



Digital Commerce Coalition

January 17, 2003

Mr. Carlyle C. Ring
Chair, NCCUSL Standby Committee on UCITA
Ober, Kaler, Grimes & Shriver
1401 H Street, NW, 5th Floor
Washington, DC 20005-3324

Re: ABA House of Delegates Consideration of the Uniform Computer Information Transactions Act

Dear Mr. Ring:

We write to express the Digital Commerce Coalition's support for NCCUSL's submission of UCITA to the American Bar Association House of Delegates.¹ Because it provides a necessary legal infrastructure for computer information industries, we also will urge the House of Delegates to approve the Act.

Our member companies have followed UCITA closely over the last decade. To its credit, NCCUSL's drafting process was exhaustive, open and inclusive, involving numerous ABA advisors and hundreds of commentators. In 2001, the ABA Torts and Insurance Practice Section (TIPS) raised questions about the Act that, unfortunately, reflected inaccuracies and confusion about both existing law and UCITA. The principles urged by TIPS would have displaced fundamental principles of commercial law.

To its credit, NCCUSL resolved the issues raised by TIPS in a manner characteristic of its practices throughout this project. It held a three-day public hearing to air all possible objections. Also, the ABA appointed a Working Group to review UCITA, which suggested only a few changes, illustrating UCITA's solid grounding. NCCUSL adopted fundamentally all of the Working Group's suggestions except for two that were not responsive to the complexities raised in the decade of debates regarding UCITA and a related NCCUSL-ALI project, or that would have discriminated among industries.

As you know, some members of the information industries are uncomfortable with some of the Working Group's suggestions adopted by NCCUSL. However, both NCCUSL and the ABA have gone to extraordinary lengths to ensure that UCITA is appropriate for consideration by states, and we support that process. Given these Herculean efforts to achieve consensus, the ABA now should approve UCITA for consideration by states. Any future modification--to what can now be described as the most fully vetted and debated uniform state law adopted by NCCUSL--are best left to the discretion of state legislatures.

¹ DCC members include AeA, Adobe, AOL, Autodesk, Business Software Alliance, Microsoft, NASDAQ, Reed Elsevier, and the Software and Information Industry Association.

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The future of reasoned legislation depends upon a viable process. The quality of projects and the willingness of all affected to participate in development of uniform laws assumes that their fate and substance will not hang on the effectiveness of last-minute lobbying of individuals who have not been active participants in the drafting process. This is especially true with UCITA, which has endured a particularly exhaustive and open review for over a decade. If this fair and deliberative process is to be high-jacked at the last moment, then the ability to develop laws in the future is called into question.

In short, we support approval by the ABA House of Delegates for UCITA's consideration by the states.

Sincerely,

A handwritten signature in black ink, reading "Robert W. Holleyman, II". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Robert W. Holleyman, II
President and CEO
Business Software Alliance
On behalf of the
Digital Commerce Coalition