



## **Press Release**

**For Immediate Release  
July 22, 2002**

**Contact: Carol Ashworth  
202-628-8410**

### **AFFECT Will Continue to Oppose UCITA**

(Washington, D. C.) –Americans for Fair Electronic Commerce Transactions (AFFECT), chief among the many critics of the Uniform Computer Information Transactions Act (UCITA), is preparing to continue its steady opposition to UCITA even if the currently proposed amendments to UCITA are approved by the National Conference of Commissioners of Uniform State Laws (NCCUSL) at its annual meeting in Tucson on July 26-August 2. These amendments to UCITA, the controversial proposed state contract law, have been drafted in the hopes of mollifying longstanding opponents and to respond to recommendations made earlier this year in an American Bar Association report. (Jan. 30, 2002)

AFFECT finds no significant improvements to UCITA in the proposed changes and notes that of the 38 changes proposed in May almost half had been issued by NCCUSL's UCITA Standby Committee in December 2001. Only two of the remaining amendments are new; most merely involve grammatical and stylistic changes or the addition of sub-headings that do not alter the meaning of the text.

AFFECT's analysis of the proposals are available in its *Response to the Proposed Amendments to UCITA, June 28, 2002*

( <http://www-affect.@ucita.com/ProposedChanges.htm>)

1301 Pennsylvania Ave. NW Suite 403  
voice: 202-628-8410  
[www.affect.ucita.com](http://www.affect.ucita.com)

Washington, D. C. 20004  
fax: 202-628-8419  
cashworth@alawash.org

## AFFECT

Page 2

UCITA is a controversial proposed state contract law that sets forth rules for licensing “computer information.” Both the ABA and thirty-three state attorneys general (in a letter to NCCUSL, Nov. 13, 2001) have recommended redrafting UCITA. AFFECT has found the act overly broad in scope, hard to understand and fundamentally biased against the needs of end users and, despite the new amendments, still in need of redrafting.

Miriam Nisbet, president of AFFECT states, “This may be the new UCITA, but it is not improved. We are disappointed that NCCUSL merely tinkered with headings under the guise of 'clarifying' a seriously flawed document, while refusing to take the sage advice of the ABA to scrap this model and go back to the drawing board.”

AFFECT finds that the changes in text that address consumer protection issues do not reduce UCITA’s potential harm to consumers. UCITA would still negate many of the currently enacted state consumer protection laws unless advocates for individual and small and large business consumers were able to persuade their state legislators to make existing consumer protection laws apply to computer software. In addition, NCCUSL has rejected the advice of its ABA colleagues on the fundamental consumer issue of pre-disclosing contract terms. AFFECT agrees with the ABA working group report that UCITA should be changed to require that all contract terms be available for review before the licensee pays for the product.

Professor Jean Braucher, of the University of Arizona College of Law, explains that “there can be no working market for better terms when business and consumer customers have to enter into transactions before they can find out what the terms are.” UCITA allows an “opportunity to review” the terms after payment. “This provision does not make up for the lack of transparency in advance, putting a burden on customers to try to reverse transactions when they find objectionable terms after delivery.”

UCITA has been criticized for its tolerance of electronic “self-help” or electronic repossession. This practice which allows a licensor to remotely shut down a licensee's

AFFECT

Page 3

system when the licensor believes the user has not followed the terms of the license, and has been one of the most controversial issues in UCITA. The standby committee has included a proposal to prohibit electronic self-help, but has kept language in other sections effectively permitting an equivalent practice.

“Business observers have repeatedly asked the drafters of UCITA to prohibit electronic self-help in a meaningful way,” said Elaine McDonald of the Principal Financial Group. “We have asked for a prohibition with teeth, and we have asked for loopholes in other parts of the law to be closed, so that licensors could not engage in electronic self-help under another name. While the proposed amendment gives the appearance of making a major concession, it is mostly illusory because the prohibition has no teeth and the loopholes have not been closed.”

Only two states, Maryland and Virginia, have enacted UCITA since it was first approved by NCCUSL two years ago, while three other states, Iowa, North Carolina and West Virginia, have passed “bomb-shelter” bills to keep UCITA from being applied to their residents through contract clauses adopting Maryland or Virginia law.

AFFECT members include large retail and manufacturing concerns, financial institutions, technology companies and IT professional groups, consumers, and libraries. The national coalition has criticized UCITA for being unbalanced in favor of the needs of the software developers and publishers who license digital information products.

XXXXXXXX