

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 23, 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 January 19, 2011, 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 January 14, 2011, served as a six-month report, containing certain relevant information requested by the Court. Order at 1-3 (May 14, 2003). The current 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 working closely with Microsoft to resolve previously identified technical documentation issues ("TDIs").<sup>1</sup>

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<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. As part of the that plan, Plaintiffs agreed that the TC would stop submitting new TDIs as of January 1, 2011.

As Plaintiffs described in the January 14, 2011 status report, the TC was able to identify significantly more TDIs in December 2010 than any of the parties had anticipated. As a result, on December 31, 2010, there were 6,018 active TC TDIs, many times higher than the previous peak for active TDIs. Since then, Microsoft and the TC have made tremendous progress in resolving these open TDIs, with the total number of active TC TDIs down to 530 as of the date of this filing. As Plaintiffs anticipated, however, the large number of TDIs filed in December made it impossible to meet the March 15, 2011 milestones. Nonetheless, the progress made over the last two and a half months has been more rapid than Plaintiffs anticipated at the last Status Conference, and bodes well for Microsoft's ability to meet the final milestones, set for April 15, 2011. While there remains a substantial amount of work to do, Plaintiffs and the TC remain committed to making every possible effort to satisfactorily resolve the outstanding TDIs as quickly as reasonably possible so that the Final Judgments can expire, as currently scheduled, on May 12, 2011.

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

In the Joint Status Report dated January 14, 2011, the State Plaintiffs reported the partial resolution of a 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 the 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 completed their investigation of the marketing component of this complaint, and have determined that it does not appear to violate the Final Judgment. In addition, the Technical Committee has completed its review of the actual implementation of the technical resolution of this complaint, and has concluded that Microsoft has made the changes agreed to, as described in the Joint Status Report dated January 14, 2011. Accordingly, the State Plaintiffs have closed this complaint.

At the Status Conference on January 19, 2011, the State Plaintiffs indicated that they would look into a complaint that Microsoft had received potentially implicating the Final Judgment. (Tr. at 20). After investigation by the TC, the State Plaintiffs believe that, because middleware is not involved, there appears to be no violation of the Final Judgment.

In addition, in January 2011, the State Plaintiffs received a substantive complaint concerning licensing imposed by Microsoft for accessing certain features of Windows Server. The State Plaintiffs have completed their investigation, have determined that the complaint is out of the scope of the Final Judgment, and accordingly are closing this complaint.

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<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.

**C. The TC**

Finally, the United States and the New York Group would like to bring one matter to the Court's attention regarding the operation of the TC following the scheduled expiration of the Final Judgments on May 12, 2011. In order to pay any remaining bills, file tax returns, and handle additional administrative tasks, the legal entity known as the TC will need to continue to exist for some period in time beyond the expiration of the Final Judgments. The TC will, of course, have no substantive powers or responsibilities following the expiration of the Final Judgments and will not be engaged in any work relating to the subject matters covered by the Final Judgments. This administrative wind-down period is necessary, however, to conclude the TC's affairs in an appropriate and lawful fashion. The United States and the New York Group are not requesting that this Court take any action relating to this matter, but rather want to ensure that the Court is aware of the wind-down process and provide an opportunity for the Court to ask any questions it may have.

**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 January 14, 2011 Joint Status Report.

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

1. *MCPPI 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 555,000 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), 29 have royalty bearing licenses, 7 have fixed fee licenses, and 13 have royalty-free licenses. Microsoft understands that 24 licensees currently 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.<sup>3</sup>

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 6 licensees have access to Windows source code.

2. *Current Status of Microsoft's Progress in Resolving Technical Documentation Issues ("TDIs") through February 28, 2011*

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:

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<sup>3</sup>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.

<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
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 1/1/2011
March 15, 2011	Open TDIs reduced to 15% of level of April 30, 2010 <b>(170 TDIs)</b>	No Longer Being Targeted
March 15, 2011	Open Priority 1 + Priority 2 TDIs reduced to 15% of level of April 30, 2010 <b>(139 TDIs)</b>	No Longer Being Targeted
March 15, 2011	Open TDIs over 90 days reduced to 5% of level of April 30, 2010 <b>(19 TDIs)</b>	No Longer Being Targeted
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 MCPD documentation through February 28, 2011, is noted in the chart below.<sup>4</sup>

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<sup>4</sup>The numbers of TDIs identified by Microsoft and by licensees as of January 31, 2011, in this chart are slightly higher than were reported in the February 15, 2011 Supplemental Status Report due to a bug. (In the February 15 report, Microsoft reported 196 TDIs identified by Microsoft and 17 identified

	As of 01/31/2011	Period Ended 02/28/2011
<b>Priority 1 TDIs Submitted by the TC</b>		
Submitted this period	2112	0
Closed this period		1112
Outstanding		1000
<b>Priority 2 TDIs Submitted by the TC</b>		
Submitted this period	4082	0
Closed this period		2431
Outstanding		1651
<b>Priority 3 TDIs Submitted by the TC</b>		
Submitted this period	408	0
Closed this period		365
Outstanding		43
<b>Total TDIs Submitted by the TC</b>		
TC Submitted	6602	0
TC Closed		3908
<i>TC Outstanding</i>		2694
<b>TDIs Identified by Microsoft</b>		
Identified this period	223	24
Closed this period		15
<i>Microsoft Outstanding TDIs</i>		232
<b>TDIs Identified by Licensees</b>		
Identified this period	24	9
Closed this period		6
<i>Licensee Outstanding TDIs</i>		27
<b>TOTAL OUTSTANDING TDIs</b>	<b>6849</b>	<b>2953</b>
<i>TC TDIs Resolved Pending Publication</i>	4117	1804
<b>Total Active TDIs (Outstanding minus Resolved Pending Publication)</b>	<b>2732</b>	<b>1149</b>

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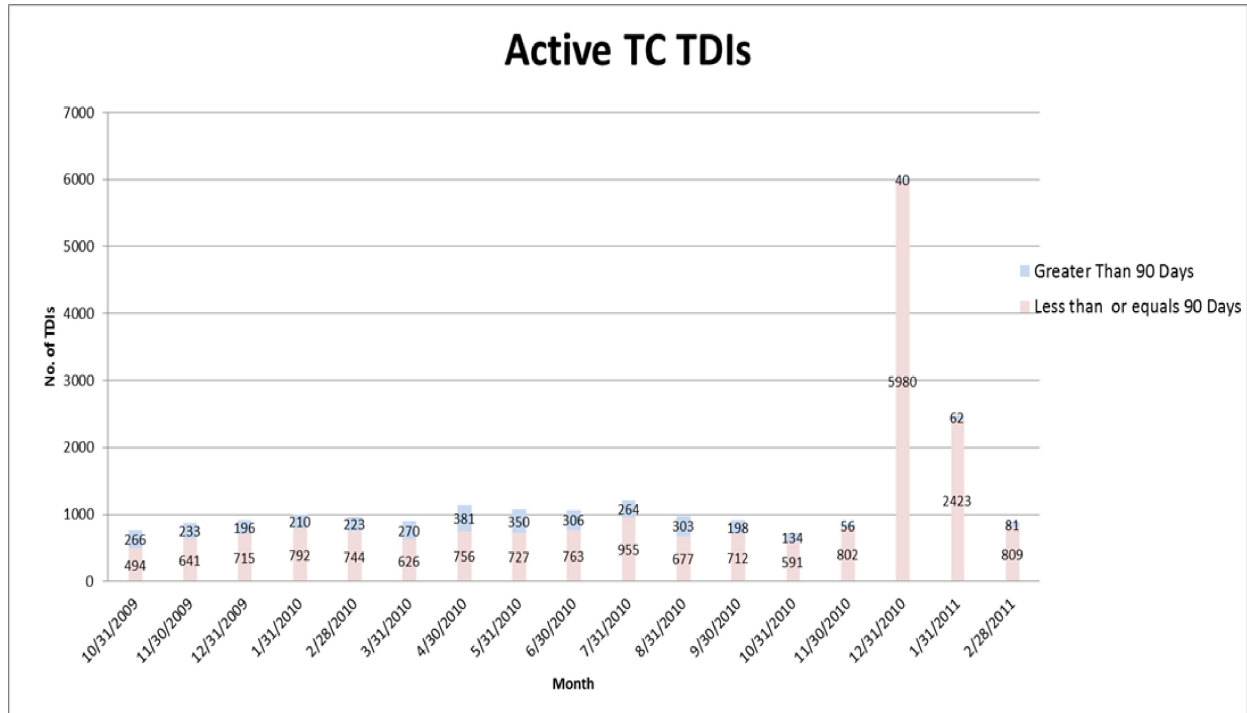
by licensees.)



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 216.

In February, Microsoft worked with the TC to resolve more than 1,500 TC TDIs, taking the total Active TC TDIs down to 890. (Note that the 1,149 TDIs listed in the above chart as Active on February 28, 2011, include TDIs identified by Microsoft and licensees.) So far in March, Microsoft and the TC have resolved an additional 360 TC TDIs, reducing the total Active TC TDIs to 590 as of this filing. The number of TC TDIs has been reduced by over 90 percent since January 1, 2011. As the parties anticipated, progress in closing TDIs has slowed somewhat as the remaining TDIs are relatively more complex than those that have been closed already. Meeting the April 15 milestones will require continued quick turnaround by both Microsoft and the TC.

The chart below shows how many of the TDIs are greater than and less than 90 days old.



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

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

Microsoft is planning an Interoperability Lab for EMC on June 13-17, 2011, and a File Sharing Protocols plug-fest for June 20-24, 2011.

### 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 211 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 24 full-time employees and approximately 72 contingent staff working as technical writers, editors, and production technicians. Additionally, as the protocol testing effort continues, approximately 6 full-time employees and approximately 95 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 March 11, 2011, Microsoft had received 85 complaints or inquiries since the January 14, 2011 Joint Status Report. None of these complaints or inquiries is related to any of Microsoft's compliance obligations under the Final Judgments.

Dated: March 17, 2011

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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