

Alliance of American Insurers
American Association of Law Libraries
American Council of Life Insurers
American Committee for Interoperable Systems
American Library Association
American Troublemasters
Anheuser-Busch.com
Art Libraries Society of North America
Association of Research Libraries
Association for Computing Machinery
Blue Feather Technologies
Boeing
Caterpillar Inc.
Catholic Healthcare West
Center for Study of Responsive Law
Columbia Consumer Education Council
Computer and Communications Industry Association
Computer Professionals for Social Responsibility
ConocoPhillips
ConsoleGames.com
Consumer Federation of America
Consumer Project on Technology
Corporate Contracts
Deere & Company
Doghouse Computing
Electronic Frontier Foundation
Fusionwerx
Gallant Technologies, Inc.
Georgia Pacific Corporation
H B Fuller Company
Harris Systems
Infowarrior.org
Infoworld
International Paper
Investment Company Institute
Jackson Laboratories
Massachusetts Mutual Life Insurance Company
MBNA
Metropolitan Life Insurance Company
Murray and Murray Co. LPA
My PC Xpert
National Consumer Law Center
National Consumers League
National Council of Teachers of English
National Humanities Alliance
National Retail Federation
National Society of Professional Engineers
Nationwide Insurance Company
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
OpenContent
OpenSonic Networks
Our-Tech
Perdue Farms
Principal Financial Group
Prudential Financial
Public Knowledge
Radsoft.net
Razorvision Studios
Satisfice, Inc.
SHARE
Sheller Law Firm
Society for Information Management
Special Libraries Association
Tesla Systems
Torrey Pines Software
Trescott Research
TSI
Ubersoft.net
USAA
Utah Academic Library Consortium
Virginia Association of Law Libraries
Virginia Consumer Council
Walgreen Corporation
Workstation



January 28, 2003

Alfred P. Carlton, President
Honorable Members of the House of Delegates
American Bar Association
750 North Lake Shore Drive
Chicago, Illinois 60611

Re: **FINANCIAL INSTITUTIONS AND
CONSUMERS AGREE ON UCITA**

Dear President Carlton and Members of the House of Delegates:

It is not often that consumers and insurance/financial institutions join together to express one view. One issue on which we have united and, in fact, agree most strongly is the Uniform Computer Information Transactions Act (UCITA). The House of Delegates will be considering Agenda Item 113G, which seeks ABA approval of UCITA as an appropriate act for enactment in the states, at the ABA Mid-Year Meeting in Seattle. We urge you not to approve the Recommendation.

Although characterized as a "uniform" law, UCITA has thus far failed to achieve any semblance of uniformity. Indeed, while two states enacted non-uniform versions, three others enacted anti-UCITA "bomb shelter" laws to protect their residents and businesses from UCITA.

During his term, ABA President Hirshon appointed a Working Group on UCITA. The Working Group's report, identifying serious concerns with UCITA, resulted in amendments to the act. Unfortunately, the revisions were not truly responsive to many of the

Working Group's concerns – particularly with respect to three of the group's most serious issues. The Working Group had maintained that:

- “[w]hen software is embedded in and marketed as an integral part of goods” (so-called “smart goods” such as coffee pots, blood pressure monitors or even automobiles), UCITA should not apply;
- the terms of a license should be available to a licensee before he pays or becomes obligated to pay for it; and
- UCITA lacks clarity and should be redrafted.

It should be noted that these remaining concerns, which directly affect consumers, are among those described in a letter opposing UCITA dated November 13, 2001 from 34 attorneys general.

These are important reasons to continue to oppose UCITA. In addition, we would note a couple of serious concerns of businesses, even small businesses:

- Security risks - While NCCUSL banned the use of electronic self-help as a remedy for breach, UCITA continues to allow the electronic termination of a contract. Use of this electronic self-help-like tool – even for as vague a reason as preventing “a use inconsistent with the agreement” - forms the basis for licensors’ inclusion of disabling code (often called “black holes”) in the software, enabling and facilitating hackers to enter a licensee’s systems. A licensee may be helpless to protect itself since UCITA permits a licensor to prohibit reverse engineering to detect and remove these black holes or, for that matter, defects in the software. This presents enormous privacy and security risks for businesses, including law firms.
- Permissible Ban on Transferability - UCITA permits licensors to ban the transfer of a license, even in the case of a sale, merger or acquisition of a business. If two law firms merge, for example, they may be prohibited from combining their client data, billing or other software. To those who say that large businesses can always negotiate their license agreements, we urge you to ask the ABA procurement staff whether they can always negotiate terms.

President Alfred P. Carlton
Members of the House of Delegates
January 28, 2003
Page 3

NCCUSL commissioners have stated that support for the resolution is important to keeping the ABA/NCCUSL tradition alive. We would suggest that the failure of NCCUSL to bring UCITA to the ABA after it was adopted in 1999 and sent out to the states for enactment did more to harm the relationship than any vote in 2003 will do. A message has been sent that you should endorse the process and not worry about the product.

We believe that endorsing the process will be tantamount to endorsing a flawed product – a product the American Law Institute would not agree to make part of the Uniform Commercial Code, citing their concerns with both substance and overall clarity and coherence.

Finally, several ABA sections, including TIPS, Business Law and Intellectual Property have already voted to withhold approval of UCITA when it is heard in Seattle. We hope you will consider their perspective as well as the continued opposition of 34 attorneys general, consumers and major financial institutions when Recommendation 113G is debated.

Very truly yours,

Riva F. Kinstlick
AFFECT Board, representing financial institutions

David B. McMahon
AFFECT Board, representing national consumer organizations