



Electronic Transactions

Federal e-signature laws should be implemented at the state level with appropriate protections for consumers. But the Uniform Computer Information Transactions Act (UCITA) would replace existing standards for consumer warranties with a special law for software purchases. Consumers may be bound by a contract they don't see until after they buy the software, unwrap it, and install it on their computer.

Two major pieces of uniform legislation affecting the way we interact with business in the Internet age are making their way into legislatures across the nation.

The Uniform Electronic Transactions Act, or UETA, will permit electronic interaction between businesses and consumers, and implement the ability to have electronic signatures, pursuant to the federal "e-sign" legislation.

The Uniform Computer Information Transactions Act, or UCITA, dramatically changes the traditional rights consumers have when purchasing software and other information products. It replaces traditional contract, warranty

and copy-right law with the electronic contract a consumer receives when buying online, or the paper "shrink-wrap" warranty a consumer gets when buy-

ing a hard copy of an information product, such as software. Consumer groups generally support UETA across the nation. However, it is critical that the consumer protections adopted by Congress in its passage of the "e-sign" legislation be incorporated into state adoption of UETA. These basic protections ensure the transactions are fair to consumers; require that consumers have the ability to get paper copies of transactions; and ensure that consumers have truly given their consent and have the ability to conduct transactions electronically. UETA attempts to ensure electronic commerce is fair by applying existing rules about agreements between consumers and businesses in the electronic realm.

In sharp contrast, consumer groups, other public interest groups and many businesses across the nation oppose UCITA. UCITA replaces the existing standards for consumer warranties, protections in consumer contract law, and other laws with a standard written by the manufacturer in the agreement the consumer receives after purchase. This places individual consumers, businesses, libraries, and many others in the untenable position of having to accept the terms of software as it is delivered to them.

- UCITA allows software publishers to sell software "as is," meaning there is no warranty that it works right or that you can get your money back if it does not.

- When consumers are sup-

posed to get notices from a software publisher or online service, UCITA considers the notice to be "received" by a consumer if the notice is only posted on a Web site.

- If the consumer wants to sue over bad software or over a bad online service, UCITA allows the software publisher or Internet service to name almost any state in the United States as the state where the consumer's law suit has to be brought.

- UCITA allows the consumer to be trapped into agreeing to all of this after buying the software or online service. Under UCITA these provisions may be placed in the boilerplate "fine print" that the consumer sees for the first time only after the consumer buys the software at the mall and takes it home (or downloads it), unwraps the box, puts the disk in the computer and starts loading the software for the first time.

- UCITA allows the software license to say that a magazine or newspaper cannot publish a review of the software without the publisher's permission unless and until the courts find such a provision to be unenforceable. This will prevent bad reviews of software from appearing in newspapers or magazines, making it harder for consumers to find out if software works right before buying it.

Recommendations

UETA

Assure that the federal e-sign protections are incorporated into UETA.

UCITA

Do not allow this flawed law to govern transactions in Texas.



In Short

UCITA allows software publishers to sell software with no warranty, and if consumers sue over bad software, UCITA gives the software firm the power to select the state where the suit will be heard. Consumers agree to all of this after purchase, during installation, when they click past the licensing agreement.