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no 11**Speech of Commissioner Mozelle W. Thompson****Commencing the West Coast Sessions
of the FTC/DOJ Intellectual Property Hearings*****Economic Perspectives on Intellectual Property,
Competition, and Innovation*****February 25, 2002**

On behalf of the Commission and my colleagues at DOJ it is my pleasure to welcome you to the West Coast Session of the FTC/DOJ hearings on intellectual property. It is my great honor to be here among such distinguished company discussing such important topics. But, I hope that we will also have some fun here this week, trading ideas and learning from each other. I'd like to start out by extending special thanks to Susan DeSanti, our Deputy General Counsel for Policy Studies, her dedicated staff, and our colleagues at the Department of Justice who have worked so hard to put this groundbreaking forum together.⁽¹⁾

Introduction

Being here at Berkeley reminds me of a very important conclusion that was reached by the students in my Graduate Policy Workshop at Princeton two years ago. The class was examining the important issues surrounding "NGI" or "Next Generation Internet" that is expected to operate at speeds multiples faster than current internet speeds. The class was surprised to conclude that almost all of the important policy issues that we will confront for NGI and the future of information technology, will not be decided at some later date, but are being decided right *now*.

I think the same holds true for many policy issues surrounding intellectual property generally - patent, copyright, and licensing issues that will drive the future of areas such as communications, publishing, music and entertainment, and biotechnology. So, it is no exaggeration that in many senses, the people in this room have the ability to make a tremendous impact on the direction of our economy - whether we call it the Old Economy, the "New" economy or the "new, new" economy.

Competition and Intellectual Property - Creating Platforms for Opportunity

Most of you here know the Federal Trade Commission as a small agency of about 1,000 lawyers, economists and staff people with a dual mandate: we act as the country's primary consumer protection agency and we are also charged with promoting competition through enforcement of the U.S. antitrust laws. While the Commission's direct mission is to protect competition and consumers, this mission also provides a **platform for opportunity** - because a truly competitive marketplace values and promotes opportunities for the skilled, creative, and innovative to be rewarded for their talent. In that sense, the worlds of intellectual property and antitrust are not very different..

Let me underscore my point and explain just a bit further: In the case of the New Economy - whether Internet-related, electronic commerce, or other technology or bio-technology based markets - the impact of consumer protection and antitrust laws may be particularly significant as *open competition* and *consumer trust* are both essential to fully realize short-term market growth - and, long-term market potential.

What Does Competition and Intellectual Property Mean for the Future of the New Economy?

Reflecting on where we have been recent months, we've seen a "Dot com shakeout" and a economic recession. These events have had a especially significant impact here in the Bay area. But what we have also seen is an increase in collective wisdom, with a renewed focus on value; a more consumer.



based orientation, with an increased attention on evolution as well as revolution. These changes not only affect high-technology industries but also the off line world. (e.g. entertainment) Accordingly, IP and how we treat it, has never been more important. How to handle these issues, especially in the context of rapidly-evolving technologies, presents a tremendous challenge for both the antitrust and IP disciplines.

Defining the Relationship Between IP and Antitrust

Although antitrust and patent law are largely symbiotic, proponents of the respective doctrines have in the past regarded each other with perhaps a little bit of suspicion. It may be tempting to regard the area of intellectual property as a zero sum game with clear winners and losers.

For example, some have argued that in the past, the pendulum swung too far in favor of limiting the scope of IP, resulting in reduced incentives to innovate rather than enhanced ones. Now, others claim that the pendulum has since swung too far in the other direction, and that the recent proliferation of patents and restrictive licensing schemes has created a patent thicket that stifles innovation. Part of reconciling the topical tension between antitrust and patent law might be recognizing that the doctrines are indeed harmonious - they both enhance public welfare by encouraging competition. The challenge, then, is in striking the right balance - which, as with most controversies, is probably somewhere in the middle.

What will be instructive in striking that middle balance is applying what we have learned from our experiences at the outer edges of the curve, to our policies going forward. In addition, economics has been increasingly recognized as a potential bridge between IP and antitrust, and may provide one means to help to illuminate the middle road. We are hoping that our esteemed guests today might shed their own light on that subject, as well as identify additional issues for us to explore.

Conclusion

The Commission has had a significant and extensive history in complex cases involving the competitive use of intellectual property. (e.g. the mergers of TimeWarner/Turner, AOL/TimeWarner, *in re Intel Corporation*, *in re Dell Corporation*) Accordingly, the Commission remains alert to antitrust violations involving intellectual property issues. Yet, we also recognize that in a fast moving marketplace, we still have much to learn. We have generally been cautious to approach New Economy and intellectual property questions, and approach them with an appropriate degree of circumspection and balance. I strongly believe that achieving benefits to consumers and industry alike also requires a balanced, transparent and forward looking approach to policy problems by utilizing interactive forums like this one, as well as working groups, industry self-regulation and (of course) strong law enforcement. For these reasons, I look forward to hearing what all of our generous and distinguished panelists have to tell us.

1. The comments that I make today are my own and do not necessarily represent those of the Commission or the other Commissioners.