

E-WORLD

By THOMAS E. WEBER



Software-Warranty Law Spurs Fears We'll Soon See Bugs Everywhere

LOOK AROUND at the conveniences of everyday life. Check out your car, your cellphone, maybe your wristwatch. Can you tell what's a computer and what's not?

That line is increasingly blurry. Computer chips and software have made their way into everything from treadmills to toasters. Now the Web is fueling the trend, giving us toys that can do new tricks after online upgrades and record albums that are sold in the form of computer files. It's getting harder and harder

to find things that are unequivocally free of computer technology.

The distinction matters because the history of mass-market computing is a chronicle of errors. Many of us do battle daily with PCs, tolerating some glitches, complaining about others, but generally slogging through even when it means turning the thing off and starting over. Computers can do amazing things, but they're complicated,

and complexity is often the enemy of reliability.

So what should we expect from computers? That's a question that has been quietly percolating in law firms, executive suites and state legislatures for months thanks to the Uniform Computer Information Transactions Act, or Ucita, a proposed law that would take our grudging tolerance of computer bugs and turn it into public policy.

UNLESS YOU'RE a lawyer or a software expert, you've probably never heard of Ucita (pronounced "you-see-tah"). It was written by the National Conference of Commissioners on Uniform State Laws, and it's up to individual state legislatures to vote it into law. In a nutshell, Ucita aims to ensure that so-called shrink-wrap licenses—those fine-print documents stuffed in with software disks or displayed on your screen as a "click-wrap" license with a button marked "I Agree"—are legally and consistently binding.

That basic goal grew into an incredibly intricate law that, along with the official commentary that explains it, weighs in at more than 300 pages. It accomplishes the original objective, putting an official imprimatur on those licenses, which usually contain a long list of protections against liability for the software maker and set forth a long list of things that the customer can't do, such as copy or resell the software.

But by blessing the licenses, Ucita creates a different legal world for software. As a result, a staggering array of critics—from corporate soft-

ware customers and consumer advocates to librarians—have lined up against Ucita. Underlying much of the criticism is a fear that Ucita will curtail customers' rights in the New Economy, and possibly even entice manufacturers to needlessly computerize their products.

"I'm extremely concerned," says Philip Koopman, a professor of electrical and computer engineering at Pittsburgh's Carnegie Mellon University. "There's a tremendous risk of adding complexity and reducing reliability in all kinds of products."

Prof. Koopman is an expert on "embedded systems," which means computers that are built into things like elevators and air conditioners. He fears that Ucita, by setting up rules for software warranties that would be different and potentially less stringent than the rules covering other products, would create an economic incentive for manufacturers to use software wherever possible to reduce their liability. If that happens, Prof. Koopman says, we could start to see more and more everyday devices becoming as balky as our desktop PCs.

Ucita's supporters say it's unlikely manufacturers would substantially redesign their products simply to have them governed by the new law's provisions. And there's no way to know whether such attempts could succeed. Questions like that would ultimately be determined in court.

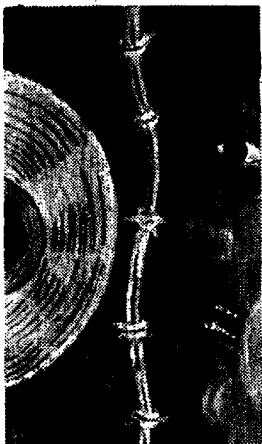
THE UCITA DEBATE is all about the global shift from selling things to selling information. Article 2 of the Uniform Commercial Code, a bedrock of warranty law, was devised for an era in which the goods people bought and sold were tangible objects. But when you're selling a washing machine, you don't worry about the customer taking the product and churning out endless free copies. Digital information is different.

And that accounts for much of the divisiveness over Ucita, says John McCabe, legislative director for the group that created the proposed law. "We're in a totally new area, and that means enormous uncertainties that people are facing," Mr. McCabe says. "That breeds some concern about anybody who tries to insert some certainty, which is what Ucita tries to do."

This year, versions of Ucita were passed by the Maryland and Virginia legislatures. Momentum in other states has slowed due to the controversy, but 2001 will be a big year for Ucita as state houses across the U.S. take up the issue.

That has James Neal, dean of university libraries at Johns Hopkins University, worried. He's less concerned by the computerization of dishwashers than by the growing digitization of all information. Specifically, he frets that the click-wrap licenses that Ucita holds so dear could be used by publishers to override copyright laws, jeopardizing the "fair use" permissions for sharing information that help make libraries possible. "We're entering a revolution where information is increasingly viewed as something not to promote the public good but something to be bought and sold," he says. "As a library, we're in a pretty vulnerable position."

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Tim Hussey