

**FRANCE – CHINA SEMINAR ON INTELLECTUAL
PROPERTY AND TECHNOLOGY TRANSFERS
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1st plenary session: Patentability of software

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Brief history of computer programs protection by copyright

- ⌘ - 1886: Berne Convention (last modified in 1971) is silent on computer programs
- ⌘ - 1957: New French Law on Copyright is also silent
- ⌘ - 1985: Modification of French Copyright Law: software are protected during 25 years
- ⌘ - 1991: EC Directive harmonizes software protection by copyright and extends protection up to 50 years AD
- ⌘ - 1993: EC Directive brings the protection to 70 years AD
- ⌘ - 1994: TRIPS agreement (Art. 10) provides protection as literary works under Berne Convention
- ⌘ - 1994 & 1998 Modification of French Copyright Law for implementing 1991 & 1993 EC Directives

Brief history of computer programs protection by patent

- ⌘ - 1968: French Patent Law (FPL) excludes software protection
- ⌘ - 1970 PCT : nothing on computer programs
- ⌘ - 1973 EPC: computer programs as such not patentable - Art. 52.2c
- ⌘ - 1978: Modification of FPL: are only excluded software as such
- ⌘ - 1994: TRIPS agreement (Art. 27) provides patent protection in all fields of technology
- ⌘ - 2000 EPC Revision : current provisions on software maintained
- ⌘ - 2002-2005 Proposal of EC Directive on patentability of computer-related inventions, finally rejected by European Parliament
- ⌘ **TODAY**, computer programs are excluded from patentability only to the extent to which a patent relates to a computer program as such (Article 52(3) EPC).

Patentable subject-matter



- ⌘ Computer programs are protected in source and object code by copyright, but software technical functions are patentable
- ⌘ Indeed, devices or methods involving use of computer programs have always been considered as patentable, as far as they produce a technical result.
- ⌘ See VICOM Case T208/84 of July 15, 1986 (image processing case), where it was considered illogical to grant EP patents on a process controlled by a programmed computer and to refuse protection to the computer programmed to execute such control

Claims on software as a product



- ⌘ From IBM case T1173/97 (1998) EPO grants patents with claims directed to a program as a product, provided that the program brings about a technical effect which goes beyond the normal physical interactions between the software and the hardware on which the program runs
- ⌘ For EPO, if a computer program related invention involves a technical effect, it is possible to grant a patent on any category of claim (device, method or software)
- ⌘ An operating system for a computer is patentable, or a software reducing the track of the mouse cursor on the screen, or enhancing the data storage capacity of the computer, etc...

EC Proposal of Directive



- ⌘ To prevent different interpretations by national Courts on validity of EP patents on computer program related inventions, a proposal of Directive has been examined by the European Parliament and seriously contested and amended between 2002 and 2005
- ⌘ This proposal of Directive was in line with the current case law of the Boards of Appeal of the EPO.
- ⌘ This proposal has been finally rejected by European Parliament on July 6, 2005 by 648 votes out of 680