

## REPORTER'S NOTES ON APRIL MEETING

### ***FUTURE SCHEDULE***

The attached materials represent a revision of the prior draft reflecting both the debates of the Drafting Committee and continuing consultation and input from various groups and individuals concerned about the Article 2B process.

The April meeting will be the final Drafting Committee meeting before the annual session of NCCUSL at which a first reading of the draft will occur. The meeting agenda, which is attached, reflects an effort to cover all of the provisions of the draft that have not previously been discussed in detail by the Committee and to return to the basic scope issue that the Committee has discussed, but should revisit before the annual meeting.

In order to provide a context for the discussion, the following pages present not only a brief over-view of some of the major changes in the draft since the March meeting, but also a list of issues that should be resolved by the Committee in April as a prelude for the annual meeting and the activities of the committee during the next year.

### **Highlights of Current Draft**

The major changes in the April Draft include the following

1. Contains a definition of consequential damages, direct and incidental in order to implement a Committee vote that changed the default rule presumption to hold that consequential damages are not available unless agreed to by the parties. In order to protect parties, contains a requirement that the party charged with consequential loss must manifest assent to the particular term.
2. Narrows definition and focus of mass market licenses by placing dollar cap on the cost of the license. The term still covers both consumers and businesses acquiring property in the general mass market.
3. Tightens the focus and mandated elements for manifesting assent to a term by requiring that the acts that manifest assent be specifically keyed to the term, rather than in the form of general conduct, such as by shipping product or opening a package.
4. Deletes treatment of consignments which will be covered in Article 9 as to priority issues. Defines consignee as a nonexclusive licensee for purposes of contract issues under this Article.
5. Proposes treatment of cases in which the basic choice of law principle would select a foreign jurisdiction.
6. Deletes section on cooperation based on opposition at the meeting and on conclusion that relevant protections are implicit in good faith standard.
7. Modifies the treatment of attribution issues to include discussion of "electronic agents."
8. Revises virus obligations to clarify scope and to make the obligation controllable by contract and context.
9. Returns to use of the term "signed" as contrasted to authenticated, leaving in provisions to create a signature other than in traditional forms.
10. Expands pre-existing provisions to focus on data disclosure and use in reference

to contractual arrangements.

11. Creates section on distribution contracts to bring together various provisions and issues relating to the distribution chain.