

National Conference of Commissioners on Uniform State Laws

211 East Ontario Street, Suite 1300, Chicago, Illinois 60611 • 312/915-0195 • Facsimile 312/915-0187

OFFICERS

K. KING BURNETT
President
P.O. Box 910
Salisbury, MD 21803-0910

PETER F. LANGROCK

Vice President
P.O. Drawer 351
Middlebury, VT 05755

ROBERT A. STEIN

Secretary
American Bar Association
750 N. Lake Shore Drive
Chicago, IL 60611

OGLESBY H. YOUNG

Treasurer
The ODS Building
601 S.W. 3rd Ave., Suite 2100
Portland, OR 97204-3155

EXECUTIVE COMMITTEE

FRED H. MILLER

Chair
University of Oklahoma
College of Law
300 Timberdell Road
Norman, OK 73019

HARRIET LANSING

Minnesota Court of Appeals
Judicial Building
35 Constitution Avenue
St. Paul, MN 55155

JUSTIN L. VIGDOR

3400 Chase Square
Rochester, NY 14604

JAMES A. WYNN, JR.

North Carolina Court of Appeals
1 West Morgan Street
Raleigh, NC 27602

EX OFFICIO MEMBERS

President
Vice President
Secretary
Treasurer

JOHN L. McCLAUGHERTY

Executive Past President
P.O. Box 553
Charleston, WV 25322

HOWARD J. SWIBEL

Chair, Scope and Program Committee
120 S. Riverside Plaza, Suite 1200
Chicago, IL 60606

MICHAEL HOUGHTON

Chair, Legislative Committee
P.O. Box 1347
1201 N. Market St., 18th Floor
Wilmington, DE 19809

STAFF

WILLIAM H. HENNING

Executive Director
University of Missouri
School of Law
313 Hulman Hall
Columbia, MO 65211
henningw@missouri.edu

WILLIAM J. PIERCE

Executive Director Emerita
1505 Roxbury Road
Ann Arbor, MI 48104

MICHAEL R. KERR

Deputy Executive Director
Deputy Legislative Director/Legal Counsel
Chicago Office
mkerr@nccusl.org

J. ELIZABETH COTTON

Chief Administrative Officer
Chicago Office
ecotton@nccusl.org

JOHN M. McCABE

Legislative Director/Legal Counsel
Chicago Office
jmmccabe@nccusl.org

UNIFORM LAW FOUNDATION

ROBERT A. STEIN

Chair
American Bar Association
750 N. Lake Shore Drive
Chicago, IL 60611

August 1, 2003

Dear Fellow Commissioners:

At our Annual Meeting last summer, I promised to follow the enactment situation with UCITA very closely and to report back to you at this Annual Meeting. While UCITA is an important subject, there are many other items to be covered in my annual report, thus this supplemental written report to you.

At last year's annual meeting the President of the ABA, A. P. Carlton, in addition to his public remarks asked me for a commitment to bring UCITA to the ABA House of Delegates at its mid-year meeting. We had previously not done so because we felt presentation to the ABA House of Delegates was premature in view of the lack of public consensus concerning the merits of the act.

When we presented UCITA to the ABA House of Delegates we expressed some of the following salient points:

1. UCITA has already been enacted in two states, Virginia and Maryland. In both, enactment came after an extensive period of debate and analysis of numerous proposed amendments, but was adopted with only minor amendments by overwhelming votes in both houses of the legislatures in both states. In both states, legislative oversight committees recently reviewed the experience with UCITA and concluded that it was favorable and beneficial. A Virginia Advisory Committee of the oversight committee met in July and voted to recommend most of the NCCUSL amendments promulgated in 2002.
2. UCITA has also been favorably referenced by important courts. These include the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Appeals for the Second Circuit, two of the most prominent federal Courts of Appeal on intellectual property law issues.
3. The Conference has thoughtfully and diligently acted to identify and fill a true gap in the law. This gap has been described by a federal district court as a "legislative void" for software transactions. The Second Circuit Court of Appeals has said this about the situation:

