

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:

March 10, 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 December 16, 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 December 8, 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

Microsoft has demonstrated, over the course of several months, that it is able to resolve Technical Documentation Issues (“TDIs”) at approximately the same rate at which they are identified by the TC. The Plaintiffs do not think there is currently cause for concern over the project’s progress and see no reason why it should not be completed by May 2011.

B. Competing Middleware and Defaults²

In the Joint Status Report dated December 8, 2009, the State Plaintiffs reported that they and the TC had received a new substantive complaint in September of 2009. This complaint relates to add-ons to Internet Explorer. Setting aside any consideration of Final Judgment requirements, Plaintiffs and Microsoft have agreed that Microsoft will make certain technical changes, to be published on MSDN. Plaintiffs have informed Microsoft that it can enforce these technical changes, so long as Microsoft's conduct is otherwise consistent with the terms of the Final Judgment.

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

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 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.

officers under the Final Judgments, as well as the inquiries and complaints received by Microsoft since the December 8, 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 800,000 times.

Separately, there are a total of 53 companies licensing patents for Communications Protocols through the MCPP program (which was created pursuant to Section III.E of the Final Judgments), 40 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.³

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 six licensees have signed up for Windows source code access.

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.

2. *Current Status of Microsoft's Technical Documentation*

Microsoft added seven new technical documents to the MCPP documentation set in January 2010. These documents are for new protocols implemented in the next version of Windows Home Server, which will be released later this year.

3. *Current Status of Microsoft's Progress in Resolving Technical Documentation Issues ("TDIs") through February 28, 2010*

The current status of TDIs⁴ identified in rewritten documentation through February 28, 2010, is reflected in the chart below. The Court will note that Microsoft has revised the format in which TDIs are reported. After consulting with the Plaintiffs, Microsoft is providing additional information in the chart to give the Court a fuller picture of Microsoft's progress in resolving TDIs, including in the period leading up to publication.

As Microsoft has explained in previous status reports, TC-generated TDIs remain open as a formal matter until revised documents reflecting the agreed-upon changes have been published through Microsoft's six-week publication cycle and have been verified again by the TC. Thus, Microsoft may address a TDI during the reporting period, but, if that reporting period does not coincide with the six-week publication cycle, the TDI will remain open until the next reporting

⁴ The total number of TDIs spans the entire range of nearly 30,000 pages of rewritten MCPP documentation and the newly released Windows 7 documentation, as well as the overview materials and System Documents.

As to the category of 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 filed by the Microsoft employees involved in answering the licensees' questions. In these circumstances, Microsoft categorizes the TDI as a licensee TDI.

period when the agreed-upon changes are published and verified by the TC.⁵ For previous reports to the Court, this TDI would be listed as “outstanding” for the period (and grouped with TDIs that Microsoft still is in the process of working with the TC to resolve) even though Microsoft’s proposed changes address the TDI satisfactorily.

The revised chart below provides a separate category for such TDIs that have been addressed to the TC’s satisfaction during the reporting period but remain open pending publication and TC verification. Microsoft recognizes that the TC still must verify following publication that the agreed-upon changes resolving the TDI have been incorporated into the published documentation. Microsoft believes, however, that the number of TDIs that have been addressed and are pending publication is a helpful data point for the Court to have when assessing Microsoft’s overall progress in resolving TDIs. This format, which is identical to the previous format with the addition of two lines at the bottom, shows how many of the open TDIs already have been addressed, as well as those that were officially “closed” by the TC during the reporting period.

⁵ In addition, because Microsoft's publication cycle and the Court's reporting cycle do not coincide exactly, there will be a small subset of TDIs in each status report classified as resolved pending publication and verification by the TC that will not be formally closed until the publication cycle after the upcoming publication cycle. For example, the “freeze date” for Microsoft’s upcoming publication was February 18, 2010. Any agreed-upon changes for TDIs resolved between February 18 and February 28, 2010, would not make it into the upcoming publication cycle, but would be published in the following cycle.

	As of 1/31/2010	Period Ended 2/28/2010
Priority 1 TDIs Submitted by the TC		
Submitted this period	527	99
Closed this period		95
Outstanding		531
Priority 2 TDIs Submitted by the TC		
Submitted this period	692	253
Closed this period		229
Outstanding		716
Priority 3 TDIs Submitted by the TC		
Submitted this period	428	165
Closed this period		164
Outstanding		429
Total TDIs Submitted by the TC		
TC Submitted	1647	517
TC Closed		488
<i>TC Outstanding</i>		1676
TDIs Identified by Microsoft		
Identified this period	372	149
Closed this period		353
<i>Microsoft Outstanding TDIs</i>		168
TDIs Identified by Licensees		
Identified this period		21
Closed this period		19

<i>Licensee Outstanding TDIs</i>	18	20
TOTAL OUTSTANDING TDIs	2037	1864
<i>TC TDIs Resolved Pending Publication</i>	646	710
Total Active TDIs (Outstanding minus Resolved Pending Publication)	1391	1154

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 a Certificate plug-fest scheduled to begin on April 12, 2010. Microsoft has five other plug-fests scheduled for this calendar year.

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 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 28 full-time employees and approximately 70 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 March 3, 2010, Microsoft has received eleven complaints or inquiries since the December 8, 2009 Joint Status Report. None of these complaints or inquiries is related to any of Microsoft's compliance obligations under the Final Judgments.

Dated: March 5, 2010

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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