

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!