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Uniform Computer Information Transactions Act (UCITA) and Electronic Commerce



Jeffrey C. Selman

HELLER EHRMAN WHITE & McAULIFFE

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Introduction

- **UCITA - What is it and How will it effect your clients?**
- **Adopted by National Conference of Commissioners on Uniform State Laws on July 29, 1999**
- **<http://www.law.upenn.edu/bll/ulc/ucita/ucitaFinal00.htm>**

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Topics of Discussion

- **Scope**
- **History**
- **Legislative enactment**
- **Impact on electronic contracting**

Real Life

- **What happens if you access an online database on a laptop on an airplane? Is there a contract governing your rights and rights of any other party to access, copy, use, transfer or do anything else with the database?**
- **Not covered by UCC Article 2, copyright law, or common law**

Scope of UCITA

- **Applies to Computer Information Transactions (Sec. 103)**
- **Applies only if agreement is to create, modify, transfer, or license computer information**
- **If contract involves both computer information and something else, UCITA may apply only in part**

Computer Information

- **“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.” (Sec. 102(a)(10))**

Computer Information Transaction

- **“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 agreement 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.” (Sec. 102(a)(11))**

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Examples of Computer Information Transactions

- **Software licenses**
- **Software development agreements**
- **Online database access agreements**
- **Agreements to distribute information on the Internet**

Exclusions from Scope

- **UCITA does not apply to goods that include software other than computers or computer peripherals unless a main purpose of the transaction is to get the software**
 - A toaster or automobile with software not covered by UCITA
- **Movies, TV, Records, and Cable excluded**

History

- **Begun over ten years ago**
 - ABA Subcommittee study: need for clarity in licensing transactions of computer information
- **NCCUSL Drafting Committee appointed in early 90's**
- **Merged into UCC Article 2 revisions**
- **1995 - Article 2B with ALI**
- **1998 - UCITA without ALI**

Drafting Process

- **Drafting Committee**
- **Input from:**
 - Information Industries
 - State and Local Bar Groups
 - Including Business Law Section of State Bar of California
 - ABA
 - Academics
 - Consumer Advocates

Legislative Enactment

- **Enacted in two states:**
 - Maryland - became effective on October 1, 2000. Legislative committee to give annual reports on implementation and necessary amendments every December 1 until June 30, 2005

Legislative Enactment (Cont.)

- Virginia - enacted 2000 with effective date of July 1, 2001, and directive for legislative committee to study the impact of law and report back to legislature by December 1, 2000 regarding any recommended changes. Committee reported back with recommended revisions and legislature has enacted.

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Legislation Pending in 2001

- **Arizona**
- **Illinois**
- **Maine**
- **New Jersey**
- **Texas**

Themes of UCITA

- **Paradigm transaction is a license**
- **Must support freedom of contract**
 - Creates default rules
- **Must recognize IP, free speech, and other public policy issues**
- **Must have a framework for Internet contracting to facilitate computer information transactions**

Recognition of E-Commerce

- **Legal Recognition of Electronic Record and Authentication: Use of Electronic Agents (Sec. 107)**
- **Proof and Effect of Authentication (Sec. 108)**

Electronic Records

- **Electronic records cannot be denied legal effect or enforceability (Sec. 107(a))**
- **Does not require that records be generated, stored, sent, received or otherwise processed by electronic means or in electronic form (Sec. 107(b))**

Proof of Authentication

- **To authenticate:**
 - to sign
 - with the intent to sign, otherwise to execute or adopt an electronic symbol, sound message, or process referring to, included in, or logically associated with a record (Sec. 102(a)(6))
- **Compliance with commercially reasonable attribution procedure adopted by parties authenticates record (Sec. 108(b))**

Contract Formation

- **Formation in General (Sec. 202)**
- **Offer and Acceptance Rules (Secs. 203 - 206)**
- **Pretransaction Disclosures in Internet-Type Transactions (Sec. 211)**
- **Electronic Contract Rules (Secs. 212 - 215)**

Formation of a Contract

- **May be formed in any manner sufficient to show agreement, including by operation of electronic agents which recognize existence of contract (Sec 202(a))**
- **Interaction of electronic agents or individual and electronic agent may form contract (Sec. 206)**
 - Relief may be granted if operation of electronic agents result of fraud, electronic mistake or the like (Sec. 206(a))

Pretransaction Disclosures in Internet-Type Transactions

- **Before conduct can be assent to term, must have opportunity to review (Sec. 112)**
- **Sec. 211 creates “safe harbor” for showing manifestation of assent with opportunity to review**
 - Make standard terms of license readily available
 - No affirmative acts to prevent printing or storage for archival or review purposes

Electronic Attribution

- **Electronic record is attributed to person if that person's act or act of its electronic agent, or bound by it under agency or other law (Sec. 213(a))**

Electronic Errors

- **If parties use attribution procedure to detect errors in electronic events, and only one party conforms, conforming party may avoid effect of undiscovered error (Sec. 213(d))**
- **Consumer not bound by unintended electronic message caused by electronic error if promptly before receiving benefits notifies and delivers or destroys all copies of information (Sec. 214)**

Effectiveness of Electronic Message

- **Effective when received, even if no individual aware of receipt (Sec. 215(a))**
- **Rejects mailbox rule**
- **Receipt of electronic acknowledgment establishes only that message received, not that content sent corresponds to content received (Sec. 215(b))**

Other Aspects of UCITA

- **UCITA provides rules on other aspects of computer information transactions**
 - Performance
 - Warranties
 - Transfer of Interests
 - Breach and Remedies

Conclusion

- **UCITA provides rules governing computer information transactions**
- **Such transactions frequently multi-jurisdictional**
- **UCITA being adopted by states**
- **UCITA provides specific rules for electronic commerce computer information transactions**