

**National Conference of Commissioners on Uniform State Laws  
211 East Ontario, Suite 1300, Chicago, Illinois 60611**

**EXECUTIVE SUMMARY**

President's Response to SOC Technology Committee Report on UCITA

1. **Complexity.** UCITA provides statutory default rules for contracts derived from the existing and familiar provisions of the UCC and the common law. It has been reviewed and re-reviewed for clarity of drafting. It articulates general rules that apply to a wide range of transactions, exactly as its familiar predecessors do.
2. **Uniformity.** It begs the question to claim that uniformity is unattainable because of controversy. There is no a priori way to know whether uniformity is attainable or not.
3. **Electronic Regulation.** It is clear that UCITA, as amended, bans electronic self-help as a remedy for breach of a computer information contract. Section 605, which governs electronic regulation, expressly bans regulation as a remedy for breach of contract. Section 605 conforms to the Berne Convention and federal copyright law.
4. **Pre-Transaction Disclosure.** Neither the familiar general law of contracts nor UCC Articles 2 and 2A require pre-transaction disclosure before the formation of a contract. No sufficient case has been made for imposing a special rule for computer information transactions. UCITA has an unprecedented right of return of a mass market license for a refund, anyway.
5. **Loud Criticism.** Criticism suggests a dynamic subject area in the law and great interest in the rules governing the new and growing commerce in information rather than a defective statute. Note the ABA Working Group did not agree with all of the criticisms of the librarian community; much of the library problem must be addressed in federal copyright law.
6. **Protocol Violations.** The ABA and the NCCUSL have historic understandings about submitting uniform acts to the ABA House of Delegates. Nothing restricts the Conference from seeking accommodation and consensus in good faith, no matter how long that may take. The Conference has provided amendments to UCITA to solve controversies in 2000, 2001 and 2002, the latter in response to the ABA Board of Governor's Task Force. There is no breach of any protocol or understanding.
7. **Probation.** UCITA has been officially promulgated by the Conference and remains in that status.
8. **ABA Negotiations.** The Conference has been available to resolve problems with UCITA, consistent with its long-standing relationship with the ABA and with its general policy of seeking consensus with respect to any uniform act. The ABA Board of Governors appointed a Task Force specifically to address discernable problems. The record of response by the Conference to the Task Force is clear and unequivocal.
9. **Hacking.** The claim that somehow UCITA encourages hacking is far-fetched and unlikely. UCITA provides default rules for the formation, performance and termination of computer information contracts. Hackers seek illegal access to a victim's computer systems without permission or assent.