



Consumers still oppose UCITA

In 2001 thirty-two state attorneys general agreed that, "UCITA is so flawed that any amendments which could reasonably be expected to result from this process would not significantly ameliorate UCITA's negative impact on consumers, or on the marketplace in general." The amendments proposed by the National Conference of Commissioners of Uniform State Laws (NCCUSL) since that time will not quiet the many critics of the Uniform Computer Information Transactions Act (UCITA) or blunt consumer opposition to its passage. Several proposals do address consumer issues. However, consumer advocates find that the current recommendations do not remedy the fundamental concerns that consumers have always had with UCITA. All of the major national and state consumer organizations will continue both to vigorously oppose UCITA and support any introduced "bomb-shelter" legislation.

Consumers have repeatedly expressed concern about UCITA's interaction with state consumer laws, the absence of a requirement for pre-payment disclosure of terms, and the waiving of warranties. The changes under consideration in 2002 do not seriously diminish the harm to consumers in these areas.

- Existing state consumer protection laws generally apply to "goods." These laws have been used to provide consumer protections for software purchases on the grounds that the software is in essence "goods." If UCITA passes, software will no longer even arguably fall under these statutes. Consumers would have to seek amendment of every state consumer protection statute applying to goods or services to explicitly mention and provide basic consumer protections for software and on-line services, an all but impossible task for consumers, as acknowledged by the drafters in a legislative note. A proposed 2002 amendment rewrites, but does not change, the problematic language in this critical area of the act.

- UCITA still allows software publishers to sell software "as is." Consequently, software licenses are not required to include a basic warranty that the product works right or that the purchaser may get his or her money back if it does not! After the consumer buys the software, takes it home, starts loading it on a computer and sees the "as is" implied warranty disclaimer, the consumer has a right of return. But the right of return vanishes when the consumer clicks "I agree" to the license.

- The UCITA Standby Committee has not amended UCITA to require the pre-payment disclosure of terms, as recommended by the American Bar Association and the state attorneys general. As a result, the law continues to allow software publishers to hide their license terms until after the consumer has paid for the software, taken it home or downloaded and begun to use it. This makes it impossible for consumers to compare license terms as they shop. It is impracticable for reviewers to see the terms in order to write comparison articles for the benefit of consumers.

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