



PROCEDURES FOR THE PRODUCTION AND ENDORSEMENT OF BRIEFS *AMICUS CURIAE*

The Association for Computing Machinery's (ACM) U.S. Technology Policy Committee (USTPC) authors or co-authors with other organizations' briefs *amicus curiae* or declarations in appropriate court cases, at either the trial or appellate level.

The foremost consideration of the USTPC is that it play a proper role in court cases. Our expertise is in technology, and in the implications of technology for public policy. We do not argue simple legal precedent or error. Thus, members or others should not ask the USTPC to author, co-sign briefs, or portions of briefs drafted by others that focus solely on making such arguments. Instead, they should seek the assistance of the USTPC to explain the technology that is at issue, and the implications of the technology. Any argument that the USTPC may then make or support will follow directly from such explanation.

Because of this focus, the USTPC needs to engage appropriate experts within its membership to draft an effective brief or declaration. It is thus important that a requesting person provide the USTPC with adequate time for it to accomplish this internal engagement. For this purpose, the USTPC provides the following guidelines for persons to use when inviting or requesting it to participate an *amicus* in a court case:

1. If the request is to draft an expert declaration, the organization should notify the USTPC no later than thirty days prior to the deadline for the submission of the declaration. USTPC should also be notified whether or not the signors of the declaration may be expected to be called as witnesses; and, if so, what arrangements will be made for travel expenses.
2. If the invitation is to co-sign an *amicus* brief in a trial or appellate court, the USTPC will limit itself to joining only those portions (or points) in the brief that focus on its expertise as discussed above. It will also require that it be allowed to actively participate in the drafting of, or in the supervision of the drafting of, those portions of the brief in which it will join. For that purpose, the organization should notify the USTPC no later than fifteen days prior to the deadline for the filing of the brief. Also, the organization should keep the USTPC advised as to all positions taken in the brief, so as to ensure that the USTPC will not find its name on a brief that includes arguments contrary to the USTPC's prior positions or established principles.
3. If the request is to draft an *amicus* brief, in any court other than the U.S. Supreme Court, the organization should notify the USTPC no later than thirty days prior to the deadline for the filing of a brief.
4. If the request is to draft an *amicus* brief for the U.S. Supreme Court, the organization should notify the USTPC immediately upon the filing of the petition for certiorari. The USTPC will then follow the proceeding and will determine whether to file a brief; and if so, the positions that it will take and the arguments that it will make.

5. With rare exceptions, the USTPC will not file an *amicus* brief in support of the granting of a petition for certiorari before the U.S. Supreme Court. One known exception is when the issue directly affects computer professionals in the practice of their professions. The organization should take this factor into account when deciding whether to ask the USTPC to file or to co-sign such a brief. If such a request is made, the organization should notify the USTPC promptly upon learning that a petition will be filed by a party to the litigation.

6. With regard to *amicus* briefs, the USTPC will usually limit its arguments to educating the court on technological issues and their implications, and for that reason will often file a “neutral” brief. Such a neutral brief may have the effect of promoting one side or another in the litigation, despite this not being the intention of the USTPC. The organization’s position in this regard is simple: the facts are the facts, and the arguments should flow from the facts and not in spite of them.

The points of contact for making an inquiry about participation of the ACM’s USTPC in a brief or declaration *amicus curiae* are its Director of Global Policy & Public Affairs and the Chair of its Law Subcommittee. These people and their contact information are as follows:

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