

Consumers Union

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A handful of software makers want to replace warranty, contract and copyright protections with an electronic agreement that most consumers zip past as they download products or install software from a disk after buying it.

Opposed by consumer groups, businesses, librarians, and others, 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 copyright law with the contract laid out in an electronic agreement a consumer receives when buying online, the paper “shrink-wrap” warranty a consumer gets when buying software, or the end user agreement with which consumers must “agree” in order to complete software installation.

This places individual consumers, small 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 you money back if it does not.

When consumers are supposed to get notices from a software publisher or on-line service, UCITA allows the notice to be “received” by a consumer if the notice is only posted on a web site.



Software Transactions

A handful of software makers want to replace traditional contract, warranty, and copyright laws with the electronic agreements you probably zip past when you install your new software.

If the consumer wants to sue over bad software or over a bad on-line 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 the consumer buys the software or on-line service. Under UCITA these provisions may be placed in the boiler plate 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.

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 bad software from appearing in newspapers or magazines making it harder for consumers to find out if software works right before consumers buy the software.

According to AFFECT, a coalition of consumers, retail and manufacturing businesses, insurers, technology professionals and librarians,

UCITA has not yet been amended to require the prepayment disclosure of terms, as recommended by the American Bar Association and the state attorneys general.

As a result, the law continues to allow software publishers to hide their license terms until after the consumer has paid for the software, taken it home or downloaded and begun to use it. This makes it impossible for consumers to compare license terms as they shop. It is impractical for reviewers to see the terms in order to write comparison articles for the benefit of consumers.

RECOMMENDATION

- 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 this after purchase, during installation, when they click past the licensing agreement.

