

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:

August 13, 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 July 20, 2009, 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 April 22, 2009, 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.¹

As discussed in prior Joint Status Reports, as part of the technical documentation rewrite project Microsoft is creating a set of “System Documents” to describe the interaction among the protocols in a number of complex scenarios. Microsoft delivered the final System Document on June 30, completing the technical documentation rewrite project. Plaintiffs and the TC are reviewing the complete set of documentation to determine whether it is “substantially complete.”² If the quality of the unreviewed documents is comparable to that of the documents already reviewed, and if there are no unexpected discoveries as the TC continues with its initial review of the technical documentation, Plaintiffs expect that by the end of the year they will be in a position to determine that the documents are substantially complete.

As described in prior Joint Status Reports, the TC has adjusted its technical documentation review by shifting the engineering resources formerly used on the prototype implementation and validation projects to direct review of the documents. As a result, the TC has been identifying technical documentation issues (“TDIs”) at a higher rate than in the past. Although it understandably took Microsoft some time to shift staffing to handle the increased TDI flow, Plaintiffs are seeing positive signs regarding Microsoft’s TDI resolution rate.

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.

² As explained in the prior Status Report, by “substantially complete,” Plaintiffs mean that the documents appear on an initial reading to cover the information required by the templates in a reasonably thorough and comprehensible manner. It does not mean, however, that the documents are finished or that no additional work remains to be done.

B. Competing Middleware and Defaults³

The TC has worked closely with Microsoft during the development of Windows 7 over the past two years. Windows 7 was finalized and released to manufacturing on July 22, 2009. Prior to the release, the TC performed detailed testing and interacted with Microsoft on numerous occasions to suggest changes to Windows 7 consistent with Microsoft's Final Judgment requirements. While the responsibility for compliance remains, of course, with Microsoft, Microsoft has thus far satisfactorily addressed all of the issues raised by the TC.

In May of 2009, the State Plaintiffs and the TC received a complaint, and observed published reports, regarding how the most recent version of Internet Explorer ("IE"), IE 8, was being installed on PCs running Windows XP and Vista. The complaint concerned how users with a non-Microsoft default browser might inadvertently have their default browser of choice switched to IE 8 during a first run screen entitled "Choose your settings" because the options presented to users by Microsoft were unclear. Choosing an "Express" (as opposed to "Custom") option in that screen would make IE 8 the default browser, and the only notification to the user was an entry stating "Default Browser: Internet Explorer" listed among many other entries. The Express option is most often selected by unsophisticated users who would then lose their prior default selection of a non-Microsoft browser. Even though it was possible for the user to revert to the original default browser (e.g. via SPAD in XP or Vista), the State Plaintiffs were concerned that the Express process was confusing, especially for unsophisticated users. Setting

³ 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.

aside any consideration of Final Judgment requirements, the parties agreed that the IE 8 first-run process could be improved. After discussions with the State Plaintiffs, Microsoft agreed to revise the IE 8 first-run process: By August 11, the default browser screen will offer the user a clear choice with respect to the browser default setting before the “Choose your settings” screen offers the Express/Custom option. This revision is consistent with the upgrade from IE 6 to IE 7.

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

In this section of the report, Microsoft focuses on its compliance work relating to 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 April 16, 2009 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. As of this filing, documents describing protocols that are made available pursuant to the Final Judgments have been downloaded more than 412,000 times.

Separately, there are a total of 54 companies licensing patents for Communications Protocols through the MCPP program (which was created pursuant to Section III.E of the Final Judgments), 43 of which have royalty bearing licenses. Fifteen of those patent licensees have

notified Microsoft that they 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.⁴ 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. *Current Status of Microsoft's Technical Documentation*

The final documentation for Windows 7, the next release of the Windows operating system, was published on July 2, 2009, before the “release to manufacturing” of the operating system on July 22, 2009. In addition, Microsoft has created and delivered to the TC the System Documents required by the Final Judgments. The System Documents all are now available to the public on MSDN.

3. *Current Status of Microsoft's Progress in Resolving Technical Documentation Issues (“TDIs”) through July 31, 2009*

The current status of TDIs identified in rewritten documentation through July 31, 2009, is noted in the chart below. The total number of TDIs spans the entire range of nearly 30,000 pages

⁴ 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.

of rewritten MCPP documentation, newly released Windows 7 documentation, as well as the overview materials and System Documents.⁵

	As of 6/30/2009	Period Ended 7/31/2009
Priority 1 TDIs Submitted by the TC		
Submitted this period		146
Closed this period		199
Outstanding	633	580
Priority 2 TDIs Submitted by the TC		
Submitted this period		249
Closed this period		366
Outstanding	937	820
Priority 3 TDIs Submitted by the TC		
Submitted this period		143
Closed this period		211
Outstanding	404	336
TC Submitted		538
TC Closed		776
TC Outstanding	1974	1736
TDIs Identified by Microsoft		
Identified this period		369
Closed this period		202
Microsoft Outstanding	114	281
TDIs Identified by Licensees		
Identified this period		17

⁵ The TDI numbers as of June 30, 2009, 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 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		14
Licensees Outstanding	13	16
TDIs Identified by TC in Overview/Reference Materials		
Identified this period		3
Closed this period		10
Overview Outstanding	36	29
TDIs Identified by TC in System Documents		
Identified this Period		88
Closed this Period		65
System Outstanding	270	293
Total Outstanding	2407	2355

Microsoft has made good progress processing the increased rate of TDI identification by the TC. As the chart above reflects, the total amount of outstanding TC-generated TDIs declined by 238 in July.

4. *Technical Documentation Testing and Licensee Support*

As previously reported, the testing processes used for the rewritten protocol documentation have been integrated into Microsoft's standard business practices. The testing of the new Windows 7 documents in MCPP will be spread out over the next several testing clusters. Microsoft expects that testing of the Windows 7 documents will be completed in approximately June 2010.

Separately, Microsoft is continuing to make various resources available to assist licensees in using the technical documentation. Microsoft's interoperability lab remains open and available for use by licensees. Two licensees, including PFIF (Samba), have scheduled time in the interoperability lab in the upcoming months. In addition, planning is underway for a

plug-fest to be held during the week of September 14, 2009, at this year's Storage Developer Conference (sponsored by SNIA.org). The plug-fest will focus on the CIFS/SMB/SMB2 protocols.

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.

Approximately 500 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 273 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 59 contingent staff working as technical writers, editors, and production technicians. Additionally, as the protocol testing effort continues, approximately 40 full-time employees and approximately 110 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, that annual certifications are completed for the most recent year, 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 August 5, 2009, Microsoft has received four complaints or inquiries since the April 16, 2009 Joint Status Report. None of these complaints or inquiries are related to any of Microsoft's compliance obligations under the Final Judgments.

Dated: August 7, 2009

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/

ELLEN COOPER
Assistant Attorney General
Chief, Antitrust Division
Office the Maryland Attorney General
200 Saint Paul Place
Baltimore, MD 21202
410/576-6470

/s/

AARON D. HOAG
JAMES J. TIERNEY
SCOTT A. SCHEELE
ADAM T. SEVERT
Trial Attorneys
U.S. Department of Justice
Antitrust Division
450 Fifth Street, N.W.
Suite 7100
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*