



New Laws Will Govern
Software Quality

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Overview

- **As pressure increases to ship quickly and the market for software broadens, customer dissatisfaction continues to rise.**
- **Lawsuits involving customer dissatisfaction with mass-market software are on the rise.**
- **The Year 2000 mess is resulting in the training of software litigators, which will yield more software suits in the future.**
- **Revisions to the Uniform Commercial Code will weaken software customers' rights. This may put you in the middle (as if you aren't already) between diverging expectations about what your company owes your customer.**
- **Help desks will note that, as business customers, their law-derived power to demand vendor support will be reduced.**

Customer Dissatisfaction

- 200 million calls to tech support in 1996. 3-4 billion customer-minutes wasted on hold.
- Longest complaint hold times, across industries.
- Customer dissatisfaction with support rose for 10 straight years through 1996.
- Computer S/W and H/W has joined the BBB top 10 complaint list, knocking out used car dealers.
- For more data (Prognostics, SSPA, Softbank, etc.)
<http://www.badsoftware.com/stats.htm>

Examples Recent Litigation

- Microsoft -- OS disk compression
- Intel -- benchmarks
- Electronic Arts -- online game problems
- SoftRAM95 -- nonfunctional utility
- Blizzard -- online privacy
- Iomega -- full warranty / support complaints
- AOL -- service level, billing
- For discussion of additional cases, see <http://www.kaner.com/support1.htm>

Y2K Wakes Up Lawyers

- Fewer software lawsuits today than have been justified, largely because most computer-specialist lawyers work on intellectual property, not quality / performance / consumer protection.
- Y2K is forcing many law firms to train staff in software contract law and laws governing defective software performance. This will build a large cadre of attorneys who can handle these suits in the future.

Background on Current Law

- Uniform Commercial Code (UCC) is the law in 49 states.
- Article 2 governs contracts for sale of goods in USA.
- Sale of packaged software is a sale of goods.
- Sale of custom software is a sale of services, not covered by the UCC.
- UCC is supplemented by laws governing fraud, deceptive trade practices, unfair competition, public safety, and consumer protection.

UCC Drafting Process

- UCC is maintained and updated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) a legal drafting organization funded by the 50 US states that writes all “Uniform” laws.
- The UCC is co-maintained by the American Law Institute, another non-profit body of senior lawyers.
- UCC and ALI appoint a joint Drafting Committee to prepare recommended revisions.

Proposed UCC 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.
- Current draft is 273 pages.
- 11 years in the works so far.
- Scheduled for completion this spring, and introduction into state legislatures in winter, 1999.
- Current draft significantly criticized at ALI and NCCUSL annual meetings, which passed motions calling for significant revision. Despite that, good chance that legislators will receive a bill with only cosmetic changes.

Current Law, Proposed New Law

- Customer have more rights than they realize today.
- Under Article 2B, they will probably have fewer rights than they expect.

Current Law, Proposed New Law

- Shrink-wrap / click-wrap with hidden terms.
- Implied warranty of merchantability (fitness for normal use.)
- Magnuson-Moss Act resurrects implied warranty.
- Express warranty created by documentation.
- Express warranty created by demonstration.
- Right of return for “imperfect tender.”
- Magnuson-Moss Act right to a bug fix.
- Charges for support for known bugs.

Current Law, Proposed New Law

- Breach of contract--waiver of liability clip-wrapped with bug fix.
- Requirement of precision in bug reporting.
- Limitation of remedies (reimbursement for incidental expenses and consequential losses).

Current Law, Proposed New Law

- Interaction with consumer protection laws
 - warranty laws for consumer goods
 - ⌚ software might become outside their scope
 - deceptive practices
 - ⌚ typically about 20 forbidden practices listed
 - ⌚ these laws will survive 2B
 - ⌚ often authorize class actions, attorney fees
 - unfair competition
 - ⌚ some are competitor-only, some are for consumer
 - ⌚ these laws will survive 2B

Additional Issues for Help Desks

- **Vendor's support contract will not require it to fix all defects.**
- **In a contract dispute, vendor can sometimes use "self-help" to shut down the operation of the program.**
- **When a license expires, the licensor can sometimes deny you access to your data as well as to the software.**
- **Your "perfect tender" right will gone.**
- **Vendor's remedies (what it owes you in the event of a defect) can be more limited than many states allow today.**
- **Vendor can make contract noncancellable in the event of its breach of contract.**
- **Vendor will have greater power to restrict your right to maintain its software or hire 3rd party support.**

For Further Information

- www.law.upenn.edu/bll/ulc/ulc.htm
 - drafts of Article 2B
- www.kaner.com
 - software quality, development, and consulting
- www.badsoftware.com
 - law of software quality, consumer protection
 - my next book, *Bad Software* (in press, Wiley, 1998.)
- www.webcom.com/software/issues/guide/parcom.html
 - comments on 2B from various sources