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DOJ and FTC Issue Updated Antitrust Guidelines for the Licensing of Intellectual Property

*Update Reaffirms Role of Guidelines while Reflecting Developments in the Law
and the Agencies' Enforcement and Policy Work*

The Department of Justice and the Federal Trade Commission issued today [updated Antitrust Guidelines for the Licensing of Intellectual Property](#) (IP Licensing Guidelines) that explain how the federal antitrust agencies evaluate licensing and related activities involving patents, copyrights, trade secrets and know-how. This update modernizes the IP Licensing Guidelines, which the agencies jointly issued in 1995, so they may continue to play a fundamental role in the agencies' analysis of the licensing of intellectual property rights and provide guidance to the public and the business community about the agencies' enforcement approach to intellectual property licensing.

The agencies announced the proposed update of the IP Licensing Guidelines and made a draft available for public comment in August 2016. As described in [that announcement](#), the proposed update reflected intervening changes in statutory and case law, as well as relevant enforcement and policy work, including the agencies' 2010 Horizontal Merger Guidelines. During a 45-day comment period, the agencies received public comments from academics, private industries, law associations and non-profit organizations, which are available [here](#). After carefully reviewing and considering the comments, the agencies have now finalized the update.

"Our modernized IP Licensing Guidelines continue to apply an effects-based analysis that puts the focus on evaluating harm to competition, not on harm to any individual competitor, and support procompetitive intellectual property licensing that can promote innovation," said Acting Assistant Attorney General Renata Hesse of the Justice Department's Antitrust Division. "The comments we received were helpful in completing this update and also serve more broadly to better our understanding of some of today's very complex antitrust issues that involve intellectual property rights."

"Today, the Commission reaffirms its commitment to an economically grounded approach to antitrust analysis of IP licensing," said Chairwoman Edith Ramirez of the FTC. "A strong and competitive IP licensing system benefits consumers and fosters innovation, by helping to ensure that inventors realize an appropriate return on their investment."

In response to the desire of some commenters for the guidelines to more specifically address additional IP licensing activities, the agencies reiterate that the flexible effects-based enforcement framework set forth in the IP Licensing Guidelines remains applicable to all IP licensing activities. In addition, the business community may consult the wide body of DOJ and FTC guidance available to the public – in the form of published agency reports, statements, speeches and enforcement decisions – which rely on this analytical framework and further illuminate each agency's analysis of a variety of conduct involving intellectual property, including standards-setting activities and the assertion of standards-essential patents.

The updated IP Licensing Guidelines are available on the Department of Justice's website [here](#) and the Federal

Trade Commission's website [here](#).

Antitrust Guidelines for the Licensing of Intellectual Property

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