

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:

October 13, 2010 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 23, 2010, 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 16, 2010, 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>

1. *TDI Closure Plan*

In the prior Joint Status Report, Plaintiffs described in detail the plan for the time between now and the scheduled end of the Final Judgments in May 2011. The plan, which contains a series of milestones, was designed to bring to an orderly conclusion the efforts of the TC and Microsoft to improve the technical documentation and to avoid last-minute surprises in the final months leading up to May 11, 2011.

As the plan has been implemented, the TC has increased its focus on working with Microsoft to close TDIs older than 180 days. This process has proven to be very time-consuming for both the TC and Microsoft and has thus progressed more slowly than expected. The October 1 milestone called for Microsoft to reduce the number of open TDIs over 180 days old to 25% of the level of April 30, 2010. While Microsoft fell just short, missing this milestone by four TDIs, Plaintiffs recognize that Microsoft made significant progress by reducing the number of open TDIs over 180 days old to 28% of the level of April 30, 2010. This progress was made possible by extraordinary efforts from both the TC and Microsoft.

2. *TC Staff Retention Incentives*

In the prior Joint Status Report, Plaintiffs and Microsoft informed the Court that the TC has implemented a Staff Retention Incentive Plan. Plaintiffs can now report that 45 of 47 eligible TC staff members have committed to remain at the TC through the end of the Final

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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.

Judgments and are therefore eligible for the Staff Retention Incentive Plan. Plaintiffs are satisfied that this level of commitment by TC staff significantly mitigates the risk of attrition by TC staff due to the nearing expiration of the Final Judgements.

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

The State Plaintiffs and the TC are currently testing beta versions of upcoming Internet Explorer 9 and Windows 7 Service Pack 1 releases for compliance with the Final Judgments.

**C. Complaints**

In August of 2010, the State Plaintiffs and the TC received a new substantive complaint. The State Plaintiffs and the TC are currently engaged in ongoing discussions with both Microsoft and the complainant with respect to the complaint.

**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 since the June 16, 2010 Joint Status Report.

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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.

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

1. *MCPPI Status Update*

Since February 2008, the documentation for Microsoft's Communications Protocols has been available free of charge on Microsoft's website. As of this filing, documents describing protocols made available pursuant to the Final Judgments have been downloaded more than 512,000 times.<sup>3</sup>

Separately, there are a total of 50 companies licensing patents for Communications Protocols through the MCPPI program (which was created pursuant to Section III.E of the Final Judgments), 36 of which have royalty bearing licenses. Numerous other entities may be making use of the protocol documentation that has been made available to the public on the MSDN website.<sup>4</sup>

Since the last Joint Status Report, Microsoft has continued to promote offers for MCPPI licensees to receive Technical Account Manager support and to obtain access to Windows source code at no additional charge. At present, 26 licensees are slated to receive free Technical

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<sup>3</sup> The number of downloads is lower than previously reported. Microsoft recently conducted a review of the download information to ensure that all of the more than 300 web addresses that Microsoft tracks for MCPPI purposes are included. As a result of the review, Microsoft discovered that anomalies in the automated data retrieval process caused the inadvertent duplicative counting of some downloads. The correct number of downloads (with dates corresponding to past Joint Status Reports) are as follows: June 2008 - 30,000; September 2008 - 83,000; January 2009 - 169,000; April 2009 - 274,000; August 2009 - 363,000; December 2009 - 443,000; March 2010 - 469,000; and June 2010 - 493,000. Microsoft has addressed these technical anomalies and added precautions to ensure accurate counting of downloads.

<sup>4</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 MCPPI, such as a broad patent cross licensing agreement.

Account Manager support from Microsoft, and six licensees have access to Windows source code.

2. *Current Status of Microsoft's Progress in Resolving Technical Documentation Issues ("TDIs") through September 30, 2010*

As reported to the Court in the last Joint Status Report, the schedule agreed to by the parties between now and May 2011 is as follows:

<b>Date</b>	<b>Event</b>	<b>Status</b>
July 1, 2010	Deadline for deciding on document re-writes	Completed
September 1, 2010	Deadline for Microsoft completion of document re-writes	Completed
October 1, 2010	Open TDIs over 180 days reduced to 25% of level of April 30, 2010	In Progress (4 TDIs to reach milestone)
January 1, 2011	Open TDIs over 90 days reduced to 15% of level of April 30, 2010	
January 1, 2011	TC stops submitting TDIs	
March 15, 2011	Open TDIs reduced to 15% of level of April 30, 2010	
March 15, 2011	Open Priority 1 + Priority 2 TDIs reduced to 15% of level of April 30, 2010	
March 15, 2011	Open TDIs over 90 days reduced to 5% of level of April 30, 2010	
April 15, 2011	Open TDIs reduced to 5% of level of April 30, 2010	
April 15, 2011	Open Priority 1 + Priority 2 TDIs reduced to 5% of level of April 30, 2010	

a) Total TDIs

The current status of TDIs identified in the MCPP documentation through September 30, 2010, is noted in the chart below.<sup>5</sup>

	As of 8/31/2010	Period Ended 9/30/2010
<b>Priority 1 TDIs Submitted by the TC</b>		
Submitted this period	514	122
Closed this period		30
Outstanding		606
<b>Priority 2 TDIs Submitted by the TC</b>		
Submitted this period	807	362
Closed this period		35
Outstanding		1134
<b>Priority 3 TDIs Submitted by the TC</b>		
Submitted this period	394	97
Closed this period		18
Outstanding		473
<b>Total TDIs Submitted by the TC</b>		
TC Submitted	1715	581
TC Closed		83
<i>TC Outstanding</i>		2213
<b>TDIs Identified by Microsoft</b>		
Identified this period	204	54
Closed this period		105
<i>Microsoft Outstanding TDIs</i>		153
<b>TDIs Identified by Licensees</b>		
Identified this period	22	23
Closed this period		21
<i>Licensee Outstanding TDIs</i>		24

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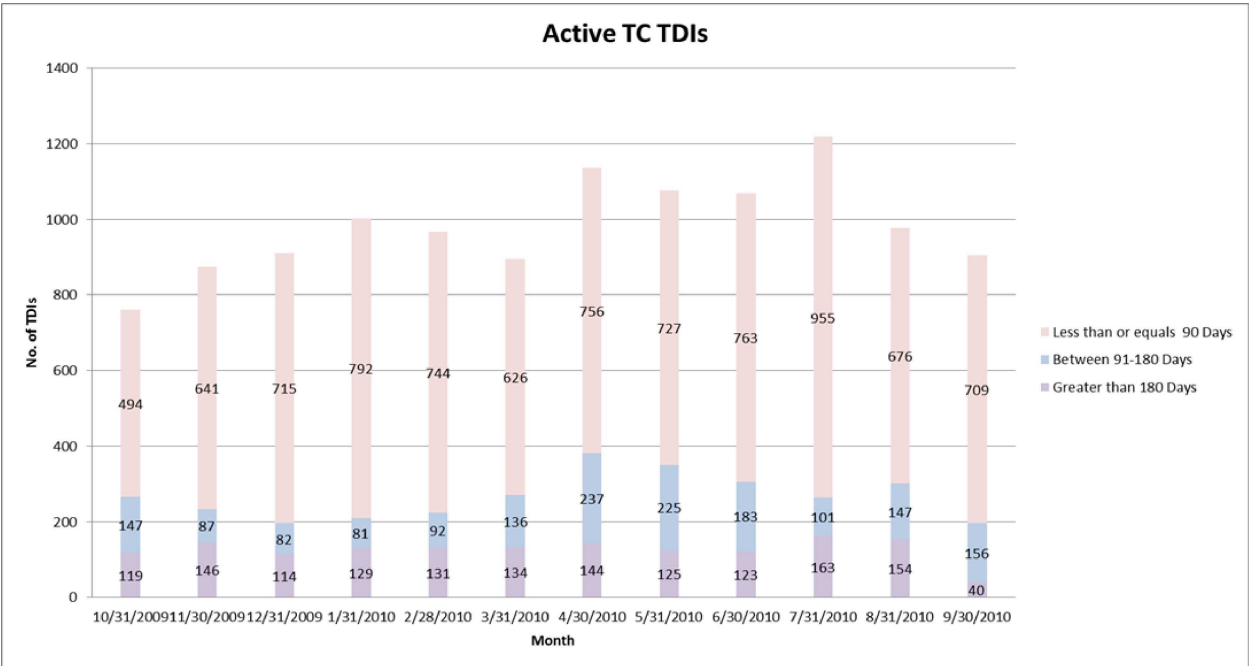
<sup>5</sup> The August TDI numbers reported in this chart differ slightly from the numbers provided in the September Supplemental Status Report because the dynamic nature of tracking TDIs in multiple databases occasionally results in categorization and exact TDI closure dates changing after the previous reporting period.

<b>TOTAL OUTSTANDING TDIs</b>	1941	2390
<i>TC TDIs Resolved Pending Publication</i>	738	1308
<b>Total Active TDIs (Outstanding minus Resolved Pending Publication)</b>	1203	1082

In addition, Microsoft regularly updates the technical documentation as appropriate to reflect relevant feedback compiled through its internal tracking mechanisms. As of the end of September, the total number of relevant items tracked by Microsoft was 184.

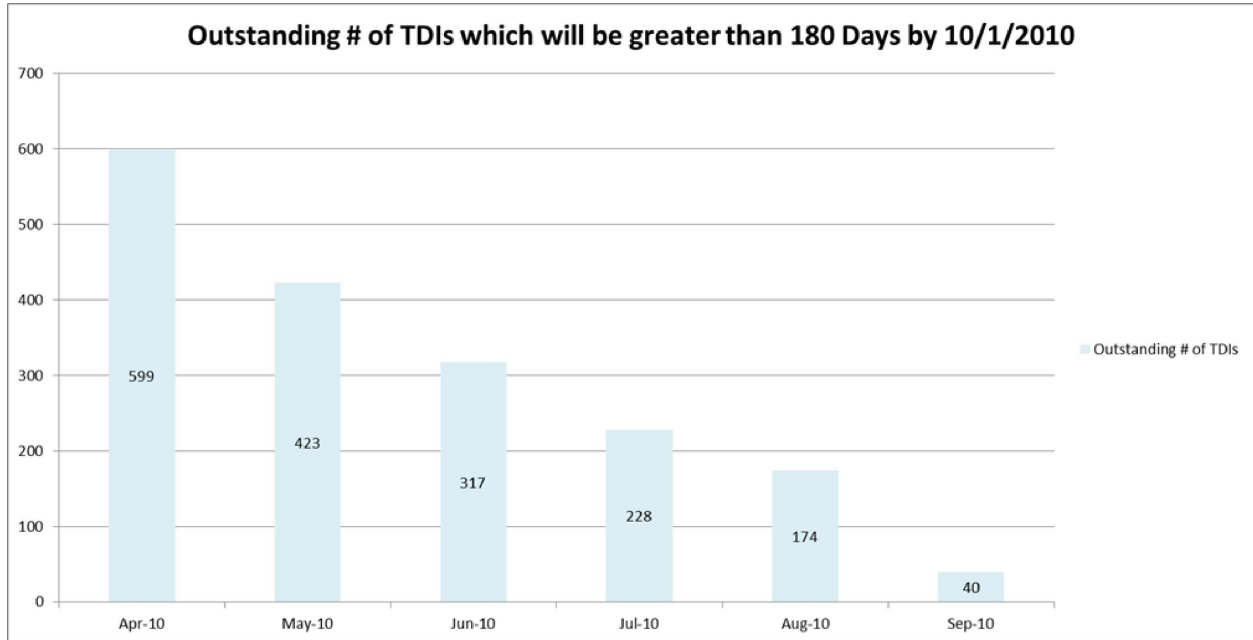
b) 180-Day TDI Project

Below is a chart reflecting the total number of TC TDIs that have been open for less than three months, between three and six months, and more than six months.





As set forth in the chart above, on October 1, there were 40 active TC TDIs greater than 180 days old, just shy of the target of 36 TDIs for this milestone. Microsoft’s progress in resolving these 180-Day TDIs over the course of the last several months is set forth in the chart below (the blue bars represent the active TDIs at the end of each month):



The 180-Day milestone was designed to ensure that significant progress was being made on these older TDIs, which generally are more complex and harder to resolve, and to expose any issues early on so that the parties can work together to resolve them expediently. This “early warning system” alerted the parties last month that the resolution of the 180-Day TDIs was slower than anticipated and allowed Microsoft and the TC to adjust their processes accordingly in advance of the October 1 milestone. Microsoft is pleased with the progress made since then on these older TDIs and expects it will reach and exceed the target of 36 TDIs remaining before

the Court conference on October 13. This progress represents a significant amount of work and a high level of cooperation among Microsoft, the TC and the Plaintiffs.

c) 90-Day TDI Project

The next milestone requires that Microsoft reduce to 57 or fewer the number of TDIs that are 90 days or older on January 1. As there were 970 active TDIs on October 2, which is 90 days before January 1, Microsoft will need to resolve at least 913 TDIs to reach this goal.

3. *Technical Documentation Testing and Licensee Support*

Microsoft continues to test MCPP documentation that has been released since Windows 7.

Microsoft sponsored the Interoperability Lab at the “SNIA 2010 Storage Developer Conference” during September 20 – 23, 2010, in Santa Clara, California. Twenty-five companies were registered to participate, and over 100 individuals attended and participated in the interoperability testing. Microsoft also hosted a successful Interoperability Lab for the Samba development team during the week of September 27, 2010.

In addition, Microsoft continues to make the usual resources available to assist licensees in using the technical documentation, including by providing access to support engineers and through user forums. In addition, Microsoft’s Interoperability Lab remains open and available for use by licensees.

#### 4. *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 and Microsoft Interoperability Program, all of these individuals' work relates to all three programs or is exclusive to the MCPP. Of these, approximately 222 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 28 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

MCPD 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 are committed to monitoring matters pertaining to the Final Judgments.

**C. Complaints and Inquiries Received by Microsoft**

As of October 1, 2010, Microsoft has received 93 complaints or inquiries since the June 16, 2010 Joint Status Report. None of these complaints or inquiries is related to any of Microsoft's compliance obligations under the Final Judgments.

Dated: October 4, 2010

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

/s/

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FOR THE UNITED STATES  
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ANTITRUST DIVISION

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CONNECTICUT, IOWA, KANSAS,  
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UTAH, AND THE DISTRICT OF COLUMBIA

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