

BOOK REVIEWS



BERNACCHI ON COMPUTER LAW

by Richard L. Bernacchi, Peter B. Frank and Norman Statland. Published 1986. ISBN 0-316-09203-7. Cost \$160 (US). Looseleaf Publication with occasional supplements. Published by Little, Brown & Company, 34 Beacon Street, Boston, Massachusetts 02106, U.S.A.

Bernacchi's new work on Computer Law is required reading for every practitioner involved in computer systems acquisition. The work is based on Data Processing Contracts and the Law, written in 1975 by Bernacchi with Gerald Larsen.

However, it is more than just an expanded version of that book. Whereas the 1974 book was confined to computer contracts, "Bernacchi on Computer Law" deals also with problems of intellectual property, tax and computer related liability.

The work is in two looseleaf volumes. It has a very comprehensive and well organised table of contents. The table of contents is reproduced in full at the front of each volume.

This is helpful because the table of contents provides a very good road map to the whole work.

The chapter headings are as follows:

1. An Overview of Computer Law.
2. Understanding the Concepts.
3. Basic Legal and Technical Issues.
4. The Systems Approach to Contracting.
5. Senior Management's Role in Controlling Data Processing Activities.
6. Managing the Procurement Activities.
7. Acquisition of Packaged or Preconstructed Software.
8. Custom Software.
- 8A. Testing.
- 8B. User Procedures Development, Documentation and Training.
9. Acquisition of Hardware, System Software and Telecommunications.
10. Maintenance.
11. Service Bureau and Facilities Management Contracts.
12. Time and Materials Contracts for Data Processing Services.
13. The Vendor's Perspective.
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12. Time and Materials Contracts for Data Processing Services.

13. The Vendor's Perspective.

14. Tax and Financial Consideration.

Appendix A. GSA/FAR Contract Provisions.

Appendix B. Checklists of Contract Terms.

Appendix C Sample Project Timetable.

Appendix D Managing Computer Risks.

Appendix E. Micro Computer

Appendix F. Arbitration of Disputes.

Chapter 3 discusses briefly, though effectively, the issues which are not primarily contract issues. It canvasses patent protection, copyright, trade secrets and the Semi-conductor Chip Protection Act. In addition, it deals with the use of trade and service marks.

The discussion of these provinces of legal protection is followed by a useful discussion of the practical steps which can be taken to protect computer related proprietary rights. This is an interesting adjunct to a discussion of the legal remedies available and is typical of the practical commonsense approach adopted throughout the work.

The balance of Chapter 3 is given over to a discussion of various liability theories and their bearing on the use of computer technology. Although this has a significant contractual component, tort theories are explored and such case law as there is on "computer malpractice" and product liability relevant to computers, is set out.

Chapter 14 discusses tax implications of the computer industry and is supplemented by a useful annexure dealing with the sales and use taxes of each of the States of the U.S.A.

The rest of the work is concerned with computer contracts of all sorts. In this regard, the work can be considered functionally as having two components: textbook and reference book.

Some chapters of the book should be read from start to finish in order to understand the authors' conceptual and philosophical approach to the problems of computer contracts. These are Chapters 1, 2, 4, 5, 6 and 13.

The balance, namely Chapters 7 - 12, is concerned with specific contracting situations and thus has more the character of a reference work.

The value of the early chapters can hardly be overstated. A practitioner who absorbed the first six chapters of the work would be unlikely to make any fundamental mistakes in negotiating and contracting for the acquisition of a system.

With an understanding of those chapters as part of the furniture of his mind, he could refer to specific parts of related chapters in order to accommodate the particular problems associated with particular acquisitions (for example, acquisition of custom software, negotiation of maintenance contracts or the supply of telecommunications equipment).

Chapter 13 contains an interesting twist. It views the problems from the vendor's perspective. The unstated major premise of most works in this area is that it is only the user who needs assistance or consideration in negotiating and contracting for computer systems. It is nice to see the legitimate interests of vendors being given some attention.

Above all, the virtue of this work is its repeated but gentle encouragement to adopt a thoughtful and creative approach to the various aspects of systems acquisition. The process is considered as a single integrated process which is firmly directed towards the ultimate commercial objectives of the parties.

The contract, although necessarily a focus of attention in the work, is considered as one integral element in a broader commercial and technical context.

Here, it is important not to overlook the contribution of Bernacchi's co-authors, Peter Frank and Norman Statland, partners in Price Waterhouse, with special expertise in management and information. The work is soundly based in the principles of management, which accounts for much of its practical advice.

It is refreshing to see a work which considers computer contracts as merely one function (albeit an important one) in the landscape of technological resource management.

This work will be an indispensable aid to lawyers, managers and computer consultants alike.