

Microsoft Consent Decree Compliance Advisory – August 1, 2003

This Microsoft Consent Decree Advisory addresses Microsoft's compliance with Sections III.E and III.H of the Consent Decree approved and entered by the Court as a Final Judgment on November 12, 2002.

Section III.E of the Consent Decree requires Microsoft to make available for use by third parties on reasonable and non-discriminatory terms certain technology used by Microsoft server operating system products to interoperate with Windows operating system products. Microsoft began to offer this technology for license on or about August 6, 2002.

The Department has carefully and thoroughly reviewed and evaluated the terms, royalties, and scope of the licenses offered by Microsoft and investigated all related industry complaints. Based on feedback from the Department and the Plaintiff States, Microsoft has greatly simplified and improved the license terms and the royalty rates and structure. Specifically, Microsoft has agreed to revise certain aspects of the licensing program, including:

- substantially reducing the amount of the royalties paid by licensees;
- reducing the royalty pre-payment required at the time the licensee signs the license to \$50,000, which is creditable toward a licensee's royalty payments;
- allowing licensees to renew their licenses for an additional five-year term at any time before the Final Judgment expires on November 12, 2007, thus allowing licensees to extend their license term well past the period covered by the Final Judgment;
- eliminating stringent program entry criteria that may have deterred some prospective licensees from taking a license;
- improving the license warranties to ensure that the licensee receives the appropriate technical documentation in the appropriate form;
- modifying a significant license term that could have deterred prospective licensees who choose to work with the open source community;
- making available the documentation for the communications protocols to prospective licensees for evaluation prior to signing a license; and
- enlarging the scope of the license to permit use of the communications protocols both to communicate with a larger variety of Windows client operating systems and to operate on clients that are functioning as servers.

In addition, Microsoft has stated that it will license broader usage rights than those offered by the current license on reasonable and non-discriminatory terms. If potential licensees are interested in broader usage rights, they are encouraged to contact Microsoft to discuss their

individual needs.

The revised licenses will be available for review on Microsoft's website today at <http://members.microsoft.com/consent/Info/default.aspx>. The Department encourages all interested parties to review the revised licenses. The Department remains strongly committed to ensuring that the communications protocol licenses provide a mechanism for reasonable and non-discriminatory access to the relevant technology in a manner consistent with the language and intent of the Consent Decree.

Section III.H of the Consent Decree requires Microsoft to allow end users and OEMs to enable or remove access to all middleware products – including web browsers, e-mail clients, and media players – through a readily accessible, centralized mechanism. This mechanism must also allow end users and OEMs to specify a non-Microsoft middleware product as the default middleware product to be launched in place of the corresponding Microsoft middleware product. In order to comply with Section III.H, Microsoft created the “Set Program Access & Defaults” (“SPA&D”) utility and included it in Windows XP Service Pack 1 and Windows 2000 Service Pack 3.

The Department has reviewed and continues to review Microsoft's compliance with Section III.H of the Consent Decree. In response to the Department's concerns, Microsoft has made three substantial changes to its implementation of the SPA&D tool. First, for Windows XP, the SPA&D icon will be placed permanently on the main Start menu. Originally, the SPA&D icon appeared within the “All Programs” submenu of the Start menu, or in a section of the Start menu that varied with usage and was not permanent. Users can now download an update from Microsoft's website that updates the location of the SPA&D icon; this change will also be included in Windows XP Service Pack 2 when it is released. Second, Windows XP Service Pack 1 can now be downloaded with non-Microsoft web browsers; Microsoft's Internet Explorer web browser is no longer required. Third, Microsoft has made Help files relating to the SPA&D tool available on its website. These Help files are also available in the Help search mechanism on an end user's computer when the user is connected to the Internet. Microsoft will also include this Help content in Windows XP Service Pack 2.

As first announced on August 5, 2002, the United States may periodically issue Microsoft Consent Decree Compliance Advisories as part of its monitoring of Microsoft's implementation of the Consent Decree. This is the third such advisory. Communications concerning Microsoft's compliance with Sections III.E, III.H, or any other section of the Consent Decree may be addressed to: Renata B. Hesse, Chief, Networks & Technology Section, Antitrust Division, United States Department of Justice, 600 E Street, NW, Suite 9500, Washington, DC 20530. Complaints concerning Microsoft's compliance with the Consent Decree, including complaints relating to the Section III.E licenses, may also be submitted by e-mail to the Technical Committee constituted pursuant to the Consent Decree at Complaints@TheTC.org or by mail to the Technical Committee at 10500 NE 8th Street, Suite 625, Bellevue, WA 98004.