



AFFECT challenges recent amendments to UCITA

The Uniform Computer Information Transactions Act (UCITA) continues to be unfairly biased toward the needs and interests of software vendors to the detriment of their customers, even after the addition of amendments in 2002. (www.law.upenn.edu) The recent revisions do not substantively address fundamental concerns articulated by the American Bar Association Working Group on UCITA, thirty-two state attorneys general or opponents. UCITA continues to lack the consensus needed for passage of a uniform law. The changes do not increase the clarity of the 256 pages of hard-to-penetrate text and comments.

UCITA

- **Still permits licensors to withhold terms until after payment and installation of software.** NCCUSL rejected the ABA Working Group's recommendation that UCITA should require the licensor to make all the terms of the transaction available before the licensee is obligated to pay or becomes bound by the license agreement.
- **Still permits licensors to include disabling code and does not require them to disclose its presence to licensees.** This type of code creates what are often called "black holes" or "security holes" that put the confidentiality, integrity and security of a business's computer systems at serious risk of exploitation.
- **Still permits the effective equivalent of electronic self-help.** UCITA still allows "electronic regulation of performance" by means of automatic restraint, which is electronic self-help under another name. The revision banning self-help provides no meaningful remedy for customers when self-help is wrongfully used.
- **Still permits licensors to prohibit reverse engineering to find security flaws.** Licensees need to be able to reverse engineer in order to detect and fix defects and security holes in software. Federal copyright law protects reverse engineering for purposes of interoperability, finding public domain elements and detecting and repairing defects. The recent amendment falls far short of permissions granted in federal law and would have a chilling effect on the development of innovative technology.
- **Still continues to apply to "smart goods."** Recent amendments ignore the ABA Working Group's recommendation that UCITA should not apply to software embedded in goods. UCITA thus increases the likelihood that such goods will fall outside the protections of many consumer laws and promote the use of restrictive licensing arrangements for more products.
- **Still does not require licensors to disclose known defects.** A new amendment merely affirming the common law of fraud ignores proposals that would have given incentives to software producers to disclose known "bugs" and thus reduce the costs now borne by individual and business users.

AFFECT is a broad-based coalition of over 60 members including retail and manufacturing businesses, consumers, financial services institutions, technology professionals and libraries. AFFECT has been engaged in the policy debate about UCITA and has been politically active in every state where UCITA has been discussed.