



Libraries* still oppose UCITA

The nation's 31,000 libraries annually spend over one billion dollars on digital information products that include everything from databases to on-line journals, e-books, CD-ROMs, and videos. Ninety-nine percent of America's public libraries provide Internet access to the public. Although libraries directly negotiate with publishers for many electronic information products, like most businesses, they also rely on mass-market software that they buy "off the shelf" or download from the web.

Libraries share many of the same concerns about the Uniform Computer Information Transactions Act (UCITA) that have been identified by our AFFECT partners who represent business, computer professionals and consumers. However, libraries also have some unique concerns that relate to fulfilling the core mission of our institutions and are based on the fundamental doctrines articulated in federal copyright law.

- UCITA would allow licensors of mass-market non-negotiated licenses to include terms that prohibit activities that are otherwise permitted under federal copyright law or that are onerous for the licensee.
- Libraries that negotiate licenses with software vendors (often sole source for library purchasing) will incur higher administrative costs because of the increased need for contract review. UCITA permits vendors to change the terms of a license after the licensee has initially assented to them and allows minimum standards for assent to these changes.
- The kinds of library services now permissible under law—like inter-library loan, distance learning programs, archiving and preservation—will be threatened.
- A new proposed amendment to UCITA would allow the transfer or donation of software to consumers, elementary or secondary schools and public libraries, as long as the software is donated with the computer. Although this is an improvement, the provision falls short of the "first sale" provision in copyright law as it provides no such limitations in who can benefit from such a donation or transfer and is not satisfactory to libraries.

The libraries have consistently advocated for changes to UCITA that would specify that terms in "shrink-wrap" and "click-on" licenses would be unenforceable if they contradict federal copyright law. Libraries find the "fundamental public policy" protections in UCITA ambiguous and inadequate to protect our interests.

The drafters of UCITA have stated that the libraries' should address their concerns with Congress. Although libraries will continue to work with Congress regarding digital copyright issues, we also believe that it is appropriate to ask state legislators to exercise good public policy by preventing the far-reaching and damaging effects that UCITA would inflict on the institutions in their states.

For a detailed response to comments regarding the library concerns stated in the *2001 Report of UCITA Standby Committee*, go to www.ala.org/washoff/ucita/resources/html

*The American Library Association (ALA), the Association of Research Libraries, (ARL), American Association of Law Libraries (AALL), Special Libraries Association (SLA) and the Art Libraries Society of North America (ALSNA) oppose UCITA and are members of AFFECT.

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.

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