



Computer Professionals still oppose UCITA

Computer and software professionals are most knowledgeable about the intricacies of the technology that the rest of us have become so dependent upon. They are the designers and the innovators who are concerned with reliability, security and functionality as well as the technical specialists who keep the digital world moving forward. Every computer and software professional organization that has taken a position on the Uniform Computer Information Transactions Act (UCITA) has opposed it. The recently proposed amendments to UCITA do not adequately address their fundamental concerns.

Computer and software professionals share the fundamental concerns of all AFFECT members but particularly object to sections of UCITA dealing with the following key concerns summarized here.

- **Known Defects**

Although all software has some bugs, some software is distributed with known defects that can cause substantial inconvenience if not harm to a business or consumer computer system. UCITA shields software publishers by making it easier for them to disclaim warranties and to limit their responsibilities to customers in the event the defects cause damage or harm to them. UCITA makes it harder for customers to recover minimum damages in the event even a known defect is the cause. Computer professionals have repeatedly recommended that vendors should be obligated to reveal known defects. Recently proposed changes to UCITA merely restate what is already legally true: that UCITA does not displace the laws of fraud, misrepresentation and unfair and deceptive practices. (UCITA Standby Committee Amendment 5, new section 116 (a)) This part of the law still does not remedy the problem of known defects in new software.

- **Open Source Software**

The "open source" (often confusingly called "free") software development model is an important source of software. For example, 60% of the servers comprising the World Wide Web run on *Apache* "open source" software. To encourage continued development and distribution of open source software, computer professionals want to ensure that UCITA's implied warranties will not apply to the distribution of open source software, whether it is distributed for free or for a nominal charge. A new amendment to UCITA provides this exemption but does not apply to entities that charge small amounts to distribute open source software on CD-ROMs.

However, the current recommendation is a Trojan horse of loopholes that will actually benefit closed source vendors and hurt consumers rather than the open source providers it purports to benefit. Under a proposed amendment (UCITA Standby Committee Amendment 11, new Sec. 410), a manufacturer of hard goods who generally gets commercial gain from the goods and not from the software embedded in the goods may offer no warranty as to the embedded software; a product will have no warranty as long as it is provided without charge, even though the manufacturer is a software merchant and even though the product's source code is closed and the license contains substantial use and redistribution restrictions. A software manufacturer who distributes a specific product for no charge (as MS Explorer did in its early days) is probably exempted from providing warranties for that software even if it is not open source.

- **Analyzing Software for Security Holes and Other Defects**

Computer and software professionals are concerned about making software products interoperable with each other and about ensuring that the products have no security holes or other defects. To accomplish this they "reverse engineer" the software involved, a process permitted under federal copyright law that essentially involves deconstructing the product to understand how it is designed and functions. UCITA currently provides for reverse engineering only for interoperability and only by a purchaser (UCITA Standby Committee Amendment 6, New Sec. 118). However, UCITA still allows terms in a license that prohibit reverse engineering to detect security holes and other defects.

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.