

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:
June 24, 2008 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 April 17, 2008, 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 February 29, 2008, 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, described in detail in previous status reports, and are providing feedback to Microsoft on what additional work is still needed.¹

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

Since the prior Joint Status Report, Microsoft has completed producing all of the documents in the Milestone schedule, including the last group of documents that were added to cover an update to the Windows Server 2008 (“Longhorn”) product. Microsoft continues to address issues in the documents that have been identified by the TC and by Microsoft itself; this work will continue over time in order to ensure the overall quality of the documentation.

Three recent matters relating to Microsoft’s progress in improving the documentation are worth noting. First, the TC determined that in the process of revising the technical documentation, Microsoft removed a number of protocol elements that were included in previous versions of the documentation. When this same issue arose last year, Microsoft and the TC discussed that Microsoft would not remove protocol elements from the documentation without first discussing it with the TC in order to ensure that there was no substantive disagreement. Plaintiffs are concerned that the same problem has occurred again. In some cases there may be perfectly valid and sufficient reasons for removing certain protocol elements,² but it is important for the stability of the documentation that the TC review the proposed deletions before they occur, as Microsoft and the TC previously agreed.

Second, and on a related note, the TC has suggested to Microsoft that it would be extremely beneficial to the TC and licensees to create a mechanism for detailing changes between versions of the documentation. Currently, it is difficult to tell exactly what has changed

include Mr. Hunt as well.

² For example, Microsoft or the TC might have discovered that a particular protocol element does not actually pass over the wire between a Windows server and a Windows client, but rather is merely internal within the Windows server and therefore does not need to be documented as part of the MCPP.

when Microsoft releases a new version of the documentation. This slows down the TC in its work by making it difficult to evaluate revisions to the documentation and causes issues such as the one discussed in the previous paragraph, where it is difficult for the TC (and Microsoft itself) to determine whether protocol elements have been removed from the documentation. Licensees have also informed the TC that the absence of version-to-version change information complicates product development. Microsoft was receptive to the TC's suggestion and will work with the TC to develop an effective mechanism to track changes to the documentation.

Finally, at the beginning of the year Microsoft changed the schedule for publishing updated technical documentation from monthly to quarterly. The TC's experience with this change has not been positive, as it creates a longer lag time between the identification of issues in the documentation and the publication of fixes to those issues. Licensees have expressed similar concerns to the TC. The TC therefore raised this issue with Microsoft in a recent meeting, and Microsoft agreed to increase the frequency of publishing updates to the documentation.

As discussed in the prior Joint Status Report, as part of the original documentation plan Microsoft committed to producing a final set of overview documents that explain how the MCPP protocols work together. The TC determined that the initial set of documents was not adequate and the Plaintiffs and the TC therefore informed Microsoft that significant additional work was necessary. Microsoft agreed to create a set of additional "system" documents which would provide more detailed information on the interaction between the protocols in a number of complex scenarios. At the end of March, Microsoft provided the TC with three pilot system documents to evaluate Microsoft's proposed template for the new system documents. The TC

recently gave Microsoft feedback on the pilot documents by identifying a number of technical documentation issues; as a general matter, the TC was concerned with the overall quality of the pilot documents. The TC previously informed Microsoft that it believes there needs to be more than one template for the system documents. Now that the TC has completed its review of the pilot documents, the TC and Microsoft will discuss over the next few weeks what modifications to the template are necessary — including the issue of whether one template is sufficient or whether two templates would be more effective — and what steps should be taken to ensure that subsequent documents meet everyone's expectations in terms of quality.

Microsoft has developed a list of nineteen system documents it plans to create and developed a rough, high-level schedule for producing these documents. As Microsoft describes in its section of this report, Microsoft plans to publish drafts of all nineteen documents by the end of March 2009 and to publish the final version of all system documents by the end of June 2009. Once Microsoft and the TC finalize the template (or templates) for the system documents, Microsoft will develop a more detailed schedule with a number of identifiable deliverables over time. As with the earlier phases of the reset project, establishing individual milestones for particular groups of system documents will allow Plaintiffs and the TC to assess the quality of the newly-created documents in a more orderly way, to provide Microsoft with timely feedback, and to monitor Microsoft's progress in meeting its schedule commitments. Plaintiffs and Microsoft will provide the Court with this detailed plan when it is available. As with the reset project itself, experience in preparing the system documents over time may result in changes to the current list of nineteen documents such as adding additional documents, combining documents, or shifting subject matter between documents.

Finally, as disclosed in the last Joint Status Report, in February Microsoft publicly announced a wide-ranging change in its licensing practices for interoperability information, which will directly affect the MCPP. At that time, Microsoft published all of the technical documentation created pursuant to the MCPP on the Microsoft Developer Network (MSDN). It is therefore no longer necessary to sign an MCPP license to obtain access to the MCPP technical documentation. Microsoft has also published online a list of the patents and patent applications that it claims apply to each protocol in MCPP and has made available a license for these patents.

Plaintiffs reviewed the patent license once it was announced and discussed with Microsoft the changes to the MCPP licensing structure. As a general matter, Plaintiffs believe that the publication of the technical documentation and the substantial reduction in royalties, as compared to the previous license, are positive steps, which will encourage wider use of the protocols in the MCPP (possibly beyond the use envisaged by the Final Judgments) and thereby promote interoperability with Windows clients. Plaintiffs did raise several issues with Microsoft regarding the new patent license, and Microsoft agreed to revise the license to address these matters. Plaintiffs wanted to ensure that future licensees had the same legal rights under the license that existing licensees possess. Most significantly, Plaintiffs requested Microsoft carry over into the new patent license: (1) the legally binding guarantee of the timeliness of future documentation updates and the quality of the documentation; and (2) the indemnification provisions in the previous license. Microsoft was receptive to these concerns and has posted a revised patent license which adds the relevant provisions from the previous MCPP license.

B. Competing Middleware and Defaults³

Plaintiff States and the TC continue to monitor developments regarding Windows XP and Windows Vista to assure compliance with the Final Judgments. This includes ongoing testing by the TC of Windows Vista, Vista Service Pack (“SP”) 1, XP SP 3, Windows Media Player 11, Internet Explorer (“IE”) 7 and the IE 8 beta, to discover any remaining middleware-related issues. In addition, Microsoft has recently authorized TC access to another early build of Windows 7 (the successor to Vista), which the TC will review. As the builds of Windows 7 progress, the TC will conduct middleware-related tests in an effort to assure that bugs fixed in Vista do not re-appear in the next operating system, as well as to assure Final Judgment compliance generally.

Additionally, the TC’s on-going review of Windows’ treatment of middleware defaults is being expanded to include an operating system source code scan in an effort to determine whether some commonality in the code accounts for default overrides. The TC also is investigating certain default browser overrides, which Microsoft asserts arise from reasonable technical requirements that competing browsers apparently do not implement. The TC will discuss its findings with Microsoft once this inquiry is concluded.

Microsoft has released publicly a beta version of IE 8. The TC is testing the beta, and familiarizing itself with the operation of IE 8’s more significant new features.

³ 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 TC continues to meet with leading ISVs and PC manufacturers to discuss issues relating to middleware, the default mechanisms in Vista, and the options available to OEMs under the Final Judgments, as well as other Final Judgment-related concerns that industry participants may choose to raise.

The transitioning to Microsoft of the TC's testing methods and tools regarding the middleware-related portions of the Final Judgments also continues. These methods and tools will assist Microsoft in its public commitment to apply to its products the middleware-related principles embodied in the Final Judgments.

The TC also participated in the investigation of the unresolved complaint, discussed by the Plaintiff States below.

C. Complaints

The Plaintiff States' Interim Status Report on Microsoft's Compliance with the Final Judgments, filed December 7, 2007, informed the Court of two complaints. One remains under investigation, as Plaintiffs have engaged in various activities in the nature of discovery. This particular complaint was made prior to November 2007, and the United States is, accordingly, involved in its investigation.⁴

⁴ The second complaint — relating to a Vista user's ability to run virtualization software on Vista Home Basic and Home Premium — had been satisfactorily resolved as of the February 2008 status conference.

III. UPDATE ON MICROSOFT'S COMPLIANCE WITH THE FINAL JUDGMENTS

In this section of the report, Microsoft focuses on its compliance work relating to Section III.E of 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 February 29, 2008 Joint Status Report.

A. Section III.E (Communications Protocol Licensing)

1. *MCPD Status Update*

Pursuant to Microsoft's recently announced interoperability principles, documentation for Microsoft's Communications Protocols have been made available free of charge on Microsoft's website. Through June 1, 2008, documents describing protocols that are made available pursuant to the Final Judgments have been downloaded over 146,000 times.⁵

To date, there are a total of 49 companies licensing patents for Communications Protocols pursuant to Section III.E of the Final Judgments, 36 of which have royalty bearing licenses. Since the previous Joint Status Report, the following companies have signed a patent license: Brocade, CrossTree, e-trees and Beijing Yuxing Software. Currently, Microsoft is aware of 14 patent licensees that are shipping products under the MCPD. Numerous other entities may be making use of the protocol documentation that has been made available to the public on the MSDN website.⁶

Since the last Joint Status Report, Microsoft has continued to promote offers for MCPD licensees to receive Technical Account Manager support and to obtain access to Windows source

⁵ Each download includes either an individual document or a set of documents.

⁶ A number of the protocols made available to the public are not covered by any Microsoft patents and thus do not require a license.

code at no additional charge. To date, 28 licensees have signed up with Microsoft to receive free Technical Account Manager support, and 6 licensees have signed up for Windows source code access.

2. *Microsoft's Progress in Modifying the Technical Documentation*

As previously reported, Microsoft has delivered all of the Milestones associated with the "rewrite" program. In addition to this documentation, Microsoft has produced additional overview/reference materials in order to assist licensees in using the technical documentation.

While Microsoft firmly believes that the current protocol documentation available to implementers enables interoperability with Windows and fully complies with the Final Judgments, in response to the Technical Committee's ("TC") request, Microsoft is undertaking a new effort to supplement the existing protocol documentation with additional "System" documents. As part of this process, on March 31, 2008, Microsoft delivered three initial System documents to the TC. Last week Microsoft received feedback from the TC in on these three documents in the form of TDIs. Microsoft is in the process of evaluating this newly-received feedback. In addition, Microsoft has delivered a fourth System document to the TC on June 9, 2008. The first three System documents will be added to MSDN once the website is updated at the end of June 2008.

Microsoft currently is planning to produce a total of 19 System documents. Due to the complexity, volume, and novelty of the System documents, Microsoft expects to publish drafts of all 19 documents no later than the end of the first quarter of 2009. Microsoft then expects to publish all of the System documents in final form by the end of second quarter of 2009. Following a review of the newly-received feedback and a related dialogue with the TC,

Microsoft will develop various milestones to aid in the delivery of the System documents.

Microsoft has also discussed with the TC the possibility of tracking changes to the documentation in a systematic fashion. These discussions have been productive and Microsoft is now exploring ways to present version-to-version change information in an efficient manner.

Finally, Microsoft is also working on increasing the frequency with which it publishes the protocol documentation. Microsoft has not yet determined the optimal release schedule, but is planning to increase the frequency from the current quarterly schedule. Microsoft will present a revised release schedule to the TC in the upcoming weeks.

3. *Current Status of Microsoft's Progress in Resolving Technical Documentation Issues ("TDIs") through May 31, 2008*

In light of the volume and complexity of the new technical documentation, it is inevitable that additional TDIs will emerge in the newly rewritten documentation. As part of its analysis, the TC is identifying TDIs in the new Online Build documentation according to the three priority levels that were described in the March 6, 2007 Joint Status Report. The current status of TDIs identified in rewritten documentation through May 31, 2008, is noted in the chart below. The total number of TDIs spans the entire range of rewritten MCPP documentation as well as some of the overview materials and should be considered in the context of more than 20,000 pages of MCPP technical documentation.⁷

⁷ The TDI numbers as of April 30, 2007, reported in this chart differ slightly from the numbers provided in the previous 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.

New Documentation TDIs	As of 4/30/2008	Period Ended 5/31/2008
Priority 1 TDIs Submitted by the TC		
Submitted this period		16
Closed this period		21
Outstanding	127	122
Priority 2 TDIs Submitted by the TC		
Submitted this period		41
Closed this period		24
Outstanding	220	237
Priority 3 TDIs Submitted by the TC		
Submitted this period		35
Closed this period		8
Outstanding	61	88
TC Submitted		92
TC Closed		53
TC Outstanding	408	447
TDIs Identified by Microsoft		
Identified this period		691
Closed this period		535
Microsoft Outstanding	599	755
TDIs Identified by Licensees		
Identified this period		8
Closed this period		2
Licensees Outstanding	6	12
TDIs Identified by TC in Overview/Reference Materials		
Identified this period		5
Closed this period		14

Overview Outstanding	64	55
TDIs Identified by TC in System Documents		
Identified this Period		7
Closed this Period		0
System Outstanding	0	7
Total Outstanding	1077	1276

4. *Technical Documentation Testing*

a. *Protocol Test Suite*

Since the previous Status Report, Microsoft has continued its efforts to test the newly rewritten protocol documentation. Microsoft finished its testing on Cluster 5, during which Microsoft completed test passes on approximately 30 documents. As is the normal practice, Microsoft and the TC met to review the results of this Cluster. Microsoft is continuing the testing of Cluster 6, which will be complete by June 30, 2008.

b. *Interoperability Lab*

On August 30, 2006, Microsoft announced to MCPP licensees the availability, at no charge, of Microsoft's Interoperability Lab in the Microsoft Enterprise Engineering Center for testing licensee implementations of MCPP protocols. The Interoperability Lab offers direct access to Microsoft product development teams and technical support from Microsoft's engineering staff to address issues that may arise during testing. Microsoft completed an interoperability lab with one licensee during March 2008. It completed another interoperability lab with a licensee in May. Microsoft received very positive feedback from Licensees on both events.

c. *Plug-fests*

Microsoft held a file-sharing plug-fest the first week of June 2008. This event was the largest plug-fest thus far. The following entities attended: Apple, Inc.; SAMBA; SNIA; Sun Microsystems, Inc.; Blue Coat Systems, Inc.; EMC Corporation; Isilon Systems, Inc.; and NetApp. Microsoft received positive feedback on this event. Additionally, Microsoft is planning two plug-fests for later in 2008 (for Media Streaming and Active Directory).

5. *Technical Documentation Team Staffing*

Robert Muglia, the Senior Vice President for Microsoft's Server and Tools Business, continues to manage the documentation effort along with additional senior product engineering team managers.

Over 750 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 devote their efforts to work that relates to both programs or that is exclusive to the MCPP.

Of these, approximately 320 product team engineers and program managers are actively involved in the creation and review of the technical content of the documentation. There are over 25 full-time employees and over 50 contingent staff working as technical writers, editors, and production technicians. Additionally, as the protocol testing effort continues, approximately 40 full-time employees and approximately 360 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 (Microsoft completed the annual training sessions for 2007), that annual certifications are completed for the most recent year (completed in December 2007), 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 June 17, 2008, Microsoft has received seven complaints or inquiries since the February 29, 2008 Joint Status Report. None of these complaints or inquiries was related to any of Microsoft's compliance obligations under the Final Judgments.

Dated: June 17, 2008

Respectfully submitted,

FOR THE STATES OF NEW YORK,
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