Proposed Uniform State Licensing Law Is Losing Ground

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The Uniform Computer Information Transactions Act ("UCITA") was proposed by the National Conference of Commissions on Uniform State Laws in 1999, in the hope of creating a uniform law that would govern licensing transactions relating to software and multimedia products. To date, however, only two states have enacted UCITA, and three states have taken action to block its application.

As we discussed in our February 23, 2001 Internet Alert, UCITA has caused significant controversy between the information technology industry and various consumer and user groups. Maryland and Virginia adopted UCITA by April 2000, but no other states have followed their lead. The status of UCITA in other states can be found by visiting the National Conference of Commissions on Uniform State Laws web site or the UCITA web site.

In fact, UCITA has been attracting more opposition than support. Three states have adopted so-called "anti-UCITA" or "bomb-shelter" statutes, which are designed to block the application of UCITA to companies and individuals residing in those states.

Iowa Code Section 554D.104(4), North Carolina Section 66.329and West Virginia have enacted identically-worded statutes which invalidate choice of law provisions in agreements otherwise covered by UCITA, if those provisions require those agreements to be interpreted pursuant to the laws of a state that has enacted UCITA. The Iowa, North Carolina and West Virginia statutes require that those agreements be interpreted pursuant to their own laws, if the party against whom enforcement of the choice of law provision is sought is a resident of, or has its principal place of business located in, one of those states.

Similar, although not identical, anti-UCITA statutes are under consideration in New York and Ohio.

The value of these anti-UCITA statutes to parties trying to avoid UCITA may in fact be fairly narrow. If a licensee from an anti-UCITA state were sued in its own state, these statutes would shield the licensee from UCITA. However, if that same licensee were sued in a UCITA state (currently only Maryland and Virginia), to avoid the application of UCITA that licensee would probably have to go to court in the UCITA state and argue either that such court did not have jurisdiction or that such court should apply the laws of the anti-UCITA state, despite the contractual choice of law provision

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pointing to the UCITA state's laws. Such arguments may be difficult, although not impossible.

Regardless of the value of these anti-UCITA statutes, their adoption reflects a growing sentiment against UCITA. When combined with the failure of any additional states to enact UCITA for more than a year, the outlook for UCITA is looking increasingly grim. States that do not adopt UCITA can be expected to continue to resolve licensing disputes relating to software and multimedia products by either applying (1) traditional concepts of contract law or (2) principles of Article 2 of the Uniform Commercial Code, even while recognizing that Article 2 is meant to apply to sales of goods and not licenses of software.

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