



AFFECT continues to oppose UCITA

The Uniform Computer Information Transactions Act (UCITA) is a controversial proposed state contract law that sets forth rules for licensing software, online services and other “computer information.” UCITA is a long, complex and ambiguous act adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1999 and since then UCITA has been enacted in only two of the almost twenty states that considered it. (UCITA “bomb-shelter” legislation, designed to protect a state’s citizens from UCITA as enacted in Virginia and Maryland, has passed in three states.) Despite the addition of some amendments in 2002, UCITA continues to be controversial, indicating a persistent lack of consensus that is normally expected of uniform laws. AFFECT continues to oppose UCITA because the amendments do not adequately address member concerns.

Why does AFFECT still oppose UCITA?

- UCITA reflects an inherent bias in favor of software publishers that is damaging to American business, consumers, libraries and the quality of software itself.
- UCITA allows vendors to hide terms of license agreements until after the purchaser has already paid for the software and started to install it.
- UCITA will undermine consumer and privacy protections by changing the rules for the purchase and use of computer software and information products.
- UCITA will likely result in increased costs for testing, security, asset management, legal and contract negotiation costs.
- UCITA allows vendors to offer software with known defects without disclosing them to the customer.
- UCITA permits the use of “automatic restraint” in certain situations to allow remote shutdown of critical systems, leading to potential threats to the security and privacy of licensees and their customers.
- UCITA allows a licensor to prohibit the licensee’s transfer of software in the event of a merger or acquisition, which could greatly –and negatively—impact businesses.
- UCITA allows licensors to insert terms in “shrink-wrap” and “click-on” licenses that prohibit activities already permitted under federal copyright law: reverse engineering to detect security holes and other defects, fair use of electronic materials in libraries and educational institutions, privately performing works without additional payment and making copies for archiving and preservation.

Who are the stakeholders in UCITA?

Americans for Fair Electronic Commerce Transactions (AFFECT), a national coalition of over sixty members including consumer organizations, retail and manufacturing businesses, financial institutions, technology professionals and libraries, is the leading opponent of UCITA. The American Law Institute, originally a partner with NCCUSL, refused to adopt UCITA when it was first drafted as Article 2B of the Uniform Commercial Code. Thirty-two state attorneys general, the American Bar Association’s UCITA Working Group, commercial, intellectual property and consumer legal experts have all criticized UCITA.

UCITA’s chief proponents are computer software publishers.

Where can I get more information?

Go to www.affect.ucita.com to see AFFECT’s 2002 amendment analysis, track state legislative activity, obtain the latest UCITA news and view AFFECT’s proposed amendments to UCITA.