

Microsoft Consent Decree Compliance Advisory – April 21, 2003

As first announced on August 5, 2002, the United States may periodically issue Microsoft Consent Decree Compliance Advisories as part of its monitoring of Microsoft's implementation of the Consent Decree agreed to by Microsoft, the United States, and nine settling Plaintiff states (as approved and entered by the Court as a Final Judgment on November 12, 2002). This is the second such Advisory.

Section III.E. of the Final Judgment requires Microsoft to make available for use by third parties on reasonable and non-discriminatory terms certain technology used by Microsoft server operating system products to interoperate with Windows operating system products. Microsoft began to offer this technology for license on or about August 6, 2002.

The Department has undertaken a careful and thorough review and evaluation of the terms of the licenses offered by Microsoft. As part of that review, the Department has consulted with various parties likely to be interested in the licenses, as well as with Microsoft. The Department has also analyzed complaints regarding Microsoft's compliance with Section III.E. during this time period. In response to comments from the Department and other antitrust enforcement agencies, Microsoft agreed to substantially revise the terms of the licenses that it initially offered on August 6, 2002, as well as to eliminate the non-disclosure agreement covering the terms of those licenses that Microsoft had originally imposed. The revised licenses will be available for review on Microsoft's website within the next several days.

The Department and other antitrust enforcement agencies have had a limited time to review the revised licenses but have already begun providing Microsoft with feedback concerning some of the terms. Microsoft will be modifying the licenses further in response to this feedback. The Department and other antitrust enforcement agencies will continue to provide Microsoft with feedback on the terms of the licenses to ensure full compliance with Section III.E. In particular, the Department will continue to examine the royalties contained in the licenses and will be evaluating this issue in a concentrated way and on a separate track over the next several weeks.

The Department remains strongly committed to ensuring that the licenses provide a mechanism for reasonable and non-discriminatory access to the relevant technology in a manner consistent with the language and intent of the Final Judgment. The Department encourages all interested parties to review the licenses and to communicate their opinions to the Department's compliance team. Members of the compliance team will also be contacting industry representatives over the next two weeks seeking input on the revised license terms and on royalty issues. Communication to our compliance team may be addressed to: Renata B. Hesse, Chief, Networks & Technology Section, Antitrust Division, United States Department of Justice, 600 E Street, NW, Suite 9500, Washington, DC 20530. Complaints concerning Microsoft's compliance with the Final Judgment, including complaints relating to the III.E. licenses, may also be submitted by e-mail to the Technical Committee constituted pursuant to the Final Judgment, at Complaints@TheTC.org.