A Bad Law for Bad Software:

or . . .

Monkey Business Doesn’t Necessarily Make Good Law

Impact of Article 2B

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The Talk’s Two Points

• 2B is currently so anti-customer that it will be an embarrassment for ALI and NCCUSL if it reaches state legislatures.

• In its zeal to protect the worst publishers from the consequences arising from their worst products, 2B will change the economics of mass market software publishing as a whole.
We Have Problems of Quality

- *We ship products with many known defects.*
- 200 million calls to tech support in 1996. Customer dissatisfaction with software support dropped for 10 straight years.
- Software provides longest complaint hold times, across industries.
- 3-4 billion customer-minutes wasted on hold.
- BBB complaint list ranked computer S/W and H/W #8, above used car dealers. *(Progress! In the next year, we went up to #7!)*
Categories of External Failure Costs

– Customer Support Costs
– Lost Sales (esp. lost to competitors)
– Legal Costs
Customer Support Costs

- Charge customers for support.
- No implied warranty (in practice).
- Mag-Moss and state consumer protection statutes based on goods go away, again reducing customers’ warranty rights.
- Reduced right to a refund (limits on perfect tender rule).
Lost Sales: Competitive Effects

- Enforces hidden terms (no competition on these terms).
- Lets companies prohibit publication of criticisms.
- Makes possible a ban on reverse engineering
- *We’re neutral--We won’t stop you from going to federal court to try to re-establish your rights. Whatever you get, you can keep.*
Nondisclosure Provisions

Here are two examples from one prominent publisher.

- The customer shall not disclose the results of any benchmark test to any third party without McAfee's prior written approval.
- The customers will not publish reviews of the product without prior consent from McAfee.

*How many licenses will this have to appear in before it becomes standard industry practice, eligible for enshrinement in 2B?*
Legal Costs and Article 2B

• Virtually no remedies
  – No refund for incidental expenses, such as charges for telephone support
  – No reimbursement for damage by known bugs
  – Eliminates principle of minimum adequate remedy

• Nearly impossible to sue
  – Choice of law
  – Choice of forum
In Sum, . . .

To quote my favorite technology expert and Article 2B commentator . . .
Warning, Warning, Will Robinson.
Danger! Danger!