

Dear Ed and Steve,

The electronic chattel paper sub-group has agreed on the following list of issues, which are ranked as you requested.

I. Category 1 (there is a general consensus that these issues be pursued):

1. If the chattel paper consists of more than one record, which record or records are relevant for the purpose of perfecting a security interest by possession or control?

The issue has arisen largely because of the rigorous requirements under the current control test for ECP. In many cases, it is expensive and impractical to subject amendments to the original ECP that do not replace the original agreement to the same rigorous requirements as the original ECP. Comment 4 to UCC 9-330 currently offers the following guidance relevant to this issue:

In determining which of several related records constitutes chattel paper and thus is relevant to possession or control, the form of the records is irrelevant. Rather, the touchstone is whether possession or control of the record would afford the public notice contemplated by the possession and control requirements. For example, because possession or control of an amendment extending the term of a lease would not afford the contemplated public notice, the amendment would not constitute chattel paper regardless of whether the amendment is in tangible form and the lease is in electronic form, the amendment is electronic and the lease is tangible, the amendment and lease are both tangible, or the amendment and lease are both electronic.

It is recommended that the study committee consider whether this guidance, or something similar, should be reflected in the text of the Code or further expanded in either the text, the comments, or both.

2. Should the Code expressly authorize the conversion of chattel paper from tangible to electronic and vice-versa?

Comment 4 to UCC 9-330 offers the following guidance:

A secured party may wish to convert tangible chattel paper to electronic chattel paper and vice versa. The priority of a security interest in chattel paper under subsection (a) or (b) may be preserved, even if the form of the chattel paper changes. The principle implied in the preceding paragraph applies to “control” as well as to “possession.” When there are multiple copies of chattel paper, a secured party may take “possession” or obtain “control” of the chattel paper if it acts with respect to the copy or copies that are reliably identified as the copy or copies that are relevant for purposes of possession or control. This principle applies as well to chattel paper that has been converted from one form to another, even if the relevant copies are not the “original” chattel paper.

It is recommended that the study committee consider whether this guidance should be elevated to the text or further expanded in either the text, the comments, or both. With regard to this issue, we have the example of Section 7-105 on reissuance of a document of title in an alternative medium. The provision might need modification but should provide a good starting point for the study committee's discussions.

3. How should the Code deal with hybrid chattel paper, meaning chattel paper as to which one or more of the relevant records is tangible and one or more is electronic?

Comment 4 to UCC 9-330 offers the following guidance:

When chattel paper comprises one or more tangible records and one or more electronic records, a purchaser may satisfy the possession-or-control requirement by taking possession of the tangible records under Section 9-313 and having control of the electronic records under Section 9-105.

Again, the recommendation is that the study committee consider whether this guidance should be elevated to the text or further expanded in either the text, the comments, or both.

## II. Category 3 (minority recommendation):

A member of the sub-group recommended that the name of the UCC type from "chattel paper," which is an oxymoron, to something like "chattel record" or "chattel receivable." One member of the sub-group expressed opposition to this recommendation.

We appreciate the work of the members of the sub-group and look forward to discussing the listed issues with the full study committee at next month's meeting.

Tom and Bill