

# EURIM Working Party Sub-Group Minutes

**Working Party:** 10 -Fairness in IT Procurement  
Sub-Group on Licence Agreements?  
**Ref:** 00-SG10-Min03  
**Minuter:** Emma Fryer  
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**Circulation:** All Subgroup contacts (12)  
**Tabled Papers:**

- Agenda
- Code of Conduct Draft 2, (Michele Rennie)

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## Minutes of the meeting of the EURIM WP for Fair Dealing in software and Service Contracts - Subgroup 3 - Model Contracts 7th April 2000, CGU London Office

### Organisation

CIPS  
EURIM  
BetaSystems  
Taylor Joynson Garrett  
CGU  
Gsoft  
Computer Weekly

### Apologies

Tesco Stores  
NCC  
The Open Group  
CGU  
Woolwich

	Meeting Notes	Action
<b>1</b>	<b>Chairman's Introduction</b>	
1.1	Stephen Cannon of CIPS welcomed everybody, ran through the agenda items, and outlined the objectives of the meeting – to catch up on progress and identify the next action required by the sub-group.	
<b>2</b>	<b>Action arising from the minutes of the last meeting</b>	
2.1	PM reported that the pilot case studies were underway. He had completed one in co-operation with Al Siddons and had found the exercise less time-consuming and more useful than he had anticipated. Al was preparing a second case study with Tesco which should be ready shortly.	
2.2	EF agreed to chase JP on feedback from his legal committee	EF
2.3	SC reported that no reply as yet had been received from the Euro Conference Board. He agreed to prod them	SC
2.4	It was agreed that copyright was not an issue with EURIM or CW. Both would benefit from the case studies receiving wide circulation. JV confirmed that CW material was available as a starting point for more case studies although she warned that it was not in an ideal format, and explicit permission would have to be obtained from the subjects.	
<b>3</b>	<b>How to proceed with case studies</b>	
3.1	GP reminded members that the current activity was focused on testing the template and the process and this would shortly be completed. The WP must then evaluate the two pilot case studies to assess whether clear lessons were emerging and whether more might be useful.	
3.2	The next stage was to get enough additional case studies to illustrate all the main	

circumstances in which stiffing occurred (e.g. parallel running, name change, change of use or platform) and show how they had been successfully, or less successfully, tackled.

- 3.3 They agreed to use the CW 500 list as a starting point and PM kindly agreed to prepare a draft letter to the members of the CW 500 club asking them to participate. JV agreed to ask John Riley to endorse it **PM, JV**
- 3.4 GP and EF agreed to compile a list of "top stiffers" from existing information source such as the Computer Weekly website. This could be used as a check-list to assess the value of potential case studies. **GP, EF**
- 3.5 GP noted that EURIM had financed the pilot case studies but did not have sufficient fund to finance a further ten case studies unless WP members who were not already EURIM members were converted into membership.

#### **4 Preparation of letter to CW 500 Club**

- 4.1 PM kindly agreed to prepare a draft letter by 14 April for circulation to sub-group members for approval. He hoped to try and circulate it to the CW 500 club by the 21st April. **PM**
- 4.2 PM agreed to approach DR to establish whether it would be appropriate to circulate a copy of the template (suitably accredited to the Open Group) with the letter to the CW 500 Club. The sub-group was aware that the template was usually only passed to known contacts. **PM**

#### **5 How are the case studies to be used?**

- 5.1 The group agreed that the purpose of the case studies was to help identify potential pitfalls and to illustrate the application of the model clauses
- 5.2 The Group agreed that case studies should be used in the preparation of the model clauses. EF agreed to tabulate the top stiffers and circulate the table, inviting members to fill in the details where possible. **EF**

#### **6 Standard Clauses**

- 6.1 All agreed that many "stiffers" were a result of licenses simply not allowing for changes in business practice which a could not have been foreseen at time of writing. The issue was not primarily one of legality but of fairness.
- 6.2 DL noted that stiffing was very costly to conscientious suppliers – they were wasting resource in unnecessarily protracted negotiations. Because they were afraid of stiffing, buyers took an adversarial approach to contracts and an aggressive negotiating stance.
- 6.3 DL noted that the same clauses always caused problems. If standard, approved, clauses could be used in these instances a great deal of negotiating time could be saved, and buyer confidence could be greatly improved. All agreed.
- 6.4 DH illustrated some cases in which standard clauses could be applied as follows:
- Re-assignment - this should be covered with mutuality so that neither party could re-assign the contract without the prior consent of the other.
  - Parallel running
  - Change of supplier – the buyer should be protected in case the SW company is taken over. Licences might cease or support end. DL noted that BetaSystems had inserted a specific clause into all their contracts which protected the rights of customers in the event of supplier take-over.

#### **7 Feedback on the Code of Conduct**

- 7.1 GP reported that the Code of Conduct was to be circulated round the CSSA Legal and Contracts group for comment, but not at this stage to suppliers in general. All agreed that a supplier interface was vital. **GP**
- 7.2 DL kindly gave some feedback on the Code from the supplier perspective. He made two main points:
- With very slight amendment the document could be presented much more positively. At the moment the wording implied that only the first paragraph listed circumstances in which it was fair for a supplier to apply charges, when in fact other instances were illustrated elsewhere in the text.
  - He illustrated one clause which would never be acceptable to any supplier,

and would prevent even the fairest suppliers from signing up. He proposed that such clauses be removed.

- 7.3 DL kindly agreed to attend the next meeting of the code of conduct sub-group, if possible. **DL**
- 7.4 It was agreed that everyone should look at the revised code and prepare their comments on it, independently of any that the CSSA group might submit. Then they table all comments at an open workshop in an attempt to reach consensus.
- 7.5 All therefore agreed to read the Code and prepare comments accordingly. **ALL**
- 8 Other actions agreed**
- 7.1 EF agreed to circulate the Tesco model contract to sub group members for comment. **EF**
- 7.2 GP agreed to circulate sub-group members with the latest draft of the Code of Conduct, tabled on 29 March. **GP**
- 7.3 EF agreed to amend the minutes of 18 Feb and re-issue them **EF**
- 9 Overall Action Plan**
- 9.1 The group agreed to keep in mind their target as a sub-group of the WP: - to address a certain level within the framework the WP sought to establish. PM reiterated the pyramidal structure tabled in previous meetings.
- A “motherhood” statement would form the top layers and characterise the concept of fairness in software contracts, aimed at by the whole group.
  - The Code of conduct would provide the next layer, providing a generic guide to best practice.
  - The Model Contracts sub group sought to address the next level down in terms of detail, and provide specific clauses, backed up by their application to real life case studies that readers could identify with.
- 9.2 Ideally the eventual output of the WP as a whole should be some kind of certification scheme, and this in itself would need publicising.
- 9.3 DL noted, and others agreed, that if BSI could be involved, and give official approval to the standard clauses (as they had done in other applications) this would add enormous weight to the whole operation.
- 9.4 If the code were to be successfully implemented, monitoring and auditing functions would have to exist.
- 9.5 PM noted that administering the Code and an associated certification scheme would need finance. GP noted that PI insurers were the largest beneficiaries of this since it would reduce PI costs, and might be a source of funding. DL noted that conscientious suppliers would also benefit because they would save negotiating time and resource.
- 10 Date of next meeting**
- 10.1 It was agreed that the next meeting would take place on Friday 19th May 2000. PM very kindly agreed to host it again at CGU. The start time would be 10 am as usual.
- 10.2 Sub-group members were also asked to note that the next WP plenary meeting was scheduled for the end of June. A date would be circulated shortly.