and successful commercialisation. Do European lawmakers seriously expect that such commercialisation will continue apace in the European Union if these innovations are to be deprived of economic remuneration?

The European Parliament will vote on the Computer Implemented Inventions Directive in second reading under a co-decision procedure before their summer recess in July. The formidable and commendably energetic Michel Rocard, former Socialist Prime Minister of France, is the parliamentary rapporteur. From the first reading in Parliament and the subsequent handling of this dossier in Council it is clear that a wide and growing divergence exists to date between the stated and evolving preference of Parliament and the Common Position adopted in Council, not without its own internal dissonance on the matter. The rapporteur's view is that being immaterial by nature software cannot form part of the technical characteristics for applications for patents. Since they are the patent issuing authority in Europe, he implicitly criticises the European Patent Office (EPO) for 'abuse in the obviously flawed interpretation that there might be a difference between software as such and software incorporated in an invention ...' The reference to software 'as such' not being patentable derives from Article 52(2) of the European Patents Convention (EPC) of 1973.

It is worth recalling that this Convention was ratified pre-personal computer, pre-internet, pre-microwave oven, pre-widespread microchip revolution, pre-fax machine, pre-broadband. Happily the European Patent Office has exercised good authority in appropriately interpreting the sum of the parts of the Convention and not merely focusing exclusively on one part. Moreover, they have refused patents involving software that does not produce technical effects. The 'first to file' versus the 'first to invent' system and the appeals procedure for any party claiming to be adversely affected by the granting of a patent are but two distinguishing and positive characteristics of the European over the US system for example. To their credit it can be said that the EPO has created in Europe patents of high quality, with a high degree of legal certainty and a good presumption of validity.

The rapporteur leaves no room for doubt as to why for the true believer implicitly the EPO is heretic, when he claims software 'must in no case lead to our relinquishing the principle of free access, which is the only way of safeguarding humanity's luxuriant ability to constantly create new areas of knowledge.' He speaks of the European Parliament having a duty to innovate. The innovation of policy, I believe, should not be confused with policy for innovation. Again, an example illustrates. SAP is an EU-based global leader in its field. Annual turnover is running at Euro 8 billion. Euro 1 billion is re-invested in R&D, 85% of this in the EU. What is the purpose of spending Euro850million on research and innovation in the EU if its value as intellectual property is zeroed? Will humanity's luxuriant ability to constantly create run faster on freebies than on incentives? If you were one of SAP's 5000 research staff in Germany would you care to bet you future on this highly conjectural outcome?

Meanwhile, our competitors watch the development of our European e-business with interest. Nowhere in the world is the value of intellectual property being undermined. On the contrary, it is being extended to places where heretofore piracy and not property was the intellectual value of the day. Domestic Intellectual Property rights and their enforcement is rapidly evolving in China. In 2000 there were over 50,000 domestic patent applications in China. By 2004 this has grown to more than 100,000. Chinese universities already are filing annually almost as many patent applications as universities in the USA (in the round 6000 compared to 6500) and six times larger than the EU's best performing state at university level, namely the UK with 1000 patent applications. Chinese companies are embracing IP. As Harvard President Lawrence Summers recently commented, 'For the first time in our history, we are going to face competition from low-wage, high-human-capital communities, embedded within India, China and Asia'. Is this really the moment to squander the fruits of Europe's knowledge economy and human capital? Will we really invite the Chinese and others to dine on our European lunch free of charge only to pay dearly and later for Chinese takeaway dinners?

What is being tested in this decision is no less than a European declaration of intent on the role of intellectual property in e-business and our economic model. Some are anti-patent and this is a chance to underscore their objections in principle. Some are anti-globalisation and this is a chance to have a go. Others are utopian, believing that we stand on the threshold of a brave new world. Others are convinced that SMEs, sometimes whose only tradable asset is their IP, are not getting a fair chance. Given the costs of patenting this latter case bears analysis. The answer, in my view, is not to tear the whole edifice down but rather to lower the cost of entry for European SMEs. One dramatic way to lower costs would be to approve the EU Patents' Statute, long around but still not decided. The other method would be to levy larger patent holders to create an SME- dedicated fund to offset the costs of patenting. In putting conventional and established practice in jeopardy we risk to turn the EU from a knowledge exporter

to a knowledge importer. In a world of mobile resources we risk accelerated relocation. We risk less innovation as companies denied patents pocket their knowledge. This means in practice less sharing, less willingness to co-operate with standards setting bodies and less prospect in succeeding in practical EU-funded research on interoperability, such as the Athena programme. To do with human capital as value and as value added, to do with the knowledge society and economy and to do with innovation policy the European Parliament in its governance role will send a very powerful signal of where the EU wishes to go when it votes in July. This is a conference on e-business and innovation in Europe. Ask yourself the question if we travel this road, the road less travelled, do you believe our competitors will follow? If yes, relax. If no, what are you going to do about it?
