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May 5, 2003

VIA COURIER

Mark Langer
Clerk of Court
United States Court of Appeals
for the District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, D.C. 20001

**Re: *United States of America, Appellee v. Microsoft Corporation, Appellee,
Computer & Communications Industry Association (CCIA) and
Software & Information Industry Association (SIIA), Appellants,
No. 03-5030.***

Dear Mr. Langer:

Enclosed for filing in the above-referenced matter please find one original and nineteen copies of the Proof Brief of Appellants Computer and Communications Industry Association (CCIA) and Software and Information Industry Association (SIIA).

An electronic (.pdf) copy of the filing has been emailed to your office in accordance with the Court's March 26, 2003, scheduling order.

We will file a separate electronic copy of the brief on CD-ROM on or before May 14, 2003, in accordance with the Court's May 2, 2003 order. Thank you.

Sincerely,



Elizabeth S. Petrela

Enclosures

SCHEDULED FOR ORAL ARGUMENT ON NOVEMBER 4, 2003

No. 03-5030

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

THE COMPUTER AND COMMUNICATIONS INDUSTRY ASSOCIATION

AND

THE SOFTWARE AND INFORMATION INDUSTRY ASSOCIATION,

Appellants,

v.

THE UNITED STATES OF AMERICA

AND

MICROSOFT CORPORATION,

Appellees.

On Appeal from the United States District Court
for the District of Columbia

**PROOF BRIEF OF APPELLANTS COMPUTER AND
COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA) AND
SOFTWARE AND INFORMATION INDUSTRY ASSOCIATION (SIIA)**

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Parties and Amici. Appellee the United States of America was the plaintiff in the proceedings below. Appellee Microsoft Corporation was the defendant in the proceedings below. Appellants participated as *amicus curiae* in the proceedings below. In addition, the following individuals and entities were permitted to participate as *amicus curiae* in the District Court: SBC Communications, the Project to Promote Competition and Innovation in the Digital Age (ProComp), the States of California, Connecticut, Florida, Iowa, Kansas, Minnesota, Utah, and West Virginia, the Commonwealth of Massachusetts, the American Antitrust Institute (AAI), the Association for Competitive Technology (ACT), NetAction, Computer Professionals for Social Responsibility (CPSR), Novell, Inc., and Consumers for Computing Choice and Open Platform Working Group. As of the date of this filing, neither these nor any other entities have been granted party status or have otherwise been granted leave to appear before this Court.

Rulings Under Review. This appeal challenges the final order entered by the United States District Court for the District of Columbia (Kollar-Kotelly, J.) on January 11, 2003, denying Appellants' motion to intervene in this case for purposes of appealing the District Court's Final Judgment, entered on November 12, 2002, in the proceedings below. The Final Judgment approves the consent

decree submitted by the parties below and incorporates all of the court's prior rulings in the case, including the District Court's order and opinion dated July 1, 2002, holding that the parties met their procedural obligations under the Tunney Act, 15 U.S.C. § 16.

The District Court's January 11 order denying Appellants' motion for intervention is reported at *United States v. Microsoft Corp.*, No. 98-1232, 2003 WL 262324 (D.D.C. Jan. 11, 2003). The District Court's Final Judgment approving the consent decree is reported at *United States v. Microsoft Corp.*, No. 98-1232, 2002 WL 31654530 (D.D.C. Nov. 12, 2002). The District Court's July 1 order and opinion holding that the parties met their procedural obligations under the Tunney Act is reported at *United States v. Microsoft Corp.*, 215 F. Supp. 2d 1 (D.D.C. 2002).

Related Cases. The liability phase of this case was previously reviewed by this Court in the consolidated appeal *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001) (*per curiam*) (*en banc*). On remand, the case was severed into the case below, *United States v. Microsoft Corp.*, D.D.C. No. 98-1232, and the separate litigation by 21 state attorneys general in *State of New York, et al. v. Microsoft Corp.*, D.D.C. No. 98-1233.

The appeal from the remedy proceedings in *State of New York, et al. v. Microsoft Corp.*, D.D.C. No. 98-1233, is currently before this Court in Nos. 02-

7155 (*State of New York et al. v. Microsoft Corp.*, Commonwealth of Massachusetts, Plaintiff-Appellant) and 02-7156 (*State of New York, et al. v. Microsoft Corp.*, State of West Virginia, Plaintiff-Appellant). These consolidated appeals are closely related to this case because they challenge the District Court's failure to award relief beyond that specified in the consent decree.

Two other related cases are currently pending before the federal courts. The first is the appeal to the United States Court of Appeals for the Fourth Circuit in *Sun Microsystems, Inc. v. Microsoft Corp.*, No. 03-1116. The second is the multi-district litigation currently pending in the United States District Court for the District of Maryland in *In re Microsoft Corporation Antitrust Litigation*, MDL Docket No. 1332. These cases are related to this appeal because they involve, in the context of private antitrust litigation, issues regarding the relief necessary to remedy the antitrust violations affirmed by this Court.

CORPORATE DISCLOSURE STATEMENT

The Software & Information Industry Association (SIIA) is the principal trade association for the software and digital content industry. SIIA has approximately 650 members that develop and market software and electronic content for business, education, consumers and the Internet. SIIA's members include software companies, ebusinesses, and information service companies, as well as many electronic commerce companies. SIIA's membership consists of some of the largest and oldest technology enterprises in the world as well as many smaller and newer companies. A complete list of SIIA's members is publicly available at <http://www.sii.net/glance/members.asp>. SIIA has participated extensively in many phases of this case as *amicus curiae*, including the liability phase in the District Court in which SIIA filed, at Judge Jackson's request, a joint brief with Appellant CCIA regarding the extent of Microsoft's antitrust liability. SIIA is a non-profit organization and no one has stock or ownership interests in it. Consequently, SIIA is neither a privately nor publicly held company. It has no parent organization, and no publicly held company owns 10% or more of SIIA.

The Computer & Communications Industry Association is a trade association that has represented computer technology and telecommunications companies, many of whom directly compete with or are customers of Microsoft, for nearly 30 years. CCIA's member companies, listed on the association's

website at <<http://www.ccianet.org/membership.php3>>, range from small start-ups to global leaders that operate in all aspects of the high-tech economy. CCIA's members include computer and communications companies, equipment manufacturers, software developers, service providers, resellers, integrators and financial services companies. Like SIIA, CCIA has participated as *amicus curiae* in several phases of this case. CCIA is a non-profit organization and no one has stock or ownership interests in it. Consequently, CCIA is neither a privately nor publicly held company. It has no parent organization, and no publicly held company owns 10% or more of CCIA.

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GLOSSARY

- API** Application programming interface. APIs “exposed” by a computer program, such as an operating system or middleware, that provide other computer programs with means of access to blocks of code that perform particular tasks, such as displaying text on the computer screen. (FF ¶ 2)
- CIS** The “Competitive Impact Statement” filed by the DOJ on November 15, 2001, as required by Section 2(b) of the Tunney Act, and reported at 66 Fed. Reg. at 59,452 (Nov. 28, 2001). (R.650)
- DOJ** The United States Department of Justice. Also referred to as the “Government” and the “United States”.
- FF** Findings of fact in the District Court’s November 5, 1999 order. *See United States v. Microsoft Corp.*, 84 F. Supp. 2d 9 (D.D.C. 1999).
- Final Judgment** The District Court’s November 12, 2002, order approving the consent decree. (R. 746)
- IAP** Internet Access Provider. A company, like America Online, that provides computer users with access to the Internet. (FF ¶15)
- IE** Internet Explorer, Microsoft’s Web browser. (FF ¶ 17)
- Intel-compatible PC** A PC designed to use a microprocessor in, or compatible with, Intel’s 80x86/Pentium microprocessor family. (FF ¶ 3)
- Internet** A global electronic network of computers. (FF ¶ 11)
- ISV** Independent software vendor. A developer of applications. (FF ¶ 28)
- Java** A programming language and related middleware that enable applications written in that language to run on different operating systems. (FF ¶ 73)
- JVM** Java Virtual Machine. A program that translates Java bytecode (which a Java compiler has produced from sourcecode written in the Java language) into instructions that the operating system can

understand. (FF ¶ 73)

Middleware	Software that relies on APIs provided by the operating system on which it runs, but also exposes its own APIs. (FF ¶ 28)
Navigator	Netscape Communications Corporation's Web browser. (FF ¶ 17)
OEM	Original equipment manufacturer. A manufacturer of PCs. (FF ¶10)
OS or Operating System	A software program that controls the allocation and use of computer resources. (FF ¶2)
PC	Personal computer. A digital information processing device designed for use by one person at a time. (FF ¶ 1)
Platform	Software, like an operating system or middleware, that exposes APIs. (FF ¶ 2)
Port, or Porting	Adapting an application program written for one OS to run on a different OS. (FF ¶ 4)
Web	The World Wide Web. A massive collection of digital information resources stored on servers throughout the internet, typically provided in the form of hypertext documents, commonly referred to as "Web pages." (FF ¶ 12)
Web Browser (or Browser)	Software that enables a user to select, retrieve, and perceive resources on the Web. (FF ¶ 16)
Windows	A family of software packages produced by Microsoft, each including an operating system. The principal members of this family for purposes of this case are Windows 95, Windows 98, and successors, which include operating systems for Intel-compatible PCs. (FF ¶ 6-8)

STATEMENT AS TO STATUTES AND REGULATIONS

Pertinent statutes and regulations are bound with this brief as Addendum A.

