On December 17, 2001, the UCITA Standby Committee of the National Conference on Commissioners on Uniform State Laws (NCCUSL) issued a report to their executive committee recommending changes to the draft Uniform Computer Information Transactions Act.

The Standby Committee’s report explicitly acknowledged that, “The majority of the amendments were submitted by AFFECT, an organization comprised of diverse interest groups and some individual companies for the purpose of opposing UCITA.” AFFECT is the Americans for Fair Electronic Commerce Transactions. 

In my opinion, the most significant changes to the draft of UCITA that will be sent to state legislatures in future are as follows:

1) UCITA does not supersede any consumer-protection laws in force and applicable to the purchase or licensing of software.
2) Software sold through mass-market distribution must not be inactivated by the vendor (the so-called “self-help” provisions of the previous version) in cases of breach of license or contract.
3) Software licenses for products distributed to the public in final form (i.e., not as test versions) cannot extinguish First-Amendment rights of consumers to discuss, report, or criticize flaws in those products.
4) Explicit recognition that UCITA “does not displace the law of fraud, misrepresentation and unfair and deceptive practices as they may relate to intentional failure to disclose defects that are known to be material.”
5) Explicit rejection of open-source software licenses (and also shareware licenses) from UCITA coverage. UCITA applies only to transactions involving the exchange of money.
6) Reverse engineering is accepted as a legitimate method for ensuring interoperability of licensed software with other products.

AFFECT issued a press release on January 4, 2002 criticizing the proposed amendments. “. . . [T]he proposed amendments fall far short of what is necessary to resolve the many issues of controversy.” According to AFFECT board member David McMahon, "The proposed amendments give the appearance of compromise, without the substance of compromise. When scrutinized, the proposed amendments simply make a fundamentally flawed piece of legislation only slightly less flawed."

AFFECT analysts point out that, among other issues,

- The UCITA revisions do not impose obligations on software vendors to reveal known flaws when selling software licenses.
- Librarians’ concerns about restrictions on transfer of software licenses have not been
met because the revisions limit such transfers to programs already installed on
donated computers.

In conclusion, it seems to me that the drafters of the UCITA are genuinely trying to respond to
criticism. It remains to be seen whether these proposed changes are in fact accepted by the
NCCUSL. Nonetheless, UCITA remains a topic of hot debate. Readers would do well to
continue to monitor events as they evolve and to ensure that state legislators are intelligently
informed about the issues.

If we technologists allow UCITA to be passed into state laws without full and open exploration
of its implications, we will have failed in our professional responsibilities to society. This is our
job, not someone else’s. Get involved!

* * *

Resources:

Report of the UCITA Standby Committee <http://www.nccusl.org/nccusl/pressreleases/UCITA-
2001-comm-fin.htm>

Press release from National Conference of Commissioners on Uniform State Laws <

http://www.computerworld.com/storyba/0,4125,NAV47_STO66888,00.html>

Press release from the Americans for Fair Electronic Commerce Transactions <
http://www.4cite.org/press_rel_010402.html>

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