
Is UCITA the Future Law for Software and Online Transactions?

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Are customers really bound by those terms that come in a box of software?

When do the terms and conditions on web sites really mean anything?

Can a software licensor change the terms of an agreement by posting new terms on its web site?

The Uniform Computer Information Transactions Act ("UCITA") is a model uniform state law intended to address these issues, and as a result has caused significant controversy between the information technology industry and various consumer and user groups.

UCITA has been proposed as a uniform law for U.S. states in order to govern licensing transactions relating to software and multimedia products. A license agreement choosing as its governing law a U.S. state that has enacted UCITA will automatically be affected by UCITA, unless the parties to that agreement specifically agree otherwise. Click [here](#) to view the text along with official interpretative comments of UCITA.

Maryland and Virginia have already adopted UCITA. The statute has also

been proposed in New Jersey and Arizona. The status of UCITA in other states can be found by clicking [here](#).

UCITA has been controversial, to put it mildly. While it is actively supported by a number of software publishers, UCITA is opposed by consumer groups, library organizations, several large engineering organizations, and some large licensees of software. To review lists of groups taking sides, both pro and con, click [here](#) or [here](#).

UCITA is generally portrayed as being favorable to licensors, and indeed it provides significant flexibility to licensors. The statute confirms certain trends in licensing, such as the enforceability of shrink-wrap and click-and-accept license agreements, and provides some licensor-friendly default provisions. UCITA allows a licensor flexibility in amending agreements, including by posting changes on its web site.

Licensors should not assume, however, that they will always be better off using their current form agreements under UCITA. UCITA provides some new and different implied warranties, and some new requirements in order to disclaim those warranties. In a UCITA state, a licensor relying on a standard warranty disclaimer may find it has unwittingly made some additional implied warranties that would have previously been disclaimed under that state's laws before UCITA was enacted.

UCITA also provides terms and procedures that must be followed for enforcing shrink-wrap and click-wrap agreements and transacting online business. For click-wrap agreements those in which a user must click to accept before paying fees and downloading software it is recommended that the user be required to double click. For example, after the license terms are displayed, the user could be required to click "Yes" in response to the question "Do you agree to the terms?" and "Yes" to an acknowledgment,

such as "Are you sure?" The failure to have such a double click may not render the agreement unenforceable, although UCITA does identify a double click as sufficient to indicate agreement to the terms.

In the case of shrink-wrap agreements for mass market software consumer contracts and certain other retail contracts where the user does not see the terms until a physical copy of the product arrives UCITA requires licensors to provide a right of return and a full refund of all amounts paid, including payment for postage and payment to return the user's system to its physical state before the returned software was loaded (if the de-installation does not automatically return the system to that state). This right of return could become expensive, particularly if disgruntled users organize themselves to exercise their rights of return simultaneously.

UCITA may also have an impact on products that include software, but would ordinarily not be considered software products. For example, since UCITA specifically authorizes restrictions on the transfer of software, a licensee could be prevented from reselling or donating equipment that incorporates licensed software.

Licensors in Maryland, Virginia and other states that enact UCITA should review and update their form agreements to conform to the provisions of UCITA or determine if they should "opt-out" of UCITA entirely. Likewise, neither licensors nor licensees should enter into contracts governed by the laws of a state which has enacted UCITA until they have assessed the impact of UCITA on those contracts.

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