Uniform Computer Information Transactions Statement

The National Conference of Commissioners on Uniform State Laws promulgated the Uniform Computer Information Transactions Act (UCITA) in 1999. This Act provides a comprehensive set of rules for licensing computer information, whether computer software or other clearly identified forms of computer information. Computerized databases and computerized music are other examples of computer information that would be subject to UCITA. It would also govern access contracts to sites containing computer information, whether on or off the Internet. UCITA would also apply to storage devices such as disks and CDs that exist only to hold computer information. Other kinds of goods which contain computer information as a material part of the subject matter of a transaction may also be made subject to UCITA by express reference in a contract. Otherwise, other laws would apply, such as the laws of sales or leases. UCITA would not govern contracts, even though they may be licensing contracts, for the traditional distribution of movies, books, periodicals, newspapers, or the like. Also, a transaction for the creation of a motion picture or a transaction with a free-lance contractor for news reporting, even though computer information is dominantly involved, is not governed by UCITA.

Why is there a need for licensing contracts, rather than sale contracts for computer information? Computer information is peculiarly vulnerable to dissipation of its value by copying. The genius of computers is their ability to retain and copy information. Copies of information look just like their originals. In fact, everything is a copy. There are no true originals. Copies can be duplicated in huge numbers and disseminated to millions of users in times measured in less than seconds. Therefore, those who invest capital, intellectual effort and labor into the creation of valuable computer information may lose the economic value of their products in seconds. Without the ability to control copying and dissemination of computer information, vendors risk losing everything. The risk is so great that without licensing, the development of computer information products could become uneconomical and the great economic benefit of computer information products could be lost.

The term “copy” is, in fact, defined in UCITA as the “medium on which information is fixed on a temporary or permanent basis and from which it can be perceived, reproduced, used, or communicated, either directly or with the aid of a machine or device.” Transfer of a copy is the basis of a licensing transaction. UCITA clearly separates transfer of a copy from transfer of ownership of computer information or informational rights. A licensee’s rights are not dependent upon transfer of title to computer information or informational rights, although a license contract may expressly transfer title to computer information or informational rights and/or title to a copy.

A licensing contract involves transferring a copy of computer information, such as software to use in a computer, from a vendor (called licensor) to a recipient (called licensee). A license may also grant informational rights to the licensee. Informational rights include any intellectual property rights derived from copyright, patents and the like, but also all other rights in information that any other law provides to a person that allows control of the information or restriction on the use of the information by other people. The difference between a licensing contract and a sale contract is that the license generally contains restrictions on use and transfer of the computer information by the licensee during the life of the contract. A breach of express restrictions on use and transfer in the contract provides a remedy to the licensor.

Licensing of information is the standard of the computer information business today. The bulk of vendors license their computer information products. UCITA, therefore, does not originate licensing contracts. UCITA was developed to provide basic, recognizable default rules for the existing licensing activity that goes on and that expands as commerce in computer information expands. That expansion is the primary source of economic development in the United States and is projected to be the economic mainstay of the United States for the foreseeable future. UCITA, therefore, is responding to existing economic activity and a mode of contract upon which the computer information industry has come to rely. Firming up the law and establishing some certainty with respect to the rules that apply, and that apply uniformly, is the modest goal of UCITA. It is not a radical, destabilizing proposal. It is familiar law adapted to ongoing economic activity that can use stable, predictable law that otherwise does not now exist.
For the most part, the rules governing computer information contracts in UCITA are default rules. This means that they may be waived or varied by contract, and that in almost all cases the terms of a contract will prevail over a contrary rule in UCITA. Rules generally relating to fairness of the contract process are not default rules, and cannot be disclaimed by contract. Included in the rules that may not be disclaimed are the obligations of good faith, diligence, and reasonableness; limitations on enforcement imposed by unconscionability and fundamental public policy; and any standard of care prescribed in UCITA. Express rules for consumers also may not generally be disclaimed.

UCITA’s rules govern licensing of contracts for computer information and informational rights from formation through final performance, including remedies if there is a breach of contract. Included in UCITA are rules for warranties, both implied and express, and rules pertaining to risk of loss in a computer information transaction. Most of the rules in UCITA are the traditional and familiar rules of contract from the law of sales and from the common law, but adapted to the special nature of computer information licensing contracts. Freedom of contract is a dominating underlying policy for UCITA, exactly as that principle is the foundation for the law of commercial transactions, generally, and exactly as that law has served all commercial transactions in the United States and has contributed to the economic growth and health of the United States.

Although a license under UCITA may transfer informational rights, UCITA is not fundamentally rooted in intellectual property law. A license under UCITA is simply a commercial contract, dependent wholly on the parties’ ability to enter into a normal, commercial contract, just as a contract of sale or lease is simply and wholly a commercial contract. However, UCITA may not be used to vary or extend intellectual property rights, and expressly recognizes preemption by copyright, patent, or other federal intellectual property law in Section 105(b).

Like the law of sales and leases, in general, the right to contract is constrained by principles of unconscionability, good faith and fair dealing. UCITA has an additional restraint, an express power for a court to deny enforcement of a provision in a licensing contract that violates fundamental public policy. This public policy defense is unique in UCITA. An essential purpose of this defense is to give courts some latitude in reconciling commercial licensing law with the principles of intellectual property law. Most intellectual property law is federal, and UCITA expressly recognizes the pre-emptive effect of that federal law. But the public policy defense gives courts an additional power to consider intellectual property principles purely within the context of commercial law.

These are some highlights of UCITA:

1. Mass-market license. Traditionally, contract formation contemplates some negotiation and arm’s-length give and take between contracting parties. Commercial contract law has abandoned this image of contracting activity as the only image. Article 2 of the Uniform Commercial Code has long had rules governing contracts that do not form in the traditional image, and has legitimized form contracts for sales of goods for nearly half-a-century. The mass-market license is an electronic form contract for computer information licensing, exactly as there have been form contracts for the sales of goods for a very long time. The difference is that a mass-market license is often presented with the package for the computer information found in retail stores, and, more importantly as electronic commerce grows, as part of the transfer of computer information, electronically, from computer to computer. Whether called “shrink-wrap” or “click-wrap,” these are mass-market licenses. UCITA treats mass-market licenses differently from negotiated licenses. A mass-market license is not enforceable against the licensee unless the terms to be enforced are readily available to the licensee and until the licensee has had a appropriate time to review them. If, upon review, the licensee does not like the license contract or any part of it, the copy of the computer information may be returned to the vendor for a refund, plus reasonable expenses for making a rightful return and compensation for damages to a processing system by the removal of the information from that system. This right of return may not be waived or disclaimed in a contract. Nowhere else in the commercial law is there such a no-fault return policy for rejecting or repudiating a contract.

2. Warranties of license are incorporated into UCITA, based on the warranty provisions for sale of goods under Article 2 of the Uniform Commercial Code. But computer information requires special implied
warranties. One is the warranty of compatibility of computer systems under Section 405(b). The licensor has an implied warranty, if the licensee is relying upon the licensor for skill and judgment in selecting components of a computer system, that the components will function together as a system. Implied warranties may be disclaimed. Disclaimers in mass-market contracts must be conspicuous. Any affirmation of fact or promise made by a licensor as part of the basis of the bargain, becomes an express warranty of the licensor.

3. There are special rules for communication of computer information in electronic form. Since these transactions are almost all electronic, and faceless, it is necessary to have rules governing the attribution of electronic signatures, and the accuracy of electronic messages. Part 2, Subpart B is largely devoted to these communications rules. The term “authenticate” is the basis for these rules. A signature or its electronic equivalent is the basic means of authentication under UCITA. That “authentication” is attributed to the person whose intentional act that “authentication” is. A party relying upon that authentication has the burden of establishing attribution, which may be shown in any manner, including evidence of the efficacy of any “attribution procedure” used in the communication. An “attribution procedure” is any procedure that provides greater assurance than a simple transmission of information that the “authentication” is that of the party to which it is attributed. There are both simple and complex attribution procedures available for identifying the person who sends an electronic communication, and people may choose the procedures that suit their particular transactions.

Attribution procedures may have impact on message content in an electronic communication. If a procedure is in place to detect errors or changes in the message communicated, a party that conforms to the procedure is not bound by an error or change that results because the other party does not conform to the procedure. There is a special rule for consumers. Consumers who make errors while entering automated transactions are not bound by the unintended erroneous message, so long as the consumer notifies the other party of the error promptly after it is identified, properly returns the computer information received and has not obtained value or benefit from using the information.

4. An “access contract” is a contract to enter the information system (read computer) of another to obtain information, or use that information system for specific purposes. Most current computer users have access contracts, if for no other reason than to use the Internet. UCITA governs these contracts with special rules relating to rights of access in Section 611.

UCITA also governs support contracts, and service contracts for the correction of performance problems. No licensor of information is required to provide such contracts (computer software support services are common), but if it does, it is subject to the express terms of the contract, or if silent, to what is “reasonable in light of ordinary standards of the business, trade, or industry . . .”

5. In Section 816, UCITA places restrictions on a licensor’s authority to disable computer information subject to a license and in use by a licensee for breach of contract. The remedy is not available unless the licensee has manifested assent to the specific part of the licensing contract that permits exercise of the remedy. There must be notice to the licensee at least 15 days prior to the exercise of the remedy. This notice gives the licensee the opportunity to cure the breach. The licensor may not exercise the remedy if it knows that exercise “will result in substantial injury or harm to the public health or safety or grave harm to the public interest substantially affecting third parties not involved in the dispute” (between licensor and licensee). The conditions for exercise of the remedy in Section 816 may not be waived or varied by contract.

In 2000, the ULC amended UCITA Section 103(b)(2); Section 103(d)(2)(A) and (B); Section 103(f)(1) and (2); Section 103(g); and new Section 216. These amendments included a number of styling and clarification amendments as well as amendments required to be ratified by the Conference that were part of a discussion with the following associations: Motion Picture Association of America, Magazine Publishers of America, Newspaper Association of America, National Cable Television Association, National Association of Broadcasters, and the Recording Industry Association of America. Five of these associations had concerns about UCITA and in lengthy discussions, these amendments were worked out as a package and with the adoption of these amendments by the Conference, these associations formally in writing have withdrawn their opposition to the enactment of UCITA.
Amendments to Section 102(a)(39)(A) and (B); Section 103(d)(2):

While most transactions that involve the relationship between the insured and the insurer would be covered by either the financial services transactions exclusion or excluded by the definitions applicable to the scope of the Act, the state insurance commissioners requested clarity that transactions of similar type subject to similar state regulatory authority were clearly excluded.

Amendments to Section 103(d)(7)(A) and (B); Section 112(g)

This second group of amendments were worked out with telecommunications industry and under these changes they have agreed to support enactment of UCITA. The changes do not alter the substantive policy of the Act and the substance was already discussed in comments.

Amendment to Section 104(1)

This is merely a clarification of the intent to include statutory rules and adds clarity in light of discussion in several States.

Amendment to Section 816

These amendments clarify the limitations on electronic self-help. The prohibition for mass-market transactions more clearly states a result that was the most likely effect of the existing limitations in the section. The addition to subsection (d) is a non-substantive clarification the inclusion of which was indicated by discussion in the various States.

In January 2001, the ULC Executive Committee approved amendments to Sections 605 and 816 of UCITA. Sections 605 and 816 are intended to act in harmony. Section 605(f) was intended to make clear that the procedural limitations and safeguards of Section 816 in the event of a breach cannot be avoided by reliance on Section 605. In the JCOTS (Joint Commission on Technology and Science, Virginia) Study, there was concern that the language might be exploited so as to not accomplish this purpose. Accordingly, changes were made to the definition of “automatic restraint” to clearly state that it “prevents” a breach; and Section 605(f) now states more clearly that in the event of a possible simultaneous breach and prevention of a breach, under (b)(4), Section 816 applies unless the affirmative acts are within (i) and (ii). This change of wording was carefully and extensively examined by all interested groups and the JCOTS staff to accomplish the stated purpose. The acceptance of the amendments will result in substantial added support from retail and financial services industries.

The amendments to Section 816 clarify what is a “wrongful use” of electronic self-help (Section 816(c)); remove an ambiguity as to the two kinds of harm that are prohibited by striking the word “grave” (Section 816(g)(1)); and clarify that the repossession of a tangible copy is permissible without breach of peace or the use of electronic self-help (Section 816(j)). These changes will increase support for U.C.I.T.A.

The ULC will consider final approval to the amendments to Sections 605 and 816 in the summer of 2001.

The language of these amendments and related notes is listed on the following pages.
SECTION 102. DEFINITIONS.

(a) In this [Act]:

(1) “Access contract” means a contract to obtain by electronic means access to, or information from, an information processing system of another person, or the equivalent of such access.

(2) “Access material” means any information or material, such as a document, address, or access code, that is necessary to obtain authorized access to information or control or possession of a copy.

(3) “Aggrieved party” means a party entitled to a remedy for breach of contract.

(4) “Agreement” means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of performance, course of dealing, and usage of trade as provided in this [Act].

(5) “Attribution procedure” means a procedure to verify that an electronic authentication, display, message, record, or performance is that of a particular person or to detect changes or errors in information. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment.

(6) “Authenticate” means:

(A) to sign; or

(B) with the intent to sign a record, otherwise to execute or adopt an electronic symbol, sound, message, or process referring to, attached to, included in, or logically associated or linked with, that record.

(7) “Automated transaction” means a transaction in which a contract is formed in whole or part by electronic actions of one or both parties which are not previously reviewed by an individual in the ordinary course.

(8) “Cancellation” means the ending of a contract by a party because of breach of contract by another party.

(9) “Computer” means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(10) “Computer information” means information in electronic form which is obtained from or through the use of a computer or which is in a form capable of being processed by a computer. The term includes a copy of the information and any documentation or packaging associated with the copy.

(11) “Computer information transaction” means an agreement or the performance of it to create, modify, transfer, or license computer information or informational rights in computer information. The term includes a support contract under Section 612. The term does not include a transaction merely because the parties’ agreement provides that their communications about the transaction will be in the form of computer information.

(12) “Computer program” means a set of statements or instructions to be used directly or indirectly in a computer to bring about a certain result. The term does not include separately identifiable informational content.

(13) “Consequential damages” resulting from breach of contract includes (i) any loss resulting from general or particular requirements and needs of which the breaching party at the time of contracting had reason to know and which could not reasonably be prevented and (ii) any injury to an individual or damage to property other than the subject matter of the transaction proximately resulting from breach of warranty. The term does not include direct damages or incidental damages.

(14) “Conspicuous,” with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. A term in an electronic record intended to evoke a response by an electronic agent is conspicuous if it is presented in a form that would enable a reasonably configured electronic agent to take it into account or react to it without review of the record by an individual. Conspicuous terms include the following:
(A) with respect to a person:

(i) a heading in capitals in a size equal to or greater than, or in contrasting
type, font, or color to, the surrounding text;

(ii) language in the body of a record or display in larger or other contrasting
type, font, or color or set off from the surrounding text by symbols or other marks that draw attention to the
language; and

(iii) a term prominently referenced in an electronic record or display which is
readily accessible or reviewable from the record or display; and

(B) with respect to a person or an electronic agent, a term or reference to a term that
is so placed in a record or display that the person or electronic agent cannot proceed without taking action
with respect to the particular term or reference.

(15) “Consumer” means an individual who is a licensee of information or informational
rights that the individual at the time of contracting intended to be used primarily for personal, family, or
household purposes. The term does not include an individual who is a licensee primarily for professional or
commercial purposes, including agriculture, business management, and investment management other than
management of the individual’s personal or family investments.

(16) “Consumer contract” means a contract between a merchant licensor and a consumer.

(17) “Contract” means the total legal obligation resulting from the parties’ agreement as
affected by this [Act] and other applicable law.

(18) “Contract fee” means the price, fee, rent, or royalty payable in a contract under this
[Act] or any part of the amount payable.

(19) “Contractual use term” means an enforceable term that defines or limits the use,
disclosure of, or access to licensed information or informational rights, including a term that defines the scope
of a license.

(20) “Copy” means the medium on which information is fixed on a temporary or permanent
basis and from which it can be perceived, reproduced, used, or communicated, either directly or with the aid
of a machine or device.

(21) “Course of dealing” means a sequence of previous conduct between the parties to a
particular transaction which establishes a common basis of understanding for interpreting their expressions
and other conduct.

(22) “Course of performance” means repeated performances, under a contract that involves
repeated occasions for performance, which are accepted or acquiesced in without objection by a party having
knowledge of the nature of the performance and an opportunity to object to it.

(23) “Court” includes an arbitration or other dispute-resolution forum if the parties have
agreed to use of that forum or its use is required by law.

(24) “Delivery,” with respect to a copy, means the voluntary physical or electronic transfer of
possession or control.

(25) “Direct damages” means compensation for losses measured by Section 808(b)(1) or
809(a)(1). The term does not include consequential damages or incidental damages.

(26) “Electronic” means relating to technology having electrical, digital, magnetic, wireless,
optical, electromagnetic, or similar capabilities.

(27) “Electronic agent” means a computer program, or electronic or other automated means,
used by a person independently to initiate an action, or to respond to electronic messages or performances, on
the person’s behalf without review or action by an individual at the time of the action or response to the
message or performance.

(28) “Electronic message” means a record or display that is stored, generated, or transmitted
by electronic means for the purpose of communication to another person or electronic agent.

(29) “Financial accommodation contract” means an agreement under which a person extends
a financial accommodation to a licensee and which does not create a security interest governed by [Article 9
of the Uniform Commercial Code]. The agreement may be in any form, including a license or lease.
(30) “Financial services transaction” means an agreement that provides for, or a transaction that is, or entails access to, use, transfer, clearance, settlement, or processing of:

(A) a deposit, loan, funds, or monetary value represented in electronic form and stored or capable of storage by electronic means and retrievable and transferable by electronic means, or other right to payment to or from a person;

(B) an instrument or other item;

(C) a payment order, credit card transaction, debit card transaction, funds transfer, automated clearing house transfer, or similar wholesale or retail transfer of funds;

(D) a letter of credit, document of title, financial asset, investment property, or similar asset held in a fiduciary or agency capacity; or

(E) related identifying, verifying, access-enabling, authorizing, or monitoring information.

(31) “Financier” means a person that provides a financial accommodation to a licensee under a financial accommodation contract and either (i) becomes a licensee for the purpose of transferring or sublicensing the license to the party to which the financial accommodation is provided or (ii) obtains a contractual right under the financial accommodation contract to preclude the licensee’s use of the information or informational rights under a license in the event of breach of the financial accommodation contract. The term does not include a person that selects, creates, or supplies the information that is the subject of the license, owns the informational rights in the information, or provides support for, modifications to, or maintenance of the information.

(32) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(33) “Goods” means all things that are movable at the time relevant to the computer information transaction. The term includes the unborn young of animals, growing crops, and other identified things to be severed from realty which are covered by [Section 2-107 of the Uniform Commercial Code]. The term does not include computer information, money, the subject matter of foreign exchange transactions, documents, letters of credit, letter-of-credit rights, instruments, investment property, accounts, chattel paper, deposit accounts, or general intangibles.

(34) “Incidental damages” resulting from breach of contract:

(A) means compensation for any commercially reasonable charges, expenses, or commissions reasonably incurred by an aggrieved party with respect to:

(i) inspection, receipt, transmission, transportation, care, or custody of identified copies or information that is the subject of the breach;

(ii) stopping delivery, shipment, or transmission;

(iii) effecting cover or retransfer of copies or information after the breach;

(iv) other efforts after the breach to minimize or avoid loss resulting from the breach; and

(v) matters otherwise incident to the breach; and

(B) does not include consequential damages or direct damages.

(35) “Information” means data, text, images, sounds, mask works, or computer programs, including collections and compilations of them.

(36) “Information processing system” means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(37) “Informational content” means information that is intended to be communicated to or perceived by an individual in the ordinary use of the information, or the equivalent of that information.

(38) “Informational rights” include all rights in information created under laws governing patents, copyrights, mask works, trade secrets, trademarks, publicity rights, or any other law that gives a person, independently of contract, a right to control or preclude another person’s use of or access to the information on the basis of the rights holder’s interest in the information.
“Insurance services transaction” means an agreement between the insurer and the insured that provides for, or a transaction that is, or entails access to, use, transfer, clearance, settlement, or processing of:

(A) an insurance policy, contract, or certificate; or

(B) a right to payment under an insurance policy, contract, or certificate.

“Knowledge,” with respect to a fact, means actual knowledge of the fact.

“License” means a contract that authorizes access to, or use, distribution, performance, modification, or reproduction of, information or informational rights, but expressly limits the access or uses authorized or expressly grants fewer than all rights in the information, whether or not the transferee has title to a licensed copy. The term includes an access contract, a lease of a computer program, and a consignment of a copy. The term does not include a reservation or creation of a security interest to the extent the interest is governed by [Article 9 of the Uniform Commercial Code].

“Licensee” means a person entitled by agreement to acquire or exercise rights in, or to have access to or use of, computer information under an agreement to which this [Act] applies. A licensor is not a licensee with respect to rights reserved to it under the agreement.

“Licensor” means a person obligated by agreement to transfer or create rights in, or to give access to or use of, computer information or informational rights in it under an agreement to which this [Act] applies. Between the provider of access and a provider of the informational content to be accessed, the provider of content is the licensor. In an exchange of information or informational rights, each party is a licensor with respect to the information, informational rights, or access it gives.

“Mass-market license” means a standard form used in a mass-market transaction.

“Mass-market transaction” means a transaction that is:

(A) a consumer contract; or

(B) any other transaction with an end-user licensee if:

(i) the transaction is for information or informational rights directed to the general public as a whole, including consumers, under substantially the same terms for the same information;

(ii) the licensee acquires the information or informational rights in a retail transaction under terms and in a quantity consistent with an ordinary transaction in a retail market; and

(iii) the transaction is not:

(I) a contract for redistribution or for public performance or public display of a copyrighted work;

(II) a transaction in which the information is customized or otherwise specially prepared by the licensor for the licensee, other than minor customization using a capability of the information intended for that purpose;

(III) a site license; or

(IV) an access contract.

“Merchant” means a person:

(A) that deals in information or informational rights of the kind involved in the transaction;

(B) that by the person’s occupation holds itself out as having knowledge or skill peculiar to the relevant aspect of the business practices or information involved in the transaction; or

(C) to which the knowledge or skill peculiar to the practices or information involved in the transaction may be attributed by the person’s employment of an agent or broker or other intermediary that by its occupation holds itself out as having the knowledge or skill.

“Nonexclusive license” means a license that does not preclude the licensor from transferring to other licensees the same information, informational rights, or contractual rights within the same scope. The term includes a consignment of a copy.

“Notice” of a fact means knowledge of the fact, receipt of notification of the fact, or reason to know the fact exists.
“Notify,” or “give notice,” means to take such steps as may be reasonably required to inform the other person in the ordinary course, whether or not the other person actually comes to know of it.

“Party” means a person that engages in a transaction or makes an agreement under this [Act].

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental subdivision, instrumentality, or agency, public corporation, or any other legal or commercial entity.

“Published informational content” means informational content prepared for or made available to recipients generally, or to a class of recipients, in substantially the same form. The term does not include informational content that is:

(A) customized for a particular recipient by one or more individuals acting as or on behalf of the licensor, using judgment or expertise; or

(B) provided in a special relationship of reliance between the provider and the recipient.

“Receipt” means:

(A) with respect to a copy, taking delivery; or

(B) with respect to a notice:

(i) coming to a person’s attention; or

(ii) being delivered to and available at a location or system designated by agreement for that purpose or, in the absence of an agreed location or system:

(I) being delivered at the person’s residence, or the person’s place of business through which the contract was made, or at any other place held out by the person as a place for receipt of communications of the kind; or

(II) in the case of an electronic notice, coming into existence in an information processing system or at an address in that system in a form capable of being processed by or perceived from a system of that type by a recipient, if the recipient uses, or otherwise has designated or holds out, that place or system for receipt of notices of the kind to be given and the sender does not know that the notice cannot be accessed from that place.

“Receive” means to take receipt.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Release” means an agreement by a party not to object to, or exercise any rights or pursue any remedies to limit, the use of information or informational rights which agreement does not require an affirmative act by the party to enable or support the other party’s use of the information or informational rights. The term includes a waiver of informational rights.

“Return,” with respect to a record containing contractual terms that were rejected, refers only to the computer information and means:

(A) in the case of a licensee that rejects a record regarding a single information product transferred for a single contract fee, a right to reimbursement of the contract fee paid from the person to which it was paid or from another person that offers to reimburse that fee, on:

(i) submission of proof of purchase; and

(ii) proper redelivery of the computer information and all copies within a reasonable time after initial delivery of the information to the licensee;

(B) in the case of a licensee that rejects a record regarding an information product provided as part of multiple information products integrated into and transferred as a bundled whole but retaining their separate identity:

(i) a right to reimbursement of any portion of the aggregate contract fee identified by the licensor in the initial transaction as charged to the licensee for all bundled information products which was actually paid, on:
(I) rejection of the record before or during the initial use of the bundled product;
(II) proper redelivery of all computer information products in the bundled whole and all copies of them within a reasonable time after initial delivery of the information to the licensee; and
(III) submission of proof of purchase; or
(ii) a right to reimbursement of any separate contract fee identified by the licensor in the initial transaction as charged to the licensee for the separate information product to which the rejected record applies, on:
(I) submission of proof of purchase; and
(II) proper redelivery of that computer information product and all copies within a reasonable time after initial delivery of the information to the licensee; or
(C) in the case of a licensor that rejects a record proposed by the licensee, a right to proper redelivery of the computer information and all copies from the licensee, to stop delivery or access to the information by the licensee, and to reimbursement from the licensee of amounts paid by the licensor with respect to the rejected record, on reimbursement to the licensee of contract fees that it paid with respect to the rejected record, subject to recoupment and setoff.

§7 (58) “Scope,” with respect to terms of a license, means:
(A) the licensed copies, information, or informational rights involved;
(B) the use or access authorized, prohibited, or controlled;
(C) the geographic area, market, or location; or
(D) the duration of the license.

§8 (59) “Seasonable,” with respect to an act, means taken within the time agreed or, if no time is agreed, within a reasonable time.

§9 (60) “Send” means, with any costs provided for and properly addressed or directed as reasonable under the circumstances or as otherwise agreed, to deposit a record in the mail or with a commercially reasonable carrier, to deliver a record for transmission to or re-creation in another location or information processing system, or to take the steps necessary to initiate transmission to or re-creation of a record in another location or information processing system. In addition, with respect to an electronic message, the message must be in a form capable of being processed by or perceived from a system of the type the recipient uses or otherwise has designated or held out as a place for the receipt of communications of the kind sent. Receipt within the time in which it would have arrived if properly sent, has the effect of a proper sending.

§10 (61) “Standard form” means a record or a group of related records containing terms prepared for repeated use in transactions and so used in a transaction in which there was no negotiated change of terms by individuals except to set the price, quantity, method of payment, selection among standard options, or time or method of delivery.

§11 (62) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

§12 (63) “Term,” with respect to an agreement, means that portion of the agreement which relates to a particular matter.

§13 (64) “Termination” means the ending of a contract by a party pursuant to a power created by agreement or law otherwise than because of breach of contract.

§14 (65) “Transfer:”
(A) with respect to a contractual interest, includes an assignment of the contract, but does not include an agreement merely to perform a contractual obligation or to exercise contractual rights through a delegate or sublicensee; and
(B) with respect to computer information, includes a sale, license, or lease of a copy of the computer information and a license or assignment of informational rights in computer information.
“Usage of trade” means any practice or method of dealing that has such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question.

(b) The following definitions in [the Uniform Commercial Code (1998 Official Text)] apply to this [Act]:

1. “Burden of establishing” [Section 1-201].
2. “Document of title” [Section 1-201].
3. “Financial asset” [Section 8-102(a)(9)].
4. “Funds transfer” [Section 4A-104].
5. “Identification” to the contract [Section 2-501].
8. “Item” [Section 4-104].
9. “Letter of credit” [Section 5-102].
10. “Payment order” [Section 4A-103].
11. “Sale” [Section 2-106].

SECTION 103. SCOPE; EXCLUSIONS.

(a) This [Act] applies to computer information transactions.

(b) Except for subject matter excluded in subsection (d) and as otherwise provided in Section 104, if a computer information transaction includes subject matter other than computer information or subject matter excluded under subsection (d), the following rules apply:

1. If a transaction includes computer information and goods, this [Act] applies to the part of the transaction involving computer information, informational rights in it, and creation or modification of it. However, if a copy of a computer program is contained in and sold or leased as part of goods, this [Act] applies to the copy and the computer program only if:
   A. the goods are a computer or computer peripheral; or
   B. giving the buyer or lessee of the goods access to or use of the program is ordinarily a material purpose of transactions in goods of the type sold or leased.

2. Subject to subsection (d)(3)(A), if a transaction includes an agreement for creating or obtaining rights to create computer information and a motion picture, this [Act] does not apply to the agreement if the dominant character of the agreement is for creating or obtaining rights to create a motion picture. In all other such agreements, this [Act] does not apply to the part of the agreement that involves a motion picture excluded under subsection (d)(3), but does apply to the computer information.

3. In all other cases, this [Act] applies to the entire transaction if the computer information and informational rights, or access to them, is the primary subject matter, but otherwise applies only to the part of the transaction involving computer information, informational rights in it, and creation or modification of it.

(c) To the extent of a conflict between this [Act] and [Article 9 of the Uniform Commercial Code], [Article 9] governs.

(d) This [Act] does not apply to:
1. a financial services transaction;
2. an insurance services transaction;
3. an agreement to create, perform or perform in, include information in, acquire, use, distribute, modify, reproduce, have access to, adapt, make available, transmit, license, or display:
   A. a motion picture or audio or visual programming that is provided by broadcast, satellite, or cable as defined or used in the Federal Communications Act and related regulations as they existed on July 1, 1999, or by similar methods of delivering that programming, other than in (i) a mass-market
   B. a motion picture or audio or visual programming that is provided by means of broadcast, satellite, or cable as defined or used in the Federal Communications Act and related regulations as they existed on July 1, 1999, or by similar methods of delivering that programming, other than in (i) a mass-market
   C. a motion picture or audio or visual programming that is provided by means of broadcast, satellite, or cable as defined or used in the Federal Communications Act and related regulations as they existed on July 1, 1999, or by similar methods of delivering that programming, other than in (i) a mass-market
transaction or (ii) a submission of an idea or information or release of informational rights that may result in making a motion picture or a similar information product; or

(B) a motion picture, sound recording, musical work, or phonorecord as defined or used in Title 17 of the United States Code as of July 1, 1999, or an enhanced sound recording, other than in the submission of an idea or information or release of informational rights that may result in the creation of such material or a similar information product.

(4) a compulsory license; or

(5) a contract of employment of an individual, other than an individual hired as an independent contractor to create or modify computer information, unless the independent contractor is a freelancer in the news reporting industry as that term is commonly understood in that industry;

(6) a contract that does not require that information be furnished as computer information or a contract in which, under the agreement, the form of the information as computer information is otherwise insignificant with respect to the primary subject matter of the part of the transaction pertaining to the information; or

(7) unless otherwise agreed in a record between the parties:

(A) telecommunication products or services provided pursuant to federal or state tariffs; or

(B) telecommunication products or services provided pursuant to agreements required or permitted to be filed by the service provider with a federal or state authority regulating these services or under pricing subject to approval by a federal or state regulatory authority.

subject matter within the scope of [Article 3, 4, 4A, 5, [6,] 7, or 8 of the Uniform Commercial Code].

(e) As used in subsection (d)(2)(B), (d)(3)(B). “enhanced sound recording” means a separately identifiable product or service the dominant character of which consists of recorded sounds but which includes (i) statements or instructions whose purpose is to allow or control the perception, reproduction, or communication of those sounds or (ii) other information so long as recorded sounds constitute the dominant character of the product or service despite the inclusion of the other information.

(f) In this section, “motion picture” means:

(1) “motion picture” as defined in Title 17 of the United States Code as of July 1, 1999; or

(2) a separately identifiable product or service the dominant character of which consists of a linear motion picture, but which includes (i) statements or instructions whose purpose is to allow or control the perception, reproduction, or communication of the motion picture or (ii) other information as long as the motion picture constitutes the dominant character of the product or service despite the inclusion of the other information.

(g) In this section, “audio or visual programming” means audio or visual programming that is provided by broadcast, satellite, or cable as defined or used in the Communications Act of 1934 and related regulations as they existed on July 1, 1999, or by similar methods of delivery.

SECTION 104. MIXED TRANSACTIONS: AGREEMENT TO OPT-IN OR OPT-OUT. The parties may agree that this [Act], including contract-formation rules, governs the transaction, in whole or part, or that other law governs the transaction and this [Act] does not apply, if a material part of the subject matter to which the agreement applies is computer information or informational rights in it that are within the scope of this [Act], or is subject matter within this [Act] under Section 103(b), or is subject matter excluded by Section 103(d)(1) or (2)(3). However, any agreement to do so is subject to the following rules:

(1) An agreement that this [Act] governs a transaction does not alter the applicability of any statute, rule, or procedure that may not be varied by agreement of the parties or that may be varied only in a manner specified by the rule or procedure, including a consumer protection statute [or administrative rule]. In addition, in a mass-market transaction, the agreement does not alter the applicability of a law applicable to a copy of information in printed form.

(2) An agreement that this [Act] does not govern a transaction:

(A) does not alter the applicability of Section 214 or 816; and
(B) in a mass-market transaction, does not alter the applicability under this [Act] of
the doctrine of unconscionability or fundamental public policy or the obligation of good faith.

(3) In a mass-market transaction, any term under this section which changes the extent to
which this [Act] governs the transaction must be conspicuous.

(4) A copy of a computer program contained in and sold or leased as part of goods and which
is excluded from this [Act] by Section 103(b)(1) cannot provide the basis for an agreement under this section
that this [Act] governs the transaction.

SECTION 112. MANIFESTING ASSENT; OPPORTUNITY TO REVIEW.

(a) A person manifests assent to a record or term if the person, acting with knowledge of, or after
having an opportunity to review the record or term or a copy of it:

(1) authenticates the record or term with intent to adopt or accept it; or

(2) intentionally engages in conduct or makes statements with reason to know that the other
party or its electronic agent may infer from the conduct or statement that the person assents to the record or
term.

(b) An electronic agent manifests assent to a record or term if, after having an opportunity to review
it, the electronic agent:

(1) authenticates the record or term; or

(2) engages in operations that in the circumstances indicate acceptance of the record or term.

(c) If this [Act] or other law requires assent to a specific term, a manifestation of assent must relate
specifically to the term.

(d) Conduct or operations manifesting assent may be proved in any manner, including a showing that
a person or an electronic agent obtained or used the information or informational rights and that a procedure
existed by which a person or an electronic agent must have engaged in the conduct or operations in order to
do so. Proof of compliance with subsection (a)(2) is sufficient if there is conduct that assents and subsequent
conduct that reaffirms assent by electronic means.

(e) With respect to an opportunity to review, the following rules apply:

(1) A person has an opportunity to review a record or term only if it is made available in a
manner that ought to call it to the attention of a reasonable person and permit review.

(2) An electronic agent has an opportunity to review a record or term only if it is made
available in manner that would enable a reasonably configured electronic agent to react to the record or term.

(3) If a record or term is available for review only after a person becomes obligated to pay or
begins its performance, the person has an opportunity to review only if it has a right to a return if it rejects the
record. However, a right to a return is not required if:

(A) the record proposes a modification of contract or provides particulars of
performance under Section 305; or

(B) the primary performance is other than delivery or acceptance of a copy, the
agreement is not a mass-market transaction, and the parties at the time of contracting had reason to know that
a record or term would be presented after performance, use, or access to the information began.

(4) The right to a return under paragraph (3) may arise by law or by agreement.

(f) The effect of provisions of this section may be modified by an agreement setting out standards
applicable to future transactions between the parties.

(g) Providers of online services, network access, and telecommunications services, or the operators
of facilities thereof, do not manifest assent to a contractual relationship simply by their provision of these
services to other parties, including but not limited to transmission, routing, or providing connections, linking,
caching, hosting, information location tools, or storage of materials at the request or initiation of a person
other than the service provider.

SECTION 201. FORMAL REQUIREMENTS.

(a) Except as otherwise provided in this section, a contract requiring payment of a contract fee of
$5,000 or more is not enforceable by way of action or defense unless:
(1) the party against which enforcement is sought authenticated a record sufficient to indicate that a contract has been formed and which reasonably identifies the copy or subject matter to which the contract refers; or

(2) the agreement is a license for an agreed duration of one year or less or which may be terminated at will by the party against which the contract is asserted.

(b) A record is sufficient under subsection (a) even if it omits or incorrectly states a term, but the contract is not enforceable under that subsection beyond the number of copies or subject matter shown in the record.

(c) A contract that does not satisfy the requirements of subsection (a) is nevertheless enforceable under that subsection if:

(1) a performance was tendered or the information was made available by one party and the tender was accepted or the information accessed by the other; or

(2) the party against which enforcement is sought admits in court, by pleading or by testimony or otherwise under oath, facts sufficient to indicate a contract has been made, but the agreement is not enforceable under this paragraph beyond the number of copies or the subject matter admitted.

(d) Between merchants, if, within a reasonable time, a record in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, the record satisfies subsection (a) against the party receiving it unless notice of objection to its contents is given in a record within 10 days after the confirming record is received.

(e) An agreement that the requirements of this section need not be satisfied as to future transactions is effective if evidenced in a record authenticated by the person against which enforcement is sought.

(f) A transaction within the scope of this [Act] is not subject to a statute of frauds contained in another law of this State.

D. IDEA OR INFORMATION SUBMISSION

SECTION 216. IDEA OR INFORMATION SUBMISSION.

(a) The following rules apply to a submission of an idea or information for the creation, development, or enhancement of computer information which is not made pursuant to an existing agreement requiring the submission:

(1) A contract is not formed and is not implied from the mere receipt of an unsolicited submission.

(2) Engaging in a business, trade, or industry that by custom or practice regularly acquires ideas is not in itself an express or implied solicitation of the information.

(3) If the recipient seasonably notifies the person making the submission that the recipient maintains a procedure to receive and review submissions, a contract is formed only if:

(A) the submission is made and a contract accepted pursuant to that procedure; or

(B) the recipient expressly agrees to terms concerning the submission.

(b) An agreement to disclose an idea creates a contract enforceable against the receiving party only if the idea as disclosed is confidential, concrete, and novel to the business, trade, or industry or the party receiving the disclosure otherwise expressly agreed.

SECTION 816. LIMITATIONS ON ELECTRONIC SELF-HELP.

(a) In this section, “electronic self-help” means the use of electronic means to exercise a licensor’s rights under Section 815(b).

(b) On cancellation of a license, electronic self-help is not permitted, except as provided in this section. Electronic self-help is prohibited in mass-market transactions.

(c) If the parties agree to permit electronic self-help, a licensee shall separately manifest assent to a term authorizing use of electronic self-help. The term must:

(1) provide for notice of exercise as provided in subsection (d);
(2) state the name of the person designated by the licensee to which notice of exercise must be given and the manner in which notice must be given and place to which notice must be sent to that person; and

(3) provide a simple procedure for the licensee to change the designated person or place.

(d) Before resorting to electronic self-help authorized by a term of the license, the licensor shall give notice in a record to the person designated by the licensee stating:

(1) that the licensor intends to resort to electronic self-help as a remedy on or after 15 days following receipt by the licensee of the notice;

(2) the nature of the claimed breach that entitles the licensor to resort to self-help; and

(3) the name, title, and address, including direct telephone number, facsimile number, or e-mail address, to which the licensee may communicate concerning the claimed breach.

(e) A licensee may recover direct and incidental damages caused by wrongful use of electronic self-help. The licensee may also recover consequential damages for wrongful use of electronic self-help, whether or not those damages are excluded by the terms of the license, if:

(1) within the period specified in subsection (d)(1), the licensee gives notice to the licensor’s designated person describing in good faith the general nature and magnitude of damages;

(2) the licensor has reason to know the damages of the type described in subsection (f) may result from the wrongful use of electronic self-help; or

(3) the licensor does not provide the notice required in subsection (d).

(f) Even if the licensor complies with subsections (c) and (d), electronic self-help may not be used if the licensor has reason to know that its use will result in substantial injury or harm to the public health or safety or grave harm to the public interest substantially affecting third persons not involved in the dispute.

(g) A court of competent jurisdiction of this State shall give prompt consideration to a petition for injunctive relief and may enjoin, temporarily or permanently, the licensor from exercising electronic self-help even if authorized by a license term or enjoin the licensee from misappropriation or misuse of computer information, as may be appropriate, upon consideration of the following:

(1) grave harm of the kinds stated in subsection (f), or the threat thereof, whether or not the licensor has reason to know of those circumstances;

(2) irreparable harm or threat of irreparable harm to the licensee or licensor;

(3) that the party seeking the relief is more likely than not to succeed under its claim when it is finally adjudicated;

(4) that all of the conditions to entitle a person to the relief under the laws of this State have been fulfilled; and

(5) that the party that may be adversely affected is adequately protected against loss, including a loss because of misappropriation or misuse of computer information, that it may suffer because the relief is granted under this [Act].

(h) Before breach of contract, rights or obligations under this section may not be waived or varied by an agreement, but the parties may prohibit use of electronic self-help, and the parties, in the term referred to in subsection (c), may specify additional provisions more favorable to the licensee.

(i) This section does not apply if the licensor obtains possession of a copy without a breach of the peace and the electronic self-help is used solely with respect to that copy.

SECTION 905. ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

The provisions of this [Act] governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (18 U.S.C. ____, and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

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AMENDMENTS TO SECTIONS 605 AND 816 OF THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AS APPROVED BY THE EXECUTIVE COMMITTEE OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS PURSUANT TO SECTION 4.3(3) OF ITS CONSTITUTION AT ITS MIDYEAR MEETING IN SAVANNAH, GEORGIA, JANUARY 13th and 14th, 2001 and REVIEWED AND MODIFIED BY THE COMMITTEE ON STYLE OF THE NATIONAL CONFERENCE at its MEETING IN SARASOTA FLORIDA, JANUARY 17th-21st, 2001.


Sections 605 and 816 are intended to act in harmony. Section 605(f) was intended to make clear that the procedural limitations and safeguards of Section 816 in the event of a breach cannot be avoided by reliance on Section 605. In the JCOTS (Joint Commission on Technology and Science, Virginia) Study, there was concern that the language might be exploited so as to not accomplish this purpose. Accordingly, changes were made to the definition of “automatic restraint” to clearly state that it “prevents” a breach; and Section 605(f) now states more clearly that in the event of a possible simultaneous breach and prevention of a breach, under (b)(4), Section 816 applies unless the affirmative acts are within (i) and (ii). This change of wording was carefully and extensively examined by all interested groups and the JCOTS staff to accomplish the stated purpose. The acceptance of the amendments will result in substantial added support from retail and financial services industries.

The amendments to Section 816 clarify what is a “wrongful use” of electronic self-help (Section 816(c)); remove an ambiguity as to the two kinds of harm that are prohibited by striking the word “grave” (Section 816(g)(1)); and clarify that the repossession of a tangible copy is permissible without breach of peace or the use of electronic self-help (Section 816(j)). These changes will increase support for U.C.I.T.A.

Amendments to Section 605 of U.C.I.T.A.

SECTION 605. ELECTRONIC REGULATION OF PERFORMANCE.

(a) In this section, “automatic restraint” means a program, code, device, or similar electronic or physical limitation the intended purpose of which is to restrict use of information contrary to the contract or applicable law.

(b) A party entitled to enforce a limitation on use of information may include an automatic restraint in the information or a copy of it and use that restraint if:

(1) a term of the agreement authorizes use of the restraint;
(2) the restraint prevents a use that is inconsistent with the agreement;
(3) the restraint prevents use after expiration of the stated duration of the contract or a stated number of uses; or
(4) the restraint prevents use after the contract terminates, other than on expiration of a stated duration or number of uses, and the licensor gives reasonable notice to the licensee before further use is prevented.

(c) This section does not authorize an automatic restraint that affirmatively prevents or makes impracticable a licensee’s access to its own information or information of a third party, other than the licensor, if that information is in the possession of the licensee or a third party and accessed without use of the licensor’s information or informational rights.

(d) A party that includes or uses an automatic restraint consistent with subsection (b) or (c) is not liable for any loss caused by the use of the restraint.

(e) This section does not preclude electronic replacement or disabling of an earlier copy of information by the licensor in connection with delivery of a new copy or version under an agreement to replace or disable the earlier copy by electronic means with an upgrade or other new information.

(f) This section does not authorize use of an automatic restraint to enforce remedies in the event of breach of contract or for cancellation for breach. If a right to cancel for breach of contract and a
right to exercise a restraint under subsection (b)(4) exist simultaneously, any affirmative acts constituting
electronic self-help may only be taken under Section 816, including the prohibition on mass-market
transactions, instead of this section. Affirmative acts under this subsection do not include:
(1) use of a program, code, device or similar electronic or physical limitation that operates
automatically without regard to breach; or
(2) a refusal to prevent the operation of a restraint authorized by this section or to reverse its
effect.

Amendments to Section 816 of U.C.I.T.A.

SECTION 816. LIMITATIONS ON ELECTRONIC SELF-HELP

(a) In this section:
(1) “electronic self-help” means the use of electronic means to exercise a licensor’s rights under Section 815(b).
(2) “Wrongful use of electronic self-help” means use of electronic self-help other than in compliance with this section.

(b) On cancellation of a license, electronic self-help is not permitted, except as provided in this section. Electronic self-help is prohibited in mass-market transactions.

(c) If the parties agree to permit electronic self-help, the licensee shall separately manifest assent to a term authorizing use of electronic self-help. In accordance with Section 112(c), a general assent to a license containing a term authorizing use of electronic self-help is not sufficient to manifest assent to the use of electronic self-help. The term must:
(1) provide for notice of exercise as provided in subsection (d);
(2) state the name of the person designated by the licensee to which notice of exercise must be given and the manner in which notice must be given and place to which notice must be sent to that person; and
(3) provide a simple procedure for the licensee to change the designated person or place.

(d) Before resorting to electronic self-help authorized by a term of the license, the licensor shall give notice in a record to the person designated by the licensee stating:
(1) that the licensor intends to resort to electronic self-help as a remedy on or after 15 days following receipt by the licensee of the notice;
(2) the nature of the claimed breach that entitles the licensor to resort to self-help; and
(3) the name, title, and address, including direct telephone number, facsimile number, or e-mail address, to which the licensee may communicate concerning the claimed breach.

(e) A licensee may recover direct and incidental damages caused by wrongful use of electronic self-help. The licensee may also recover consequential damages for wrongful use of electronic self-help, whether or not those damages are excluded by the terms of the license, if:
(1) within the period specified in subsection (d)(1), the licensee gives notice to the licensor’s designated person describing in good faith the general nature and magnitude of damages;
(2) the licensor has reason to know the damages of the type described in subsection (f) may result from the wrongful use of electronic self-help; or
(3) the licensor does not provide the notice required in subsection (d).

(f) Even if the licensor complies with subsections (c) and (d), electronic self-help may not be used if the licensor has reason to know that its use will result in substantial injury or harm to the public health or safety or grave harm to the public interest substantially affecting third persons not involved in the dispute.

(g) A court of competent jurisdiction of this State shall give prompt consideration to a petition for injunctive relief and may enjoin, temporarily or permanently, the licensor from exercising electronic self-help even if authorized by a license term or enjoin the licensee from misappropriation or misuse of computer information, as may be appropriate, upon consideration of the following:
(1) grave harm of the kinds stated in subsection (f), or the threat thereof, whether or not the licensor has reason to know of those circumstances;
(2) irreparable harm or threat of irreparable harm to the licensee or licensor;
(3) that the party seeking the relief is more likely than not to succeed under its claim when it
is finally adjudicated;
(4) that all of the conditions to entitle a person to the relief under the laws of this State have
been fulfilled; and
(5) that the party that may be adversely affected is adequately protected against loss,
including a loss because of misappropriation or misuse of computer information, that it may suffer because
the relief is granted under this [Act].

(h) Before breach of contract, rights or obligations under this section may not be waived or varied by
an agreement, but the parties may prohibit use of electronic self-help, and the parties, in the term referred to in
subsection (c), may specify additional provisions more favorable to the licensee.

(i) This section does not apply if the licensor obtains physical possession of a copy without a breach
of the peace and the electronic self-help is used solely with respect to that copy without use of electronic self-
help, in which case the lawfully obtained copy may be erased or disabled by electronic means.

Virginian

Virginia originally enacted the Uniform Computer Information Transactions Act (UCITA) as Chapter

Chapter 762 of 2001 amended Virginia’s Uniform Computer Information Transactions Act (UCITA)
and the Virginia Consumer Protection Act (VCPA) (§ 59.1-196 et seq.). The law changes UCITA’s references
to other laws or rules to other statutes, administrative rules, regulations or procedures where applicable. The
bill also changes references to the VCPA to other consumer protection statutes, administrative rules or
regulations including, but not limited to, the VCPA. The bill provides that a mass-market license may be
transferred if such transfer involves making a gift or donation of a computer along with mass-market software
to a public school, a public library, a charity or a consumer. The bill amends the definition of “goods” as used
in the VCPA to include “computer information” and “informational rights” as defined in UCITA.

Chapter 763 of 2001 amended Virginia’s UCITA to:
• Clarify the definitions of “electronic agent” and “mass-market transaction;”
• Modify UCITA’s scope over motion pictures and online service providers;
• Clarify the applicability of other statutes, rules and regulations;
• Provide that a contract term that specifies a judicial forum must be expressly stated, and in a
mass-market transaction, such contract term must be expressly and conspicuously stated;
• Modify the terms of mass-market licenses; create a special rule for using standard form licenses
with nonprofit libraries, archives, and educational institutions;
• Modify the terms governing transferability;
• Clarify the definition of automatic restraint; and
• Modify the restrictions on use of electronic self-help.