

“Recognizing that a ‘body of law based on images of the sale of manufactured goods ill fits licenses and other transactions in computer information,’ the National Conference of Commissioners on Uniform State Laws has promulgated the Uniform Computer Information Transactions Act (“UCITA”), a code resembling UCC Article 2 in many respects but drafted to reflect emergent practices in the sale and licensing of computer information.”

Clearly our efforts to find consensus and to bring all of the interested parties together has been extraordinary. Connie Ring and his committee have done a fantastic job in drafting a statute that attempts to bridge the fields of intellectual property and contracts. The effort has been applauded by many thoughtful observers. An act in this area is important and needed. We were right to tackle this subject. We did an excellent job. We have every reason to be proud of the Act we produced.

Unfortunately in the real world, sometimes doing the right thing at the right time is not enough. The reality of groundbreaking legislation is that it is often either ahead of its time or comes with great political upheaval, or both. Clearly we are experiencing directed intense and incessant politics and strong opposition, without the suggestion of concrete alternatives, from some consumer groups, insurance companies and libraries, and the allies they have accumulated.

When we presented UCITA to the ABA House of Delegates, six ABA Sections by formal resolution essentially stated that they did not want to take a position on UCITA and if not withdrawn, five of those Sections indicated opposition. Although we had brought the Act as requested by the ABA President, faced with substantial and significant requests from our friends, and in keeping with our valued relationship with the ABA, we withdrew UCITA, an action that appeared to be accepted with great relief by the House of Delegates.

We also made efforts to have the Act enacted in a few jurisdictions this past year. Despite the strong support from various interest groups those efforts were not successful.

The point here is that we have moved through the intellectual debate phase and are now embroiled in a political debate with unusual dimensions. We are also working with a change in our economy that does not occur often. UCC Article 2 encountered a decade of opposition when it attempted to treat the shift from an agrarian economy to a manufactured goods economy; we are seeing the same level of opposition in UCITA’s attempt treat the shift from a goods economy to an