

## **Quick overview of EURIM Working Party meeting on "Stiffing" Henceforward to be know as "Fairness in IT Procurement" 4 November 1999**

### **The current situation**

- Stiffing is defined as the exploitation of weaknesses in software contracts by suppliers to extract excess profits from customers.
- Stiffing is enabled by poor wording in software contracts, and by the nature of such contracts which are broadly exclusive. A user could technically be outside its terms due to expansion, restructuring, name change, outsourcing, Y2K or a geographical move and would therefore be liable to charges at the discretion of the supplier. Users often are unable to change supplier because they are reliant on continuity in their IT systems for business survival.
- The problem is widespread and can be exemplified, although stiffees are often unwilling to reveal the true cost. Very few cases ever get to court but it was estimated that 30% of UK companies had been affected and sums involved were in the range of 280M.
- The worst offenders are the largest software companies but smaller firms are catching on.
- The reasons for stiffing are firstly:- Economic benefit for suppliers - it is cheaper to extract more money from existing customers than to find new ones. Secondly users are also to blame for poor procurement practice. Thirdly, culturally in the UK most focus on IT procurement costs is on up-front charges, which encourages suppliers to quote for low front end costs with high exclusivity or high ongoing costs.

### **Scope of the group**

Membership of the EURIM Working Party on fairness in IT procurement comprises major software users, suppliers, government observers, parliamentarians, IT lawyers, trade publications, professional bodies and trade associations representing over 1000 users and suppliers.

### **Aims of the group as defined at the 4th November meeting**

1. Identify the current situation and the primary issues to be addressed. An overview of the current situation was given at the meeting.
2. Draft a code of conduct and good practice for the industry. A draft "Code of fair Use and Best Practice for Software Owners and Licensees / Users" had been produced by Michele Rennie of Computalaw and was circulated for comment. A small sub-group headed by Michele agreed to use this as a starting point and produce a more formal code of conduct with input from both users and suppliers.
3. Establish a mechanism for alternative dispute resolution - The group agreed that mediation was a far better method of resolving disputes than litigation which could be protracted, expensive and risky. Tony Lewis of CSSA agreed to head up a sub group of users and suppliers to work with CEDA (the centre for alternative Dispute resolution) and the IUA (to access PI insurers). The subgroup aimed to produce criteria or a working basis for alternative dispute resolution procedure in two stages, a) identifying underlying principles and b) outlining the process of dispute resolution in the form of a step by step guide.
4. Establish whether model contracts would be a useful way forward. The group agreed that it might be counter productive to create new model contracts when a plethora already exist which can be accessed easily via the CCTA. A sub-group therefore agreed to source a collection of good practice terms and clauses which can be edited and web-mounted for easy access. The resulting "model contract" would simply be a collection of useful terms and examples clearly referenced and indexed.
5. Identify the role (if any) that government regulators should play. The WP agreed to keep parliamentarians fully informed and to involve the OFT in all discussions but to leave lobbying until they had identified clearly and specifically whether and where there was a need for Government intervention.

**Diagrammatic representation of desired Working Party output:- aim to achieve good business practice by establishing foundations of good practice, codes of conduct and guidance.**

