"UCITA was originally intended to be a revision to the Uniform Commercial Code (UCC), which has been adopted in almost all of the states and territories of the U.S. and which ensures consistent rules governing contract law from state to state. . . . Publishers and large software producers are the primary supporters of UCITA." -- American Library Association, "What is UCITA?" <http://www.ala.org/washoff/ucita/what.html>

[Before summarizing the arguments presented in favor of UCITA, I want it clear that on balance, I oppose the UCITA. However, based on previous sad experience, I must respectfully request that the more excitable readers among you NOT shower me with abuse for presenting arguments with which I _disagree_.]

Proponents of the UCITA make the following key points:

1) The issue: growth in e-business has outdated existing contract law dealing with intellectual property. The absence of clear guidelines makes it difficult to frame end-user license agreements (EULAs) in a uniform way from state to state. Conflicts between end-users and software and other content producers have been resolved through expensive and time-consuming civil tort proceedings. Standardization will reduce the cost of doing business and will therefore encourage small businesses to expand successfully into interstate commerce, free of the burden of having to worry about wildly varying laws in different jurisdictions in the USA. In addition, software and information-content vendors will have the choice of law and choice of venue for all legal disputes concerning EULAs. By default, the applicable laws and the venue governing EULAs are those of the vendor.

2) Shrink-wrap EULAs are those included inside the packages that consumers purchase; click-wrap EULAs are electronically displayed during purchase transactions and are typically acceded to by clicking on a button on screen. The UCITA makes click-wrap EULAs enforceable and allows for a period following purchase during which users can return the product for a full refund if they disagree with the EULA terms.

3) "UCITA rejects the `perfect tender' rule for commercial licenses. One of the problems with Article 2 [of the Uniform Commercial Code] is that it requires delivery of goods that conform to the contract. Software is recognized as a product that cannot be made perfect and that it almost always will have bugs. . . . UCITA eliminates the perfect tender rule and replaces it with a substantial conformance standard. The perfect tender rule is retained for transactions involving consumers." -- SIIA "Summary of Benefits." <http://siia.net/sharedcontent/govt/issues/ucita/summary.html>

4) As explained above, UCITA makes it easier for software and information publishers to include legally-binding terms explicitly disclaiming responsibility for the damages caused by defective software or inaccurate "informational content." Such freedom will encourage risk-taking by vendors because they won't have to worry about legal entanglements when they sell defective products; the net effect will be greater innovation and therefore, ultimately, better
products and value for consumers.

5) The user interface is explicitly excluded from consideration as part of a computer program: "As used in this Act, 'computer program' refers to functional and operating aspects of a digital or similar system, whereas 'informational content' refers to material that communicates to a person." -- UCITA Official Comment 10 on Section 102. <http://www.law.upenn.edu/bll/ulc/ucita/ucita01.htm>

6) UCITA establishes a framework for enforcing contractual limitations on use of covered products. The SIIA document quoted in section (3) above reads, "For instance, if a license agreement is for a certain term, it is not a breach of the contract for the licensor to put something in the software that prevents use of the software after the term expires. Similarly, if the license allows only a certain number of users, it is not a breach of the contract to put something in the software that prevents more users from logging on to the software." In particular, vendors may include and enforce a gag rule on commercial purchasers of their products, reducing the annoyance and expense caused by public disclosure of such inevitable flaws as bugs and design flaws in purchased software. As Official Comment 3 to Section 105 has it, "While a term that prohibits a person from criticizing the quality of software may raise public policy concerns if included in a shrink-wrap license for software distributed in the mass market, a similar provision included in an agreement between a developer and a company applicable to experimental or early version software not yet perfected for the marketplace would not raise similar concerns."

7) UCITA-based legislation may attract high-technology business to those states that pass such laws. "Such benefits could include helping to foster e-commerce within the state and becoming a magnet for emerging companies seeking an e-commerce-friendly location." -- Priscilla A. Walter, "UCITA: Establishing a legal infrastructure for e-commerce." <http://www.siia.net/sharedcontent/govt/issues/ucita/upgrade-may.html>

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In part 3 of this series, I will summarize at opposition to the UCITA.

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