

April 6, 2001

Honorable Drew Edmondson
Office of the Attorney General
State of Oklahoma
112 State Capitol
Oklahoma City, Oklahoma 73105

Dear Attorney General Edmondson:

I am writing this letter to clarify the context within which the Virginia Library Association (VLA) negotiated an agreement regarding a library amendment to the UCITA legislation as enacted in the Commonwealth of Virginia. I was appointed to serve as the Virginia Library Association Representative on the Virginia General Assembly's Joint Commission on Technology and Science Advisory Committee Five to study the impact of UCITA on libraries, consumers, and other constituencies in the state of Virginia. As you know, UCITA was enacted in Virginia during the 2000 legislative session, but the effective date was delayed until July 2001 to allow further examination of what many fear will be extremely negative ramifications for libraries and others. The advisory committee met between July and November 2000.

During the deliberations of the committee, I submitted three different proposals for amendment to the Virginia UCITA legislation. Each amendment was defeated by a very narrow vote, with the final amendment being defeated with a tie vote. During the course of the committee's work, a number of representatives from libraries and publishing interests met with Connie Ring and Ray Nimmer from NCCUSL to negotiate an amendment that would address the library community's concerns. After the final library amendment was defeated, the interested parties were asked by Connie Ring to continue negotiations in order to reach a compromise regarding library issues.

The final agreement reached was extremely narrow in scope, not widely supported by library associations within and beyond Virginia, and was considered only the best that Virginia could do given the fact that the UCITA legislation was already enacted and effective July 1, 2001. The agreement was considered a "reasonable compromise" only to the extent that the Virginia library community was facing a July effective date and wanted to temper the negative impact of the legislation, even if in only a very limited way. The "deal" in no way satisfied our concerns surrounding the serious limitations UCITA places on libraries' exercise of fair use and other established library practices as provided under the federal copyright law.

The letter of agreement states: "Both sides to the negotiations agreed that this compromise is not entered into as a proposed national solution to library concerns with UCITA, and that, except for preserving any fundamental public policy, preemption, and

unconscionability defenses which may exist, the issue of online access to content was one that could not be resolved during the Virginia negotiations." This makes clear that the amendment does not address online issues and that the amendment was not deemed a national solution to library issues by any of the parties concerned; libraries, publishing interests or representatives from NCCUSL. Rather, the agreement was reached only within the context of the specific situation in Virginia.

The agreement was NOT endorsed by the Library of Virginia (the State Library), the Virtual Library of Virginia (VIVA), the Virginia Educational Media Association (VEMA), the Virginia Association of Law Libraries (VALL), the Virginia Independent College and University Library Association (VICULA), or any other Virginia library or education association. You will note in the attached copy of the agreement that the Virginia Library Association agreed not to oppose UCITA or support amendments to it (other than those approved by JCOTS) in the Commonwealth of Virginia prior to the 2003 Session of the Virginia Assembly. Other Virginia library associations or individual librarians within state are not bound by the agreement.

In closing, the fact that VLA endorsed the amendment in Virginia should in no way be construed to mean that the language of the amendment satisfied the concerns of libraries, or that the Virginia library community supports the broader UCITA legislation. Enclosed is a copy of the letter of agreement and the amendment as approved. If I can be of any further assistance please contact me.

Sincerely,

Ruth E. Kifer
Virginia Library Association Representative,
Virginia JCOTS Advisory Committee Five on UCITA;
Associate University Librarian for Distributed Libraries
George Mason University Libraries

Encl.