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**SENATOR THE HON KIM CARR**

**MINISTER FOR INNOVATION, INDUSTRY,  
SCIENCE AND RESEARCH**

The Hon John Murphy MP  
Chair of Standing Committee on Petitions  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

22 MAR 2011

Dear Mr Murphy

Thank you for your letter of 28 February 2011 on behalf of the Standing Committee of Petitions concerning the two petitions made by members of the Australian Software Industry presented in the House of Representatives on 21 and 28 February 2011.

Under current law computer-related inventions are patentable, provided they meet the same criteria that apply to all other areas of technology. These criteria include that an invention must be new, inventive and provide a practical and useful result involving a tangible, physical or observable effect. Computer software *per se* will generally not meet these requirements. However, where the software embodies a method that meets these criteria it may be patentable. The petitions show that there is concern within the software industry regarding patents over computer software.

In 2008 the Advisory Council on Intellectual Property (ACIP) commenced a review into the test of patentable subject matter for all technologies. The report was released on 16 February 2011. The report did not recommend the exclusion of software from patentable subject matter.

I note that the petitioners consider that the software industry was not well-represented in ACIP's findings. ACIP consulted widely by inviting public submissions on both an issues and options paper. These papers were advertised on the Government's Business Consultation website, on ACIP's website, and in major newspapers. ACIP also directly contacted a range of stakeholders, including the Australian Information Industry Association and Australian Computer Society.

I regret that the petitioners were unaware of the ACIP review. However, I note that ACIP considered a previous petition by members of the software industry, as well as other similar submissions to the review, arguing for the exclusion of software from patentable subject matter. Before making its recommendations, ACIP also considered Australia's obligations under international treaties. Although there are some exceptions, these treaties require that Australian patent laws must not discriminate between different areas of technology.

The Government is currently considering its response to the ACIP report and will take into account the concerns raised in the petition before making its response.

Yours sincerely

~~Kim Carr~~