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(U.S.A. and Canada), Inc.

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May 15, 2009

The Honorable William E. Kovacic
Chairman, Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, N.W.
Room H-135 (Annex I)
Washington, DC 20580

Evolving IP Marketplace – Comment, Project No. P093900

Dear Chairman Kovacic:

The Licensing Executives Society USA and Canada (LES USA and Canada) is a professional association of nearly 6,000 members involved in the discovery, development, protection, and commercialization of intellectual property. LES USA and Canada is also the founding member society of the Licensing Executives Society International (LESI) which includes more than 12,000 members in over 90 countries around the world. LES USA and Canada appreciates the opportunity to respond to the Federal Trade Commission's notice and questions concerning the Evolving Intellectual Property Marketplace, 73 Fed. Reg. 70645 (Nov. 21, 2008).

LES USA and Canada congratulates the Federal Trade Commission (FTC)'s efforts to examine the marketplace for intellectual property, the same marketplace in which LES USA and Canada members operate every day. As an organization, LES USA and Canada has followed this series of hearings very closely, and LES USA and Canada members have participated in the hearings as speakers and presenters

Established in 1965, LES USA and Canada is the oldest professional society dedicated to the business of intellectual property. Our members include attorneys, financial experts, scientists, researchers, and business executives united by their interest to improve the return on investment within the intellectual property marketplace and realize the potential of technology innovation. LES USA and Canada members develop agreements that address all forms of intellectual property, including patents, trademarks, copyrights, trade secrets, and know-how.

As a professional society, LES USA and Canada has created and sustained best practices for licensing professionals for more than 40 years. Licensing professionals from a wide range of industries, (including consumer products, chemicals, energy, environment and materials, life sciences, high technology and the industry/university/government technology transfer interface) come together in our organization to learn from each other, to share ideas and lessons learned, and to explore new ways to promote innovation through the economic potential of intellectual property-based technology.

With such a diverse range of members, LES USA and Canada has historically not been active in the public policy arena. However, the issues that the FTC is addressing through these hearings are at the core of the business of LES USA and Canada members and their employers. These hearings present LES USA and Canada with a unique opportunity to speak on behalf of all our members to demonstrate the value of intellectual property, the vitality of the current marketplace, and the importance of sustaining commercial interests in these markets to ensure the future exploration, development and distribution of innovative technologies.

Throughout the current set of hearings, LES USA and Canada has been concerned by the views expressed by some presenters, calling for a registration system for licenses or intellectual property-based agreements. Many LES USA and Canada members believe that the confidential and proprietary nature of these agreements helps to ensure the strategic value of the investments made to develop the technology, and preserves the essential business interests necessary to foster continued investment in new and novel technologies within a host of new and emerging industries.

LES USA and Canada members, and the thousands of organizations they represent, could potentially be significantly affected by the introduction of a registry for licensing agreements or deal terms. Some LES USA Canada members who have worked in other countries where similar registration systems are in place have experienced problems or challenges to successful, defensible intellectual property commercialization.

LES USA and Canada welcomes the opportunity to work collaboratively with the Federal Trade Commission and other policymaking groups to identify ways to improve the access to relevant information about the value of intellectual property, in a way that preserves and sustains the vital business interests of licensors and licensees. One potential approach could be the establishment of an industry advisory group to work with the Commission to examine how to collect and publish marketplace data in a way that preserves confidential information while

Throughout these hearings, several speakers including Q. Todd Dickinson, Professor Iain Cockburn, and Jim Malackowski, have referred to the pioneering work of LES USA and Canada, along with our Foundation, to develop and publish unique research on prevailing deal terms, royalty rates, and other key marketplace metrics. The LES USA and Canada Foundation has published a series of annual survey reports to assess the trends and changes in the IP deal marketplace (*les Nouvelles*, LES International, 2004-2009). In addition, LES USA and Canada recently published a widely regarded report on current royalty rates and licensing deal terms in the biopharmaceuticals industry (LES USA and Canada, 2008).

These reports illustrate the potential for the collection and publication of valid, current marketplace data that balances the interests in transparency with the need for confidentiality and the preservation of confidential business interests. In response to the significant attention to this research, LES USA and Canada is expanding this work in 2009, to update the 2008 Biopharmaceutical survey data and to collect similar data and publish a new report on the current deal terms and royalty rates in the Chemicals, Energy, Environment and Materials Sector. Plans are also underway to publish a similar report for the High Technology Sector in 2011.

This research, even in its initial stages, has been well received and supported by key contributors to intellectual property innovation. By relying on collaboration in lieu of policy or rule making to collect and publish future IP market research, LES USA and Canada believes that we can assist the Commission to achieve many of our common objectives. These shared interests include better access to information, greater availability of a wide range of IP value indicators across industry sectors, and the ability to conduct cross-industry comparisons on the value of intellectual property and related technologies.

On behalf of the Board of Trustees of LES USA and Canada and our members across the landscape of the intellectual property marketplace, we are prepared to support the Commission's work by exploring how we can establish a public-private industry partnership to meet our common goals. LES USA and Canada looks forward to working with the Commission on this vital issue.

Please contact our Executive Director, Ken Schoppmann, to discuss how we can take the next steps together.

Thank you.

Sincerely,

Francois Painchaud
President
Licensing Executives Society
USA and Canada
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For additional background information on LES USA and Canada, please visit our web site, www.lesusacanada.org.