



September 23, 2016

To: Department of Justice – Antitrust Division
Federal Trade Commission
ATR.LPS.IPGuidelines@usdoj.gov

Re: Proposed Update to the Antitrust Guidelines for the Licensing of IP

BSA | The Software Alliance (www.bsa.org) welcomes the opportunity to provide comments on the Department of Justice and the Federal Trade Commission's Proposed Update of the Antitrust Guidelines for Licensing Intellectual Property ("Proposed Updated Guidelines"). BSA believes the current Guidelines are well balanced and continue to provide effective guidance to companies and the public regarding the potential antitrust issues associated with licensing intellectual property. Indeed, the Guidelines have helped to foster a period of incredible innovation in the United States and throughout the world. BSA believes that the Proposed Updated Guidelines build upon this solid foundation.

BSA¹ is the leading advocate for the global software industry before governments and in the international marketplace. Its members are among the world's most innovative companies, creating software solutions that spark the economy and improve modern life. Intellectual property policy is extremely important to our member companies, which invest billions of dollars globally in research and development every year. This investment fuels the creation of amazing innovations that are often protected by various forms of intellectual property rights. As is the case with most innovative companies, BSA members are both active licensors and licensees of intellectual property. Therefore, an intellectual property system and antitrust law that encourage innovation but deter abuse is of the utmost importance to BSA members. The FTC and DOJ's efforts in drafting the Proposed Updated Guidelines play a critical role in achieving this balance.

Effective policy guidelines should describe the principles of interpretation that the enforcement agencies will use in particular situations. The current Guidelines have accomplished this goal and the Proposed Updated Guidelines do not veer from this path.

As the Proposed Updated Guidelines acknowledge, there have not been any fundamental changes to antitrust law as it relates to the licensing of intellectual property since the Guidelines were released in 1995. There have been, however, some important updates to IP law and policy, and BSA appreciates that FTC and DOJ are attempting to incorporate these

¹ The members of BSA include: Adobe, ANSYS, Apple, Autodesk, Bentley Systems, CA Technologies, CNC/Mastercam, DataStax, Dell, IBM, Intuit, Microsoft, Minitab, Oracle, salesforce.com, SAS Institute, Siemens PLM Software, Splunk, Symantec, Tekla, The MathWorks, Trend Micro, and Workday.

updates. For example, enactment of the Defend Trade Secrets Act earlier this year presents a good opportunity for the Guidelines to be updated to reflect the growing importance of trade secret protection. In addition, Supreme Court cases such as, *Illinois Tool Works v. Independent Ink*, 547 U.S. 28 (2006) and *Leegin Creative Leather Products Inc. v. PSKS Inc.*, 551 U.S. 877 (2007) have helped clarify the appropriateness of certain licensing practices. Updating the Guidelines to incorporate these changes and clarifications gives companies important guidance as they structure their licensing transactions.

BSA appreciates the opportunity to comment on the Proposed Guidelines and looks forward to working with the DOJ and FTC as it continues to develop policy in this area.

Sincerely,

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