



## **Business users still oppose UCITA**

The retail and manufacturing concerns and financial institutions, including insurers, banks and mutual fund companies, which comprise AFFECT's business members believe the Uniform Computer Information Transactions Act (UCITA) would be detrimental to American business. UCITA's new rules for software licensing, online access and other transactions in computer information will increase the cost of doing business for any organization that makes significant use of software and other technologies. These costs include added testing, security, asset management, legal and contract negotiation. UCITA has generated almost a decade of controversy and, in its current form, does not reflect the consensus of the interested parties. Amendments proposed in 2002 do not adequately respond to UCITA's many critics.

UCITA is biased in favor of the software industry. Numerous provisions in UCITA change current law and commercial practice to the detriment of business and institutional users of software. None of the recently proposed NCCUSL amendments alleviate these concerns. For example, UCITA:

- authorizes a software licensor to remotely shut down an organization's mission critical software without court approval through its "automatic restraint" provision. In addition, the licensor may electronically erase a tangible copy it acquires. Finally, UCITA permits a licensor to include computer code to implement electronic self-help. Such code, even if never activated by the licensor, constitutes a very great security threat, substantially facilitating entry into systems by hackers. Recently proposed changes to this section will not eliminate any of these significant risks for the licensee: since the licensor is not required to warrant that its code is free of such security-threatening code and may contractually limit damages for its wrongful use of electronic self-help, there is no incentive for the licensor to refrain from including such code or even using self-help.
- allows a software licensor to prohibit the transfer of software in connection with corporate mergers, reorganizations, or sale of assets, thereby significantly increasing the transactional and due diligence costs associated with those unrelated business transactions.
- allows a software licensor to prohibit a licensee from using reverse engineering for the purpose of correcting defects in the software or other computer information. Since, under UCITA, a licensor need not warrant that the product is free of known defects and, indeed, need not even reveal known defects, prohibiting licensees from finding and fixing such defects encourages the licensing of shoddy products, to the detriment of American business.
- makes it difficult and expensive to challenge surprising or one-sided provisions in "shrink-wrap" and "click-on" agreements (such as clauses allowing the licensor to make unilateral changes to the contract by posting the changes somewhere on its website, or clauses requiring the end user to litigate disputes in the courts of a distant state or country).

***AFFECT is a broad-based coalition of 60 retail and manufacturing businesses, consumers, financial services institutions, technology professionals and libraries. AFFECT has been deeply engaged in the policy debate about UCITA and has been politically active in every state where UCITA has been discussed.***