

Restricting Competition in the Software Industry: Pending Revisions to the UCC

Appraising Microsoft
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Welcome to Detroit.

- General Microsoft
- Ford Microsystems
- International Chrysler Machines
- Oracle Motors
- Volksapple

We Have Problems of Quality

- *We ship products with dozens, hundreds, thousands, or many thousands of known defects.*
- 200 million calls to tech support last year.
- Industry left people on hold 3-4 billion minutes.
- We have the longest complaint hold times, across industries.
- Better Business Bureau complaint list ranked computer S/W and H/W #8, above used car dealers.
- **<http://www.badsoftware.com/stats.htm>**

Federal Trade Commission Hearings on Global and Innovation-Based Competition.

Testimony of Ken Wasch, President of the Software Publishers Association.

[Http://www.spa.org/gvmnt/papers/kentest.html](http://www.spa.org/gvmnt/papers/kentest.html)

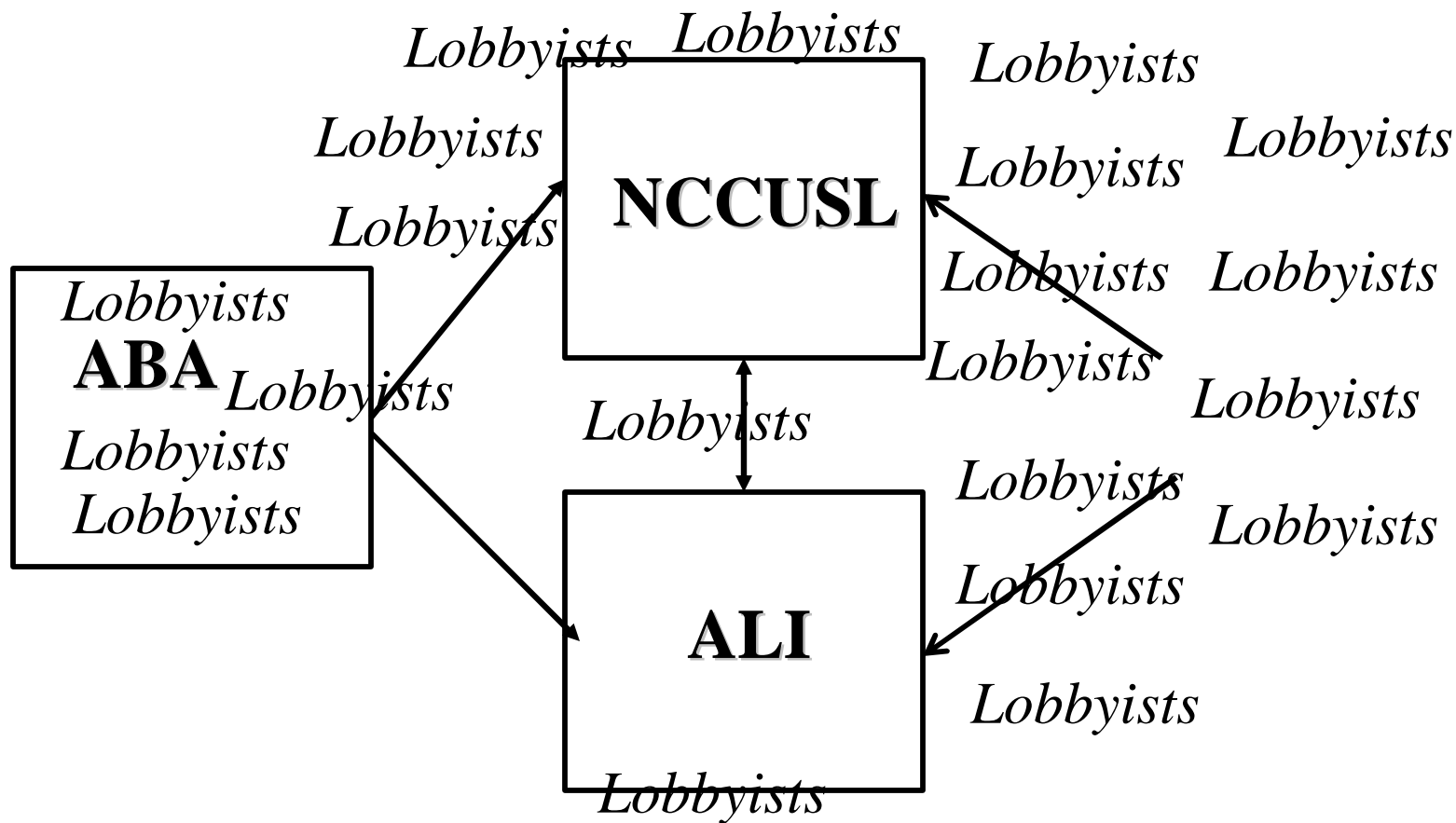
Protests that a certain big licensor was in a dominant position in the industry and that it (*horror of horrors*) “effectively dictates the terms of the required license--essentially on a take-it-or-leave-it basis.”

Uniform Commercial Code Article 2B

Will govern all contracts for the development, sale, licensing, maintenance and support of software and almost all contracts for the licensing of information.

www.law.upenn.edu/bll/ulc/ulc.htm

Uniform Commercial Code 2B



Key Problems with 2B

www.badsoftware.com/ali.htm

- Purchase of retail software is characterised as a license of intangibles:
 - **Eliminates applicability of consumer protection laws for goods, such as Magnuson-Moss Act, Song-Beverly Act, and others.**
 - **Much greater control over customer's use of the product.**

Key Problems with 2B

- Virtually no remedies
 - **no refund for incidental expenses, such as charges for telephone support**
 - **no reimbursement for damage caused by known bugs**
 - **eliminates the principle of the “minimum adequate remedy”**
- Nearly impossible to sue
 - **Choice of law**
 - **Choice of forum**

Article 2B Anti-Competitive Effects

- **Enforces terms that were not revealed until after the sale.**
- **Lets companies prohibit publication of criticisms.**
- **Lets companies prohibit reverse engineering.**
- **Lets companies restrict inter-operability via prohibition of reverse engineering.**
- **Lets companies limit or eliminate 3rd party support.**
- **Lets companies directly forbid use of its product to create competitive product.**

What to Do

- **We need help.**

Next meeting is November 21-23, Memphis, Peabody Hotel.

- **I list changes in the paper, but don't expect these to pass.**
- **We probably need to kill this bill, or come so close that the publishers will negotiate.**

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<http://catless.ncl.ac.uk/Risks/17.44.html#subj11>