

CONSUMER WARRANTY AS A GENRE

Ilona DELEKTA, M.A.

Institute of East Slavonic Languages, University of Silesia
ul. Grotta-Roweckiego 5, 41-205 Sosnowiec, Poland
ilona.delekta@us.edu.pl

Abstract: The purpose of this paper is to present genre specificity of the consumer warranty and various factors determining its structure and language as well as consumer regulations. Warranty is a type of document that is commonly used and widely known. However, a possibility of different interpretations of warranty content can lead to its incomprehensibility and/or misinterpretation and have specific legal consequences. The author analysed English version of 110 warranty documents for consumer goods. The collected research material indicates a structural and syntactic diversity of warranty documents. It also illustrates how content and the language of the document might facilitate or hinder its correct interpretation.

Key words: consumer warranty, genre, correct interpretation, readability.

GWARANCJA KONSUMENCKA JAKO GATUNEK WYPOWIEDZI

Abstrakt: Celem artykułu jest omówienie specyfiki gatunkowej gwarancji konsumenckiej, a także różne czynniki determinujące jej strukturę i język (w tym przepisy konsumenckie). Gwarancja jest rodzajem dokumentu stosowanego i znanego powszechnie. Niejednokrotnie jednak możliwość różnej interpretacji języka i treści gwarancji wpływa na jej niezrozumiałość i/lub utrudnia jej prawidłową interpretację. Rodzi to określone konsekwencje prawne. Autorka poddała analizie 110 gwarancji konsumenckich w angielskiej wersji językowej. Zebrany materiał badawczy wskazuje na zróżnicowanie strukturalno-semantyczne dokumentów gwarancyjnych. Pozwala również stwierdzić w jaki sposób treść lub język dokumentu może ułatwić bądź utrudnić poprawną interpretację treści zawartych w gwarancji.

Warranty etymology and some facts from its history

According to the Merriam-Webster dictionary, the term *warranty* is traced back to the Anglo-French and Old North French *warantie* or *garantie*. In English it was used for the first time in the mid-14th century.

However, the concept of warranty is as old as trade, one of the oldest human activities. Due to the need for some trade standards, product warranty was created as one of trade practices. The warranty has been an important issue since the beginnings of human civilisation and it covered various products and services ranging from cattle or slaves in ancient times to modern electronic systems or weapons currently. For a long time, there had been no one clear-cut definition or characteristics for warranty. It was present in trade as a part of good practice. Its very beginnings, as Loomba (1996, 31) claims, go back to the first customer complaints and related issues and were found on clay tablets in Babylonia in about 2128-2004 BC. Other examples of warranty in the

early civilisations are found in the Hammurabi Code (around the 20th century BC) which provided for the two following warranty options:

- (i) an eye-for an eye compensation illustrated by the following provision below:

If a builder has built a house for a man, and has not made his work sound, and the house he built has fallen, and caused the death of its owner, that builder shall be put to death.

- (ii) money-back guarantee illustrated by a warranty for a slave.

If a man has bought a male or female slave and the slave has not fulfilled his month, but the bennu disease has fallen upon him, he shall return the slave to the seller and the buyer shall take back the money he paid.¹

Loomba (1996, 33) also describes warranties drafted in the Egyptian era (5702-3180 BC), as well as in the law of India around AD 500 or in the early Islamic period (ca. AD 632-661). In Europe first warranties came into being around the 5th century BC. Then, some warranties were written among others in early English period (AD 597-617) and in Russia in the 10th century. These are the very origins of the warranty genre but its actual beginnings go back to the end of the 19th century when they started to be treated as standardised contracts.

Warranty definitions

The definitions presented in this paper refer only to warranties for consumer goods. However, warranty is probably one of the most commonly used written documents worldwide. This notion is also used other areas such as real property law, sales of personal property, contracts, insurance, to mention but a few.

Below there are three definitions of the *warranty* notion. The first one comes from a **law dictionary**² according to which

warranty is the attesting of one party to a contract to the other of reliable facts so that the second party does not need to ascertain such facts for him or herself. Such assurance carries with it a promise to indemnify the second party for any loss should the particulars of the warranty prove not to be factual. Such a warranty may be express or implied.

The second one comes from an on-line **business dictionary**³: warranty is

legally binding assurance (which may or may not be in writing) that a good or service is, among other things, (1) fit for use as represented, (2) free from defective material and workmanship, (3) meets statutory and/or other specifications. A warranty describes the conditions under, and period during, which the producer or vendor will repair, replace, or other compensate for, the defective item without cost to the buyer or user. Often it also delineates the rights and obligations of both parties in case of a claim or dispute.

¹ Both examples come from the Hammurabi Code version at <http://www.commonlaw.com/Hammurabi.html>

² Webster's New World Dictionary, Law Dictionary. 2006.

³ www.businessdictionary.com.

The third definition comes from the on-line **general English dictionary**⁴ according to which warranty is

a written guarantee, issued to the purchaser of an article by its manufacturer, promising to repair or replace it if necessary within a specified period of time.

Warranty versus guarantee

For some researchers, authors and in some dictionaries⁵ both terms are synonymous as can be seen in the third definition quoted above stating that warranty is a written guarantee whereas others disagree, for example, Blischke, Murthy (1996, 7) stress that guarantee is 'pledge or assurance of something' and warranty is a specific kind of guarantee that concerns particular goods or services rendered by a seller to a buyer. The Black's Law Dictionary (1910) though not so recent, provides a clear distinction between the *warranty* and the *guarantee*, according to it in the strict legal sense the *warranty* is

an absolute undertaking or liability on the part of the warrantor, and the contract is void unless it is strictly and literally performed, while the *guarantee* is a promise, entirely collateral to the original contract, and not imposing any primary liability on the guarantor, but binding him to be answerable for the failure or default of another.

Various aspects of warranty

As warranty is a very broad term and concept, it has been a subject of interest of various disciplines such as **law** (as a subject of study and in terms of regulations), **marketing** (influencing consumer's purchasing decisions), **management** (planning warranty strategies and its duration), **economics** (predicting and calculating future warranty costs), **statistics and mathematics** (risk assessment), **design and engineering** (optimal design and manufacture), **quality assurance**, **consumer affairs** (protecting consumers). The issues they deal with frequently overlap because, for example, good design and quality of a specific product can minimise warranty costs.

Classifications of warranty

The author has chosen four common classifications used with regard to consumer goods:

- (i) **Express warranty** and **implicit warranty**. Express warranty is a kind of agreement between the seller and the buyer of a product to provide a repair or replacement for covered components of a specific product during the specified time (e.g. warranty for a washing machine). The latter guarantees that the product is merchantable and fit for the purpose intended (e.g. food).
- (ii) **Buyer-based classification**. Depending on who the consumer is, there are **warranties for individual consumers** (e.g. for a dishwasher for home use), **commercial warranties** (e.g. equipment bought by manufacturer) and

⁴ www.on-line Oxford Dictionary.

⁵ Dictionary of Law Bloomsbury reference (2004), Longman Dictionary of Contemporary English (2009), on-line Dictionary of Economics (2013).

- government warranties** (e.g. purchase of military equipment by the government) where unlike in the first two groups, the warranty terms are not standardised but negotiated and imposed at the time of product purchase.
- (iii) **Full warranty, limited warranty, combination of full and limited, extended** depending on extent of coverage. Warranties limit the conditions in which the manufacturer or seller is obliged to solve a problem resulting from defective parts or workmanship. Most household products, for example, are usually covered by warranty for one year or for two years. Extended warranties last beyond manufacturer's warranty and they are a kind of insurance policy that consumers pay in advance. They last longer and its conditions are more lenient.
- (iv) Warranty **for a single item** or a **group of items** (cumulative warranty).

Warranty – different roles and perspectives

Another crucial aspect of warranty is determined by its role. On the one hand, it **protects consumer** against manufacturers' or sellers' unfair practices, it guarantees solving problems resulting from product defects. It **provides the consumer with information** about his/her rights with regard to the defective product and also is a **promise to remedy a problem** by the warrantor (manufacturer or seller) by its repair, replacement or a refund.

On the other hand, from manufacturer /seller's perspective warranty plays **informative, persuasive and protective roles**. Firstly, it informs the consumer of potential problems related to product defects and their solutions, warranty procedures, inclusions and exclusions. In terms of product marketing, it can persuade prospective consumers to buy specific products as product warranty can "offer customers peace of mind and demonstrate the manufacturer has faith in the quality of its product"⁶. For many consumers long warranty period means that a product is reliable and long-lasting and thus affects their purchasing decisions and might create brand loyalty. As for its protective function, warranty drawn up by the manufacturer, limits its coverage and legal obligations to consumers, prevents product's misuse and thus limits warranty costs, which consequently causes that their position is superior in comparison to that of consumers.

Average consumer and consumer goods

Before discussing in more detail consumer warranty language and its components, two key notions need to be defined. Firstly, who is a warranty addressee/ recipient? Secondly, who actually is an *average consumer*? According to the European Court of Justice, it is a person who is "reasonably well-informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors"⁷.

However, this definition seems unrealistic and therefore raised many questions.

⁶ See: three levels of product in marketing, in particular level 3 of augmented product <http://www.learnmarketing.net/threelevelsofaproduct.htm>.

⁷ B2C Directive (UCPD) in the preamble recital 18. The definition is based on the case law of the European Court and therefore is not static. <http://www.marketinglaw.eu/AverageConsumer.html>

Many consumers do not have sufficient knowledge to exercise their rights. There is even a notion of *vulnerable consumers*⁸ who are disempowered by the kind of information they receive that is difficult to understand due to different factors, for example, sophisticated marketing methods or lack of access to information. In the opinion of the European Consumer Consultative Group⁹ (2013, 8) the definition of the European Court of Justice “overstates the qualities of the typical consumer. Often consumers do not have the time or the inclination to investigate offers as much as the law expects them to do”.

Therefore, for the purposes of this research, I use this term to refer to a buyer who is a non-specialist with a reasonable knowledge of the market and products and does not necessarily have higher education. This was necessary for the assessment of the readability of warranties for average consumers.

Consumer goods (also called final goods) are products purchased for consumption to satisfy needs of the average consumer (buyer).

Warranty – genre specificity

Multidisciplinary character of warranty requires a multidimensional approach to its analysis in order to see, as Bhatia (2004, 156) said ‘the whole of the elephant’ not only its part. In his view, the analysis of written texts cannot be restricted only to linguistic perspective and investigating text-internal factors. It should also examine text-external factors providing a wider context such as, for example, socio-cognitive perspective, professional and other institutional practices and constraints. Thus, the author attempts to present multi-disciplinary contexts of the warranty.

Warranty contents are partly determined by the law of particular countries where companies (manufacturers) producing consumer goods are based¹⁰. It is analysed in more detail in my research. This article though analyses actual consumer warranties on the basis of the collected corpus of 110 warranties for consumer goods (mainly for electronic goods such as computers, cameras, tv sets and stereo sets, household appliances etc.) selected and analysed by the author. All the warranties are drafted in English, by manufacturers in different countries (mainly the EU countries and the United States where companies are based) and probably not all of the authors were native speakers although it is hard to verify this fact. However, some language mistakes seem to be characteristic of the B1-B2 CEFR level¹¹. The warranties used for the purpose of the analysis were either scanned from original written warranties or downloaded from the Internet from the manufacturers’ websites. The collected warranties have been analysed manually in terms of their construction and interpretation (among others similarities, differences, their typical contents and contents characteristics and readability).

⁸ http://ec.europa.eu/consumers/empowerment/docs/eccg_opinion_consumers_vulnerability_022013_en.pdf.

⁹ For more information see: http://ec.europa.eu/consumers/empowerment/docs/eccg_opinion_consumers_vulnerability_022013_en.pdf.

¹⁰ For example, in Poland, Ustawa o szczególnych warunkach sprzedaży konsumenckiej (Dz. U. z 2002 r. nr 141, poz. 1176 ze zm.), in the European Union the Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees.

¹¹ CEFR - The Common European Framework of Reference for Languages: Learning, Teaching, Assessment developed by the Language Policy Division of the Council of Europe, Strasbourg, 2001, Council of Europe, Language Policy Division.

Warranty components and general characteristics

Warranty is easily recognisable because each warranty document always starts with the title 'Warranty.' In other respects, the warranty contents vary significantly, for example, the **length** of texts in the corpus ranges from 100 to 1,300 words. In the case of cars, manufacturers issue special warranty booklets. However, there are certain components that are present in the majority of documents, they include: **a name of a product**, **warrantor's name contact details** (address, telephone number, e-mail address, website), **extent of warranty coverage** (information on parts/components and problems covered, territorial scope of warranty coverage), **period of coverage** (for the whole product or its particular components), **description of complaint procedure** (how to correct a problem and/or obtain warranty service) and **warranty exclusions and limitations** (including lengthy sentences, frequently in capital letters drawing reader's attention to that part of the document). In addition, a number of warranties include **information on responsibilities of manufacturer or seller**¹² and **proper use of a purchased product** by the consumer. The latter affects and limits consumer's rights as in the case of damage caused by accident, abuse, misuse or modification of the product, warranty does not apply. The manufacturer's or seller's duties generally include: repair or replacement of a defective product or a refund.

Some warranties provide additional information on the ways of **obtaining service in the post-warranty period**. Frequently, **registration card** is attached to a warranty document, its completion and return to the manufacturer is required to obtain warranty service for a defective product (there is also an on-line option of product registration). As well as this, **marketing aspect** is present at the **personalised beginning** of some documents addressing directly the consumer using personal pronoun *you* (e.g. *Thank you for buying our product, thank you for having bought ..., thank you for purchasing ..., thank you for choosing..., we hope you will be happy with it*). Personal style is also found in sentences encouraging purchasers to read use manuals (e.g. *we advise you to read the user manuals carefully*) or inform about after-sales service (*we are dedicated to ensuring that our customers receive the best possible after sales care*) or complaint procedures (*If you are not completely satisfied with your appliance or require a service engineer call us*). This allows to establish a closer relationship with the consumer because the writer sounds less anonymous, create a better impression of a manufacturer and a product, and thus affect purchasing decisions.

Other components of warranties are impersonal due to frequent use of **passive voice** illustrated by examples from the warranty documents in the collected corpus (*This guarantee will be granted only upon presentation of the original invoice; Benefits of this guarantee may be refused if the invoice cash receipt or guarantee card has been altered in way, deleted or made illegible after the original purchase*) or numerous nominalisations (*Failure to return the defective machine within 5 business days will result in a charge for the full price of the exchange machine; in the event of replacement*).

¹² By law, in Poland a warranty which does not specify manufacturer's or seller's duties Ustawa o szczególnych warunkach sprzedaży konsumenckiej (Dz. U. z 2002 r. nr 141, poz. 1176 ze zm. [Act of 27 July 2002 on specific terms and conditions of consumer sale and amendments to the Civil Code].

Currently, instead of attaching warranties to products more and more warrantors place them on the Internet on manufacturer's website or in the case of e-shopping, purchaser can register and generate a warranty document at home. On the basis of the Internet warranties collected in the corpus two groups of e-warranties can be distinguished, the first one includes warranties for specific products, the other one includes general warranty conditions for all products of a particular manufacturer. Their content is frequently the same or almost identical for all the products. **Warranties on the Internet** are not subjected to formal limitations like the traditional paper warranty (e.g. number of pages, layout; the consumer can also check on-line his/her warranty status warranty status and eligibility for support and extended coverage even if s/he has lost its paper version), which consequently can cause some generic changes (e.g. the warranty becomes to some extent 'interactive').

Readability of consumer warranties

The article also analyses the issue of assessing readability of warranties for average consumers. The term *readability* refers to the ease with which written texts can be read. According to Klare (1963) readability is 'the ease of understanding or comprehension due to the style of writing.' This definition separates writing style from content, organisation and coherence. To assess the difficulty level of the collected documents the author uses on-line text analysing tool *Textalyser*¹³ using the following formulas: Fleisch Reading Ease Fleisch-Kincaid Grade Level. The assessment is made by means of mathematical formulas that analyse semantic and syntactic difficulty of words and sentences by calculating factors such as sentence length, word length, lexical density, number of syllables, passive index or word frequency. The **Fleisch Reading Ease score** calculated for the warranties in the corpus was 14. The scale for this formula ranges from 0 to 100 and a higher score indicates easier reading. Scores 90-100 are understood by an average 5th grader and documents with a score 0-30 can be understood by college graduates. The score of **Fleisch-Kincaid Grade Level** indicates a US school grade level (i.e. a score of 9.0 means that a ninth grader can understand a text). The average score for the corpus was 12. Although the formulas are based on the US educational system, the achieved scores show a high degree of difficulty with reading the warranties because they indicate that warranties can be understood by college graduates, which makes them difficult to understand by an average consumer.

One of the factors affecting readability might result from **long sentences**. An average number of words per sentence in the corpus is 18.33. However, there are numerous documents with sentences where number of words ranges from 70 to 128 words, which makes their reading and correct interpretation extremely difficult, particularly for the average consumer. Long sentences with excessive or insufficient use of punctuation, legal references and additional information in brackets result cause the lack of clear logical link between clauses, are difficult to remember and interpret correctly.

¹³ <http://textalyser.net/>.

Here is an example of the longest sentence in the corpus:

Example 1.

XYZ warrants to the purchaser of the Product (defined herein as the boxed XYZ ® processor and the accompanying thermal solution) in its original sealed packaging ("Original Purchaser") and to the purchaser of a computer system built by an Original Purchaser containing the Product ("Original System Customer") as follows: if the Product is properly used and installed, it will be free from defects in material and workmanship, and will substantially conform to XYZ's publicly available specifications for a period of three (3) years beginning on the date the Product was purchased in its original sealed packaging in the case of an Original Purchaser, and for a period of three (3) years beginning on the date of purchase of a computer system containing the Product for an Original System Customer.

Kohl (2008, 34) in his guidelines for drafting documentation for a global audience¹⁴ suggests limiting the length of sentences to 20-25 to avoid unnecessary ambiguities and complexities reducing document readability. This in turn can also be a source of problems in translating warranties (and other documents) into other languages and misinterpreting their contents.

It seems worth noting that such long sentences are frequently used in exclusions section, which might suggest an intentional strategy on the part of the warranty authors.

In addition, there are other numerous factors affecting warranties readability and comprehensibility like the use of foreign words (*in lieu*), long words (*remediable*) or poor translation (*Warranty is referred only to the customer goods using for common domestic use.*). Despite the requirement for using plain intelligible language in consumer documents, there is still some legalese present in a number of warranties:

Example 2.

This Limited Warranty shall not apply to any product or component thereof which has been repaired or altered outside of Eaton's factory in any manner so as, in Eaton's sole judgment, to affect its serviceability, or to any product that has been subject to alteration, accident, misuse, abuse, neglect or normal wear.

For an average consumer this text might pose a difficulty and it does not conform to the plain English requirements for consumer documents as the sentence is long and includes vocabulary commonly found in legal documents (thereof, in any manner, subject to alteration) and they could be easily replaced with their less formal counterparts.

Readability formulas raised controversy due to a number of limitations. Firstly, assessing statistically the difficulty of printed material only on basis of textual variables on the level of words (vocabulary difficulty) and sentences (sentence length) is insufficient. Other issues such as, for example, cohesion, organisation, coherence must be also considered. Another variable worth considering in the analysis of text readability is a group of intended audience in terms of their reading ability, prior knowledge (Klare et al. 1955) as well as interest and motivation. Dubay (2004) also mentions the research

¹⁴ In: *The Global English Style Guide: Writing Clear, Translatable Documentation for a Global Market* written for technical, medical and science writers and editors, course developers as well as training instructors.

conducted by Hardyck and Petrovich (1970) that indicated even a connection between readability and muscle activity in the oral area. Despite that, readability formulas, when used as one of the text assessment tools, can contribute to writing more readable texts as they allow for predicting difficulty level of a specific text and indicate potential problem areas that can be eliminated.

On the whole, the analysis of the collected documents suggests that warranty is not particularly consumer-friendly, due to a number of factors discussed in this article. This causes various problems with its correct interpretation because it can reduce consumer statutory rights, no matter whether it is a deliberate hedging strategy or is a consequence of the warranty writer's ignorance or poor quality translation.

Finally, a **visual impact** of warranty documents should not be neglected. The Federal Commission Staff in the US drafted a manual for warranty writers¹⁵ in which they advise how to enhance visual clarity and attractiveness of a printed document. The following elements of graphic design should be included:

- (i) Typesize, typeface (size 10 is preferred, as smaller fonts can make the information difficult to read and/or unclear)
- (ii) Blank space between lines
- (iii) Line length
- (iv) Margins
- (v) White space
- (vi) Colour (of the type and the paper)
- (vii) Capital letters
- (viii) Illustrations.

The warranties in the corpus suggest that manufacturers do not pay attention to visual impact of the warranty document, they tend to economize and as a result many warranties are printed on poor quality paper, use small fonts, use very little space for warranty provisions so no margins or lists are used. In some cases a small section including warranty provision is attached to user's manual and is difficult to find. Therefore, such factors can also limit consumer rights.

Concluding remarks

To sum up, consumer warranty is a very complex issue due to a number of aspects and various factors affecting its contents and interpretation. It is a subject of interest and analyses of manufacturers, sellers, consumers and consumer organisations as well as lawyers, economists, designers, marketing or quality assurance specialists, statisticians, insurers, managers and a number of other specialists. Due to the broad scope of issues related to warranty, only some of the aspects have been presented in the article. It presents only preliminary results of analysis of ongoing research conducted by the author. Therefore, not all the aspects have been exhaustively discussed (e.g. statistics, lexicogrammatical resources within textual space or socio-cognitive context). The analysis of the warranties in the corpus suggests that further research is needed to investigate particularly the linguistic issues causing comprehension and interpretation problems for

¹⁵ <http://www.business.ftc.gov/documents/bus20-writing-readable-warranties>.

average consumers. Identification of such problem areas would allow for providing guidelines for warranty writers and more effective interpretation of warranty documents for consumers.

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