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library associations, consumer groups, the Federal Trade Commission and others (see *ALAWONs* from [July 16, July 22](#), and [August 5, 1999](#)). State commissioners now will send UCITA to each of the state legislatures for approval as uniform state law (see <http://www.nccusl.org> for more information).

Who would be impacted by UCITA?

The software industry was the initial focus of this model law and software companies have been a driving force in shaping UCITA. However, many other industries will be affected as the scope of UCITA extends to nearly all "transactions in information." For example, UCITA will impact: the music industry, the information technology industry, public and private libraries, data processing service providers, publishers of statistical data, traditional print publishers, online database providers, and the consumer of information. As the scope of UCITA has expanded so has the political nature of the debate.

Why is UCITA controversial?

- UCITA represents a movement toward licensing of information in its many forms and away from the *sale of copies* as traditionally understood under copyright law. UCITA would enforce the broad use of "shrink-wrap" and computer "click-on" licenses (called "mass-market licenses" in UCITA). By licensing rather than selling something, a vendor can wield more control of the downstream use of the product. Placing new constraints on the use of information in mass-market transactions can, in turn, constrain the use of information for important public purposes such as democratic speech, education, scientific research, and cultural exchange. Many believe that UCITA fails to appreciate the strong public interest in prohibiting new restrictions on information exchange.
- The scope of UCITA is extremely broad. "Computer information," under UCITA, includes everything from copyrighted expression, such as stories, computer programs, images, music and web pages; to other traditional forms of intellectual property such as patents, trade secrets, and trademarks; to newer digital creations such as online databases and interactive games. Although the statute claims to be limited to information in electronic form, it allows other transactions to "opt-in" to being governed by UCITA.

- Many legal community commentators are of the opinion that UCITA (or something like it) is not necessary or, at least, it is premature. This view is based on the opinion that existing common law and copyright law are developing appropriately to handle the new types of information-based transactions emerging in the information economy.
- The American Law Institute (ALI), consumer advocacy groups, libraries, a number of state attorney generals, and the Federal Trade Commission have continued to criticize and/or oppose the UCITA proposal and prior UCC2B drafts, yet their concerns have not been addressed. Instead, NCCUSL intends to push the UCITA proposal as quickly as possible to state legislatures.

Library community concerns

- UCITA represents a shift in power between copyright law and contract/license law that would endanger the balanced set of copyright law principles and privileges under which the library community currently operates--such as fair use, preservation, and the unhindered use of works in the public domain. For example, fair use and related exemptions could be eliminated via a click-on license.
- The framework put forth in UCITA does not take into account the intermediary role of libraries and would undermine the public policy of making information available to the general public on a shared-use basis.
- The scope of UCITA is too broad and even enables mass-market licensing of books.
- UCITA enables new constraints on public domain information and materials, including those already protected by intellectual property law.
- UCITA would create new layers of costly procedures for libraries as more time and money would be needed to educate library staff, negotiate licenses, track use of materials, and investigate the status of materials donated to libraries.

Consumer concerns

- UCITA's primary purpose is to shift the balance of power

in mass-market transactions involving information products and strengthen the ability of vendors to dictate terms in standard form contracts that are difficult for consumers to negotiate.

- UCITA would enable a vendor of information products, such as computer software, to restrict a consumer's right to sue for a product defect, to donate the product to charity, to use the product, or even to publicly discuss or criticize the product or information contained in it.
- UCITA would enable software companies and other information product providers to require that consumers bring all claims against the software company in a state of the software company's own choosing and that may be far from where the consumer lives.
- A summary of consumer concerns is available at:
<http://www.infoworld.com/cgi-bin/displayStory.pl?features/990531ucita3.htm>

What you can do to help

Now that the NCCUSL approved the Uniform Computer Information Transactions Act, the decision-making shifts to state legislatures. As this is a setback for libraries, consumers and state educational institutions, it is critical that library supporters contact their state legislators to oppose UCITA.

All state library associations, as well as chapters of school library and academic library associations, are strongly encouraged to get involved with this issue in their respective states. Please consult your state library association to identify the appropriate state contacts.

Since each state may approach UCITA in a different way, it is important to work through your particular state government system. One good place to start to find out about the UCITA activities in your state would be to contact the Office of the State Attorney General.

The Message:

- The Uniform Computer Information Transactions Act—by proposing that information transactions can be best managed through the use of non-negotiable, mass-market licenses—is inappropriate for libraries, consumers and state educational institutions. UCITA is a barrier to

achieving the following library goals:

- Libraries need to be able to purchase materials and contract for access to information on behalf of their patrons;
- Libraries need to be able to make materials available on a non-discriminatory basis to patrons;
- Libraries need to ensure that there are adequate and appropriate terms and conditions for access on the use of the materials.

Important links

- Information about the Annual Meeting of NCCUSL:
<http://www.nccusl.org/meetings.html>
 - List of State Commissioners:
<http://www.ala.org/washoff/list.html>
 - Current draft of UCITA:
<http://www.law.upenn.edu/bll/ulc/ucita/citam99.htm>
 - Infoworld's letter writing campaign regarding UCITA:
<http://forums.infoworld.com/threads/get.cgi?115803>
 - Background on UCITA from the Infoworld site:
http://www.infoworld.com/cgi-bin/displayStory.pl?features/990531ucita_home.htm
 - Cem Kaner's site with information about UCITA/UCC2B:
<http://www.badsoftware.com/>
 - Recent comments that have been sent to NCCUSL regarding UCITA:
<http://www.2Bguide.com/nccusl.html>
 - Federal Trade Commission Letter opposing UCITA, July 9, 1999, (consumer protection issues):
<http://www.ftc.gov/be/v990010.htm>
 - Library Community Letter on UCITA:
<http://www.arl.org/info/letters/lebrun7.12.html>
 - Article: *Legally Speaking, Does Information Really Want to be Licensed?* by Pam Samuelson, September 1998 Issue of Communications of the ACM:
http://sims.berkeley.edu/~pam/papers/acm_2B.html
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ARL, ALA, AALL, MLA, SLA
November 1, 1999

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Last Modified: Wednesday, 03-Nov-1999 13:59:50 CST