

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:

December 16, 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 August 13, 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 August 7, 2009, 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 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 created 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. The Plaintiffs are therefore in a position to assess whether the technical documentation is “substantially complete.” After consulting with the TC, Plaintiffs have determined that the technical documentation is now substantially complete. As explained in prior Joint Status Reports, by “substantially complete,” Plaintiffs mean that the documentation, when considered as a whole, appears on an initial reading to cover the information required by the templates in a reasonably thorough and comprehensible manner.

The “substantially complete” determination means that Microsoft may now end the MCPP licensee interim royalty credit and will be able to resume collecting royalties. This determination, while a significant milestone in the overall documentation rewrite project, does not mean that the documents are finished or that no additional work remains to be done. There is, in fact, much work left to do. For example, the TC will continue to identify substantial numbers of technical documentation issues (“TDIs”), a small number of documents require substantial rewriting or reorganization, test suites for Windows 7 protocols must be written, and Microsoft must continue to resolve licensee concerns and TDIs in a timely manner.

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.

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 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 have seen positive signs regarding Microsoft's TDI resolution rate.

B. Competing Middleware and Defaults²

In the Joint Status Report dated August 7, 2009, the parties reported the proposed resolution of a complaint regarding how Internet Explorer ("IE") 8 was being installed on PCs running Windows XP and Vista. As agreed to, in August of 2009, Microsoft modified the IE 8 first-run process. The user now has a clear choice with respect to the browser default setting before the "Choose your settings" screen offers the Express/Custom option.

C. Complaints

In September of 2009, 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.

Since the prior full Status Report, filed on April 16, 2009, fifteen 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,

² 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.

the Final Judgment. Each of the non-substantive complaints received a simple response acknowledging its receipt. Other than the new complaint mentioned above, the State Plaintiffs have received no additional substantive complaints.

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 August 7, 2009 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 that are made available pursuant to the Final Judgments have been downloaded more than 732,000 times.

Separately, there are a total of 55 companies licensing patents for Communications Protocols through the MCPP program (which was created pursuant to Section III.E of the Final Judgments), 42 of which have royalty bearing licenses. Fourteen 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.³

³ 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.

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, 27 licensees have signed up with Microsoft to receive free Technical Account Manager support, and seven licensees have signed up for Windows source code access.

2. Current Status of Microsoft's Technical Documentation

As set forth in Section II.A of this JSR, Microsoft's protocol documentation is "substantially complete," which means that Microsoft may now end the MCPP licensee interim royalty credit and resume collecting royalties. Microsoft will work with Plaintiffs to ensure a smooth transition for MCPP licensees.

3. Current Status of Microsoft's Progress in Resolving Technical Documentation Issues ("TDIs") through November 30, 2009

The current status of TDIs identified in rewritten documentation through November 30, 2009, is noted in the chart below. The total number of TDIs spans the entire range of nearly 30,000 pages of rewritten MCPP documentation, newly released Windows 7 documentation, as well as the overview materials and System Documents.⁴

⁴ The TDI numbers as of October 31, 2009, reported in this chart differ slightly from the numbers provided in the previous 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.

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.

	As of	Period Ended
	10/31/2009	11/30/2009
Priority 1 TDIs Submitted by the TC		
Submitted this period		173
Closed this period		193
Outstanding	597	577
Priority 2 TDIs Submitted by the TC		
Submitted this period		354
Closed this period		393
Outstanding	838	799
Priority 3 TDIs Submitted by the TC		
Submitted this period		274
Closed this period		236
Outstanding	346	384
TC Submitted		801
TC Closed		822
TC Outstanding	1781	1760
TDIs Identified by Microsoft		
Identified this period		249
Closed this period		305
Microsoft Outstanding	287	231
TDIs Identified by Licensees		
Identified this period		11
Closed this period		9
Licensees Outstanding	8	10
TDIs Identified by TC in		
Overview/Reference Materials		
Identified this period		2
Closed this period		3
Overview Outstanding	13	12
Total Outstanding	2089	2013

4. Technical Documentation Testing and Licensee Support

Microsoft's testing of the Windows 7 documentation is progressing and is expected to be completed in approximately June 2010.

Microsoft continues 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. Planning is underway for the next weeklong plug-fest focused on Active Directory protocols, which is scheduled for January 2010 on the Microsoft campus.

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 263 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 29 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 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 December 4, 2009, Microsoft has received ten complaints or inquiries since the August 7, 2009 Joint Status Report. None of these complaints or inquiries is related to any of Microsoft's compliance obligations under the Final Judgments.

Dated: December 8, 2009

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

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Respectfully submitted,

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