

My name
My address
My town, ST 00000

June 2, 1999

Elaine M. Farrell
Office of House Counsel
Room 139, State House
Boston, MA 02133

Dear NCCUSL Representative:

We are writing to express our opposition to the adoption of Uniform Computer Information Transactions Act (UCITA). If enacted, UCITA would increase our cost of doing business and adversely affect the economy of the states in which we operate.

This increased cost of doing business would likely impact employment, tax revenue, and the competitiveness of our operations in the world economy.

The current UCC fairly balances the interests of buyer and seller. Proposed UCITA is irreparably flawed in that it dramatically shifts this balance in favor of the seller. This imbalance pervades the provisions of UCITA in both blatant and numerous subtle nuances woven throughout the law.

For example, a partial list of some of the blatant provisions follows:

1. Seller's unilateral right to electronically disable software ("Self Help").
 - All medium and large businesses, and most small businesses, rely on computer software to perform critical daily tasks, such as running their manufacturing processes, paying suppliers and employees, calculating and remitting taxes, and controlling pollution. Because of their complexity, business software systems are often very expensive and cannot easily be replaced.
 - UCITA would allow software companies to exploit this vulnerability and threaten disruption of these critical systems if their demands are

not met.

- UCITA assumes the customer is guilty until proven innocent. The customer must run to court to try to stop this Draconian “remedy.”
- There is a huge potential here for misuse and harm to businesses and the communities in which they operate.

2. Reduced warranties.

- Language that disclaims an implied warranty must be conspicuous only in the narrowly defined “mass-market.” This is a trap for the unwary.
- UCITA reduces the implied warranty of noninfringement to apply only to U.S. rights, even if the license granted is worldwide. It is important to note here that the essence of a software transaction is a presumption that the software company has the right to grant the license, free of infringement.

3. Abandonment of the seller’s obligation to deliver a working product (“Perfect Tender”).

- If the software fails to conform to the contract, only a “mass-market” customer may refuse to accept it.
- The mass-market definition has been very carefully crafted to exclude entire market segments. For example, most businesses would lose the protection they have under current law.

4. Uncertainty of the time period of the right to use a product.

- In almost all cases today, software is licensed for a perpetual time period.
- Instead of reflecting this commercial reality, UCITA opens the door to needless mischief, litigation and expense, by introducing the concept of “time reasonable” for the duration of a license.

5. Unreasonable obligation placed upon the buyer to discover defects during an evaluation.

- Software companies understandably take the position that, even with all their resources and intimate knowledge of their software products, they are unable to test them adequately in order to warrant them as being error-free.

- UCITA, however, assumes that the customer will be able to discover any and all defects in software during a short trial period (usually 30 to 90 days). Evaluation of software can negate the implied warranty for defects that the software company deems could have been discovered.

6. Uncertainty in the scope of license

- UCITA arbitrarily restricts the number of users under a site or enterprise-wide license to what it deems “reasonable in light of the . . . commercial circumstances”, even though these types of licenses have traditionally permitted an unlimited number of users.
- This is another trap for the unwary licensee, who may suddenly find that the scope of its license is not as broad as currently defined by usage of trade.

This list is by no means exhaustive, but merely an example of some of the most obvious points of prejudice against the buyer. However, it is important to note that the entirety of UCITA is so permeated with bias in favor of the seller that addressing only a few key points cannot rectify it.

We oppose and, as your constituents, urge you to oppose this irreparably flawed measure.

Thank you for your efforts on behalf of our company and its employees.

Sincerely,

(your name)