

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1232 (CKK)

Next Court Deadline:

September 25, 2008 Status Conference

**JOINT STATUS REPORT ON MICROSOFT'S
COMPLIANCE WITH THE FINAL JUDGMENTS**

The United States of America, Plaintiff in *United States v. Microsoft*, CA No. 98-1232 (CKK), and the Plaintiffs in *New York, et al. v. Microsoft*, CA No. 98-1233 (CKK), the States of New York, Ohio, Illinois, Kentucky, Louisiana, Maryland, Michigan, North Carolina, and Wisconsin (the "New York Group"), and the States of California, Connecticut, Florida, Iowa, Kansas, Massachusetts, Minnesota, Utah, and the District of Columbia (the "California Group") (collectively "Plaintiffs"), together with Defendant Microsoft, hereby file a Joint Status Report on Microsoft's Compliance with the Final Judgments, pursuant to this Court's Order of May 14, 2003.

I. INTRODUCTION

In a minute order dated June 25, 2008, the Court directed the Plaintiffs to file a Status Report updating the Court on activities relating to Microsoft's compliance with the Final Judgments entered in *New York, et. al. v. Microsoft*, CA No. 98-1233 (CKK), and in *United States v. Microsoft*, CA No. 98-1232 (CKK).

The last Status Report, filed June 17, 2008, served as an interim report, containing information on selected activities relating to enforcement of the Final Judgments. The current report is a six-month report and contains information that the Court has requested in each six-month report. Section II of this Report discusses Plaintiffs' efforts to enforce the Final Judgments; this section was authored by Plaintiffs. Section III discusses Microsoft's efforts to comply with the Final Judgments; this section was authored by Microsoft. Neither Plaintiffs nor Microsoft necessarily adopts the views expressed by the other.

II. UPDATE ON PLAINTIFFS' EFFORTS TO ENFORCE THE FINAL JUDGMENTS

A. Section III.E (Communications Protocol Licensing)

Plaintiffs' work concerning Section III.E and the Microsoft Communications Protocol Program ("MCP") continues to center on efforts to improve the technical documentation provided to licensees. In particular, Plaintiffs, in conjunction with the Technical Committee ("TC") and Craig Hunt, the California Group's technical expert, are reviewing the results of Microsoft's project to rewrite the technical documentation that has been described in detail in

previous status reports and providing feedback to Microsoft on what additional work is still needed.¹

As discussed in the prior Joint Status Report, Plaintiffs and the TC were not satisfied that the original set of overview documents prepared by Microsoft was sufficiently comprehensive. At Plaintiffs' request, Microsoft agreed to create a set of additional "system" documents that would provide more detailed information on the interaction between the protocols in a number of complex scenarios. Microsoft began the project by creating a template to govern preparation of the system documents; Microsoft also created three pilot system documents using the proposed template in an effort to demonstrate the suitability of its template despite the TC's initial concerns. The TC's review of the pilot documents reinforced its concerns with the suitability of the template. Microsoft revised the template based on the TC's feedback and informed the Court in the prior Joint Status Report that, subject to finalization of the templates with the TC, Microsoft planned to publish drafts of all nineteen system documents by the end of March 2009 and to publish the final version of all system documents by the end of June 2009.

As promised at the prior Status Conference, Microsoft created a second template in response to the TC's concerns that a single template was not suitable for handling the different types of system documents included in the projected. Although Microsoft and the TC tried to resolve the outstanding issues with the templates following the June Status Conference, the TC concluded in early August that this process was not likely to lead to a prompt and satisfactory resolution. Accordingly, the TC provided to Microsoft the TC's two proposed templates,

¹ The TC is working closely with Mr. Hunt on all of these technical documentation issues. References to Microsoft working with the TC throughout this report should be taken to include Mr. Hunt as well.

versions of which had previously been provided to Microsoft, and advised Microsoft that the TC templates should form the basis for further discussions. Microsoft and the TC are using the TC templates as a starting point for discussions and are reviewing Microsoft's suggested changes. The parties' objective is to minimize possible miscommunication over the intended meaning of the templates. To facilitate the template discussions, and to respond to Microsoft's request for practical examples, the TC has begun creating examples for specific sections of the templates. The TC presented the first of these examples to Microsoft last week. Plaintiffs and the TC are mindful of the challenges to creating system documents in the circumstances presented here. Therefore, the TC templates adapt recognized software engineering practices and well-known documentation models to this project.

While the process of finalizing the system document templates is taking longer than the parties had anticipated, the TC is pursuing it to assist Microsoft in developing quality system documents during this phase of the rewrite project. Microsoft and the TC continue to work to finalize the new templates and are targeting completion of this process during the next month or two. Once the template is completed, Microsoft will need to develop a project plan to complete all the system documents which includes milestones that enable Plaintiffs and the Court to track Microsoft's progress.

As Plaintiffs noted in the prior Joint Status Report, the TC has suggested to Microsoft that the technical documentation should, going forward, describe changes on a version-by-version basis. Microsoft developed a process for including suitable change information in the documentation, and provided the TC with a sample document. The TC is satisfied that Microsoft's proposed approach should capture the necessary information so as to benefit both

licensees and the TC. Microsoft will implement this approach beginning with the October release of the documentation.

Previous Joint Status Reports described Microsoft's "Project Sydney" effort to identify all the protocols in Windows, and various related issues. Recently, the TC's testing disclosed a protocol not included in the Project Sydney database. After the TC reported this to Microsoft, Microsoft uncovered a second protocol, also not included in the database, and it has now added both protocols. Neither needs to be documented as part of the MCPP.

Finally, Microsoft recently informed the TC that changes to protocols in Windows 7 will result in a significant number of new and modified technical documents. The TC is currently developing a plan for reviewing these technical documents when they are delivered to the TC later this year.

B. Competing Middleware and Defaults²

Plaintiff States and the TC continue to monitor developments regarding Windows XP and Windows Vista to assure compliance with the Final Judgments. This includes ongoing testing by the TC of Windows Vista, Vista Service Pack ("SP") 1, XP SP 3, Windows Media Player 11, Internet Explorer ("IE") 7 and beta versions of IE 8, to discover any remaining middleware-related issues. In addition, the TC's review of early builds of Windows 7 continues. As the builds of Windows 7 progress, the TC will conduct middleware-related tests in an effort to assure that bugs fixed in Vista do not re-appear in the next operating system, as well as to assure

² The provisions of the United States' Final Judgment not relating to Section III.E (Communications Protocol Licensing) expired in November 2007. This part of the Joint Status Report therefore covers the joint enforcement activities of the New York Group and the California Group.

Final Judgment compliance generally. Further, the TC is testing the version of XP that Microsoft developed for the XO laptop computer, offered by the One Laptop per Child Foundation, also to assure Final Judgment compliance.

The TC has completed testing new desktop search features, introduced as a result of a complaint from Google, reported to the Court in the June 19 and August 31, 2007 Joint Status Reports. The new features, delivered in Vista SP 1 in February 2008 and in Vista image disks used by OEMs, work as agreed, thus promoting user and OEM choice for desktop search in Windows Vista.

As noted in the prior June 17, 2008 Joint Status Report, the TC's on-going review of Windows' treatment of middleware defaults includes developing an operating system source code scan in an effort to determine whether some commonality in the code accounts for default overrides. Work on the code for the scan is on-going.

The TC's investigation of certain default browser overrides, also referred to in our prior Report, continues as well. The TC testing activity recently identified an additional browser override issue in Vista. The TC has reported the issue, and Microsoft is investigating.

The TC has completed its testing of Microsoft's publicly released version of IE 8 beta 1. Microsoft has recently released IE 8 beta 2, which the TC is now testing. As more fully reported in Microsoft's August 15, 2008 Supplemental Status report, the TC has discussed with Microsoft the behavior of IE in placing its icon in the start menu under certain middleware default-setting scenarios. Microsoft has changed this behavior in IE 8 beta 2. The TC also has discussed with Microsoft aspects of Windows' Internet Options interface, as a result of which Microsoft has made changes in IE 8 beta 2, which make the interface more browser-independent.

The TC continues to meet with leading ISVs and PC manufacturers to discuss issues relating to middleware, the default mechanisms in Vista, and the options available to OEMs under the Final Judgments, as well as other Final Judgment-related concerns that industry participants may choose to raise. Also, the TC continues to test newly released non-Microsoft middleware applications, such as browsers, and to report the test results to the vendor.

The TC has made certain changes to its simulator tool, previously transitioned to Microsoft. Once the TC's testing of the changes is completed, the TC will provide the new code to Microsoft. The TC has also provided Microsoft with associated webpage changes for posting on MSDN.

The TC reviewed and discussed with Microsoft the current version of the company's OEM MDA Agreement, and other Microsoft marketing programs that have come to the TC's attention.

The TC also participated in the investigation of the unresolved complaint, discussed by the Plaintiff States below.

C. Complaints

The Plaintiff States' Interim Status Report on Microsoft's Compliance with the Final Judgments, filed December 7, 2007, informed the Court of two complaints. While one complaint was resolved earlier this year, one remains under investigation, as Plaintiffs have engaged in various activities in the nature of discovery. This particular complaint was made prior to November 2007, and the United States is, accordingly, involved in its investigation.

Since the prior full Status Report, filed on February 29, 2008, nine third-party complaints have been received by the United States. All of these complaints were non-substantive and did

not raise any issues regarding Microsoft's compliance with, or the United States' enforcement of, the Final Judgment. Each of the non-substantive complaints received a simple response acknowledging their receipt. The New York and California Groups do not believe that they have received any additional substantive complaints since the prior full Status Report.

III. UPDATE ON MICROSOFT'S COMPLIANCE WITH THE FINAL JUDGMENTS

In this section of the report, Microsoft focuses on its compliance work relating to Sections III.E of the Final Judgments. In addition, this section briefly summarizes the activities of the compliance officers under the Final Judgments, as well as the inquiries and complaints received by Microsoft since the June 17, 2008 Joint Status Report.

A. Section III.E (Communications Protocol Licensing)

1. MCPP Status Update

Pursuant to Microsoft's recently announced interoperability principles, documentation for Microsoft's Communications Protocols have been made available free of charge on Microsoft's website. To date, documents describing protocols that are made available pursuant to the Final Judgments have been downloaded over 209,000 times.

Separately, there are a total of 50 companies licensing patents for Communications Protocols through the MCPP program (which was created pursuant to Section III.E of the Final Judgments), 40 of which have royalty bearing licenses. Since the previous Joint Status Report, the following companies have signed a patent license: Lucent Technologies Inc., DayTek Corp., and Storwize, Inc. Currently, Microsoft is aware that 14 of those patent licensees are shipping

products. Numerous other entities may be making use of the protocol documentation that has been made available to the public on the MSDN website.³

Since the last Joint Status Report, Microsoft has continued to promote offers for MCPP licensees to receive Technical Account Manager support and to obtain access to Windows source code at no additional charge. To date, 28 licensees have signed up with Microsoft to receive free Technical Account Manager support, and seven licensees have signed up for Windows source code access.

2. *Microsoft's Progress in Modifying the Technical Documentation*

As previously reported, Microsoft has delivered all of the Milestones associated with the “rewrite” program. In addition, Microsoft has produced a separate set of overview/reference materials in order to assist licensees in using the technical documentation. Microsoft firmly believes that the current protocol documentation available to implementers enables interoperability with Windows and fully complies with the Final Judgments.

In response to the Technical Committee’s (“TC”) request, Microsoft is undertaking an effort to supplement the existing protocol documentation with additional “system” documents. On July 30, 2008, Microsoft provided the Plaintiffs with a schedule for completing the system documents. This schedule contemplated that the documents would be created using Microsoft’s templates as modified in response to the TC’s feedback on an earlier template and Microsoft’s

³ A number of the protocols made available to the public are not covered by any Microsoft patents and thus do not require a license. In addition, other entities may have rights to Microsoft patents through a vehicle other than MCPP, such as a broad patent cross licensing agreement.

initial “pilot” system documents. Microsoft estimated that it would complete production of the final system documents on March 30, 2009.

Following the July 30th meeting, Microsoft and the TC continued their discussions regarding the proposed templates. Although the discussions were constructive, the technical experts at Microsoft and the TC expressed different views regarding various technical aspects of the templates. Because the system documents will be the first of their kind within Microsoft – and possibly the industry as a whole – there are no established best practices for creating them. Thus, creating effective templates for the system documents in this context is a difficult exercise, and there are many detailed technical questions that must be addressed before the templates can be finalized.

Microsoft agrees with the TC and the Plaintiffs that the optimal approach is to work through as many of these technical questions as possible before the templates are finalized. Therefore, Microsoft has worked closely with the TC to develop agreed upon templates that reflects each side’s understanding of the other’s expectations and to agree upon a fundamental approach to creating the System documentation. Microsoft and the TC thus have had numerous meetings over the last few months and have made progress on arriving at a common understanding of the content and format being requested by the TC.

One of the most significant remaining issues is the TC’s request that the system documents use “three levels of abstraction” for describing each system (e.g., describing each system from three different points of view and at different levels of detail). However, despite significant effort by both the TC and Microsoft, Microsoft still is uncertain about how to address this specific request. Because no industry examples of such system documentation currently

exist, the TC is working to create its own examples in an effort to convey to Microsoft the specifics of its request.

While this work is ongoing, Microsoft is continuing to draft system documents in accordance with its latest templates. Microsoft will revise these draft documents as necessary once the new templates are finalized. Microsoft also will update the schedule for completion once the template is finalized.

3. *Current Status of Microsoft's Progress in Resolving Technical Documentation Issues ("TDIs") through August 31, 2008*

In light of the volume and complexity of the new technical documentation, it is inevitable that additional TDIs will emerge in the newly rewritten documentation. As part of its analysis, the TC is identifying TDIs in the new Online Build documentation according to the three priority levels that were described in the March 6, 2007 Joint Status Report. The current status of TDIs identified in rewritten documentation through August 31, 2008, is noted in the chart below. The total number of TDIs spans the entire range of rewritten MCPP documentation as well as the overview materials and system documents. They should be considered in the context of more than 20,000 pages of MCPP technical documentation.⁴

⁴ The TDI numbers as of July 31, 2008, reported in this chart differ slightly from the numbers provided in the previous Status Report because the dynamic nature of tracking TDIs in multiple databases occasionally results in categorization and exact TDI closure dates changing after the previous reporting period. In most cases, licensees do not open TDIs themselves.

As to the category "TDIs Identified by Licensees," licensees generally ask Microsoft questions about the documentation. Most questions do not result in any TDIs. In some cases, questions from licensees result in a TDI being filed by the Microsoft employees involved in answering the licensees' questions. In these circumstances, Microsoft categorizes the TDI as a licensee TDI.

New Documentation TDIs	As of 7/31/2008	Period Ended 8/31/2008
Priority 1 TDIs Submitted by the TC		
Submitted this period		7
Closed this period		27
Outstanding	204	184
Priority 2 TDIs Submitted by the TC		
Submitted this period		21
Closed this period		63
Outstanding	248	206
Priority 3 TDIs Submitted by the TC		
Submitted this period		9
Closed this period		20
Outstanding	73	62
TC Submitted		37
TC Closed		110
TC Outstanding	525	452
TDIs Identified by Microsoft		
Identified this period		534
Closed this period		505

Microsoft Outstanding	622	651
TDIs Identified by Licensees		
Identified this period		39
Closed this period		19
Licensees Outstanding	18	38
TDIs Identified by TC in Overview/Reference Materials		
Identified this period		1
Closed this period		8
Overview Outstanding	31	24
TDIs Identified by TC in System Documents		
Identified this Period		22
Closed this Period		20
System Outstanding	193	195
Total Outstanding	1389	1360

4. *Technical Documentation Testing*

a. Protocol Test Suite

Since the previous Status Report, Microsoft has continued its efforts to test the newly rewritten protocol documentation. Microsoft and the TC met on July 22, 2008, to review the results of its Cluster 6 testing. Microsoft is continuing the testing of Cluster 7, which will be complete by September 30, 2008.

b. Interoperability Lab

On August 30, 2006, Microsoft announced to MCPP licensees the availability, at no charge, of Microsoft's Interoperability Lab in the Microsoft Enterprise Engineering Center for testing licensee implementations of MCPP protocols. The Interoperability Lab offers direct access to Microsoft product development teams and technical support from Microsoft's engineering staff to address issues that may arise during testing. Microsoft held an interoperability lab with an implementer in July 2008 and received very positive feedback on the event. Microsoft has another interoperability lab with an implementer scheduled for the end of September 2008.

c. Plug-fests

Microsoft is planning a Media Streaming plug-fest for October 2008 and an Active Directory plug-fest for January 2009. In addition, Microsoft will host a file systems plug-fest in September 2008 in conjunction with an event for developers sponsored by the Storage Networking Industry Association ("SNIA") from September 22nd through the 25th. Microsoft is the CIFS/SMB/SMB2 Plugfest Underwriter at the event. Platinum Sponsors for the event are NetApp and SUN Microsystems and IBM is a Gold Sponsor.

5. *Technical Documentation Team Staffing*

Robert Muglia, the Senior Vice President for Microsoft's Server and Tools Business, continues to manage the documentation effort along with additional senior product engineering team managers.

Over 800 Microsoft employees and contingent staff are involved in work on the MCPP technical documentation. Given the substantial overlap between the MCPP and the European Work Group Server Protocol Program, all of these individuals' work relates to both programs or is exclusive to the MCPP. Of these, approximately 320 product team engineers and program managers are actively involved in the creation and review of the technical content of the documentation, including periodic work on TDI resolution as well as developing new content for the next version of Windows Client and Windows Server. Because of varying areas of expertise, not all of these product team employees are working on the documentation at any given time. For example, many of the MCPP documents currently do not have TDIs associated with them. Thus, there may be no work in any particular month for product team members with documents that have no TDIs to resolve and for whom no documentation updates for future releases are currently underway. In other months, these same product teams may have multiple TDIs to resolve and/or additional content to draft and spend much or even all of their time on protocol documentation projects.

In addition, there are approximately 30 full-time employees and approximately 50 contingent staff working as technical writers, editors, and production technicians. Additionally, as the protocol testing effort continues, approximately 40 full-time employees and approximately 425 contingent and vendor staff work as software test designers, test engineers, and test

architects. Significant attention to and involvement in the technical documentation and the MCPP extend through all levels of the Microsoft organization and draw upon the resources of numerous product engineering, business, technical, and legal groups, as well as company management.

B. Compliance Officers

Since the Initial Status Report was filed on July 3, 2003, the compliance officers have continued to ensure that newly-appointed Microsoft officers and directors receive copies of the Final Judgments and related materials (ongoing), that Microsoft officers and directors receive annual briefings on the meaning and requirements of the Final Judgments (Microsoft completed the annual training sessions for 2007), that annual certifications are completed for the most recent year (completed in December 2007), and that required compliance-related records are maintained (ongoing). In addition, the compliance officers are actively engaged in Microsoft's ongoing training programs and committed to monitoring matters pertaining to the Final Judgments.

C. Complaints and Inquiries Received by Microsoft

As of September 12, 2008, Microsoft has received nine complaints or inquiries since the June 17, 2008 Joint Status Report. None of these complaints or inquiries were related to any of Microsoft's compliance obligations under the Final Judgments.

Dated: September 18, 2008

Respectfully submitted,

FOR THE STATES OF NEW YORK,
OHIO, ILLINOIS, KENTUCKY,
LOUISIANA, MARYLAND, MICHIGAN
NORTH CAROLINA, AND WISCONSIN

FOR THE UNITED STATES
DEPARTMENT OF JUSTICE'S
ANTITRUST DIVISION

/s/

ANDREW M. CUOMO
Attorney General of New York
JAY L. HIMES
Chief, Antitrust Bureau
Assistant Attorney General
120 Broadway
New York, New York 10271
212/416-8282

/s/

AARON D. HOAG
JAMES J. TIERNEY
SCOTT A. SCHEELE
ADAM T. SEVERT
Trial Attorneys
U.S. Department of Justice
Antitrust Division
600 E Street, N.W.
Suite 9500
Washington, D.C. 20530
202/514-8276

FOR THE STATES OF CALIFORNIA,
CONNECTICUT, IOWA, KANSAS,
FLORIDA, MASSACHUSETTS, MINNESOTA,
UTAH, AND THE DISTRICT OF COLUMBIA

/s/

KATHLEEN FOOTE
Senior Assistant Attorney General
Office of the Attorney General of California
455 Golden Gate Avenue
Suite 11000
San Francisco, California 94102-3664
415/703-5555

FOR DEFENDANT MICROSOFT
CORPORATION

BRADFORD L. SMITH
MARY SNAPP
DAVID A. HEINER, JR.
Microsoft Corporation
One Microsoft Way
Redmond, Washington 98052
425/936-8080

/s/

CHARLES F. RULE
JONATHAN S. KANTER
Cadwalader, Wickersham & Taft LLP
1201 F Street, N.W.
Washington, DC 20004
202/862-2420

STEVE L. HOLLEY
RICHARD C. PEPPERMAN II
Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
212/558-4000

*Counsel for Defendant
Microsoft Corporation*