

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 19, 2011 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 October 4, 2010, served as an interim report, containing information on selected activities relating to enforcement of the Final Judgments. Order at 1-3 (May 14, 2003). 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 working closely with Microsoft to resolve previously identified technical documentation issues ("TDIs").<sup>1</sup>

---

<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.

In the June 16, 2010, 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. The milestones were also designed to give all parties specific targets to plan around and to give all parties and the Court an early warning system in the event that resolution of the vast majority of TDIs proves to be substantially more difficult than the parties now anticipate.

Microsoft has continued to make good progress responding to and resolving TDIs. Although Microsoft missed the October 1 milestone by a week, Microsoft was able to meet the January 1 milestone nearly a month ahead of schedule. After Microsoft met the January 1 milestone, and because the schedule called for the TC to stop submitting TDIs on January 1, 2011, the TC increased its focus on identifying new TDIs through the end of December.

As a direct result of this shift in the TC's focus, the TC identified a very large number of new TDIs in December. Although it was anticipated that the TDI count would increase in December, the number far exceeded Plaintiffs' expectations. It is important to note that the large number of TDIs identified in December should not be viewed as an indication that the documentation has declined in quality. On the contrary, the number of TDIs found per page remains in the same range as it has been in recent months. The reason for the TDI spike in December is that the TC reviewed many more pages of documents than it typically does in a month. The TC's increased output was a result of its increased focus on identifying new TDIs

rather than assisting in correcting already identified TDIs and the long overtime hours worked by its staff to complete the TC's planned review before year-end.

To increase the pace at which TDIs are resolved to cope with the larger than expected number identified in December, the TC and Microsoft—with Plaintiffs' approval—have agreed to several process changes intended to improve the efficiency of communication between Microsoft and TC engineers. These changes do not, however, alter the TC's expectations regarding the quality of Microsoft's responses to TDIs. Rather, they are designed to take advantage of the fact that the TC is no longer identifying new TDIs and is now focused on resolving existing TDIs. Plaintiffs, the TC, and Microsoft have agreed to review these process changes in early March, or sooner if necessary, to ensure that they are having the desired effect.

But even with these process changes, Plaintiffs believe it unlikely that Microsoft will be able to meet the March 15 milestones. The March 15 milestones would have been markedly different had the parties anticipated how many TDIs would be identified in December. There are simply too many TDIs for Microsoft to resolve in two months.

Plaintiffs do not view that as a significant cause for concern, however, because they expect that Microsoft will be able to meet the April 15 milestones. Microsoft has demonstrated that it has the ability to resolve large numbers of TDIs in a short amount of time. Indeed, more than 2,000 TDIs have been resolved in the last two weeks. Going forward, Plaintiffs' focus will be on ensuring that Microsoft is on track to meet the final targets and will judge its progress by that measure.

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

In the Joint Status Report dated October 4, 2010, the State Plaintiffs reported a new substantive complaint that they received in August of 2010 concerning toolbars. Toolbars are a form of Internet browser add-on which permit users to extend functionality of their browser. The complaint had two related components concerning how toolbars are marketed and technically managed in Internet Explorer 9 (“IE 9”). The State Plaintiffs have not completed their investigation of the marketing component of this complaint.

The technical aspect of the complaint related to new functionality Microsoft added in IE 9 which measures how long add-ons take to load. Microsoft added this functionality because of its concern that users may be frustrated if their browser is slowed as a result of the performance of add-ons. If the cumulative load time exceeds a preset threshold, IE 9 displays a “Choose Add-ons” screen that provides the user with specific information about the performance of add-ons on the user's machine and opportunities to disable some or all add-ons. The State Plaintiffs were concerned that users might inadvertently disable add-ons they wished to leave enabled.

Setting aside any consideration of Final Judgment requirements, Microsoft agreed to make certain changes to address the State Plaintiffs’ concerns. Specifically, Microsoft agreed to revise IE 9 as follows: 1) the user will now have to perform two keystrokes to “Disable All” add-ons; 2) Microsoft will increase the number of add-ons visible on the “Choose add-ons”

---

<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.

screen (without scrolling) from four to six where possible; and 3) IE 9 will disregard an add-on's initial run, which may take longer than subsequent runs, from calculation of load times. Subject to TC review of the actual implementation of these changes, the State Plaintiffs believe these changes will reduce the likelihood of users inadvertently disabling add-ons, and resolves the technical component of this complaint.

### **C. Complaints**

Since the prior full Status Report, filed on June 16, 2010, eight 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 its receipt. The New York and California Groups have not 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 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 October 4, 2010 Joint Status Report.

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

#### *1. MCPP 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 533,000 times.

Separately, there are a total of 49 companies licensing patents for Communications Protocols through the MCPP program (which was created pursuant to Section III.E of the Final Judgments), 28 have royalty bearing licenses, eight have fixed fee licenses and 13 have royalty-free licenses. Since the previous Joint Status Report, SwiftTest, Inc. signed a patent license. Microsoft understands that 24 licensees are currently 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.

Microsoft continues to promote offers for MCPP licensees to receive Technical Account Manager support and to obtain access to Windows source code at no additional charge. Currently, 23 licensees have elected to receive free Technical 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 December 31, 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 <b>(36 TDIs)</b>	Completed on 10/8/10

<b>Date</b>	<b>Event</b>	<b>Status</b>
January 1, 2011	Open TDIs over 90 days reduced to 15% of level of April 30, 2010 <b>(57 TDIs)</b>	Completed on 12/5/10
January 1, 2011	TC stops submitting TDIs	Completed on 1/1/11
March 15, 2011	Open TDIs reduced to 15% of level of April 30, 2010 <b>(170 TDIs)</b>	
March 15, 2011	Open Priority 1 + Priority 2 TDIs reduced to 15% of level of April 30, 2010 <b>(139 TDIs)</b>	
March 15, 2011	Open TDIs over 90 days reduced to 5% of level of April 30, 2010 <b>(19 TDIs)</b>	
April 15, 2011	Open TDIs reduced to 5% of level of April 30, 2010 <b>(57 TDIs)</b>	
April 15, 2011	Open Priority 1 + Priority 2 TDIs reduced to 5% of level of April 30, 2010 <b>(46 TDIs)</b>	

The current status of TDIs identified in the MCPP documentation through December 31, 2010, is noted in the chart below.

	<b>As of 11/30/2010</b>	<b>Period Ended 12/31/2010</b>
<b>Priority 1 TDIs Submitted by the TC</b>		
Submitted this period	490	1776
Closed this period		24
Outstanding		2242
<b>Priority 2 TDIs Submitted by the TC</b>		
Submitted this period	828	3409
Closed this period		72
Outstanding		4165



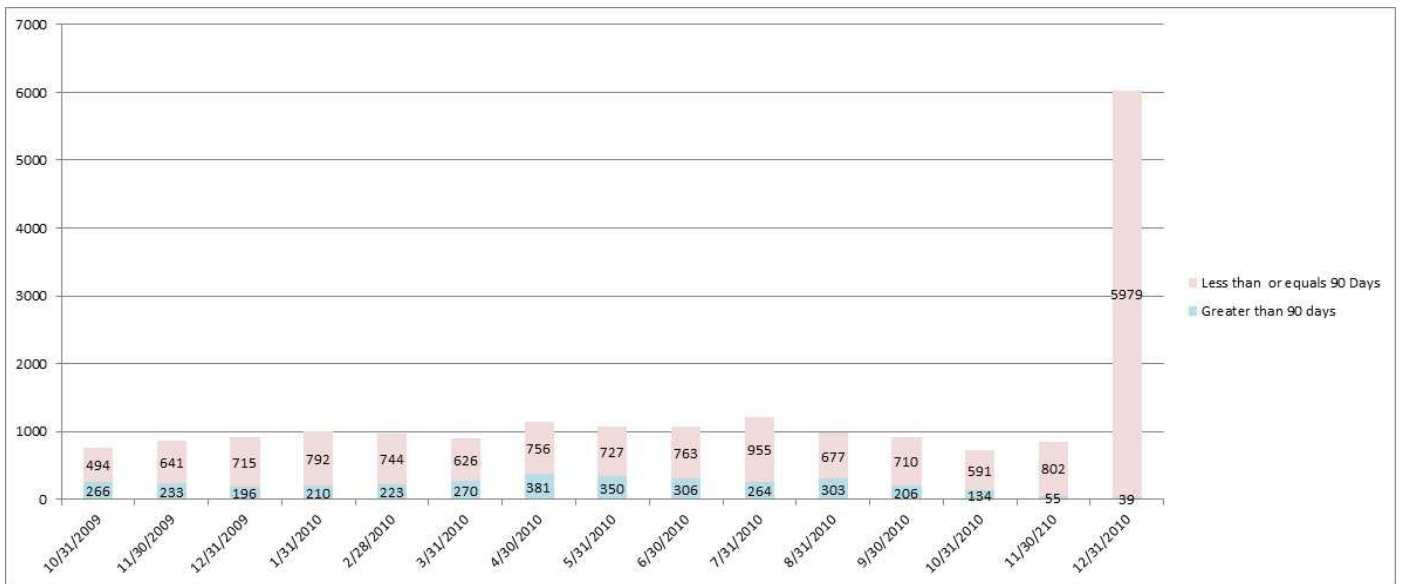
	As of 11/30/2010	Period Ended 12/31/2010
<b>Priority 3 TDIs Submitted by the TC</b>		
Submitted this period	175	284
Closed this period		19
Outstanding		440
<b>Total TDIs Submitted by the TC</b>		
TC Submitted	1493	5469
TC Closed		115
<i>TC Outstanding</i>		6847
<b>TDIs Identified by Microsoft</b>		
Identified this period	209	47
Closed this period		55
<i>Microsoft Outstanding TDIs</i>		201
<b>TDIs Identified by Licensees</b>		
Identified this period	17	16
Closed this period		10
<i>Licensee Outstanding TDIs</i>		23
<b>TOTAL OUTSTANDING TDIs</b>	<b>1719</b>	<b>7071</b>
<i>TC TDIs Resolved Pending Publication</i>	635	828
<b>Total Active TDIs (Outstanding minus Resolved Pending Publication)</b>	<b>1084</b>	<b>6243</b>

In addition to the TDIs reflected in the table above, Microsoft regularly updates the technical documentation as appropriate to reflect relevant feedback compiled through its internal tracking mechanisms. As of the end of December, the total number of relevant items tracked by Microsoft was 202.

As plaintiffs described in their section of this Joint Status Report, the TC filed a significant number of TDIs leading up to the deadline in December. As a result, considerable challenges lie ahead for Microsoft and the TC to resolve the outstanding TDIs in a timely fashion. Microsoft is devoting substantial resources to address the last remaining TDIs, and early indications suggest that Microsoft and the TC are well equipped to address these TDIs. In the

month of January alone, the TC has closed (pending publication) 2,087 of the 6,243 TC TDIs that were active on December 31. Although Microsoft believes it can handle the volume of TDIs necessary to meet the final April milestones, at this time Microsoft believes it will not meet the March milestones given the unanticipated volume of TDIs filed in December.

The chart below shows how many of the TDIs are greater than and less than 90 days old. As noted above, the total number of active TC TDIs has been reduced by 2,087 since December 31, 2010.



### 3. *Technical Documentation Testing and Licensee Support*

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

Microsoft will host a combined Microsoft Active Directory and Microsoft Exchange plugfest on January 24-28, 2011. Seven companies are registered to attend. Microsoft will also

host an Interoperability Lab for the Oracle File Services development team during the week of January 31, 2011.

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.

More than 400 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 232 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 23 full-time employees and approximately 71 contingent staff working as technical writers, editors, and production technicians. Additionally, as the protocol testing effort continues, approximately 7 full-time employees and approximately 100 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 are committed to monitoring matters pertaining to the Final Judgments.

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

As of January 10, 2011, Microsoft had received 68 complaints or inquiries since the October 4, 2010 Joint Status Report. Only one of these complaints is related to any of Microsoft's compliance obligations under the Final Judgments. The complaint asserts that Microsoft has failed to provide documentation for certain application programming interfaces

(APIs) used by Microsoft Middleware. The products in question are not Microsoft Middleware under the Final Judgments, and Microsoft has confirmed that even if they were, no undocumented APIs are in fact used by the products in question. Microsoft has shared details of the complaint with the Plaintiffs.

Dated: January 14, 2011

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  
ERICH D. ANDERSEN  
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  
700 Sixth Street, N.W.  
Washington, DC 20001  
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*