

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:

January 28, 2009 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 September 26, 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 September 18, 2008, served as a six-month report, containing certain relevant information requested by the Court. Order at 1-3 (May 14, 2003). This Report is an interim report relating only to recent enforcement activities. 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 identifying issues with the revised documentation for Microsoft to address.<sup>1</sup>

As discussed in prior Joint Status Reports, in response to Plaintiffs' concerns with the sufficiency of the overview documents originally prepared by Microsoft as part of the rewrite project, Microsoft has agreed to create a set of "system" documents that would provide detailed information on the interaction between the protocols in a number of complex scenarios. Since the last Joint Status Report, Microsoft and the TC have finalized the two templates that will govern preparation of the system documents. Microsoft has also developed a project plan to complete all the system documents. This plan, which was first published in Microsoft's Supplemental Monthly Report of November 15, 2008, states that Microsoft will complete the system documents by June 30, 2009. The plan includes seven milestones along the way to enable Plaintiffs and the Court to track Microsoft's progress. Microsoft has completed the system documents included in the first two milestones pursuant to the schedule; the TC has begun reviewing these documents and will provide Microsoft with any necessary feedback on the documents when it finishes its initial review.

On December 5, 2008, Microsoft delivered to the TC updated technical documents in anticipation of the release of the Windows 7 beta. Microsoft had previously informed Plaintiffs and the TC that changes to the protocols in Windows 7 would result in a significant number of new and modified technical documents. Indeed, the updated documentation included 30 new technical documents and 87 updated technical documents. In the prior Joint Status Report,

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<sup>1</sup> 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.

Plaintiffs informed the Court that the TC was developing a plan for reviewing these technical documents. After considering the scope of work it will take to review both the updated Windows 7 technical documents and the new system documents that will be produced over the next 5 months, and after consulting with Plaintiffs, the TC has decided to adjust its technical documentation review strategy for maximum efficiency. Up until now, the TC's efforts have largely focused on its prototype implementation and validation efforts designed to test the quality of the technical documents. In light of the number of new documents that need to be reviewed, the TC is going to shift its focus to direct review of the documents by the TC's engineers as the most efficient method of identifying issues with the documentation; the TC will still use validation and prototyping methods to supplement this direct review. The revised strategy will enable the TC to review the new Windows 7 and system documents more thoroughly than it would otherwise, which is particularly desirable given the significance of these new documents to the project as a whole.

**B. Competing Middleware and Defaults<sup>2</sup>**

The States and the Technical Committee have received complaints about certain marketing programs announced by Microsoft from several companies that manufacture and sell a variety of products that work with Windows. Microsoft has informed the States and the Technical Committee that a number of changes have been made to these programs and that it is considering additional changes. The States and the Technical Committee continue to monitor the

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<sup>2</sup> 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.

situation, have requested pertinent documents and information from Microsoft, and continue their dialogue with Microsoft with respect to these marketing programs.

### **C. Complaints**

In the last several Joint Status Reports, Plaintiffs informed the Court that they were conducting an ongoing inquiry into an undisclosed matter as to which the complainant had requested confidential treatment. That matter, which related to cross-platform gaming, has now been resolved to Plaintiffs' satisfaction and without the need to seek judicial intervention. Microsoft has agreed to provide additional compliance training to certain of its employees in the Windows organization who interact with hardware vendors. Also, Microsoft has committed to Plaintiffs that one of its executives will publicly affirm, at an appropriate industry meeting scheduled to take place within the next two months, Microsoft's ongoing commitment to support game developers on Windows whether or not those developers choose to develop for other platforms as well.

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

In this section of the report, Microsoft focuses on its compliance work relating to Section 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 September 18, 2008 Joint Status Report.

#### **A. Section III.E (Communications Protocol Licensing)**

##### *1. MCPP Status Update*

Pursuant to Microsoft's interoperability principles (announced in February 2008), documentation for Microsoft's Communications Protocols has 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 270,000 times.

Separately, there are a total of 51 companies licensing patents for Communications Protocols through the MCPP program (which was created pursuant to Section III.E of the Final Judgments), 41 of which have royalty bearing licenses. Since the previous Joint Status Report, the following company has signed a patent license: Storspeed, 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.<sup>3</sup>

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 eight licensees have signed up for Windows source code access.

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

As previously reported, Microsoft is creating "System Documents" to assist developers in using Microsoft's protocol documentation. Microsoft has agreed with Plaintiffs upon the following schedule for completing a total of 19 System Documents by June 30, 2009:

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<sup>3</sup> 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.

| Milestone   | No. of Documents | Initial Availability |
|-------------|------------------|----------------------|
| Milestone 1 | 2                | 12/15/08             |
| Milestone 2 | 2                | 1/15/09              |
| Milestone 3 | 2                | 2/27/09              |
| Milestone 4 | 6                | 3/30/09              |
| Milestone 5 | 2                | 4/30/09              |
| Milestone 6 | 4                | 5/29/09              |
| Milestone 7 | 1                | 6/30/09              |
|             |                  |                      |
| Total       | 19               |                      |

As scheduled, Microsoft has delivered System Documents to the Technical Committee (“TC”) for the first two Milestones. Microsoft is on track to deliver Milestone 3 in February as scheduled.

3. *Current Status of Microsoft’s Progress in Resolving Technical Documentation Issues (“TDIs”) through December 31, 2008*

In light of the volume and complexity of the new technical documentation, it is inevitable that additional TDIs will emerge in the technical 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 December 31, 2008, is noted in the chart below.

The total number of TDIs spans the entire range of more than 20,000 pages of rewritten MCPP documentation as well as the overview materials and System Documents.<sup>4</sup>

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<sup>4</sup> The TDI numbers as of November 30, 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.

As to the category TDIs identified by licensees, in most cases licensees do not open TDIs themselves. Licensees generally ask Microsoft questions about the documentation. Most

|  | <b>As of<br/>11/30/2008</b> | <b>Period Ended<br/>12/31/2008</b> |
|--|-----------------------------|------------------------------------|
| <b>Priority 1 TDIs Submitted by the TC</b>                       |                             |                                    |
| Submitted this period  |                             | 188                                |
| Closed this period   |                             | 46                                 |
| Outstanding  | 159                         | 301                                |
| <b>Priority 2 TDIs Submitted by the TC</b>                       |                             |                                    |
| Submitted this period  |                             | 245                                |
| Closed this period   |                             | 56                                 |
| Outstanding  | 215                         | 404                                |
| <b>Priority 3 TDIs Submitted by the TC</b>                       |                             |                                    |
| Submitted this period  |                             | 84                                 |
| Closed this period   |                             | 27                                 |
| Outstanding  | 59                          | 116                                |
| TC Submitted   |                             | 517                                |
| TC Closed  |                             | 129                                |
| <b>TC Outstanding</b>  | 433                         | 821                                |
| <b>TDIs Identified by Microsoft</b>                              |                             |                                    |
| Identified this period   |                             | 613                                |
| Closed this period   |                             | 531                                |
| Microsoft Outstanding  | 694                         | 776                                |
| <b>TDIs Identified by Licensees</b>                              |                             |                                    |
| Identified this period   |                             | 15                                 |
| Closed this period   |                             | 24                                 |
| Licensees Outstanding  | 20                          | 11                                 |
| <b>TDIs Identified by TC in<br/>Overview/Reference Materials</b> |                             |                                    |
| Identified this period   |                             | 3                                  |
| Closed this period   |                             | 2                                  |
| Overview Outstanding   | 23                          | 24                                 |
| <b>TDIs Identified by TC in System<br/>Documents</b>             |                             |                                    |
| Identified this Period   |                             | 2                                  |

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.



|                          |      |      |
|--------------------------|------|------|
| Closed this Period       |      | 0    |
| System Outstanding       | 26   | 28   |
|                          |      |      |
| <b>Total Outstanding</b> | 1196 | 1660 |

4. *Technical Documentation Testing and Licensee Support*

Microsoft is continuing its efforts to test the rewritten protocol documentation. Testing of Cluster 8 was completed in early January and the results were reviewed with the TC on January 20, 2009. Microsoft expects to complete its comprehensive testing of the existing documentation by March 31, 2009. Newly created technical documentation (including for Windows 7) will be tested using a similar method.<sup>5</sup>

Separately, Microsoft is continuing to make various resources available to assist implementers in using the technical documentation. Microsoft is planning an Active Directory plug-fest for the week of January 26, 2009, which is open to all implementers. There are five confirmed attendees thus far. In addition, the interoperability lab remains available for use by licensees.

5. *Technical Documentation Team Staffing*

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

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<sup>5</sup> As reported in Microsoft's previous Supplemental Status Report, Microsoft's plan for testing the System Documents differs from the testing process for the underlying technical documents because of the unique nature of the System Documents. Most of this work will take place as the System Documents are being written and is thus reflected in the System Document milestones above rather than in the technical documentation testing schedule.

Nearly 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 285 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 any associated TDIs. In other months, these same product teams may have multiple TDIs to resolve and/or additional content to draft and spend most or all of their time on projects relating to the protocol documentation.

In addition, there are approximately 30 full-time employees and approximately 57 contingent staff working as technical writers, editors, and production technicians. Additionally, as the protocol testing effort continues, approximately 40 full-time employees and approximately 350 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 2008), that annual certifications are completed for the most recent year (completed in December 2008), 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 January 20, 2009, Microsoft has received six complaints or inquiries since the September 18, 2008 Joint Status Report. None of these complaints or inquiries were related to any of Microsoft's compliance obligations under the Final Judgments.

Dated: January 21, 2009

Respectfully submitted,

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

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