



Priorities in Intellectual Property

The software industry is a profound driver of the US economy, adding more than \$1.6 trillion in GDP and supporting 14 million high-paying jobs. A well-functioning intellectual property (IP) system—with protection for patents, copyrights, trademarks, and trade secrets—provides software developers indispensable incentives to invest and apply their creative and inventive energies to innovate. Such innovation requires a predictable and well-functioning IP system that encourages investments in R&D and commercialization while maintaining key flexibilities and safeguards to prevent abuse.

Preserve Copyright Certainty

BSA members rely on copyright protection to make their software-enabled products and services available to customers through flexible licensing options. The Copyright Act has provided a steady foundation that has served as a launching pad for the world's most creative companies. The US copyright system is the envy of the world, striking a balance between core substantive protections and important flexibilities that have made it incredibly adaptive in the face of immense technological changes. We urge the incoming Administration to:

- ✔ **Preserve the Section 512 Notice-and-Takedown Framework.** As publishers of high-value software, BSA members depend on the Digital Millennium Copyright Act's (DMCA) takedown provisions to defend against unlicensed uses of their works. As providers of innovative online services, BSA members rely on the DMCA's limitations on liability to process high volumes of sensitive customer data. The DMCA's balanced framework has played a key role in catalyzing the explosive growth of the internet as a medium for free expression and digital commerce. Although much has changed since Congress enacted the DMCA in 1998, the structural framework embodied in the statute remains fundamentally sound.

- ✔ **Promote International Harmonization.**

The competitiveness of US innovators in the globalized economy is buoyed by policies that create as much certainty as possible for the creation and commercialization of their works. To help create certainty for US innovators, the incoming Administration should engage with our trading partners to promote alignment with the US framework for IP protection. Engagement should promote both the core substantive protections afforded by US copyright law as well as the [critical flexibilities](#) that have been integral to the development of digital technologies, such as artificial intelligence.

Prioritize Patent Quality and Innovation

BSA members are among the nation's leading technology companies, producing much of the hardware and software that power computer and telecommunication networks. BSA members invest heavily in R&D and rely on intellectual property for the viability of their business, depending on a patent system that does not discriminate by technology. BSA members hold hundreds of thousands of patents and account for more than half of all US patents issued to the top 10 patent grantees every

year. The software industry accounts for \$83 billion in annual US R&D investments and 22 percent of total US private sector R&D expenditures. At the same time, due to the complexity and commercial success of their products, these companies are frequently the subject of patent infringement claims. Frivolous patent litigation claims from non-practicing entities represent a significant expense that diverts resources away from investments in R&D and inventive activity. We urge the incoming Administration to:

- ✔ **Nominate a Director of the US Patent and Trademark Office (USPTO) Who Appreciates the Different Perspectives on the Patent System.** The Director sets the priorities for the USPTO and should focus on patent quality and the efficiency of the USPTO, rather than promoting maximalist or minimalist views on patents. The key to promoting innovation is a predictable and well-functioning patent system that rewards innovators without fostering an environment in which a small number of actors can abuse the system to the detriment of responsible market participants and the economy at large.
- ✔ **Strengthen Opportunities for American Innovation to Underrepresented Groups.** The United States should encourage, empower, and support all future innovators, including by maintaining the National Council for Expanding American Innovation (NCEAI), which is grounded in USPTO's 2018 SUCCESS Act report. That report found that women and minorities are underrepresented as inventors named on U.S.-granted patents. The council, which includes BSA member companies, is actively working on a national strategy for increased participation from underrepresented groups.
- ✔ **Streamline USPTO Operations.** BSA supports efforts to improve patent quality, provide clear guidance to patent examiners regarding applicable legal standards, and increase the consistency and predictability of decision-making at the USPTO.
- ✔ **Support Effective Use of Post-Issuance Processes.** The incoming Administration should ensure the Patent Trial and Appeal Board (PTAB) serves its intended function of improving the quality of patents in the system by removing claims that should not have been allowed. The USPTO should not make changes that would undermine the PTAB's effectiveness or the effectiveness of Inter Partes Review (IPR) and Post Grant Review (PGR) proceedings.
- ✔ **Modernize USPTO Infrastructure.** BSA supports USPTO plans to modernize the USPTO's Information Technology (IT) infrastructure, and to enhance USPTO's use of machine learning technologies to improve the effectiveness of patent examination procedures.



ABOUT BSA

BSA | The Software Alliance is the leading advocate for the global software industry before governments and in the international marketplace. Its members are among the world's most innovative companies, creating software solutions that spark the economy and improve modern life.

With headquarters in Washington, DC, and operations in more than 30 countries, BSA pioneers compliance programs that promote legal software use and advocates for public policies that foster technology innovation and drive growth in the digital economy.