

The Bruno consent decree may be examined at the Office of the United States Attorney, District of Nebraska, 1620 Dodge Street, Suite 1400, Omaha, NE 68102-1506, and at U.S. EPA Region 7, 901 N. 5th Street, Kansas City, KS 66101. A copy of the Bruno consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044-7611. In requesting a copy, please enclose a check in the amount of \$50.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Alternatively, you may request a copy of only the consent decree, without the attached appendices, by enclosing a check in the amount of \$13.00 (25 cents per page reproduction cost). Please make checks payable to the Consent Decree Library.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

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DEPARTMENT OF JUSTICE

[AAG/A Order No. 295-2002]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice proposes to modify a system of records entitled "Executive Clemency Case Files/Executive Clemency Tracking System," JUSTICE/OPA-001. The purpose of publishing this notice is to document the functions of the Attorney General or his designee in receiving, investigating, and evaluating requests for executive clemency, preparing the necessary reports and recommendations from the Department of Justice to the President in clemency matters, serving as liaison with clemency applicants and the public on clemency matters, and advising the President on the historical exercise of the clemency power.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by December 2, 2002. The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice

Management Division, Department of Justice, Washington, DC, 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: October 22, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/OPA-001

SYSTEM NAME:

Executive Clemency Case Files/
Executive Clemency Tracking System.

SYSTEM LOCATION:

Office of the Pardon Attorney (OPA), U.S. Department of Justice, 500 First Street, NW., Suite 400, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for or been granted executive clemency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Paper Files: The system contains the individual case files of persons who have applied for or been granted executive clemency, which may include the following: The clemency petition; character affidavits; investigatory material; court-related documents (*e.g.*, presentence reports, judgments of conviction, and court opinions); official court-martial documents (in military cases); prison progress reports and U.S. Parole Commission notices of action; media reports (*e.g.*, newspaper and magazine articles); official and other correspondence (both generated and received, whether solicited or unsolicited); and inter-agency and intra-agency reports and recommendations and decisional documents relating to individual clemency matters.

Computerized Records: The system also includes an automated database for tracking the handling of clemency cases from filing to final action. Information used to track such progress may include, but is not limited to, the petitioner's name, social security number, birth date, the date the petition was received, offense and sentencing information, the date of final action by the President, and other case-related information. Clemency case file notes may also be summarized and stored in an automated format, and may include any relevant information that would assist OPA in formulating clemency recommendations to the President or otherwise performing its duties more efficiently.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in order to carry out the duties assigned by the President, pursuant to the power granted him under United States Constitution, Article II, section 2, to the Department of Justice in Executive Order of the President 30-1, dated June 16, 1893; and Executive Order of the President No. 11878 (published at 40 FR 42731), as delegated by the Attorney General to OPA in 28 CFR 0.35 and 0.36 (Attorney General Order No. 1012-83, published at 48 FR 22290), and as described in 28 CFR 1.1 through 1.11 (Attorney General Order No. 1798-93, published at 58 FR 53658; as amended at 65 FR 48381 and 65 FR 58223).

PURPOSE(S) OF THE SYSTEM:

Executive clemency case files are maintained by the Attorney General or his designee to facilitate and document the functions of the Attorney General or his designee in receiving, investigating, and evaluating requests for executive clemency; preparing the necessary reports and recommendations from the Department of Justice to the President in clemency matters; serving as liaison with clemency applicants and the public on clemency matters; and advising the President on the historical exercise of the clemency power. In addition, OPA or the Attorney General may provide other Departmental components records and information from clemency case files to the extent it is necessary to perform their functional responsibilities. For example, following a Presidential decision to grant clemency (and occasionally when clemency is denied), the Department's Office of Public Affairs typically makes appropriate disclosures of information to the public, including the name of the person granted clemency, the date of the grant of clemency, the nature of the relief granted (*e.g.*, commutation of sentence, remission of fine, reprieve, or pardon after completion of sentence), the date, sentence, and district of the conviction for which clemency was sought, the city and state of the applicant's current place of residence, and the names of his attorney and character affiants, if any. Automated tracking and retrieval systems enhance OPA's ability to maintain and use the information contained in clemency case files.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

Disclosure of records in the clemency file of an individual who has applied for or been granted clemency, and

information contained in such documents, may be made to the following parties when it has been determined by OPA that such a need exists:

(a) The President, and members of his staff, in order to assist him in the exercise of his constitutional clemency power.

(b) Current and former government employees, including law enforcement and judicial authorities, whose comments on a particular clemency matter are solicited by OPA in connection with its investigation and review of a case, in order to enable such persons to formulate a response to the request.

(c) Contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(d) A private contractor or federal agency for the purpose of preparing bound and indexed volumes containing originals and/or photocopies of the official warrant of clemency granted each recipient of clemency as a public and official record of Presidential action.

(e) An appropriate federal, state, local, foreign, or tribal law enforcement authority or other appropriate agency charged with the responsibility for investigating or prosecuting a violation or potential violation of law (whether civil, criminal, or regulatory in nature), in the event that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law.

(f) A federal, state, local, or tribal agency, including prosecution, corrections, sentencing, or parole authorities, in order to assist it in the execution of appropriate actions necessary to implement a Presidential clemency decision or in the performance of its official duties.

(g) A federal, state, local, or tribal agency or regulatory authority where OPA determines that the agency requires information relevant to a decision concerning the issuance, renewal, revocation, or suspension of a license, permit, grant, or other benefit, or other need for the information in the performance of its official duties.

(h) A court, administrative, or regulatory body when the records, or information derived therefrom, are determined by OPA to be arguably relevant to the litigation or proceeding, and when one of the following is a party to or has an interest in the litigation or

proceeding: (1) OPA; (2) any employee of OPA in his or her official capacity; (3) any employee of OPA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States.

(i) The news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(j) A Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(k) The National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(l) A member of the public who has requested information concerning a specific, named person, provided that such a disclosure shall be limited to: whether a clemency application has been filed, and if so, the date on which it was filed, the type of clemency sought, the offense(s) for which clemency is sought, the date and court of conviction, the sentence imposed, the decision of the President to grant or deny clemency and the date of that decision, the administrative closure of a clemency request and the date of such closure.

(m) Former employees of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored in electronic media via a client/server configuration. Computerized records are stored on hard disk, floppy diskettes, compact disks, magnetic tape, and/or on OPA's local area network. Paper records are stored in individual file folders and a secure file room or file cabinets with

controlled access, and/or other appropriate GSA approved security containers.

RETRIEVABILITY:

Individual case files are retrieved primarily by the name of the person who applied for or was granted executive clemency. Case files also may be retrieved by a case file number assigned to each file. Information stored in the computerized case-tracking system is retrieved primarily by searching under the name of the person who applied for or was granted clemency, or on whose behalf clemency was sought. Information stored in the computerized case-tracking system may also be retrieved by the clemency case file number, or the applicant's Bureau of Prisons register number (if he was incarcerated at the time he applied for or was granted clemency).

SAFEGUARDS:

Paper records are secured through the use of safes, locked file cabinets, and/or restricted access to the space in which they are located. Electronic records are safeguarded in accordance with DOJ rules and policies governing automated systems security and access, including the maintenance of technical equipment in restricted areas and the required use of individual passwords and user identification codes to access the system.

RETENTION AND DISPOSAL:

Individual case files are stored in OPA's work area while the clemency request is pending, and generally for up to two years after the date of final decision. Closed case files are transferred to the Washington National Records Center in Suitland, Maryland one full year after the calendar year in which the case was closed. Except for copies of reports furnished to the President on particular clemency matters, clemency warrants and other documents reflecting the President's action in clemency cases, case files in any cases in which clemency is granted, case files in any other cases designated by the Pardon Attorney as having significant public interest, and notices issued by OPA to the Office of Public Affairs of the Department of Justice, case files at the Washington National Records Center are destroyed no sooner than 25 years after the case is closed, in accordance with Records Disposition Authority NC1-204-95-1, or successor Records Disposition Authority.

SYSTEM MANAGER(S) AND ADDRESSES:

Pardon Attorney, Office of the Pardon Attorney, U.S. Department of Justice,

500 First Street, NW., Suite 400,
Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to Office of the Pardon Attorney, U.S. Department of Justice, 500 First Street, NW., Suite 400, Washington, DC 20530.

RECORD ACCESS PROCEDURES:

While the Attorney General has exempted executive clemency case files from the access provisions of the Privacy Act, requests for discretionary releases of records shall be made in writing to the system manager listed above with the envelope and letter clearly marked "Privacy Access Request." Include in the request the general subject matter of the document. Provide full name, current address, date and place of birth, signature (which must be either notarized or submitted under penalty of perjury) and a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

While the Attorney General has exempted executive clemency case files from the correction (contest and amendment) provisions of the Privacy Act, requests for the discretionary correction (contest and amendment) of records should be directed to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information include: individual applicants for clemency, their representatives, and persons who write, confer with, or orally advise OPA concerning those applicants; investigatory reports of the Federal Bureau of Investigation, the Drug Enforcement Administration, the Internal Revenue Service, and the Immigration and Naturalization Service, and other appropriate government agencies; records of the Bureau of Prisons; reports of the Armed Forces; presentence reports provided by the Bureau of Prisons or the federal Probation Offices; reports of the U.S. Parole Commission; comments and recommendations from current and former federal and state officials; and employees of the Department of Justice and the White House.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), and (e)(5) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been

promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the **Federal Register**.

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DEPARTMENT OF JUSTICE

Antitrust Division

Public Comments and Response on Proposed Final Judgment in United States v. Computer Associates International, Inc., et al. Exhibit

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), the United States hereby publishes below the comment received on the proposed Final Judgment in *United States of America v. Computer Associates International Inc. and Platinum technology International, inc.*, Civil Action No. 1:01CV02062 (GK), filed in the United States District Court for the District of Columbia, together with the United States' response to the comment.

Copies of the comment and response are available for inspection at Room 200 of the Department of Justice, Antitrust Division, 325 Seventh Street, NW., Washington, DC 20530, telephone (202) 514-2481, and at the Office of the Clerk of the United States District Court for the District of Columbia, E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,
Director of Operations.

United States' Response to Public Comments

Pursuant to Section 5(d) of the Clayton Act, as amended by Section 2 of the Antitrust Procedures and Penalties Act (codified at 15 U.S.C. 16(b)-(h)(the "Tunney Act")), the United States responds to public comments received regarding the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Background

On September 28, 2001, the United States filed a civil antitrust Complaint alleging that the Merger Agreement between Defendants Computer Associates International, Inc. ("CA") and Platinum *technology International, inc.* ("Platinum") had the effect of lessening or eliminating competition between them in the sale of certain software products in violation of

Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint alleged that, prior to March 1999, Platinum aggressively competed with CA in the development and sale of numerous software products, including mainframe systems management software products. On March 29, 1999, CA and Platinum entered into a Merger Agreement pursuant to which CA would purchase all issued and outstanding shares of Platinum through a \$3.5 billion cash tender offer.¹

The Merger Agreement set forth numerous covenants made by Platinum, as part of the agreement to be acquired, regarding how it would conduct its business during the period between the signing of the Merger Agreement and the closing of the acquisition transaction (the pre-consummation period). Under the Merger Agreement, CA and Platinum agreed that Platinum would not offer discounts greater than 20% off list prices for its software products and consulting services unless CA approved the discount. Before the merger announcement, Platinum commonly gave discounts over 20% for its software products and consulting services. In furtherance of this Agreement, CA installed one of its vice presidents at Platinum's headquarters to review Platinum's proposed customer contracts and exercise authority to approve or reject proposed contracts offering discounts greater than 20%. CA also obtained prospective, customer-specific information regarding Platinum's bids, including the name of the customer, products and services offered, list price, discount, and the justification for any discount. Platinum placed no limits with respect to CA's use of this information. CA used this information to monitor Platinum's adherence to the Merger Agreement's limitation on discounts and to exercise its authority to approve or reject any proposed contract that offered discounts over 20%.

The United States filed a Complaint on September 28, 2001, alleging that the provisions of the Merger Agreement relating to CA's approval of Platinum discounts prior to consummation of the merger violated section 1 of the

¹ On May 25, 1999, the United States filed a Complaint alleging that CA's proposed acquisition of Platinum would eliminate substantial competition and result in higher prices in certain mainframe systems management software markets. See *United States v. Computer Associates International Inc., et al.* (D.D.C. 99-01318 (GK)). Simultaneously with the filing of the Complaint, the parties reached an agreement that allowed CA and Platinum to go forward with the merger, provided that CA sell certain Platinum mainframe systems management software products and related assets. Thereafter, CA accepted for payment all validly tendered Platinum shares and the Defendants consummated their merger.