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

Appraising Microsoft
November 14, 1997

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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](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

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

ABA

Lobbyists

NCCUSL

ALI

Lobbyists

Lobbyists

Lobbyists

Lobbyists

Lobbyists

Lobbyists

Lobbyists
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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We Have Problems of Quality

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