

## **Caterpillar Opposes Uniform Computer Information Transactions Act**

On July 29, 1999, the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved for individual state consideration the Uniform Computer Information Transactions Act (UCITA), which is proffered to provide a uniform law for software and other computer information contracts. Caterpillar **opposes** enactment of UCITA.

### **Background**

NCCUSL consists of a body of state appointed commissioners from each of the United States. NCCUSL's purpose is to promote uniformity in state law and is tasked with the responsibility of determining which areas of the law would benefit from uniformity, and then drafting and recommending the drafted uniform laws to state legislatures for enactment. The most well known uniform act is the Uniform Commercial Code (UCC). The task of drafting such uniform laws is accomplished by a drafting committee established by NCCUSL.

UCITA was originally being proposed as a new article to the UCC and was formerly referred to as UCC Article 2B (UCC 2B). The effort to pass this uniform computer law act as a new article to the UCC failed however because of a controversy raised over the proposed act's unbalance and lack of fairness to software users. Instead of letting UCC 2B simply die, its drafting committee recast UCC 2B as a stand-alone act and renamed it as UCITA.

In the drafting process for UCC 2B, attendance at the open drafting committee meetings was dominated in large part by mass-market software publishers (i.e., Microsoft) that showed no interest in substantive balance of the act for users. As a result, UCITA, as drafted, falls well short of being acceptable to both sides of the transactions that such rules are intended to govern. Some of the problems are as follows:

- Software publishers can shut down user software remotely without court approval
- Software publishers can prohibit the transfer of its shrink and click-wrap software license from one company to another (during a merger or acquisition)
- Unlimited disclaimers of warranty will absolve publishers from damages for defective software even when the publisher concealed defects that might harm the business
- Software acquired by employees without authorization will end up binding a corporation
- Click through terms in the software will overwrite those of a fully negotiated contract between the software publisher and the corporation and
- Allows publishers to write their own intellectual property law and circumvent well established intellectual property principles and statutes

Caterpillar urges other corporate software users to join us in our effort of opposing enactment of UCITA by the states. If interested, please contact Gordon Pence, IP Counsel, Caterpillar Inc., 100 N.E. Adams St., Peoria, IL 61629-6490 (Ph. 309-675-4460; Fax. 309-675-1236; e-mail: [ogpence@cat.com](mailto:ogpence@cat.com)).