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## THE LAWYER'S BOOKSHELF

REVIEWED BY DOUGLAS P. DREYER

### *A Survival Guide to Computer Contracts: How to Select & Negotiate for Business Computer Systems*

By Jeff Monassebian Application Publishing Inc., Great Neck, N.Y. 304 pages. \$24.95.

Computer technology is constantly evolving so that companies today must routinely decide how and when to incorporate new technology into their infrastructure. And, while these technological advances may offer a more efficient workplace, the costs may bring an attendant drop in the company's bottom line. *A Survival Guide to Computer Contracts* underscores the significance of these costs by offering recent statistics on computer system spending.

For example, "in 1994 over \$250 billion was spent in the United States on systems development." Furthermore, "only 16 percent of the software projects were completed on time and on budget; in large companies only 9 percent came in on budget." Additionally, approximately

"30-40 percent of all systems fail in some way."

Given the staggering nature of these statistics, corporate leaders need to exercise extreme care in deciding how best to use technology within their own company, such as when technology should be purchased or leased and when technology needs should be outsourced. In making these decisions, these leaders will be faced with a number of issues ranging from guarantees of performance to questions of capital ownership to finance and tax concerns. As a result of the complexity of these issues, many new areas of specialization are emerging, such as technology consulting and the area of law commonly referred to as computer law.

Some lawyers may believe that computer law is nothing more than drafting and negotiating contracts. However, more experienced lawyers know that drafting a contract can run the gamut from creating a new and different business deal to simply duplicating an old agreement and substituting new terms.

Accordingly, the computer law

specialist has the added responsibility of educating the client on legal and technological issues.

There are many treatises on the market today for a lawyer to consult in developing appropriate computer-related contracts for a client. For the most part, these treatises focus primarily on form agreements and technical legal issues, whereas *A Survival Guide to Computer Contracts* is designed to provide an overview of computer-related transactions.

Accordingly, the book is a general guide tailored to help a layperson, novice attorney or general practitioner navigate the process of technology acquisition and compute contracts.

For the practitioner, part of the process involves assisting the client in the effective procurement of a computer system. A well-structured transaction can only be accomplished through detailed planning, due diligence and a carefully developed definition of the company's requirements. Although time-consuming and deal-specific, the successful completion of the tasks will lead to

**DOUGLAS P. DREYER**, a senior associate at Brown Raysman Millstein Felder & Steiner LLP, specializes in patents, trademarks and copyrights in emerging technologies and computer transactions.

the procurement of a system which supports business requirements and accommodates future growth.

For those familiar with contract negotiation and computer contracts in general, the book is sensibly arranged. The author has used the actual process of buying a computer system as an organizational model. The chapters closely follow the temporal process of software acquisition; the first substantive chapter deals with requirements and due diligence, and the final chapter deals with dispute resolution. As a result, an attorney or layman using this guide could follow the process of acquiring the computer system from the beginning to the end of the book.

The book is broadly broken into two parts. The first 3/5 of the book is textual description of the process of acquiring computer technology, and the last 2/5 includes sample agreements and form documents such as requests for information or requests for proposals.

Each chapter begins with a brief overview and is directed to one step in the process of procuring computer technology. For example, Chapter 2, the first substantive chapter, is directed to requirements and due diligence. Chapter 3 deals with software and briefly discusses the types of software and software license agreements available, and the distinction between a software license and hardware purchase. The organizational layout and the author's clear, concise writing style make the process easy to understand for those unfamiliar with the agreement process and computer technology in general.

The book also provides many form agreements. The narrative in the first

portion of the book is strewn with references to the later agreements in the appendices as well as smaller, more specialized agreements that appear interleaved with the narrative. Accordingly, when discussing subjects such as confidentiality or trial use, the reader is referred to a sample confidentiality agreement or trial use agreement. Alternatively, when the narrative discusses subjects such as termination or disaster recovery, reference is made to the appropriate section of the sample agreement within the appendix.

Three of the chapters -- Chapters 2, 3 and 5 -- are particularly insightful. Chapter 2 includes a review of the process of preparing a requirements definition, focusing on identifying the capabilities needed for the management information system. Monassebian instructs the reader that the requirements definition is extremely important, and attention should be focused on it since it can later be used as a basis for the request for proposal. Chapter 3 provides the user with a balanced discussion of software options including benefits and disadvantages of prepackaged, customized and custom computer software, so that a businessman can decide which type of software is best for his business

needs. Chapter 5 provides an excellent discussion for the uninformed on alternatives to traditional implementation of directly purchased computer hardware and the licensing of computer software, such as outsourcing alternatives. It also provides a discussion of tax and escrow considerations associated with these procurement options.

It is unlikely that Chapter 6 will

be read in narrative form by laymen. It covers agreement clauses and analysis and provides a detailed discussion of individual clauses which are duplicated from the form procurement agreement.

The book also provides a glossary which should prove helpful as a quick reference guide for the often complicated technical terms used when procuring computer technology. Additionally, a helpful index is provided.

The book's weakness is in the selection of forms, which are generic and do not provide clear tailoring for either the vendor or user. This would not be viewed as a shortcoming if the book is only used by those unskilled in the art. However, it does make the book inappropriate for attorneys specializing in computer law that may be looking for assistance with particular clauses heavily favoring their clients' position.

Designed as a guide for business people in dealing with the complicated issues of computer procurement agreements, the book can serve as a good tool to educate those delving into the subject. It is not designed as a comprehensive statement of the law or as a comprehensive forms book. As such, it is not appropriate for the sophisticated practitioner.

I would recommend to any businessman considering options for the procurement of computer technology to educate himself by reading *A Survival Guide to Computer Contracts*. The education of the businessman will not only assist in the procurement of appropriate technology, but also will make the attorney-client relationship more efficient.