

Editorial

Year 2000

Most people will have heard of the so-called millennium bug or Year 2000 (Y2K) problem by now. But how many have understood how widespread its impact might be and what they should be doing now to minimise its impact? For lawyers the problem has several different aspects – their own business could be directly affected, their clients will be looking to them for advice on how to deal with it, and they should be proactively advising on the potential effects of Y2K when handling many different types of transaction.

The Problem

Put simply, many computer systems have been written using only two digits for the year component of a date, so that 1998 is represented as “98”, and 2000 as “00”. Many computer systems will interpret this as 1900, with obvious implications for any calculation involving dates. Moreover, many systems which are otherwise millennium compliant cannot cope with the fact that 2000 is a leap year.

Although the problem is perceived as being most common in mainframes, it can also affect all types of computers and programs, and chips embedded in machinery such as lifts, heating and ventilation systems and equipment used in hospitals. Even new PCs may be affected, as can programs which themselves use four digits for a year, but were written with tools which do not.

The Consequences

Any business which has not already carried out an audit of its computer systems (both hardware and software), and of any other system which may have a date-reliant embedded chip, should do so immediately. Quite apart from the fact that it may be too late already to rectify the problem by re-writing the code, the cost of doing so is increasing daily as the number of programmers able to do the job is far outweighed by the demand for them. Moreover, directors who do not take action are not only vulnerable to criticisms and possibly claims by shareholders, but may also find that by not acting in time they will invalidate any business interruption insurance policies which they may have.

It should not be assumed that losses resulting from problems caused by the “millennium bug” will be covered by insurance. Many insurance policies already exclude such losses; if they do not, they need to be checked carefully on renewal in case an exclusion is introduced.

Even if a Year 2000 audit has been carried out, and steps taken to rectify any problems, it has to be remembered that businesses could be severely affected if their customers or suppliers have not done the same. Consider how businesses would be affected if they could not obtain supplies, or if payment by their customers was delayed. Also, the bank used by the suppliers or customers, or by the business itself, may be relying on systems which are not millennium compliant. Many banks have mainframe computers using programs written years ago when electronic storage was expensive, and the use of two-digit years was commonplace. Businesses should write to every organisation key to them to ask

them to confirm that they are millennium compliant – but they should be writing the same letters, so one needs to be prepared to answer them.

If an audit reveals that there is a problem, it must not be assumed that the supplier of the computer or program will rectify the problem. Maintenance agreements need to be checked carefully to see if they are drafted widely enough to include such work. However, if the software was written specifically for a business, the contract may well contain an exclusion clause (which may or may not be valid).

Those involved in the buying and selling of businesses need to be very aware of the millennium problem and to consider appropriate warranties, such as that an audit has been carried out and that all systems and programs are compliant. The discovery by the existing owners of a problem could be the reason why the business is being sold! Similarly, it would be sensible to check whether all accounting systems can cope with the euro – nothing to do with Y2K, but potentially very expensive for UK businesses even though the UK is not participating in the first wave.

Those involved in buying and selling property need to be Y2K aware as well – some properties are “infected” with embedded chips which may prevent lifts, air conditioning or security systems from operating properly or at all. Indeed, wider issues may need to be considered, such as whether any embedded chips affect safety critical systems or could cause damage to the environment if not rectified.

Those financing acquisitions of property, or other assets such as ships and aircraft, also need to be aware of the potential reduction in value of the asset if it is affected by non-compliant systems. Indeed, some of these assets may be also be affected by a completely unrelated but worrying problem with the global positioning systems on which they rely which, coincidentally, may suffer severe problems in August 1999 unless rectified.

Some believe that the answer to Y2K problems is simply to sue someone. However, the position is far from straightforward, even assuming that the supplier of the equipment or software still exists and that it will have the resources to pay any damages which might be awarded at the end of the day (particularly if there are several such claims). There are complications in calculating the relevant limitation periods, the effect of legislation on the sale of goods and supply of services, the efficacy and enforceability of exclusion clauses, and so on. However, it is important to check now the date of supply of any equipment or program which may have a Y2K problem, in case the six year period from the date of supply is about to expire – although it might be argued that proceedings cannot be issued until after the problem has manifested itself.

It may or may not be possible to sue the supplier of the software or chip, but the priority should be to rectify the problem as soon as possible (if only to mitigate the loss).

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