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Electronic Age

Robert A. Hillman*

Ibrahim Barakat†

*Cornell University, rah16@cornell.edu

†White and Case

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WARRANTIES AND DISCLAIMERS IN THE ELECTRONIC AGE

Robert A. Hillman* & Ibrahim Barakat**

Introduction

A software licensor expressly warrants the quality of its software on its website. A consumer reads the warranty and decides to acquire the software.¹ The consumer has no opportunity to inspect or test the software and therefore relies on the licensor's quality representations. For a host of reasons, both rational and irrational, the consumer fails to read the electronic standard form record that governs the transaction² (no less negotiate with anyone) before clicking "I agree" to the license.³ The e-standard form includes a disclaimer of all express (and implied) warranties and a full integration clause.⁴ If the consumer attempts to avail itself of an express warranty when something goes wrong with the product, the licensor can point to the e-disclaimer and integration clauses and claim that evidence of the express warranty is inadmissible under contract law's parol evidence rule. Even if the evidence is admissible, the licensor can claim that the e-disclaimer supersedes any quality representations or promises.

Lawmakers should focus on this scenario because this manner of presenting express

* Edwin H. Woodruff Professor of Law, Cornell Law School. The author is Reporter, Principles of the Law of Software Contracts, American Law Institute. All ideas expressed herein are the authors' and not those of the American Law Institute. We thank Mark Grube for able research assistance and the faculty of Boston University Law School for very helpful comments at a workshop presentation.

** Associate, White and Case; JD 2008, Cornell Law School.

¹ We focus on consumer transactions here, but recognize that the analysis could extend to small-business end users of software. See ALI Principles of the Law of Software Contracts [hereinafter "ALI Principles"] § 2.02, Tentative Draft No. 1 (2008) (defining and explaining standard-form transfers of generally available software).

² The standard form record is often called an End User Licensing Agreement (EULA).

³ See generally Robert A. Hillman & Jeffrey Rachlinski, Standard-Form Contracting in the Electronic Age, 77 N.Y.U. L Rev. 429 (2002).

⁴ A full integration clause states that the parties intend the record to be the complete and exclusive agreement between them on the subject matter.

warranties and disclaimers in the e-world is remarkably widespread and potentially problematic. Part I of this article presents empirical evidence of just how prominent the strategy is. In a sample of 54 software titles culled from the top 100 best-selling software products in which the licensor made its End User License Agreement (EULA) available on its website without a purchase, 53 contain express warranties on the website and e-disclaimers in the EULAs that may erase all or much of this quality protection.⁵ Of course, the problem of express warranties and disclaimers is not limited to e-commerce and is, in fact, common in the paper world too. But the e-world magnifies the problem and presents new challenges for contract law. In this article, we analyze if and when express warranties on a licensor's website should trump e-disclaimers of those express warranties in the EULAs.

An important goal of contract law is to enforce a party's manifestation of assent to a contract made with full access to all pertinent information and with time to contemplate the terms. In so doing, contract law facilitates exchange and encourages reliance on contracts, which in turn maximizes resources and supports individual autonomy. Contract law's parol evidence rule bars assertions of agreements, promises, or representations inconsistent with a record the parties intended to be complete on the subject matter.⁶ In theory, this rule advances contract law's goals by weeding out fraudulent or other false assertions of prior inconsistent terms. But the problem of standard-form disclaimers in the e-environment is not the potential for consumer fraud because the parties should rarely have occasion to dispute what a licensor's website says.⁷ The problem is that a consumer may be unfairly surprised to learn that the licensor does not intend to stand behind its express promises and representations. We argue that enforcement of warranties in this context should not depend on the parol evidence rule.

Assuming the absence of a parol evidence imbroglio, and meeting the issue head on, contract law certainly should not allow a licensor to employ e-disclaimers as part of a strategy to confuse or surprise a consumer. Further, evidence mounts that people do not and will not carefully read their e-standard forms, thereby creating an invitation for licensor opportunism. On the other hand, as a general matter, licensors should be able to rely on the enforcement of their e-standard forms, which facilitates commerce and reduces costs for licensors and consumers alike.⁸

⁵ See *infra* notes 11-15, and accompanying text.

⁶ "A 'record' is information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." ALI Principles § 1.01, citing UCITA § 102(a)(55) and UCC Revised § 1-201(b)(31).

⁷ "Many licensors already maintain archival records of website content, including when material was introduced, modified, and removed. Server logs also indicate when and if a web page was modified." ALI Principles § 2.02, cmt. g.

⁸ Standard form exchanges obviously do not constitute the paradigm "bargain" of classical contract law with the parties on equal footing and each term separately

We therefore should not dispense with the “duty-to-read” principle lightly.⁹ Further, licensors’ concern for their reputations should help deter overreaching in an environment in which consumers do not read standard forms but may complain vociferously about the shoddiness of their products and in which they can broadcast their complaints over the Internet to a wide audience. In fact, many, if not most, successful licensors stand behind their products (and produce quality products) to establish good reputations and to increase their bottom line regardless of their legal liability. Finally, e-disclaimers may be so prevalent that consumers should not be surprised by them even if they purchase shortly after reading warranties and ignoring the standard form.

In light of the conflicting policies at play, how should contract law address this problem? Our view is that contract law’s response should depend on whether a reasonable consumer should expect the e-disclaimer to extinguish express warranties. This focus on objective expectations in interpreting contracts, of course, is not novel. We reinforce this approach in the context of e-warranties and disclaimers and construct specific guidelines for assessing expectations.¹⁰ These guidelines focus on improved disclosure of e-standard forms, but we also discuss problems with the disclosure strategy. We show why disclosure may only be the best of a series of imperfect responses to the problem of e-warranties and disclaimers.

As mentioned, Part I of this paper reports on licensor warranty and disclaimer practices on the Internet. Part II reviews the reasons why consumers generally do not read their standard

negotiated. Yet standard forms benefit both sellers *and* consumers. By using the form for each transaction, sellers standardize risks and reduce bargaining costs. Moreover, sellers avoid costly litigation by crafting their form to accommodate various judicial interpretations. Sellers likely pass along some of these savings to consumers in the form of lower prices. Moreover, sellers can best determine the “particular set of terms that ‘fits’ the practical problems and needs that arise . . . in carrying out the transactions,” and therefore produce the most efficient allocation of risks for both parties. Consumers also benefit from judicial decisions that weed out offensive clauses. In fact, because of the efficiencies and benefits of standard forms, it is not a reach to predict that the economy would come to a screeching halt without them.

Robert A. Hillman, *Rolling Contracts*, 71 *Fordham L. Rev.* 743, 747 (2002) (quoting Todd D. Rakoff, *Contracts of Adhesion: An Essay in Reconstruction*, 96 *Harv. L. Rev.* 1174, 1230 (1983)).

⁹ See, e.g., John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 9-42 (3d ed. 1987) (“A party who signs an instrument manifests assent to it and may not later complain that he did not read the instrument or that he did not understand its contents. . . . The feeling is that no one could rely on a signed document if the other party could avoid the transaction by saying that he had not read or did not understand the writing.”).

¹⁰ The guidelines are modeled after the ALI Principles, *supra* note 1.

forms despite the prevalence of disclaimers and, of course, other adverse terms. Part III discusses the parol evidence rule's application to the problem. With issues of the admissibility of evidence put to one side, Part IV outlines the factors for determining when contract law should enforce e- express warranties despite the presence of disclaimers.

I. The Data

The source of our data is the Amazon Top 100 best-selling software titles on November 5, 2007.¹¹ As the name implies, Amazon ranks its software by numbers of sales, so our sample consists of software titles likely resident on consumers' computers. Further, because Amazon is an online retailer, consumers who purchase from Amazon likely perform any product research online as well and are therefore more likely to have seen a licensor's online express warranties.

We sought to gather the EULAs for each of the 100 titles. However, 34 software licensors did not post their EULAs on their websites.¹² We removed an additional 12 titles from the remaining 66 titles because they were either "upgrade" versions of titles already on our list or their EULAs consisted of a multi-user license.¹³ We then examined the websites and EULAs of the remaining 54 software titles.¹⁴ We found that 15 software licensors produced the 54 titles.

¹¹ Amazon compiles its Top 100 hourly, so our sample is a snapshot of software titles with some degree of randomness. On November 25, 2007, for example, there were 27 different titles than November 5. We did not collect our data on November 5, but used the date only to compile our list of software titles to investigate.

¹² This itself is significant because it shows the lack of visibility of a significant number of EULAs prior to a consumer engaging in a transaction. See *infra* notes 14, 68-70, and accompanying text.

¹³ For example, the number-one best "seller" in the Top 100 on November 5 was Apple's Mac OS X Version 10.5 Leopard, while number three was Apple's Mac OS X Version 10.5 Leopard (5-user family pack). The EULA for both programs is identical. Similarly, Microsoft Office Professional Upgrade (number 39) is the same as Microsoft Office Professional Full Version (number 30).

¹⁴ The EULA in our data for Microsoft Streets and Trips 2008 (number 23) is actually for Microsoft Streets and Trips 2006, and the EULA for Adobe Photoshop Elements 4.0 (Mac) (number 41) is actually for Photoshop Elements 5.0. We kept these two titles in our data, expecting to update these titles when the software developers posted the EULAs on their websites for the actual titles. At the time of this writing, the developers still had not posted the EULAs. We decided not to omit these titles because we believe the EULAs in our data likely represent the EULAs that actually come with the software. (In fact, a representative of Microsoft confirmed this for number 23.) We note that even well-known and successful software developers apparently fail to post all of the EULAs for their programs and fail to regularly post

Because our goal was to examine titles commonly residing on consumers' computers, we were not concerned by the concentration of software licensors in our sample.

We found that 53 of the 54 EULAs contained disclaimers of express warranties otherwise created on the licensors' websites that may extinguish all or much of the warranty protection.¹⁵ In addition, 51 of the 54 titles contain website "terms of use" (as distinguished from a EULA that governs a consumer's purchase) that appear to disclaim website express warranties.¹⁶ However,

updated EULAs for new versions of the same software.

¹⁵ Of the 53 titles, one Microsoft title (number 19) contains the language "[m]anage your projects . . . in one convenient place" that, because of its marginal specificity, is on the borderline between puffing and an express warranty. Another, Nero (number 22), did not disclaim express warranties.

We have no reason to believe that the 34 titles that hide their EULAs would be less inclined to disclaim their warranties, but even if all 34 did not disclaim, at least 50 out of 88 would still have done so.

¹⁶ Some of the "terms of use" are ambiguous as to exactly what is disclaimed. For example, Intuit, the creators of Quicken software set forth the following guarantee on their website:

100% Satisfaction Guaranteed

If you're not 100% satisfied, return Quicken Premier Software 2008 with your dated receipt within 60 days of purchase for a refund of the purchase price (Return shipping and handling charges are not included).

Quicken Premier 2008 Features & Benefits, <http://quicken.intuit.com/personal-finance/premier-portfolio-management.jsp> (last visited June 16, 2008). However, Intuit's "Terms of Service" "Disclaimer of Warranties" states that

Your use of the Site, including any . . . content contained therein, is entirely at your own risk. The service is provided "As Is," and to the maximum extent permitted by applicable law, Intuit . . . disclaim[s] all guarantees and warranties, whether express, implied, or statutory regarding the site and related materials including any warranty of fitness for a particular purpose, title, merchantability and non-infringement.

Quicken.com Terms of Service, <http://help.quicken.com/support/termsofservice/index.shtml> (last visited June 16, 2008). The disclaimer governs "use of the Site," and the "service" provided by the site, but the reference to a disclaimer of "content" and "related materials" suggests that the disclaimer covers express warranties on the site.

we believe these latter disclaimers are clearly unenforceable because of the absence of sufficient notice and the lack of acceptance of the terms.¹⁷ The more difficult question, addressed here, is enforcement of express warranty disclaimers in the EULAs.

We set forth our data consisting of express warranties and EULA disclaimers in Appendix 1. We set forth three examples here that represent the three major categories of express warranty and disclaimer that we found in our data.

The best selling title is Apple Mac OS X Version 10.5 Leopard. Apple states on its website that this software enables the user to “run Windows on your Mac.” But section 6 of Apple’s EULA warrants only that the media that stores the software is free from defects in workmanship and states that the “Limited Warranty set forth herein is the only warranty made to you and is provided in lieu of any other warranties (if any) created by any documentation, packaging or otherwise.” Not to be outdone by this language, section 7 contains an even broader disclaimer:

Except for the limited warranty on media set forth above . . . the Apple Software and Any services performed or provided by the Apple Software (“Services”) are provided “As Is”, with all faults and without warranty of any kind, and Apple and Apple’s Licensors . . . hereby disclaim all warranties and conditions with respect to the Apple Software and any

Similar 100% satisfaction guarantees are made on the Rosetta Stone website titles, numbers 35, 48, 66, and 86. But these websites’ “terms of use” state:

The material on this Website is provided “as is”, without any conditions, warranties or other terms of any kind. Accordingly, to the maximum extent permitted by law, Rosetta Stone provides you with this Website on the basis that Rosetta Stone excludes all representations, warranties, conditions and other terms

Rosetta Stone: Website Terms and Conditions, <http://www.rosettastone.com/global/terms> (last visited June 18, 2008).

¹⁷ Typically, a consumer can reach the terms of use only if she finds a hyperlink buried at the bottom of a web page somewhere on a licensor’s website. This should not constitute sufficient notice. Further, courts have found this controversial “browsewrap” presentation unenforceable on offer and acceptance grounds, holding that mere use of the site does not constitute acceptance of the terms of use. See, e.g., *Specht v. Netscape Commc’ns Corp.*, 306 F.3d 17, 31-32 (2d Cir. 2002). Further, as we discuss later, contract law favors express quality assertions over conflicting language that seeks to negate them so even absent notice and formation problems a warranty should trump the terms-of-use disclaimer. See *infra* notes 61-65, and accompanying text.

services, either express, implied or statutory¹⁸

The effect of the language of both sections, of course, is that a consumer expecting to “run Windows on [her] Mac” may be sorely disappointed to learn that Apple does not have to stand by its assertion that the software will work. Although the EULAs in our sample varied in form and language, we can fairly place 18 of the 53 EULAs within this first category.¹⁹

A second representative example, is the “Limited Warranty” in Microsoft Office Home and Student 2007 EULA (number two on the list of the Top 100), which states that “the software will perform substantially as described in the Microsoft materials that you receive in or with the software.”²⁰ The disclaimer in the Limited Warranty then states that “Microsoft gives no other express warranties, guarantees or conditions.”²¹ Therefore the express promise made on Microsoft’s website that the software supports Portable Document Format (PDF) would not be covered by their limited warranty unless Microsoft repeats this promise in the materials a consumer receives “in or with the software.”²² In other words, by virtue of the disclaimer,

¹⁸ Mac OS X (Leopard) Software License, <http://images.apple.com/legal/sla/docs/macosex105.pdf> (last visited June 16, 2008).

¹⁹ The eighteen titles are 1, 5, 8, 9, 11, 12, 33, 34, 36, 44, 61, 63, 67, 73, 75, 79, 84, 93. To complete the picture of this category, the Intuit titles (numbers 5, 11, 33, 34, 44, 63, 73, 75, and 93) contain “satisfaction” guarantees in their EULAs, authorizing for a limited time a return of the software for a refund, notwithstanding the EULAs’ disclaimers of express warranties. Although these guarantees offer some protection, consumers may still be enticed to enter a transaction because of express warranties, but fail to take advantage of the guarantee because of the guarantee’s limited time and other requirements. Further, a consumer cannot seek consequential damages for breach of the express warranties or otherwise enforce them under the satisfaction clause.

²⁰ Retail Software License Terms for Microsoft Office Home and Student 2007, http://download.microsoft.com/documents/usetems/Office%20Home%20and%20Student_2007_English_bc25f42d-51f9-4e57-8a41-846bca63054a.pdf, section A (last visited June 16, 2008).

²¹ Retail Software License Terms for Microsoft Office Home and Student 2007, http://download.microsoft.com/documents/usetems/Office%20Home%20and%20Student_2007_English_bc25f42d-51f9-4e57-8a41-846bca63054a.pdf, section G (last visited June 16, 2008).

²² For a discussion of the materials that accompany the software, see *infra* notes 27-29 and accompanying text. Titles 2, 13, 15, 23, 24, 30, 31, 35, 47, 48, 50, 56, 57, 64, 66, 81, 83, 86, 89, 97, 99 belong in this category.

Although disclaiming express warranties, titles 13, 24, and 99 also allow a return of the

Microsoft's website itself is incapable of providing any express warranties to the end user. Twenty-one EULAs belong in this category.

A third set of disclaimers seem ambiguous on whether they disclaim express warranties made on the website. But courts likely would find that they do so. For example, Microsoft states on its website that Windows XP Professional with Service Pack 2 (number 32) allows users to access their work computer from their home computer. Further, the website claims that "when you connect to your computer at work, Remote Desktop automatically locks that computer so no one else can access your applications and files while you are gone."²³ Nevertheless, section 18 of the EULA disclaims any express warranties that are not in the limited warranty of section 17, which provides that the software will perform "substantially in accordance with accompanying materials."²⁴ But the EULA nowhere defines "accompanying materials" and section 18 states that "advertising, documentation, packaging, or other communications" do not create express warranties,²⁵ leaving as a mystery whether "accompanying materials" includes website promises and representations. Nevertheless, Microsoft's "terms of use" of its website disclaims any express warranties created by the website, suggesting that Microsoft did not intend "accompanying materials" to include website materials.²⁶ Microsoft's set of disclaimers means that website promises and representations likely are not legally enforceable. Fourteen EULAs

software for a limited time for "defects" in material or workmanship.

²³ Windows XP Professional Overview: Access Files and Applications Remotely, <http://www.microsoft.com/windowsxp/evaluation/features/remotefeatures.aspx> (last visited June 16, 2008).

²⁴ Section 18's disclaimer provides:

The Limited Warranty that appears [in section 17] is the only express warranty made to you and is provided in lieu of any other express warranties or similar obligations (if any) created by any advertising, documentation, packaging, or other communications. Except for the Limited Warranty and to the maximum extent permitted by applicable law, Microsoft and its suppliers provide the software and support services (if any) AS IS AND WITH ALL FAULTS, and hereby disclaim all other warranties and conditions, whether express, implied or statutory

Microsoft Windows XP Professional: End-User License Agreement, http://download.microsoft.com/documents/useterms/Windows%20XP%20SP2_Professional_English_29e61d64-43e3-4ca3-b201-fe0c62507034.pdf (last visited June 16, 2008).

²⁵ See supra note 24.

²⁶ The "Terms of Use" can be found at Microsoft - Information on Terms of Use, <http://www.microsoft.com/info/copyright.aspx> (last visited June 16, 2008). Titles 4, 6, 19, 21, 32, 38, 40, 41, 52, 53, 55, 58, 62, 70 belong in this third category.

contain this kind of ambiguity.

A licensor may argue that disclaimers of website promises are irrelevant if the licensor makes the same promise in the “materials in or with the software.” For example, suppose Microsoft repeats its PDF representation somewhere in their “materials.” However, our data suggests that consumers cannot rely on a licensor’s “materials” repeating website promises and representations and that the potential for overreaching by licensors is strong. First, the data shows that licensors go to great lengths to disclaim promises made on their websites. It is hard to explain why they would do so if their “materials” contain the same promises and, in fact, our further investigation of these materials, although limited to those available, revealed that some do not.²⁷ Further, some “materials” contain disclaimers of their own or narrow the promises and

²⁷ We sought to track down whether licensors that provided that their software would perform “substantially in accordance with accompanying materials or documentation” repeated their website express promises and representations in their “accompanying materials”. However, many of these “materials” were unavailable without a purchase. From those that were available, a small sample yielded mixed results. Four user guides (numbers 6, 50, 53 and 57) were lengthy and thorough, explicitly repeating the representations captured in our appendix (and probably most if not all of what is on the licensor’s website); however, two of these user guides from Adobe (6 and 53) contained the following disclaimer:

The content of this guide is furnished for informational use only, is subject to change without notice, and should not be construed as a commitment by Adobe Systems Incorporated. Adobe Systems Incorporated assumes no responsibility or liability for any errors or inaccuracies that may appear in the informational content contained in this guide.

Adobe Photoshop Elements 6,
http://help.adobe.com/en_US/PhotoshopElements/6.0/pselements_6_help.pdf (last visited June 29, 2008); Adobe Acrobat 8.0 Professional,
http://help.adobe.com/en_US/Acrobat/8.0/Professional/help.pdf (last visted June 29, 2008).

Adobe Acrobat Standard 8.0 (number 38) contains the same disclaimer in their user guide. Further, the representations on their website appear broader than in the user guide. The representation on the website provides “Save Adobe PDF files as Microsoft Word documents, retaining the layout, fonts, formatting, and tables, to facilitate reuse of content.” <http://www.adobe.com/products/acrobatpro/acrobatstd.html> (last visited on March 31, 2008) (this link now takes you to Acrobat Standard 9.0). However, the instruction in the user guide contains the following: “If you don’t have the original file from which a PDF was created, you can save the PDF as a Word document that you can then edit in Word.... *Note: When you save a PDF to Word format, the resulting file isn’t equivalent to a file created in Word; some coding information may be lost.*” User Guide at 131. See also page 136. Adobe Acrobat Standard 8.0 -

representations made on the website.²⁸ Second, Microsoft and others promise only that the software will perform "substantially" as promised in the "materials," itself potentially a significant reduction in quality protection. Third, there appears to be little incentive for licensors to repeat promises and representations after a purchase regarding the software's capabilities. We should also point out that our data reveals the warranty/disclaimer approaches of very successful software licensors. Apparently Apple's current strategy of disclaiming virtually all warranties is not negatively influencing sales. It is likely that less successful licensors and fly-by-night operations, focusing on the bottom line and wary of the costs of warranty services, already follow or will follow Apple's lead.²⁹

A licensor may also claim that it stands behind its product no matter what a disclaimer says so the problem we address is irrelevant. We believe otherwise. First, as already noted, we present information about successful licensors and surmise that plenty of less successful licensors will not stand behind their products (even if they say they will). Second, sellers have invoked their disclaimers against warranties in hosts of cases in the paper world, suggesting that e-licensors will act no differently.³⁰ Third, the argument that licensors will "do the right thing" proves too much. If accepted, the argument means that we do not need contract law at all. Let's

http://help.adobe.com/en_US/Acrobat/8.0/Standard/help.pdf

The universal user guide furnished by Rosetta Stone for the four titles on our list (numbers 35, 48, 66, and 86) do not repeat their website representations captured in our appendix. However, even if the representations were included in the guide, the following disclaimer is set forth on page II of the user guide:

All information in this document is subject to change without notice. This document is provided for informational purposes only and Rosetta Stone Ltd. makes no guarantees, representations or warranties, either express or implied, about the information contained within the document or about the document itself.

Rosetta Stone Universal Guide -

[http://www.rosettastone.com/us_assets/documentation/RSV3_UG_CD_English_\(US\).pdf](http://www.rosettastone.com/us_assets/documentation/RSV3_UG_CD_English_(US).pdf)
(last visited on June 29, 2008).

²⁸ See *supra* note 27.

²⁹ Additionally, start-up software licensors are most likely to transfer problematic software and therefore be more interested in disclaiming warranties.

³⁰ See, e.g., *Inter-Mark USA, Inc. v. Intuit*, 2008 U.S. Dist. LEXIS 18834 (N.D. Cal.) (software disclaimer); *Jordan v. Doonan Truck & Equipment, Inc.*, 552 P.2d 881 (Kan. 1976) (holding that evidence of an oral express warranty that a truck would run for three to four months without any work was inadmissible because the disclaimer of warranties was the final expression of the parties' agreement).

just trust in the good faith of all businesses. Finally, perhaps most important and as the discussion in the next Part reveals, conditions in the e-world for overreaching may be too inviting for licensors uniformly to stand behind their warranties.

II. The E-Standard Form Environment

Professors Hillman and Rachlinski have compared the paper and e-worlds of standard-form contracting. They identified certain factors in the e-environment that should promote reading of e-standard forms by consumers:

Several factors suggest that consumers can defend themselves against undesirable terms more easily in the electronic environment. E-consumers can shop in the privacy of their own homes, where they can make careful decisions with fewer time constraints. They can leave their computers and return before completing their transactions, giving them time to think and investigate further. Also, at present, e-consumers tend to be better educated and wealthier than paper-world consumers, suggesting that they can better fend for themselves in the marketplace.

The Internet has also taken comparison shopping to a level that is unimaginable in the real world. The ease with which consumers can compare business practices, including the content of standard forms, suggests that consumers do not need judicial intervention to protect themselves from business abuse.³¹

Notwithstanding these advantages, some aspects of e-contracting raise concerns about the quality of assent to e-standard forms. Hillman and Rachlinski described these factors as either rational, cognitive, or social in nature, all leading to the conclusion that e-consumers are not likely to read terms. In another paper, Hillman summarized how these factors operate to discourage reading:

The rational factors overlap explanations from the paper world about why people do not read their forms, such as the impenetrability of most boilerplate, the ability of e-businesses to present the forms in a manner that deters reading, consumers' lack of bargaining power (indeed the lack of anyone with whom to bargain), the lack of diversity of terms within an industry, and the knowledge that boilerplate generally allocates the risks of remote contingencies. In short, an e-reader may weigh the costs and benefits of reading and not reading and rationally find a net benefit in not reading.

Cognitive factors for failing to read are irrational, but prominent, both in the paper and electronic worlds. They include consumers' propensity to underestimate the likelihood of adverse events and their tendency to rely on intuition and hunches instead of

³¹ Hillman & Rachlinski, *supra* note 3, at 478-79.

processing all of the information.

At first blush, social factors that affect how consumers treat standard forms would seem to be very different and favorable to e-consumers reading more [mainly because of the absence of a live agent applying pressure on the consumer to sign precipitously]. . .

Despite th[is] potential advantage[] for consumers . . . the likelihood is that e-consumers [will] not assign the same significance to a mouse click as a signature on a paper form. . . . [E]-consumers are conditioned to expect speed and instant gratification when using their computers, including when they engage in Internet contracting. Put differently, consumers may be overeager, even “click-happy” and may therefore fail to research their e-standard contracts.³²

In light of these factors, Hillman and Rachlinski predicted that consumers would resemble their counterparts in the paper world who fail in large part to read or comprehend their standard forms. To test these assumptions, Hillman administered a survey to his first-year class of 92 contracts students. The results and explanations are reported elsewhere.³³ Suffice it to say here that, for the most part, the survey results support the assumption that consumers generally do not read their e-standard forms.³⁴

Assuming we cannot expect consumers to read e-standard forms what, if anything, should contract law do about the problem? As noted in the introduction, a basic and deeply embedded rule of contract law is that people should be bound to terms when they have an opportunity to

³² Robert A. Hillman, Online Consumer Standard Form Contracting Practices: A Survey and Discussion of Legal Implications [hereinafter “Survey”], in *Consumer Protection in the Age of the “Information Economy”* 284-85 (2006).

³³ *Id.* at 286-94.

³⁴ *Id.* The survey found that few respondents read their e-standard forms beyond price and description of the goods or services “as a general matter.” Further, beyond price and description, a large minority of respondents do not read their forms at all. However, more than a third of the respondents read their forms when the value of the contract is high and more than a third read when the licensor is unknown. Further, a small cadre of respondents read particular terms beyond price and description, primarily warranties and product information warnings. *Id.*

The survey also illustrates that impatience accounts most often for the failure of respondents to read their forms. Not surprisingly, therefore, the survey also reveals that respondents rarely shop for advantageous terms, despite their greater availability on the Internet. *Id.*

read their contracts and signify their acceptance.³⁵ And for good reason. Licensors have better information about their products and the various problems that can arise than lawmakers who would have to substitute their judgments for those of the licensors. Nor is the use of standard forms necessarily disadvantageous to consumers. Analysts frequently point out that the use of standard forms reduces costs for licensors, which they can pass on to consumers.³⁶ Finally, even in competitive markets disclaimers are sufficiently common so that consumers arguably should expect them whether or not they read their standard forms.³⁷

On the other hand, there are good reasons not to be complacent about enforcing e-

³⁵ See supra note 9, reciting the duty-to-read rule.

³⁶ See supra note 8, and accompanying text.

³⁷ For a recent judicial defense of form contracts, see *IFC Credit Corp. v. United Business and Industrial Credit Union*, 512 F.3d 989, 992-93 (7th Cir. 2008) (Easterbrook, J.):

Ever since *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 111 S.Ct. 1522, 113 L.Ed.2d 622 (1991), enforced a forum-selection clause printed in tiny type on the back of a cruise-ship ticket, it has been hard to find decisions holding terms invalid on the ground that something is wrong with non-negotiable terms in form contracts. . . . As long as the market is competitive, sellers must adopt terms that buyers find acceptable; onerous terms just lead to lower prices. . . . If buyers prefer juries, then an agreement waiving a jury comes with a lower price to compensate buyers for the loss-though if bench trials reduce the cost of litigation, then sellers may be better off even at the lower price, for they may save more in legal expenses than they forego in receipts from customers.

There is no difference in principle between the content of a seller's form contract and the content of that seller's products. The judiciary does not monitor the content of the products, demanding that a telecom switch provide 50 circuits even though the seller promised (and delivered) 40 circuits. It does not matter that the seller's offer was non-negotiable (if, say, it offered 40-circuit boxes and 100-circuit boxes, but nothing in between); just so with procedural clauses, such as jury waivers. As long as the price is negotiable and the customer may shop elsewhere, consumer protection comes from competition rather than judicial intervention. Making the institution of contract unreliable by trying to adjust matters *ex post* in favor of the weaker party will just make weaker parties worse off in the long run. . . .

For recent defenses of boilerplate in the law reviews, see, e.g., Lucian A. Bebchuk & Richard Posner, *One-Sided Contracts in Competitive Consumer Markets*, 104 Mich. L. Rev. 827 (2006); Jason S. Johnston, *The return of Bargain: An Economic Theory of How Standard-Form Contracts Enable Cooperative Negotiation Between Businesses and Consumers*, 104 Mich. L. Rev. 857 (2006).

standard forms, including express warranty disclaimers. The conditions for licensor opportunism are too great to adopt a “hands off” policy on the grounds of freedom of contract and the duty to read. First, our data shows that licensors are not reticent to make rather bold claims about their products on their websites only to reverse position on their standard forms.³⁸ These circumstances are likely to mislead consumers, regardless of whether they read their e-standard forms, especially if the claims are sufficiently clear and distinct to constitute express warranties and the consumer reads the promises and representations shortly before committing to a purchase. Even consumers who have become inured to everyday puffing and boasting in general advertising about products likely rely more heavily on licensor promises and representations when they appear on websites only a few clicks away from a purchase.

Second, the collection of “dangerous terms” already appearing on various “watchdog” websites provides evidence that licensors are not beyond taking advantage of the conditions of e-commerce.³⁹ Common suspect terms in the software arena, for example, include those that authorize licensors to add spyware to a consumer’s computer, that provide for unilateral modification of terms by the licensor without notice or an opportunity to contest the changes, that extend the duration of a contract automatically, and that authorize the licensor to cancel a contract without notice.⁴⁰ Our data suggests that we can add deceptive e-warranty disclaimers to this list.

Third, contract law should help create the appearance of fairness in e-contracting in order

³⁸ See *supra* notes 15-26, and accompanying text; see also Appendix 1. For another example, Intuit’s Quicken 2008 software (number 75) states that “Quicken can now import your transaction data directly from PayPal.” Quicken Deluxe® Software: What’s New in 2008, <http://quicken.intuit.com/personal-finance/deluxe-money-management.jsp> (last visited June 16, 2008). The EULA “disclaim[s] all guarantees and warranties, whether express, implied, or statutory, regarding the software. . . .” Quicken 2008 End User License Agreement, http://help.quicken.com/support/eula/eula_qw2008/ (last visited June 16, 2008). The EULA does include a “satisfaction guaranteed” term, but see *supra* note 19.

³⁹ See ALI Principles, *supra* note 1, at Chapter 2, Topic 2, A, Overview, citing Larry Magid, *It Pays to Read License Agreements*, PC Pitstop, available at <http://www.pcpitstop.com/spycheck/eula.asp> (last accessed March 28, 2005) (discussing the licensing agreement that accompanies Gain Publishing’s eWallet software, which authorizes the collection of data about a consumer’s reading behavior, TV interests, and communication partners, effectively allowing the company to “follow [the transferee] around”); Annalee Newitz, *Dangerous Terms, A User’s Guide to EULAs*, Electronic Frontier Foundation, available at <http://www.eff.org/wp/eula.php> (last accessed May 5, 2005). But see Ronald J. Mann & Travis Siebeneicher, *Just One Click: The Reality of Internet Retail Contracting*, 108 *Colum. L. Rev.* 984 (2008) (reporting relatively benign terms in standard forms of major Internet retailers).

⁴⁰ See ALI Principles, *supra* note 1, § 1.11 cmt. c.

to encourage consumers to engage in the process. Relatedly, as a matter of fairness and ethics licensors *should* keep their promises. There is little reason why the law should adopt a lesser standard in the e-context than morality would dictate. For example, there is little danger that holding licensors to their express warranties will flood courts with litigation or disrupt the operation of otherwise clear and distinct rules. As we have already mentioned, most licensors already stand behind their products regardless of the legal rules that apply.

Some analysts argue that in competitive markets only a small number of readers may deter licensor opportunism.⁴¹ Licensors want to establish good reputations to ensure a market share and a few readers and watchdog groups that already exist in abundance on the Internet can easily spread the word electronically if a licensor writes unfair terms.⁴²

This line of argument, often addressed in the literature, is problematic because the number of readers may be too small to impact a licensor's reputation and watchdog groups, at least so far, have only been marginally effective.⁴³ Further, licensors in competitive industries can employ new e-technologies to segregate readers and offer them more advantageous terms. "Careful segregation of consumers on the basis of their willingness to read and shop for terms would ensure that the small number of careful consumers would not discipline businesses concerning terms they offer to the rest of the consumers and would allow businesses to take advantage of the latter."⁴⁴ In addition, licensors can experiment and determine the types of presentation of terms that best discourages reading.⁴⁵ Nowhere may be more important to intercede than in the context of disclaimers of express warranties that not only induce consumers to enter transactions but that also create fundamental quality expectations.⁴⁶

Sections I and II demonstrate that licensors make express warranties on their websites, that consumers generally do not read the e-disclaimers in their EULAs, that this creates the incentive for opportunism, and that evidence of overreaching already exists. The next two

⁴¹ See Alan Schwartz & Louis L. Wilde, *Imperfect Information in Markets for Contract Terms: The Examples of Warranties and Security Interests*, 69 Va. L. Rev. 1387, 1409 (1983).

⁴² See Hillman & Rachlinski, *supra* note 3, at 469-70 & n.222; Avery Katz, *Standard Form Contracts*, 3 *New Palgrave Dictionary of Economics and the Law* 505 (Peter Newman ed., 1998) ("If reputational concerns lead drafters of forms to moderate their opportunism, regulation may be largely unnecessary.").

⁴³ See, e.g., Hillman & Rachlinski, *supra* note 3, at 443; ALI Principles, *supra* note 1, § 2.01 cmt. h.

⁴⁴ Hillman & Rachlinski, *supra* note 3, at 472.

⁴⁵ *Id.* at 481-82; Hillman, *Survey*, *supra* note 32.

⁴⁶ See *supra* notes 16-23, and accompanying text.

sections of this paper consider how contract law should treat e-express warranty disclaimers in light of these realities. First, in Part III, we look at the parol evidence rule and then, in Part IV, we turn to the issue on the merits.

III. The Parol Evidence Rule in the Electronic Age

Our data supports the view that licensors make specific and verifiable representations and promises on their websites that constitute express warranties under current law.⁴⁷ Thus, our starting point is that a licensor's representation or promise constitutes a "basis of the bargain" if a court applies UCC section 2-313, or that a reasonable consumer could rely on the statement if a court applies section 3.02 of the ALI Principles.⁴⁸ Under this set of assumptions, the threshold question is whether the parol evidence rule bars evidence of the express warranty if the e-standard form disclaims such warranties and includes a "full integration" clause.

The parol evidence rule bars evidence of prior or contemporaneous representations and promises that contradict an unambiguous record that the parties intended to be complete. Suppose, for example, a consumer alleges that a software licensor represented on its website that its software "is compatible with the Ultrix operating system," when it is not.⁴⁹ The e-standard form disclaims all express and implied warranties and includes a full integration clause. The parol evidence rule, at least in its traditional form in the paper world, bars the admissibility of the express warranty because it is inconsistent with the standard form.

Courts and writers have spilled plenty of ink advocating the abolishment of the parol evidence rule for reasons not unlike the problem presented here, namely that the rule, designed to deter fraud, tends to encourage it by allowing contracting parties to shield themselves from their actual promises and representations. In fact, because the parol evidence rule aids and abets such conduct, courts often find exceptions to, or manipulate, the rule if they believe that the evidence offered is true. Among a host of exceptions and manipulations, three are pertinent here: Courts admit extrinsic evidence (1) if the parties did not intend the record to be complete on the issue at hand; (2) if the evidence would reveal fraud or another invalidating cause; or (3) if the evidence

⁴⁷ See *infra*, Appendix.

⁴⁸ Courts have split on whether UCC Article 2, governing the sale of goods, should apply to software. The ALI sought to promulgate the Principles of the Law of Software Contracts to fill the void. The UCC's "basis of the bargain" test for determining the existence of an express warranty has caused confusion over precisely what the test means. The ALI Principles have therefore adopted a new test based on whether a copyholder could reasonably rely on the words or conduct, a test based on the UCC commentary explaining the meaning of "basis of the bargain."

⁴⁹ See ALI Principles § 3.02, Illus. 1.

consists of a course of performance, course of dealing, or usage of trade.⁵⁰

Some courts determine whether a record is complete based on its plain meaning, including the meaning of any integration clause. However, many courts, following Corbin and Llewellyn, admit all relevant evidence preliminarily to determine whether the parties intended the record to be complete before applying the parol evidence rule, sometimes even if the record contains a full integration clause.⁵¹ Needless to say, credible evidence of representations and promises that are inconsistent with a record usually means that the parties did not intend to integrate their agreement completely, at least if they are in good faith. If a licensor says its software is compatible with Ultrix, a transferee can justifiably assert that the record is not complete on the compatibility issue notwithstanding an e-disclaimer and integration clause. A court sympathetic with this argument can entertain the evidence preliminarily, conclude that the record is incomplete, and admit the evidence for purposes of determining the parties' substantive rights. In truth, however, in most cases neither the licensor nor consumer probably thought about the completeness of the e-standard form, nor has either party read it. The situation is not unlike the merchant-to-merchant battle-of-the-forms fiasco, in which the UCC and courts have wisely turned their focus away from the text of the forms.⁵²

⁵⁰ See, e.g., *Mitchill v. Lath*, 160 N.E. 646, 647 (N.Y. 1928) (“[A]n inspection of the written contract, read in the light of surrounding circumstances, must not indicate that the writing appears to contain the engagements of the parties, and to define the object and measure the extent of such engagement.”); *Johnson Bldg. Co. v. River Bluff Dev. Co.*, 374 N.W.2d 187, 193 (Minn. App. 1985) (fraud); *Eskimo Pie Corp. v. Whitelawn Dairies, Inc.*, 284 F. Supp. 987 (S.D.N.Y. 1968) (course of performance, usage of trade, course of dealing).

Determining what constitutes “the record” that the parties intend to be complete constitutes a fourth potential exception. If the fully-integrated record *includes* promises and representations made on the website, then there is no parol evidence issue, only one of interpretation of the conflicting terms.

⁵¹ See, e.g., *Johnson Bldg. Co. v. River Bluff Dev. Co.*, 374 N.W.2d 187, 193 (Minn. App. 1985) (“The fact that the purchase agreement contained a ‘full integration’ clause does not alter our conclusion that the trial court properly admitted parol evidence. A ‘full integration’ clause does not prevent proof of fraudulent representations by a party to the contract.”); *Rumsfeld v. Freedom NY*, 329 F.3d 1320, 1328-29 (Fed. Cir. 2003) (“Like ‘most courts’ we elect to follow the ‘traditional rule’ . . . namely that an integration clause ‘conclusively establishes that the integration is total unless (a) the document is obviously incomplete or (b) the merger clause was included as a result of fraud or mistake or any other reason to set aside the contract.’ (quoting *Calamari & Perillo*, supra, § 3.4(c) (citing Samuel Williston, *Williston on Contracts*, § 633 (3d ed. 1957)).”).

⁵² See UCC § 2-207; Douglas G. Baird & Robert Weisberg, *Rules, Standards and the Battle of the Forms: A Reassessment of § 2-207*, 68 Va. L. Rev. 1217 (1982).

Despite the parol evidence rule, many courts also admit evidence of fraudulent misrepresentation, duress, mistake, or the like on the theory that such evidence establishes the unenforceability of an agreement (including any warranty disclaimer). If a licensor warrants that its software is compatible with Ultrix when it knows that it is not and this information is not readily available to the transferee, the evidence of this misrepresentation should be admissible.⁵³ Further, evidence that the licensor presented the e-disclaimer in a manner meant to discourage the consumer from reading the e-disclaimer would substantiate the misrepresentation or by itself may constitute actionable concealment.⁵⁴

Courts also admit evidence of course of performance, course of dealing, or usage of trade because they are reliable indicators of the meaning of contract language.⁵⁵ For example, a court may admit evidence that a licensor repeatedly replaced a consumer's software that is incompatible with Ultrix, which course of dealing may establish such a duty notwithstanding an e-disclaimer of express warranties and an integration clause.⁵⁶ In addition, a court may admit evidence of a trade custom that software licensors in a particular "place, vocation, or trade" consistently stand behind their e-express warranties, notwithstanding disclaimers.⁵⁷

Although these and other exceptions show that the parol evidence rule is porous and confusing, the ALI Principles seek to clarify the rule by codifying the results suggested in the Ultrix example above. The ALI Principles direct courts to admit extrinsic evidence to determine whether the parties intended a full or partial integration prior to application of the parol evidence rule. The Principles also provide for the admissibility of evidence of misrepresentation, course of performance, course of dealing, or usage of trade.⁵⁸ Finally, the Principles hold in the

⁵³ A fraudulent misrepresentation occurs if a party knows that the representation is false or the party makes the representation recklessly, with the intention of inducing the other party to rely, which the other party does. See, e.g. *Gibb v. Citicorp Mortgage, Inc.* 246 Neb. 355, 518 N.W.2d 910 (1994).

⁵⁴ A fraudulent concealment occurs if a party conceals a material fact that is not within the reasonable observation of the other party in order to mislead that party. See, e.g. *Gibb v. Citicorp Mortgage, Inc.* 246 Neb. 355, 518 N.W.2d 910 (1994).

⁵⁵ See, e.g., *Eskimo Pie Corp. v. Whitelawn Dairies, Inc.*, 284 F. Supp. 987 (S.D.N.Y. 1968).

⁵⁶ The UCC proclaims that express terms trump course of dealing, but directs courts to construe them consistently if possible. See UCC § 1-303(e)(1) (2001).

⁵⁷ UCC § 1-303(c).

⁵⁸ ALI Principles, *supra* note 1, § 3.08 provides:

consumer context that an integration clause is “probative but not conclusive” evidence on

Integration and Parol Evidence

- (a) A full integration constitutes a record or records intended by the parties as a complete and exclusive statement of the terms of an agreement. A partial integration constitutes a record or records intended by the parties as the complete and exclusive statement of one or more terms of an agreement.
- (b) The court should determine whether a record is fully integrated, partially integrated, or not integrated prior to applying subsections (e) and (f). In making this determination, the court should consider all credible and relevant extrinsic evidence, including evidence of agreements and negotiations prior to or contemporaneous with the adoption of the record.
- (c) If the transfer is a standard-form transfer of generally-available software, a term in a record indicating that the record is fully integrated or partially integrated should be probative but not conclusive on the issue.
- (d) The court should determine whether a term in a record is ambiguous prior to applying subsections (e) and (f). In making this determination, the court should consider all credible and relevant extrinsic evidence, including agreements and negotiations prior to or contemporaneous with the adoption of the record. If a term or terms is ambiguous, extrinsic evidence is admissible to prove the meaning of the term or terms.
- (e) Unambiguous terms set forth in a fully integrated record may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, but may be explained by course of performance, course of dealing, or usage of trade.
- (f) Unambiguous terms set forth in a partially integrated record may not be contradicted by evidence of conflicting terms, but may be explained by evidence of course of performance, course of dealing, usage of trade, or consistent additional terms.
- (g) Notwithstanding subsections (e) and (f),
 - (1) evidence is admissible to prove
 - (A) illegality, fraud, duress, mistake, or other invalidating causes; and
 - (B) independent agreements; and
 - (2) evidence of course of performance, course of dealing, and usage of trade is admissible to supplement a record.

integration.⁵⁹

An alternative approach would be to abandon the parol evidence rule in its entirety, at least in the case of consumer e-express warranties and disclaimers, on the theory that the cost of administering the rule outweighs its usefulness. After all, the problem is not with proof of the existence of a warranty—records and logs of a website make this incontestable.⁶⁰ The issue is whether the e-disclaimer extinguishes what would otherwise be the licensor’s legal duty to stand behind its quality claims. Instead of complicating the issue by entertaining claims of inadmissibility of evidence, courts should receive all pertinent evidence, not as a preliminary step with the evidence out of the reach of the trier of fact, but as probative evidence on the merits. We turn to these merits in the following section.

IV. Enforcement of e-Disclaimers

In this section, we assume the absence of a parol evidence bar, so we are left with the question of whether, as a substantive matter, contract law should enforce e-disclaimers if the licensor has made express warranties on its website. The UCC and the ALI Principles recognize the potential incompatibility of express warranties and disclaimers.⁶¹ UCC § 2-316(1) directs courts to strike disclaimers that are “inconsistent” with an express warranty, but the section exhorts courts to try to find consistency and implies that such an interpretation can be found.⁶² One can argue that the UCC is asking courts to do the impossible: How can a court find a consistent interpretation of contradictory language? Unsurprisingly, judicial application of § 2-316(1) has been inconsistent and incoherent.⁶³ The ALI Principles, on the other hand, direct courts to strike “unexpected” e-disclaimers.⁶⁴ Arguably this approach is clearer and is consistent with what the UCC drafters were trying to achieve: Comment 1 to § 2-316 states that subsection

⁵⁹ ALI Principles § 3.08(c).

⁶⁰ See *supra* note 6, and accompanying text.

⁶¹ See *supra* notes 16-23, and accompanying text.

⁶² Section 2-316(1) directs courts to construe language or conduct creating such warranties and language or conduct negating them as “consistent” unless unreasonable: “Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other . . . negation or limitation is inoperative to the extent that such construction is unreasonable.” See Ajay Ayyappan, *UCITA: Uniformity at the Price of Fairness?*, 69 *Fordham L. Rev.* 2471, 2478-85 (2001).

⁶³ See ALI Principles § 3.06, cmt. a and cases cited therein.

⁶⁴ See ALI Principles § 3.06(a).

(1) is meant to “protect a buyer from *unexpected* . . . language of disclaimer”⁶⁵

The issue thus boils down to an analysis of what conditions must exist for a court to find that an e-disclaimer is unexpected. The legal framework already exists for such an analysis. Although the approach has many labels, including “reasonable expectations” and “unconscionability,” contract law largely follows Karl Llewellyn’s admonition to presume “blanket” assent to conscionable boilerplate, but only if a party had reasonable notice of and opportunity to read the standard form.⁶⁶ This strategy’s emphasis on consumer delegation to licensors of the drafting of boilerplate preserves the semblance of autonomous choice in the context of standard forms and should remain attractive in the e-age.⁶⁷ What factors should courts therefore focus on in determining the adequacy of notice and the opportunity to read the e-disclaimer? And how should courts determine if a disclaimer is “conscionable?”

The ALI Principles furnish some guidance. They call for software licensors to make terms, including disclaimers, easily accessible on their websites *prior* to a transaction and to give reasonable notice of and access to the terms if a licensee initiates a transaction.⁶⁸

⁶⁵ Emphasis added. The ALI Principles follow this comment in § 3.06, but omit the superfluous “unbargained” language.

⁶⁶ Hillman, *Rolling Contracts*, supra note 8, at 758, relying on Karl Llewellyn, *The Common Law Tradition: Deciding Appeals* 370 (1960); see also K.N. Llewellyn, *Book Review*, 52 *Harv. L. Rev.* 700, 704 (1939) (asserting that the presumption of assent does not apply to “utterly unreasonable clauses”).

⁶⁷

[D]ifficulties arise in determining when a contracting party has sufficient information about the contract subject matter or future course of events affecting the value of the contract subject matter for a conclusion to be sustained that the choices in question were autonomous. Although contracting choices made with false information or in the absence of highly material information may, at one level, be regarded as non-autonomous, at another level the decision to forgo opportunities to acquire further information may itself be an autonomous choice.

Michael Trebilcock, *The Limits of Freedom of Contract* 242 (1993).

⁶⁸ ALI Principles § 2.02. Our data reveals that 34% of the Top 100 titles did not make their EULAs available before a consumer engaged in a transaction. See supra notes 11-12, and accompanying text.

Initiation of a transaction occurs only when the consumer intends to contract and has begun that process, such as by clicking on a “purchase” or “I agree” icon before the consumer gives payment information. Accessibility of terms on a website prior to initiation enables prospective customers to read and compare terms without making a commitment. In fact, it is just such accessibility, albeit with some searching, that enabled us to peruse the standard forms discussed in Part I of this paper (and should make enforcement of those disclaimers more likely). A reasonably clear notice of the availability of terms on the licensor’s homepage should suffice. Further, the notice should be conspicuous based on placement and size (bold print or a large font should do) and should constitute a hyperlink that leads directly to the standard form.⁶⁹ The standard form itself should also be conspicuous on the computer screen.

Once a transferee initiates a transaction, licensors should require a “clickwrap” acceptance of the e-standard form. Clickwrap most closely resembles the signing of a paper standard form because clickwrap requires the consumer to click “I agree” (or the like) before completing the transaction. Further the “I agree” icon must be adjacent to or at the end of the standard form, and must automatically appear on the screen or in a scroll-down window as part of the processing of the transaction. A mere reference to terms that can be found elsewhere (“browsewrap”) should not suffice.⁷⁰

The Federal Trade Commission’s truth-in-advertising” and “dot com disclosures” policies should supplement the disclosure strategies discussed here.⁷¹ These call for truthful and non-deceptive advertising and “clear and conspicuous” disclosures. However, contract law should not consider the FTC approach alone a solution to the e-express warranty and disclaimer problem. For all of the reasons agencies, as a general matter, are imperfect solutions to society’s problems, such as agency capture, lack of resources, and ineffective policing, we believe that contract law should itself address the problem of e-warranties and disclaimers.

What will be the effect of the disclosure measures we suggest? Disclosure will increase the *opportunity* for consumers to uncover warranty disclaimers. But for the reasons discussed in

⁶⁹ Certain warranty disclaimers must be conspicuous under Article 2 of the UCC. See, e.g., UCC § 2-316 (1998).

⁷⁰ For a discussion of clickwrap and browsewrap, see ALI Principles § 2.01, cmt. b; § 2.02, cmt. b; Chapter 2, Topic 2, Summary Overview.

⁷¹ See Federal Trade Commission, Facts for Business, <http://www.ftc.gov/bcp/online/pubs/buspubs/dotcom/index.shtml> (last accessed on 4/15/08), & <http://smallbusiness.findlaw.com/business-operations/advertising-marketing/advertising-fair-advertising-faq.html> (last accessed on 4/15/08).

Part II and for the reasons that follow, we doubt that disclosure will greatly increase reading of any terms of an e-standard form, including warranty disclaimers. We will suggest, however, that disclosure may be the best of a series of less-than satisfactory solutions.

Research on advertising and on shopping behavior on the Internet reinforces the conclusion that greater disclosure of e-standard terms will have little influence on consumers' purchasing strategies, especially because of the proximity of the warranties to the "I agree" icon that commits a consumer to a transaction. In an earlier article, Hillman reported on a study that identifies two kinds of Internet shoppers.⁷² The "convenience" shopper rationally uses the Internet to search for a particular product or service and to compare prices and quality reports.⁷³ The "recreational" shopper, as the name implies, shops for fun and commonly purchases impulsively.⁷⁴ Recreational shoppers "may be driven by need to purchase rather than need for a product."⁷⁵ The Internet likely promotes impulsive purchasing because it supplies "recreational shopping features," such as "email alerts of new products and special offers" twenty-four hours a day.⁷⁶ In addition, people who purchase impulsively prefer the privacy e-shopping affords.⁷⁷ In fact, shoppers who start an Internet search for convenience may ultimately purchase

⁷² Robert A. Hillman, *Online Boilerplate: Would Mandatory Website Disclosure of E-Standard Terms Backfire?*, 104 Mich. L. Rev. 837, 851 (2006), discussing Junghyun Kim & Robert LaRose, *Interactive E-Commerce: Promoting Consumer Efficiency or Impulsivity?* 10 J. of Computer-Mediated Comm. (November 2004), available at http://jcmc.indiana.edu/vol10/issue1/kim_larose.html (last accessed on March 4, 2005).

⁷³ Kim and LaRose, *supra* note 72.

⁷⁴ *Id.*

⁷⁵ *Id.*, citing Dennis W. Rook & Robert J. Fisher, *Normative Influences in Impulsive Buying Behavior*, 22(3) J. of Consumer Res. 305-313 (1995).

⁷⁶ *Id.* See also Xiaoni Shang, Victor R. Prybutok, & Chang E. Koh, *The Role of Impulsiveness in a TAM-Based Online Purchasing Behavior Model*, 19 Information Resources Management Journal 54, 55 (2006) ("The development of the digital economy makes impulsive purchasing even more convenient and pervasive. . . . Online licensors are convinced that a substantial portion of their sales is attributed to impulse purchases. . . . Impulsive purchasing is bound to increase as the Internet makes it easier for consumers to access a wide range of brands and to compare different products without ever leaving home.").

⁷⁷ Kim and LaRose, *supra* note 72.

impulsively.⁷⁸ Ironically, the lack of a live agent exerting time pressure on consumers actually *may reduce* the tendency to read terms and increase impulsive purchasing. Consumers with time to interact with a website may gain confidence in and form a favorable impression of it.⁷⁹ Such an attitude may reinforce the belief that reading terms would be a waste of time.⁸⁰

The opportunity to commit to a purchase literally seconds after reading a licensor's promises and representations that are carefully designed to induce purchasing obviously further promotes and facilitates impulsive purchasing.⁸¹ In short, the Internet environment likely is not one in which we can hope for careful perusal of warranty disclaimers even with greater disclosure.⁸²

In addition to our qualms about the effects of disclosure on consumer reading of terms, we have another concern. Ironically, more disclosure may only mean more judicial enforcement of e-disclaimers because consumers will be unable to claim surprise if the disclaimer is readily available for their perusal.⁸³ Perhaps watchdog groups will become more efficacious once e-standard forms are more readily available for perusal, thereby tipping the balance in favor of greater disclosure despite our concern, but only time will tell.

⁷⁸ Id.

⁷⁹ See Miriam J. Metzger, Privacy, Trust, and Disclosure: Exploring Barriers to Electronic Commerce, 9 J. of Computer-Mediated Comm. (July 2004), available at <http://jcmc.indiana.edu/vol9/issue4/metzger.html> ("Web sites of respected organizations that were visually pleasing were rated high in trustworthiness and expertise.") (last accessed on June 13, 2005).

⁸⁰ Kim & LaRose, *supra* note 72, citing Sharon E. Beatty & M. Elizabeth Ferrell, Impulse Buying: Modeling its Precursors, 74 J. of Retailing 161-67 (1998).

⁸¹ The more formalities and processes required to make a commitment, the more likely a party will be cautioned about the seriousness of what she is doing. See Lon L. Fuller, Consideration and Form, 41 Colum. L. Rev. 799 (1941).

⁸² Hillman's survey of first-year law students reported that 15 out of 92 respondents read warranty terms. See Hillman, Survey, *supra* note 32, at 308 n. 30. But see Chang-Hoan Cho, Jaewon Kang, & Hongsik John Cheon, Online Shopping Hesitation, 9 CyberPsychology & Behavior 261 (2006).

⁸³ Hillman, Online Boilerplate, *supra* note 72, at 853-55.

In light of these realities, we should not rule out other methods of dealing with e-warranty disclaimers, some involving even greater disclosure requirements. For example, the law could require that consumers click “I agree” at the end of each e-disclaimer (and other contentious terms) or that disclaimers must be in bold print to emphasize their importance.⁸⁴ However, critics may claim, with some justification, that extra clicking would be cumbersome for little gain because consumers would simply click without digesting the disclaimer. Nor has bold or large print worked very well in the paper world.⁸⁵

Another method of dealing with the warranty/disclaimer problem would be to require conspicuous notice on the website, both in terms of placement and size, that representations and promises made there are not legally enforceable. We have already mentioned that 51 of the 54 titles in our data contain website “terms of use” that appear to disclaim website express warranties, but that these are not enforceable because of the absence of sufficient notice of the terms of use and their lack of real acceptance by consumers.⁸⁶ However, if a licensor gave ample notice, for example, by including a conspicuous preamble on the website stating that nothing that follows is legally enforceable, reasonable consumers would not rely on any representations or promises and therefore contract law would not recognize any express warranties in the first place. The problem with this approach is that it ties the hands of good-faith licensors who want to advertise their products by requiring them to send perhaps misleading signals about the quality of their products: “We assume no legal liability, but our software will allow you to run Windows on your Mac” suggests that this licensor has little faith in its product or its promises. Perhaps requiring licensors to highlight their warranty disclaimers in a window that automatically appears before the completion of a transaction would alleviate this problem, but it is hard to justify why warranty disclaimers deserve more attention than other potentially “dangerous” terms, such as those authorizing automatic renewal or unilateral modification. Contract law could require licensors to include *all* potentially material terms in a pop-up window before a consumer can commit to a transaction, but sorting out what to include would challenge licensors and courts. Further, with clickwrap disclosure of the entire EULA already required, additional disclosure may be confusing and deter any reading at all. On the other hand, warranty disclaimers in EULAs particularly rankle because they take back commitment-inducing promises and representations affirmatively set forth on the website. Perhaps a pop-up window solely consisting of disclaimers is therefore justified.

⁸⁴ See *Id.*

⁸⁵ Analogous strategies in the paper world have not been very successful, in part because consumers are unlikely to be riveted to attention by such formalities.

⁸⁶ See *supra* notes 16-17, and accompanying text.

Still another approach to the warranty/disclaimer problem would be to invalidate all e-disclaimers of express warranties regardless of the context on the theory that such disclaimers are invariably unexpected and misleading and therefore unconscionable. This strategy would deal a considerable blow to freedom of contract and related policies discussed above for enforcing disclaimers.⁸⁷ And, so long as the disclosure process is reasonable, it is difficult to make a case for wholesale exclusion of disclaimers notwithstanding consumers' seeming inability to protect themselves. In short, unconscionability per se may be too blunderbuss a remedy for the warranty/disclaimer problem. Disclosure, incorporating some or all of the ideas we have suggested, may be the best of a series of imperfect solutions, as we now discuss briefly in the conclusion.

Conclusion

We believe that e-commerce exacerbates the problem of warranties and disclaimers and that lawmakers should address this issue. And we find that more disclosure is the best of various imperfect solutions to the problem. Disclosure is inexpensive and, at minimum, creates the potential for more legitimate consumer assent to e-standard forms, including assent to disclaimers of warranty. Even if in the short term consumers do not read their forms, perhaps consumers will eventually learn of misleading warranties. After all, the Internet creates communication possibilities and research tools unavailable to disgruntled purchasers in the paper world. Only a few readers or vitalized watchdog groups may suffice to spread the word. The prospect of the word getting out that a licensor does not intend to stand behind its promises and representations may be sufficient to curtail the practice of misleading warranties and disclaimers.

⁸⁷ See supra notes 35-37, and accompanying text.

Sales Rank	Developer	Software Title	Website Address (last accessed March 31, 2008)	Example of Express Warranty created on website	Disclaimer Language	Limited Warranty Language
1	Apple	Apple Mac OS X Version 10.5 Leopard	http://store.apple.com/1-800-MY-APPLE/WebsiteObjects/AppleStore.wa/wa/RSLID?mco=A58D4EFD&fnode=home/shop_mac/software&nplm=MB427Z/A	Run Windows on your Mac	...THE APPLE SOFTWARE AND ANY SERVICES PERFORMED OR PROVIDED BY THE APPLE SOFTWARE ("SERVICES") ARE PROVIDED "AS IS", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND APPLE AND APPLE'S LICENSORS (COLLECTIVELY REFERRED TO AS "APPLE" FOR THE PURPOSES OF SECTIONS 7 and 8) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE APPLE SOFTWARE AND ANY SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY...	Limited Warranty on Media. Apple warrants the media on which the Apple Software is recorded and delivered by Apple to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of original retail purchase. Your exclusive remedy under this Section shall be, at Apple's option, a refund of the purchase price of the product containing the Apple Software or replacement of the Apple Software which is returned to Apple or an Apple authorized representative with a copy of the receipt. THIS LIMITED WARRANTY AND ANY IMPLIED WARRANTIES ON THE MEDIA INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, OF SATISFACTORY QUALITY, AND OF FITNESS FOR A PARTICULAR PURPOSE, ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF ORIGINAL RETAIL PURCHASE...THE LIMITED WARRANTY SET FORTH HEREIN IS THE ONLY WARRANTY MADE TO YOU AND IS PROVIDED IN LIEU OF ANY OTHER WARRANTIES (IF ANY) CREATED BY ANY DOCUMENTATION, PACKAGING OR OTHERWISE.

2	Microsoft	Microsoft Office Home and Student 2007	http://office.microsoft.com/en-us/suites/HA101655151033.aspx	New support for Portable Document Format (PDF) and XML Paper Specification (XPS) file formats helps ensure broader distribution of your documents with others	NO OTHER WARRANTIES. THE LIMITED WARRANTY IS THE ONLY DIRECT WARRANTY FROM MICROSOFT. MICROSOFT GIVES NO OTHER EXPRESS WARRANTIES, GUARANTEES OR CONDITIONS.	LIMITED WARRANTY. If you follow the instructions, the software will perform substantially as described in the Microsoft materials that you receive in or with the software.
4	Microsoft	Microsoft Office 2004 for Mac Student and Teacher	No Longer available on Microsoft.com	Now you can take full advantage of the Spotlight search functionality in Mac OS X Tiger with the help of Office Update 11.2.3.	The Limited Warranty that appears above is the only express warranty made to you and is provided in lieu of any other express warranties or similar obligations (if any) created by any advertising, documentation, packaging, or other communications. Except for the Limited Warranty and to the maximum extent permitted by applicable law, Microsoft and its suppliers provide the Software and support services (if any) AS IS AND WITH ALL FAULTS, and hereby disclaim all other warranties and conditions, whether express, implied or statutory,	Microsoft warrants that the Software will perform substantially in accordance with the accompanying materials for a period of ninety (90) days from the date of receipt... Any supplements or updates to the Software, including without limitation, any (if any) service packs or hot fixes provided to you after the expiration of the ninety day Limited Warranty period are not covered by any warranty or condition, express, implied or statutory.

5	Intuit	Quickbooks Pro 2008	http://quickbooks.intuit.com/product/accounting-software/small-business-accounting-software.jhtml	Download credit card and bank transactions	<p>DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10 ABOVE, THE SOFTWARE, SERVICES, AND ANY CONTENT ACCESSIBLE THROUGH THE SOFTWARE OR SERVICES ARE PROVIDED "AS-IS" AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INTUIT, ITS AFFILIATES, LICENSORS, PARTICIPATING FINANCIAL INSTITUTIONS, THIRD-PARTY CONTENT OR SERVICE PROVIDERS, DEALERS AND SUPPLIERS (COLLECTIVELY, "SUPPLIERS") DISCLAIM ALL GUARANTEES AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SOFTWARE, SERVICES, CONTENT, CDROMS AND RELATED MATERIALS</p>	<p>10. SATISFACTION GUARANTEED/LIMITED WARRANTY. (i) <u>Satisfaction Guarantee.</u> If you are not satisfied with the Software and (a) You purchased the Software from a retail store, you may uninstall and delete all copies of the Software from your computer(s) and return it within 60 days of purchase to the store where you purchased your license with a dated receipt for a full refund. If the store is unable or unwilling to issue a refund or you obtained the Software directly from Intuit, you may uninstall and delete all copies of the Software and return the Software with a dated receipt or packing slip within 60 days of purchase via U.S. mail to Intuit Inc., Returns Department, PO Box 190004, Greenville, SC 29390-9004 or via UPS to Intuit Inc., Returns Department, 110 Hidden Lake Circle, Duncan, SC 29334. ...(ii) <u>Limited Warranty.</u> (a) If the CDROM on which the Software is stored is defective, then return the CDROM to Intuit Inc., Returns Department, PO Box 19004, Greenville, SC 29390-9004 within 60 days of shipment (or in the case of a retail purchase, within 60 days of purchase) with a dated receipt or packing slip, and a replacement CDROM will be mailed to you...</p>
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6	Adobe	Adobe Photoshop Elements 6	http://www.adobe.com/products/photoshopelw/in/upgrade/?promoid=BGWA	Photoshop Elements eliminates red eye automatically as you download photos from your camera. (Last accessed June 5, 2008)	...the Software and access to any websites, online services and CD Services as-is and with all faults and expressly disclaim all other warranties, conditions, representations or terms, express or implied, whether by statute, common law, custom, usage or otherwise...	6. LIMITED WARRANTY. Except as may be otherwise provided in Section 14, Adobe warrants to the individual or entity that first purchases a license for the Software for use pursuant to the terms of this agreement that the Software will perform substantially in accordance with the Documentation for the ninety (90) day period following receipt of the Software when used on the recommended operating system and hardware configuration. Non-substantial variation of performance from the Documentation does not establish a warranty right.
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8	Apple	Apple iLife '08	http://store.apple.com/1-800-MY-APPLE/WebObjects/AppleStore.wa/wa/RSLID?mco=7E50163B&nplm=MB015Z/A	Import from popular video devices including AVCHD	<p>EXCEPT FOR THE LIMITED WARRANTY ON MEDIA SET FORTH ABOVE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE APPLE SOFTWARE AND ANY SERVICES PERFORMED OR PROVIDED BY THE APPLE SOFTWARE ("SERVICES") ARE PROVIDED "AS IS", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND APPLE AND APPLE'S LICENSORS (COLLECTIVELY REFERRED TO AS "APPLE" FOR THE PURPOSES OF SECTIONS 7 and 8) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE APPLE SOFTWARE AND ANY SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY...</p>	<p>6. Limited Warranty on Media. Apple warrants the media on which the Apple Software is recorded and delivered by Apple to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of original retail purchase.</p>
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9	Symantec	Norton Internet Security 2008 up to 3 Users	http://www.symantec.com/norton/products/overview.jsp?pcid=is&pvid=nis2008	Blocks identity theft by phishing Web sites	TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ABOVE WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED,	6. Limited Warranty: Symantec warrants that the media on which the Software is distributed will be free from defects for a period of sixty (60) days from the date of delivery of the Software to You. Your sole remedy in the event of a breach of this warranty will be that Symantec will, at its option, replace any defective media returned to Symantec within the warranty period or refund the money You paid for the Software. Symantec does not warrant that the Software will meet Your requirements or that operation of the Software will be uninterrupted or that the Software will be error-free.
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11	Intuit	Quicken 2008 Deluxe	http://quicken.intuit.com/personal-finance/deluxe-money-management.jhtml	Quicken Deluxe also exports your data directly to TurboTax, so you won't have to re-enter the same information twice. ³	DISCLAIM ALL GUARANTEES AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SOFTWARE... FURTHER, INTUIT DOES NOT WARRANT ACCESS TO THE INTERNET OR TO ANY OTHER SERVICE OR CONTENT OR DATA THROUGH THE SOFTWARE	9. SATISFACTION GUARANTEED. If you are not satisfied with the Software and (a) You purchased the Software from a retail store, you may uninstall and delete all copies of the Software from your computer(s) and return it within 60 days of purchase to the store where you purchased your license with a dated receipt for a full refund. If the store is unable or unwilling to issue a refund or you obtained the Software directly from Intuit, you may uninstall and delete all copies of the Software and return the Software with a dated receipt or packing slip within 60 days of purchase via U.S. mail to Intuit Inc., Returns Department, PO Box 190004, Greenville, SC 29390-9004 or via UPS to Intuit Inc., Returns Department, 110 Hidden Lake Circle, Duncan, SC 29334. (b) You obtained the Software directly from Intuit via an Internet download, you may submit a written request to Intuit including your name, contact and product order information to Intuit Inc., Returns Department, PO Box 19004, Greenville, SC 29390-9004. ...
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12	Apple	Apple iWork '08	http://store.apple.com/1-800-MY-APPLE/WebObjects/AppleStore.wa/wa/RSLID?mco=7E4EB91E&nplm=MA790Z/A	Import from and export to Microsoft Excel and other formats	EXCEPT FOR THE LIMITED WARRANTY ON MEDIA SET FORTH ABOVE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE APPLE SOFTWARE AND ANY SERVICES PERFORMED OR PROVIDED BY THE APPLE SOFTWARE ("SERVICES") ARE PROVIDED "AS IS", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND APPLE AND APPLE'S LICENSORS (COLLECTIVELY REFERRED TO AS "APPLE" FOR THE PURPOSES OF SECTIONS 7 and 8) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE APPLE SOFTWARE AND ANY SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY...	6. Limited Warranty on Media. Apple warrants the media on which the Apple Software is recorded and delivered by Apple to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of original retail purchase.
13	Nova Development	Parallels Desktop 3.0 for Mac	http://www.novadevelopment.com/Products/Parallels_Desktop_3/default.aspx	With Parallels' award-winning virtualization technology, you can run Mac OS X and your favorite Windows applications at the same time. You can even drag-and-drop files between desktops!	WITH THE EXCEPTION OF THE FOREGOING EXPRESS WARRANTY, THE SOFTWARE IS LICENSED "AS IS," AND PARALLELS DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED	9. Limited Warranty. PARALLELS ONLY WARRANTS THAT THE SOFTWARE WILL BE FREE FROM MATERIAL DEFECTS FOR A PERIOD OF 90 DAYS FOLLOWING ITS PURCHASE. IF A MATERIAL DEFECT OCCURS WITHIN 90 DAYS, YOU MAY RETURN THE SOFTWARE TO PARALLELS FOR A FREE REPLACEMENT.

15	Microsoft	Microsoft Outlook 2007	http://office.microsoft.com/en-us/outlook/HA101650261033.aspx	Outlook Mobile Service is a feature of Outlook that enables you to send and receive text and picture messages between Office Outlook 2007 and any mobile phone.	NO OTHER WARRANTIES. THE LIMITED WARRANTY IS THE ONLY DIRECT WARRANTY FROM MICROSOFT. MICROSOFT GIVES NO OTHER EXPRESS WARRANTIES, GUARANTEES OR CONDITIONS.	LIMITED WARRANTY. If you follow the instructions, the software will perform substantially as described in the Microsoft materials that you receive in or with the software.
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19	Microsoft	Microsoft Office 2004 for Mac Standard	http://www.microsoft.com/mac/products/office2004.msp	Manage your projects more efficiently by accessing all of your project-related e-mail messages, files, notes, contacts, and schedules in one convenient place	<p>THE LIMITED WARRANTY THAT APPEARS ABOVE IS THE ONLY EXPRESS WARRANTY MADE TO YOU AND IS PROVIDED IN LIEU OF ANY OTHER EXPRESS WARRANTIES (IF ANY) CREATED BY ANY DOCUMENTATION OR PACKAGING. EXCEPT FOR THE LIMITED WARRANTY AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MICROSOFT AND ITS SUPPLIERS PROVIDE THE SOFTWARE PRODUCT AND SUPPORT SERVICES (IF ANY) AS IS AND WITH ALL FAULTS, AND HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED OR STATUTORY</p>	<p>20. LIMITED WARRANTY FOR SOFTWARE PRODUCTS ACQUIRED IN THE US AND CANADA. Microsoft warrants that the SOFTWARE PRODUCT will perform substantially in accordance with the accompanying materials for a period of ninety (90) days from the date of receipt. If an implied warranty or condition is created by your state/jurisdiction and federal or state/provincial law prohibits disclaimer of it, you also have an implied warranty or condition, BUT ONLY AS TO DEFECTS DISCOVERED DURING THE PERIOD OF THIS LIMITED WARRANTY (NINETY DAYS). AS TO ANY DEFECTS DISCOVERED AFTER THE NINETY (90) DAY PERIOD, THERE IS NO WARRANTY OR CONDITION OF ANY KIND. ... Any supplements or updates to the SOFTWARE PRODUCT, including without limitation, any (if any) service packs or hot fixes provided to you after the expiration of the ninety (90) day Limited Warranty period are not covered by any warranty or condition, express, implied or statutory.</p>
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21	Microsoft	Microsoft Windows XP Home Edition Full Version with SP2	http://www.microsoft.com/windowsxp/home/evaluation/features.aspx	Errant applications will not cause your computer to crash.	The Limited Warranty that appears above is the only express warranty made to you and is provided in lieu of any other express warranties or similar obligations (if any) created by any advertising, documentation, packaging, or other communications. Except for the Limited Warranty and to the maximum extent permitted by applicable law, Microsoft and its suppliers provide the Software and support services (if any) AS IS AND WITH ALL FAULTS, and hereby disclaim all other warranties and conditions, whether express, implied or statutory...	17. LIMITED WARRANTY FOR SOFTWARE ACQUIRED IN THE US AND CANADA. Microsoft warrants that the Software will perform substantially in accordance with the accompanying materials for a period of ninety (90) days from the date of receipt. If an implied warranty or condition is created by your state/jurisdiction and federal or state/provincial law prohibits disclaimer of it, you also have an implied warranty or condition, BUT ONLY AS TO DEFECTS DISCOVERED DURING THE PERIOD OF THIS LIMITED WARRANTY (NINETY DAYS). AS TO ANY DEFECTS DISCOVERED AFTER THE NINETY-DAY PERIOD, THERE IS NO WARRANTY OR CONDITION OF ANY KIND. Some states/jurisdictions do not allow limitations on how long an implied warranty or condition lasts, so the above limitation may not apply to you. Any supplements or updates to the Software, including without limitation, any (if any) service packs or hot fixes provided to you after the expiration of the ninety day Limited Warranty period are not covered by any warranty or condition, express, implied or statutory
22	Nero Inc.	Nero 8 Ultra Edition	N/A	N/A	N/A	

23	Microsoft	Microsoft Streets and Trips 2008	http://www.microsoft.com/streets/ProductDetails.aspx?pid=002&active_tab=Features	Find Nearby Places lets you find more than 1.6 million locations such as parks, ATMs, hotels, landmarks, and more within up to 50 miles of your current position or anywhere on your route - without being connected to the Web.	NO OTHER WARRANTIES. THE LIMITED WARRANTY IS THE ONLY DIRECT WARRANTY FROM MICROSOFT. MICROSOFT GIVES NO OTHER EXPRESS WARRANTIES, GUARANTEES OR CONDITIONS.	LIMITED WARRANTY. If you follow the instructions, the software will perform substantially as described in the Microsoft materials that you receive in or with the software.
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24	Corel	Paint Shop Pro Photo X2	http://www.corel.com/service/Satellite/us/en/Product/1185293061925	With the NEW Visible Watermarks feature you can easily create and add a personal watermark to all your photos.	EXCEPT FOR THE EXPRESS LIMITED WARRANTY ABOVE AND FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO YOU IN YOUR JURISDICTION, THE PRODUCT IS PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS OR TERMS, EXPRESS OR IMPLIED, WHETHER BY LAW, STATUTE, USAGE OF TRADE, COURSE OF DEALING OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, MERCHANTABILITY QUALITY, SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COREL AND ITS SUPPLIERS AND DEALERS DO NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS YOU MAY OBTAIN BY USING THE PRODUCT.	1.8 LIMITED WARRANTY: Except as may be otherwise provided in this Agreement or unless the Product is a Trial Version as set forth in Section 3 or a Pre-Release Version as set out in Section 7, Corel warrants to the person or entity that first purchases a license to Use this Product that this Product will be free from defect in materials and workmanship for ninety (90) days from the date you acquire it. If such a defect occurs, contact Corel Customer Service at www.corel.com to obtain a RMA Number to return the media and Corel will replace it free of charge. THIS REMEDY IS YOUR EXCLUSIVE REMEDY AND COREL'S AND ITS SUPPLIERS' AND DEALERS' ENTIRE LIABILITY FOR BREACH OF THIS WARRANTY OR, WHERE PERMITTED BY APPLICABLE LAW, FOR ANY OTHER CAUSE OF ACTION (INCLUDING NEGLIGENCE) CONCERNING ANY DEFECT IN MATERIALS OR WORKMANSHIP IN RELATION TO THE PRODUCT. THIS LIMITED WARRANTY GIVES YOU CERTAIN LEGAL RIGHTS. YOU MAY HAVE ADDITIONAL LEGISLATED RIGHTS WHICH MAY VARY FROM JURISDICTION TO JURISDICTION.
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30	Microsoft	Microsoft Office Professional 2007 Full Version	http://office.microsoft.com/en-us/suites/FX101759491033.aspx	Attachment preview. View attachments to e-mail messages without opening them in Office Outlook 2007.	NO OTHER WARRANTIES. THE LIMITED WARRANTY IS THE ONLY DIRECT WARRANTY FROM MICROSOFT. MICROSOFT GIVES NO OTHER EXPRESS WARRANTIES, GUARANTEES OR CONDITIONS.	LIMITED WARRANTY. If you follow the instructions, the software will perform substantially as described in the Microsoft materials that you receive in or with the software.
31	Microsoft	Microsoft Office Standard 2007 Full Version	http://office.microsoft.com/en-us/suites/HA101655221033.aspx	New support for Portable Document Format (PDF) and XML Paper Specification (XPS) file formats helps ensure broader distribution of your documents with others.1 Convert your files to PDF or XPS for sharing with users on any platform.	NO OTHER WARRANTIES. THE LIMITED WARRANTY IS THE ONLY DIRECT WARRANTY FROM MICROSOFT. MICROSOFT GIVES NO OTHER EXPRESS WARRANTIES, GUARANTEES OR CONDITIONS.	LIMITED WARRANTY. If you follow the instructions, the software will perform substantially as described in the Microsoft materials that you receive in or with the software.

32	Microsoft	Microsoft Windows XP Professional Full Version with SP2	http://www.microsoft.com/windowsxp/evaluation/features/remotefeatures/moteaccess.msp	When you connect to your computer at work, Remote Desktop automatically locks that computer so no one else can access your applications and files while you are gone.	The Limited Warranty that appears above is the only express warranty made to you and is provided in lieu of any other express warranties or similar obligations (if any) created by any advertising, documentation, packaging, or other communications. Except for the Limited Warranty and to the maximum extent permitted by applicable law, Microsoft and its suppliers provide the Software and support services (if any) AS IS AND WITH ALL FAULTS, and hereby disclaim all other warranties and conditions, whether express, implied or statutory...	17. LIMITED WARRANTY FOR SOFTWARE ACQUIRED IN THE US AND CANADA. Microsoft warrants that the Software will perform substantially in accordance with the accompanying materials for a period of ninety (90) days from the date of receipt. If an implied warranty or condition is created by your state/jurisdiction and federal or state/provincial law prohibits disclaimer of it, you also have an implied warranty or condition, BUT ONLY AS TO DEFECTS DISCOVERED DURING THE PERIOD OF THIS LIMITED WARRANTY (NINETY DAYS). AS TO ANY DEFECTS DISCOVERED AFTER THE NINETY-DAY PERIOD, THERE IS NO WARRANTY OR CONDITION OF ANY KIND. ... Any supplements or updates to the Software, including without limitation, any (if any) service packs or hot fixes provided to you after the expiration of the ninety day Limited Warranty period are not covered by any warranty or condition, express, implied or statutory.
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33	Intuit	Quickbooks Pro 2007 Small Business Financial Software	http://intuitsearch.intuit.com/search?entqr=0&Search.x=0&sort=date%3AD%3A%3Ad1&output=xml_no_dtd&ie=UTF-8&shopperID=1332402273&opc=0273400000&client=quickbooks_site&npc=2055913657&num=10&Search.y=0&ud=1&site=quickbooks_site&oe=UTF-8&proxystylesheet=quickbooks_site&q=quickbooks+pro+2007+small+business&btnG.x=0&btnG.y=0	Create 100+ customizable reports, like Profit & Loss Statements and sales reports, in two clicks	DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10 ABOVE, THE SOFTWARE, SERVICES, AND ANY CONTENT ACCESSIBLE THROUGH THE SOFTWARE OR SERVICES ARE PROVIDED "AS-IS" AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INTUIT, ITS AFFILIATES, LICENSORS, PARTICIPATING FINANCIAL INSTITUTIONS, THIRD-PARTY CONTENT OR SERVICE PROVIDERS, DEALERS AND SUPPLIERS (COLLECTIVELY, "SUPPLIERS") DISCLAIM ALL GUARANTEES AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SOFTWARE, SERVICES, CONTENT, CDROMS AND RELATED MATERIALS	10. SATISFACTION GUARANTEED/LIMITED WARRANTY. (i) <u>Satisfaction Guarantee.</u> If you are not satisfied with the Software and (a) You purchased the Software from a retail store, you may uninstall and delete all copies of the Software from your computer(s) and return it within 60 days of purchase to the store where you purchased your license with a dated receipt for a full refund. If the store is unable or unwilling to issue a refund or you obtained the Software directly from Intuit, you may uninstall and delete all copies of the Software and return the Software with a dated receipt or packing slip within 60 days of purchase via U.S. mail to Intuit Inc., Returns Department, PO Box 190004, Greenville, SC 29390-9004 or via UPS to Intuit Inc., Returns Department, 110 Hidden Lake Circle, Duncan, SC 29334. ... (ii) <u>Limited Warranty.</u> (a) If the CDROM on which the Software is stored is defective, then return the CDROM to Intuit Inc., Returns Department, PO Box 19004, Greenville, SC 29390-9004 within 60 days of shipment (or in the case of a retail purchase, within 60 days of purchase) with a dated receipt or packing slip, and a replacement CDROM will be mailed to you...
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34	Intuit	Learning Quickbooks 2008	http://quickbooks.intuit.com/product/training/learning_quickbooks.jhtml?view=overview#tabAnchor	Duration: 3 total hours of training	<p>DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10 ABOVE, THE SOFTWARE, SERVICES, AND ANY CONTENT ACCESSIBLE THROUGH THE SOFTWARE OR SERVICES ARE PROVIDED "AS-IS" AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INTUIT, ITS AFFILIATES, LICENSORS, PARTICIPATING FINANCIAL INSTITUTIONS, THIRD-PARTY CONTENT OR SERVICE PROVIDERS, DEALERS AND SUPPLIERS (COLLECTIVELY, "SUPPLIERS") DISCLAIM ALL GUARANTEES AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SOFTWARE, SERVICES, CONTENT, CDROMS AND RELATED MATERIALS</p>	<p>10. SATISFACTION GUARANTEED/LIMITED WARRANTY. (i) <u>Satisfaction Guarantee.</u> If you are not satisfied with the Software and (a) You purchased the Software from a retail store, you may uninstall and delete all copies of the Software from your computer(s) and return it within 60 days of purchase to the store where you purchased your license with a dated receipt for a full refund. If the store is unable or unwilling to issue a refund or you obtained the Software directly from Intuit, you may uninstall and delete all copies of the Software and return the Software with a dated receipt or packing slip within 60 days of purchase via U.S. mail to Intuit Inc., Returns Department, PO Box 190004, Greenville, SC 29390-9004 or via UPS to Intuit Inc., Returns Department, 110 Hidden Lake Circle, Duncan, SC 29334. ...(ii) <u>Limited Warranty.</u> (a) If the CDROM on which the Software is stored is defective, then return the CDROM to Intuit Inc., Returns Department, PO Box 19004, Greenville, SC 29390-9004 within 60 days of shipment (or in the case of a retail purchase, within 60 days of purchase) with a dated receipt or packing slip, and a replacement CDROM will be mailed to you...</p>
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35	Rosetta Stone	Rosetta Stone V3 Spanish (Latin America) Level 1-2-3 Personal Edition	http://www.rosetta.com/personal/languages/spanish-america/level-1-2-3	Level 1, 2 & 3 Set Includes The Basics Nouns, verbs, adjectives, numbers, questions, colors, clothing. Friends and Family Ages, family relations, household items, introductions, landmarks, states, descriptions...	DISCLAIMER OF WARRANTIES: OTHER THAN AS STATED IN THIS SECTION 10. A. ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY THE LAW NEITHER LICENSOR NOR ITS THIRD PARTY LICENSORS MAKE ANY OTHER WARRANTIES OR PROMISES, WHETHER EXPRESS OR IMPLIED...	A. LIMITED WARRANTY AND DISCLAIMER: Licensor warrants that the Software will perform substantially in accordance with the descriptions and specifications in the documentation accompanying such Software for a period of ninety (90) days after purchase of the Software under normal use. Notwithstanding anything to the contrary, Licensor makes no representation or warranty with respect to any third party software, and undertakes no obligations with respect to any third party software.
36	Symantec	Norton Antivirus 2008 1 User	http://www.symantec.com/norton/products/overview.jsp?pcid=is&pvid=nav2008	One click access to expert support	TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ABOVE WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED,	6. Limited Warranty: Symantec warrants that the media on which the Software is distributed will be free from defects for a period of sixty (60) days from the date of delivery of the Software to You. Your sole remedy in the event of a breach of this warranty will be that Symantec will, at its option, replace any defective media returned to Symantec within the warranty period or refund the money You paid for the Software. Symantec does not warrant that the Software will meet Your requirements or that operation of the Software will be uninterrupted or that the Software will be error-free.

38	Adobe	Adobe Acrobat Standard 8.0	http://www.adobe.com/products/acrobatpro/acrobatstd.html	Save Adobe PDF files as Microsoft Word documents, retaining the layout, fonts, formatting, and tables, to facilitate reuse of content.	...the Software and access to any websites, online services and CD Services as-is and with all faults and expressly disclaim all other warranties, conditions, representations or terms, express or implied, whether by statute, common law, custom, usage or otherwise...	6. LIMITED WARRANTY. Except as may be otherwise provided in Section 14, Adobe warrants to the individual or entity that first purchases a license for the Software for use pursuant to the terms of this agreement that the Software will perform substantially in accordance with the Documentation for the ninety (90) day period following receipt of the Software when used on the recommended operating system and hardware configuration. Non-substantial variation of performance from the Documentation does not establish a warranty right.
40	Adobe	Adobe Photoshop CS3 Upgrade	http://www.adobe.com/products/photoshop/upgrade/	Add, adjust, and remove filters from an image without having to resave the image or start over to preserve quality. Nondestructive Smart Filters allow you to visualize changes without altering original pixel data.	...the Software and access to any websites, online services and CD Services as-is and with all faults and expressly disclaim all other warranties, conditions, representations or terms, express or implied, whether by statute, common law, custom, usage or otherwise...	6. LIMITED WARRANTY. Except as may be otherwise provided in Section 14, Adobe warrants to the individual or entity that first purchases a license for the Software for use pursuant to the terms of this agreement that the Software will perform substantially in accordance with the Documentation for the ninety (90) day period following receipt of the Software when used on the recommended operating system and hardware configuration. Non-substantial variation of performance from the Documentation does not establish a warranty right.

41	Adobe	Adobe Photoshop Elements 4.0 (Mac)	No Longer available on Adobe.com	No Longer available on Adobe.com	...the Software and access to any websites, online services and CD Services as-is and with all faults and expressly disclaim all other warranties, conditions, representations or terms, express or implied, whether by statute, common law, custom, usage or otherwise...	6. LIMITED WARRANTY. Except as may be otherwise provided in Section 14, Adobe warrants to the individual or entity that first purchases a license for the Software for use pursuant to the terms of this agreement that the Software will perform substantially in accordance with the Documentation for the ninety (90) day period following receipt of the Software when used on the recommended operating system and hardware configuration. Non-substantial variation of performance from the Documentation does not establish a warranty right.
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44	Intuit	Quicken 2008 Premier	http://quicken.intuit.com/personal-finance/premier-portfolio-management.jhtml?lid=site_banner	Connect to your bank, credit card, 401(k)s, or brokerage accounts with a single password	DISCLAIM ALL GUARANTEES AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SOFTWARE... FURTHER, INTUIT DOES NOT WARRANT ACCESS TO THE INTERNET OR TO ANY OTHER SERVICE OR CONTENT OR DATA THROUGH THE SOFTWARE	9. SATISFACTION GUARANTEED. If you are not satisfied with the Software and (a) You purchased the Software from a retail store, you may uninstall and delete all copies of the Software from your computer(s) and return it within 60 days of purchase to the store where you purchased your license with a dated receipt for a full refund. If the store is unable or unwilling to issue a refund or you obtained the Software directly from Intuit, you may uninstall and delete all copies of the Software and return the Software with a dated receipt or packing slip within 60 days of purchase via U.S. mail to Intuit Inc...(b) You obtained the Software directly from Intuit via an Internet download, you may submit a written request to Intuit including your name, contact and product order information to Intuit Inc....(c) The Software was pre-installed on your computer when you bought it, or if CDROMs came packaged with your computer at no extra charge, follow the manufacturer's applicable return policy; or (d) You obtained the Software by downloading it on your computer, contact the [site provider].
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47	Pinnacle Systems	Pinnacle Studio Ultimate Version 11	http://www.pinnaclesys.com/PublicSite/us/Products/Consumer+Products/Home+Video/Studio+Family/Studio+Ultimate+11	Pinnacle Studio Plus edits native HDV or AVCHD footage and then authors HD DVD format discs that will play on the latest HD players.	NO OTHER WARRANTIES. EXCEPT AS SET FORTH ABOVE, THE SOFTWARE IS PROVIDED ON AN "AS IS" BASIS. YOU ASSUME ALL RESPONSIBILITIES FOR THE QUALITY AND PERFORMANCE OF THE SOFTWARE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PINNACLE DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED	9. Limited Warranty. Pinnacle warrants to the original licensee that the Software, as delivered, will perform in accordance with the accompanying documentation for a period of 30 days from the date of the original purchase ("Limited Warranty"). Pinnacle's entire liability and your exclusive remedy for breach of the preceding Limited Warranty shall be, at Pinnacle's sole option, repair or replacement of the Software that does not meet the warranty set forth herein and that is returned to Pinnacle. This limited warranty shall be void if failure of the Software has resulted from any accident, abuse, misuse or misapplication by you. Any replacement Software will be warranted for the remainder of the original warranty period or 30 days, whichever is longer.
48	Rosetta Stone	Rosetta Stone V3 Spanish (Latin America) Level 1 Personal Edition	http://www.rosstattstone.com/personal/languages/spanish-latin-america/level-1	Level 1 Includes 4 Major Units Covering: Work and School - Times of day, greetings, calendar terms, body parts, speaking, personal hygiene.	DISCLAIMER OF WARRANTIES: OTHER THAN AS STATED IN THIS SECTION 10. A. ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY THE LAW NEITHER LICENSOR NOR ITS THIRD PARTY LICENSORS MAKE ANY OTHER WARRANTIES OR PROMISES, WHETHER EXPRESS OR IMPLIED...	A. LIMITED WARRANTY AND DISCLAIMER: Licensor warrants that the Software will perform substantially in accordance with the descriptions and specifications in the documentation accompanying such Software for a period of ninety (90) days after purchase of the Software under normal use. Notwithstanding anything to the contrary, Licensor makes no representation or warranty with respect to any third party software, and undertakes no obligations with respect to any third party software.

50	Kaspersky Lab	Kaspersky Internet Security 7.0 3-User	http://usa.kaspersky.com/products_services/internet-security.php	Parental controls limit online time and access to forbidden sites (with tracking)	The warranties and conditions stated in this Agreement are in lieu of all other conditions, warranties or other terms concerning the supply or purported supply of, failure to supply or delay in supplying the Software or the Documentation which might but for this paragraph (vi) have effect between the Kaspersky Lab and your or would otherwise be implied into or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, all of which are hereby excluded (including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or as to the use of reasonable skill and care).	<i>5. Limited Warranty.</i> (i) Kaspersky Lab warrants that for six (6) months from first download or installation the Software purchased on a physical medium will perform substantially in accordance with the functionality described in the Documentation when operated properly and in the manner specified in the Documentation.
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52	Microsoft	Microsoft Windows XP Home Edition SP2B for System Builders	http://www.microsoft.com/windowsxp/home/evaluation/features.aspx	Errant applications will not cause your computer to crash.	The Limited Warranty that appears above is the only express warranty made to you and is provided in lieu of any other express warranties or similar obligations (if any) created by any advertising, documentation, packaging, or other communications. Except for the Limited Warranty and to the maximum extent permitted by applicable law, Microsoft and its suppliers provide the Software and support services (if any) AS IS AND WITH ALL FAULTS, and hereby disclaim all other warranties and conditions, whether express, implied or statutory...	17. LIMITED WARRANTY FOR SOFTWARE ACQUIRED IN THE US AND CANADA. Microsoft warrants that the Software will perform substantially in accordance with the accompanying materials for a period of ninety (90) days from the date of receipt. If an implied warranty or condition is created by your state/jurisdiction and federal or state/provincial law prohibits disclaimer of it, you also have an implied warranty or condition, BUT ONLY AS TO DEFECTS DISCOVERED DURING THE PERIOD OF THIS LIMITED WARRANTY (NINETY DAYS). AS TO ANY DEFECTS DISCOVERED AFTER THE NINETY-DAY PERIOD, THERE IS NO WARRANTY OR CONDITION OF ANY KIND. Some states/jurisdictions do not allow limitations on how long an implied warranty or condition lasts, so the above limitation may not apply to you. Any supplements or updates to the Software, including without limitation, any (if any) service packs or hot fixes provided to you after the expiration of the ninety day Limited Warranty period are not covered by any warranty or condition, express, implied or statutory
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53	Adobe	Adobe Acrobat 8.0 Professional	http://www.adobe.com/products/acrobatpro/	Combine multiple files into a searchable, sortable PDF package that maintains the individual security settings and digital signatures of each included PDF document.	...the Software and access to any websites, online services and CD Services as-is and with all faults and expressly disclaim all other warranties, conditions, representations or terms, express or implied, whether by statute, common law, custom, usage or otherwise...	6. LIMITED WARRANTY. Except as may be otherwise provided in Section 14, Adobe warrants to the individual or entity that first purchases a license for the Software for use pursuant to the terms of this agreement that the Software will perform substantially in accordance with the Documentation for the ninety (90) day period following receipt of the Software when used on the recommended operating system and hardware configuration. Non-substantial variation of performance from the Documentation does not establish a warranty right.
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57	Microsoft	Microsoft Windows Vista Home Premium Full Version	http://www.microsoft.com/windows/products/windowsvista/homepremium/default.aspx	With Windows Meeting Space, you can wirelessly connect your mobile PC to a friend's PC and share photos, videos, and documents when you're at a coffee shop, working on a group project, or in many other situations—even when you're not connected to the Internet.	NO OTHER WARRANTIES. THE LIMITED WARRANTY IS THE ONLY DIRECT WARRANTY FROM MICROSOFT. MICROSOFT GIVES NO OTHER EXPRESS WARRANTIES, GUARANTEES OR CONDITIONS.	A. LIMITED WARRANTY. If you follow the instructions and the software is properly licensed, the software will perform substantially as described in the Microsoft materials that you receive in or with the software. B. TERM OF WARRANTY; WARRANTY RECIPIENT; LENGTH OF ANY IMPLIED WARRANTIES. The limited warranty covers the software for one year after acquired by the first user.
58	Adobe	Adobe Photoshop Elements 5.0	No Longer available on Adobe.com	Photoshop Elements eliminates red eye automatically as you download photos from your camera.	...the Software and access to any websites, online services and CD Services as-is and with all faults and expressly disclaim all other warranties, conditions, representations or terms, express or implied, whether by statute, common law, custom, usage or otherwise...	6. LIMITED WARRANTY. Except as may be otherwise provided in Section 14, Adobe warrants to the individual or entity that first purchases a license for the Software for use pursuant to the terms of this agreement that the Software will perform substantially in accordance with the Documentation for the ninety (90) day period following receipt of the Software when used on the recommended operating system and hardware configuration. Non-substantial variation of performance from the Documentation does not establish a warranty right.

61	Symantec	Norton 360 All-In-One Annual Subscription - 3 PCs	http://shop.symantecstore.com/DRHM/servlet/ControllerServlet?Action=DisplayProductDetailsPage&SiteID=symnahh&Locale=en_US&ThemeID=106300&Env=BASE&productID=81884500	Provides one-click access to expert support right from your Norton product	TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ABOVE WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED	8. Limited Warranty: Symantec warrants that the media on which the Software is distributed will be free from defects for a period of sixty (60) days from the date of delivery of the Software to You. Your sole remedy in the event of a breach of this warranty will be that Symantec will, at its option, replace any defective media returned to Symantec within the warranty period or refund the money You paid for the Software. Symantec does not warrant that the Software will meet Your requirements or that operation of the Software will be uninterrupted or that the Software will be error-free. For the avoidance of doubt, references to "Software" in the foregoing sentence shall include, but not be limited to, the Online Backup Feature and Technical Support.
62	Microsoft	Microsoft Office Professional 2003	http://www.microsoft.com/products/info/product.aspx?view=22&type=over&pcid=ee959bd8-14b4-4601-91a7-eea1043249fa#Overview	Support for industry-standard Extensible Markup Language (XML) lets you exchange and use data from a variety of sources	DISCLAIMER OF WARRANTIES. The Limited Warranty that appears above is the only express warranty made to you and is provided in lieu of any other express warranties or similar obligations (if any) created by any advertising, documentation, packaging, or other communications	16. LIMITED WARRANTY FOR SOFTWARE ACQUIRED IN THE US AND CANADA. Microsoft warrants that the Software will perform substantially in accordance with the accompanying materials for a period of ninety (90) days from the date of receipt.

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64	Trend Micro	Trend Micro Internet Security 2008 3- User	http://www.i nternetsecur ity- 2008.com/p c-cillin.html	Parental controls give you control over your children's internet activity by blocking inappropriate Web sites and content	NO OTHER WARRANTIES OR REMEDIES. EXCEPT FOR THE EXPRESS LIMITED WARRANTY IN SECTION 10, THE TERMS OF THIS AGREEMENT ARE IN LIEU OF ALL WARRANTIES, (EXPRESS OR IMPLIED), CONDITIONS, UNDERTAKINGS...	10. LIMITED WARRANTY. Trend Micro warrants that the Software will perform substantially in accordance with the accompanying documentation for 30 days from the date of purchase. Trend Micro does not warrant that the Software will meet your requirements or that your use of the Software will be uninterrupted or error-free. GIVEN THE NATURE AND VOLUME OF MALICIOUS AND UNWANTED ELECTRONIC CONTENT, TREND MICRO DOES NOT WARRANT THAT THE SECURITY COMPONENTS OF THE SOFTWARE (PATTERN FILES, DEFINITIONS OR RULES) AND RELATED UPDATES ARE COMPLETE OR ACCURATE OR THAT THEY DETECT, REMOVE OR CLEAN ALL, OR ONLY, MALICIOUS OR UNWANTED APPLICATIONS AND FILES.
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66	Rosetta Stone	Rosetta Stone V3 Spanish (Latin America) Level 1&2 Personal Edition	http://www.rosetta.com/personal/languages/spanish-latin-america/level-1-2	Level 1 Includes 4 Major Units Covering: Work and School - Times of day, greetings, calendar terms, body parts, speaking, personal hygiene.	DISCLAIMER OF WARRANTIES: OTHER THAN AS STATED IN THIS SECTION 10. ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY THE LAW NEITHER LICENSOR NOR ITS THIRD PARTY LICENSORS MAKE ANY OTHER WARRANTIES OR PROMISES, WHETHER EXPRESS OR IMPLIED...	A. LIMITED WARRANTY AND DISCLAIMER: Licensor warrants that the Software will perform substantially in accordance with the descriptions and specifications in the documentation accompanying such Software for a period of ninety (90) days after purchase of the Software under normal use. Notwithstanding anything to the contrary, Licensor makes no representation or warranty with respect to any third party software, and undertakes no obligations with respect to any third party software.
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67	Final Draft	Final Draft 7 Professional Scriptwriting	http://finaldraft.com/products/final-draft/whats-new.php	Over two dozen new templates. These include new television shows ...Newest templates include: American TV, Arrested Development, Boston Legal, Cold Case, CSI Miami, CSI NY, Deadwood, Desperate Housewives...	THE PROGRAM IS PROVIDED AS IS WITHOUT WARRANTY OF ANY KIND. YOU ASSUME THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE PROGRAM. FINAL DRAFT, INC. MAKES NO REPRESENTATION OR WARRANTIES WITH RESPECT TO THE CONTENTS HEREOF AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. FURTHER, FINAL DRAFT, INC. DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE CORRECTNESS, ACCURACY, RELIABILITY, COMPATIBILITY OR UNINTERRUPTED OPERATION OF THE PROGRAM, OR OTHERWISE	LIMITED WARRANTY AND DISCLAIMER: FINAL DRAFT, INC. WARRANTS THE MEDIA ON WHICH THE PROGRAM IS PROVIDED TO BE FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP FOR 30 DAYS AFTER PURCHASE. DEFECTIVE MEDIA MAY BE RETURNED FOR REPLACEMENT WITHOUT CHARGE DURING THE 30-DAY WARRANTY PERIOD UNLESS THE MEDIA HAS BEEN DAMAGED BY ACCIDENT OR MISUSE.
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70	Adobe	Adobe Photoshop CS2	No longer available on www.adobe.com	No longer available on www.adobe.com	...the Software and access to any websites, online services and CD Services as-is and with all faults and expressly disclaim all other warranties, conditions, representations or terms, express or implied, whether by statute, common law, custom, usage or otherwise...	6. LIMITED WARRANTY. Except as may be otherwise provided in Section 14, Adobe warrants to the individual or entity that first purchases a license for the Software for use pursuant to the terms of this agreement that the Software will perform substantially in accordance with the Documentation for the ninety (90) day period following receipt of the Software when used on the recommended operating system and hardware configuration. Non-substantial variation of performance from the Documentation does not establish a warranty right.
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73	Intuit	Quickbooks Premiere Edition 2008	http://quickbooks.intuit.com/product/accounting-software/premier-edition-financial-planning-software.jhtml?lid=left_nav	Track inventory, set reorder points & create purchase orders	<p>DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10 ABOVE, THE SOFTWARE, SERVICES, AND ANY CONTENT ACCESSIBLE THROUGH THE SOFTWARE OR SERVICES ARE PROVIDED "AS-IS" AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INTUIT, ITS AFFILIATES, LICENSORS, PARTICIPATING FINANCIAL INSTITUTIONS, THIRD-PARTY CONTENT OR SERVICE PROVIDERS, DEALERS AND SUPPLIERS (COLLECTIVELY, "SUPPLIERS") DISCLAIM ALL GUARANTEES AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SOFTWARE, SERVICES, CONTENT, CDROMS AND RELATED MATERIALS</p>	<p>10. SATISFACTION GUARANTEED/LIMITED WARRANTY. (i) <u>Satisfaction Guarantee.</u> If you are not satisfied with the Software and (a) You purchased the Software from a retail store, you may uninstall and delete all copies of the Software from your computer(s) and return it within 60 days of purchase to the store where you purchased your license with a dated receipt for a full refund. If the store is unable or unwilling to issue a refund or you obtained the Software directly from Intuit, you may uninstall and delete all copies of the Software and return the Software with a dated receipt or packing slip within 60 days of purchase via U.S. mail to Intuit Inc., Returns Department, PO Box 190004, Greenville, SC 29390-9004 or via UPS to Intuit Inc., Returns Department, 110 Hidden Lake Circle, Duncan, SC 29334. ...(ii) <u>Limited Warranty.</u> (a) If the CDROM on which the Software is stored is defective, then return the CDROM to Intuit Inc., Returns Department, PO Box 19004, Greenville, SC 29390-9004 within 60 days of shipment (or in the case of a retail purchase, within 60 days of purchase) with a dated receipt or packing slip, and a replacement CDROM will be mailed to you...</p>
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75	Intuit	Quicken 2008 Home & Business	http://quicken.intuit.com/small-business-finance/home-business.html?cid=ppc_google_all_stan_US_PFS+-H&priorityCode=3978900000	Whether it's personal payments or business income -- or both -- Quicken can now import your transaction data directly from PayPal.	...DISCLAIM ALL GUARANTEES AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SOFTWARE, FINANCIAL INSTITUTION SERVICES, THIRD PARTY SERVICES, CONTENT, AND RELATED MATERIALS, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, AND NON-INFRINGEMENT.	9. SATISFACTION GUARANTEED. If you are not satisfied with the Software and (a) You purchased the Software from a retail store, you may uninstall and delete all copies of the Software from your computer(s) and return it within 60 days of purchase to the store where you purchased your license with a dated receipt for a full refund. If the store is unable or unwilling to issue a refund or you obtained the Software directly from Intuit, you may uninstall and delete all copies of the Software and return the Software with a dated receipt or packing slip within 60 days of purchase via U.S. mail to Intuit Inc., Returns Department, PO Box 190004, Greenville, SC 29390-9004 or via UPS to Intuit Inc., Returns Department, 110 Hidden Lake Circle, Duncan, SC 29334. (b) You obtained the Software directly from Intuit via an Internet download, you may submit a written request to Intuit including your name, contact and product order information to Intuit Inc., Returns Department, PO Box 19004, Greenville, SC 29390-9004.
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79	Sony Media	Vegas Movie Studio 8 Platinum Edition	http://www.sonycreative.com/products/product.asp?pid=447	Over 100 video effects and transitions from NewBlue®, maker of professional video effects plug-ins	DISCLAIMER OF WARRANTIES. EXCEPT FOR THE LIMITED WARRANTY PROVIDED ABOVE, THE SOFTWARE IS PROVIDED "AS IS." TO THE FULL EXTENT PERMITTED BY APPLICABLE LOCAL LAW, SONY AND THE THIRD PARTY PROVIDERS DISCLAIM ALL OTHER WARRANTIES, REPRESENTATIONS AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES, REPRESENTATIONS AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON- INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SONY OR A SONY AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY.	No limited warranty despite the language in the disclaimer.
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81	Microsoft	Microsoft Office Small Business 2007 Upgrade	http://office.microsoft.com/en-us/help/HA101983081033.aspx	With SmartArt graphics, you can experiment as much as you want with different formats and styles. You can preview styles before choosing one, so you don't have to apply styles over and over again to find the one you want.	NO OTHER WARRANTIES. THE LIMITED WARRANTY IS THE ONLY DIRECT WARRANTY FROM MICROSOFT. MICROSOFT GIVES NO OTHER EXPRESS WARRANTIES, GUARANTEES OR CONDITIONS.	LIMITED WARRANTY. If you follow the instructions, the software will perform substantially as described in the Microsoft materials that you receive in or with the software.
83	Microsoft	Microsoft Windows Vista Ultimate Full Version	http://www.microsoft.com/windows/products/windowsvista/features/details/flip3d.aspx	Windows Flip and Windows Flip 3D render live thumbnail images of the exact contents of your open windows	NO OTHER WARRANTIES. THE LIMITED WARRANTY IS THE ONLY DIRECT WARRANTY FROM MICROSOFT. MICROSOFT GIVES NO OTHER EXPRESS WARRANTIES, GUARANTEES OR CONDITIONS.	A. LIMITED WARRANTY. If you follow the instructions and the software is properly licensed, the software will perform substantially as described in the Microsoft materials that you receive in or with the software
84	Palo Alto Software	Palo Alto Business Plan Pro 2007	http://www.paloalto.com/ps/bp/?bpedition=bpp	CC500+ sample business plans	TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY PROVIDED ABOVE, THE SOFTWARE IS "AS-IS" AND PALO ALTO SOFTWARE, INC... DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SOFTWARE, DISK AND RELATED MATERIALS...	No limited warranty despite the language in the disclaimer.

86	Rosetta Stone	Rosetta Stone V3 French Level 1&2 Personal Edition	http://www.rossettastone.com/personal/languages/french/level-1-2	Level 1 & 2 Set Includes: Friends and Social Life - Months of the year, arrivals and departures, social interaction, celebrations, meal courses, quality terms, apologies.	DISCLAIMER OF WARRANTIES: OTHER THAN AS STATED IN THIS SECTION 10. A. ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY THE LAW NEITHER LICENSOR NOR ITS THIRD PARTY LICENSORS MAKE ANY OTHER WARRANTIES OR PROMISES, WHETHER EXPRESS OR IMPLIED...	A. LIMITED WARRANTY AND DISCLAIMER: Licensor warrants that the Software will perform substantially in accordance with the descriptions and specifications in the documentation accompanying such Software for a period of ninety (90) days after purchase of the Software under normal use. Notwithstanding anything to the contrary, Licensor makes no representation or warranty with respect to any third party software, and undertakes no obligations with respect to any third party software.
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93	Intuit	Quickbooks Simple Start Plus Pack 2008	http://quickbooks.intuit.com/product/accounting-software/simple-start-bookkeeping-software.html	Get personalized help for the first 30 days after you register the product. Simply go online to submit your question, and a support expert will e-mail you back. It's included with Simple Start—at no extra charge.	<p>DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10 ABOVE, THE SOFTWARE, SERVICES, AND ANY CONTENT ACCESSIBLE THROUGH THE SOFTWARE OR SERVICES ARE PROVIDED "AS-IS" AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INTUIT, ITS AFFILIATES, LICENSORS, PARTICIPATING FINANCIAL INSTITUTIONS, THIRD-PARTY CONTENT OR SERVICE PROVIDERS, DEALERS AND SUPPLIERS (COLLECTIVELY, "SUPPLIERS") DISCLAIM ALL GUARANTEES AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SOFTWARE, SERVICES, CONTENT, CDROMS AND RELATED MATERIALS</p>	<p>10. SATISFACTION GUARANTEED/LIMITED WARRANTY. (i) <u>Satisfaction Guarantee.</u> If you are not satisfied with the Software and (a) You purchased the Software from a retail store, you may uninstall and delete all copies of the Software from your computer(s) and return it within 60 days of purchase to the store where you purchased your license with a dated receipt for a full refund. If the store is unable or unwilling to issue a refund or you obtained the Software directly from Intuit, you may uninstall and delete all copies of the Software and return the Software with a dated receipt or packing slip within 60 days of purchase via U.S. mail to Intuit Inc., Returns Department, PO Box 190004, Greenville, SC 29390-9004 or via UPS to Intuit Inc., Returns Department, 110 Hidden Lake Circle, Duncan, SC 29334. ...(ii) <u>Limited Warranty.</u> (a) If the CDROM on which the Software is stored is defective, then return the CDROM to Intuit Inc., Returns Department, PO Box 19004, Greenville, SC 29390-9004 within 60 days of shipment (or in the case of a retail purchase, within 60 days of purchase) with a dated receipt or packing slip, and a replacement CDROM will be mailed to you...</p>
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97	Microsoft	Microsoft Expressio n Web Upgrade from FrontPage	http://www.microsoft.com/expression/products/features.aspx?key=web	Configure flexible schema settings to support all combinations of HTML, XHTML, Strict, Transitional, Frameset and CSS 1.0, 2.0, and 2.1 plus browser-specific schemas.	NO OTHER WARRANTIES. THE LIMITED WARRANTY IS THE ONLY DIRECT WARRANTY FROM MICROSOFT. MICROSOFT GIVES NO OTHER EXPRESS WARRANTIES, GUARANTEES OR CONDITIONS.	LIMITED WARRANTY. If you follow the instructions, the software will perform substantially as described in the Microsoft materials that you receive in or with the software.
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99	Corel	Corel Ulead VideoStudio 11 Plus	http://www.corel.com/service/Satellite/us/en/Product/1175714228666	Capture and import video from DV, DVD, AVCHD or HDV camcorders. Import video from mobile devices, VHS tape or the Web.	EXCEPT FOR THE EXPRESS LIMITED WARRANTY ABOVE AND FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO YOU IN YOUR JURISDICTION, THE PRODUCT IS PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS OR TERMS, EXPRESS OR IMPLIED, WHETHER BY LAW, STATUTE, USAGE OF TRADE, COURSE OF DEALING OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, MERCHANTABILITY QUALITY, SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COREL AND ITS SUPPLIERS AND DEALERS DO NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS YOU MAY OBTAIN BY USING THE PRODUCT.	1.8 LIMITED WARRANTY: Except as may be otherwise provided in this Agreement or unless the Product is a Trial Version as set forth in Section 3 or a Pre-Release Version as set out in Section 7, Corel warrants to the person or entity that first purchases a license to Use this Product that this Product will be free from defect in materials and workmanship for ninety (90) days from the date you acquire it. If such a defect occurs, contact Corel Customer Service at www.corel.com to obtain a RMA Number to return the media and Corel will replace it free of charge. THIS REMEDY IS YOUR EXCLUSIVE REMEDY AND COREL'S AND ITS SUPPLIERS' AND DEALERS' ENTIRE LIABILITY FOR BREACH OF THIS WARRANTY OR, WHERE PERMITTED BY APPLICABLE LAW, FOR ANY OTHER CAUSE OF ACTION (INCLUDING NEGLIGENCE) CONCERNING ANY DEFECT IN MATERIALS OR WORKMANSHIP IN RELATION TO THE PRODUCT. THIS LIMITED WARRANTY GIVES YOU CERTAIN LEGAL RIGHTS. YOU MAY HAVE ADDITIONAL LEGISLATED RIGHTS WHICH MAY VARY FROM JURISDICTION TO JURISDICTION.
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