

D R A F T
FOR APPROVAL

**AMENDMENTS TO
UNIFORM COMPUTER INFORMATION
TRANSACTIONS ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-NINTH YEAR
ST. AUGUSTINE, FLORIDA
JULY 28 – AUGUST 4, 2000

**AMENDMENTS TO
UNIFORM COMPUTER INFORMATION
TRANSACTIONS ACT**

Copyright © 2000
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting

Committee and its Members and Reporters. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

**STANDBY COMMITTEE ON
UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT**

CARLYLE C. RING, 1401 H Street, NW, Suite 500, Washington, DC 20005, *Chair*
JOHN A. CHANIN, 715 S. Washington Street, Apartment B13, Alexandria, VA 22314
STEPHEN Y. CHOW, One Beacon Street, 30th Floor, Boston, MA 02108
PATRICIA BRUMFIELD FRY, University of North Dakota, School of Law, P.O. Box 9003,
Grand Forks, ND 58201
THOMAS T. GRIMSHAW, Suite 3800, 1700 Lincoln Street, Denver, CO 80203
LEON M. McCORKLE, JR., P.O. Box 387, Dublin, OH 43017-0387
THOMAS J. McCracken, JR., Room 600, 134 N. LaSalle Street, Chicago, IL 60602
JAMES C. McKAY, JR., Office of Corporation Counsel, 6th Floor South, 441 4th Street, NW,
Washington, DC 20001, *Committee Member and Committee on Style Liaison*
BRUCE MUNSON, Revisor of Statutes Bureau, Suite 800, 131 W. Wilson Street, Madison, WI 53703
LEWIS BART STONE, 1105 Park Avenue, New York, NY 10128
RAYMOND T. NIMMER, University of Houston, Law Center, 4800 Calhoun, Houston, TX 77204,
Reporter

EX OFFICIO

JOHN L. McCLAUGHERTY, P.O. Box 553, Charleston, WV 25322, *President*
JOHN P. BURTON, P.O. Box 1357, Suite 101, 123 E. Marcy Street, Santa Fe, NM 87501,
Division Chair

AMERICAN BAR ASSOCIATION ADVISOR

DONALD A. COHN, 14 Gale Lane, Greenville, DE 19807, *Co-Advisor*
DANIEL S. COOLIDGE, 25 Franklin Street, Boston, MA 02110-2804, *Law Practice Management
Section Advisor*
MARY JO HOWARD DIVELY, One Oxford Centre, 40th Floor, Pittsburgh, PA 15217, *Business Laws
Section Advisor*
GEORGE L. GRAFF, 30th Floor, 399 Park Avenue, New York, NY 10022, *Co-Advisor*
LYNN P. HENDRIX, 1700 Lincoln Street, Suite 4100, Denver, CO 80203, *Intellectual Property Law
Section Advisor*

EXECUTIVE DIRECTOR

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Road, Norman,
OK 73019, *Executive Director*
WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, *Executive Director Emeritus*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611

312/915-0195
www.nccusl.org

1
2
3

4

5
6

7
8
9
10
11
12
13
14
15
16

17

18
19
20
21
22

23

24
25
26
27

28

29
30

**AMENDMENTS TO
UNIFORM COMPUTER INFORMATION
TRANSACTIONS ACT**

EXPLANATION OF AMENDMENTS

**Amendments to Section 103(b)(2); Section 103(d)(2)(A) and (B);
Section 103(f)(1) and (2); Section 103(g); and new Section 216**

A number of styling and clarification amendments as well as amendments required to be ratified by the Conference were part of a discussion with the following associations: Motion Picture Association of America, Magazine Publishers of American, Newspaper Association of America, National Cable Television Association, National Association of Broadcasters, and the Recording Industry Association of America. As the Conference will recall, five of these associations had concerns about UCITA and in lengthy discussions, these amendments were worked out as a package and with the adoption of these amendments by the Conference, these associations formally in writing have withdrawn their opposition to the enactment of UCITA.

Amendments to Section 102(a)(39)(A) and (B); Section 103(d)(2)

While most transactions that involve the relationship between the insured and the insurer would be covered by either the financial services transactions exclusion or excluded by the definitions applicable to the scope of the Act, the state insurance commissioners requested clarity that transactions of similar type subject to similar state regulatory authority were clearly excluded.

Amendments to Section 103(d)(7)(A) and (B); Section 112(g)

This second group of amendments were worked out with telecommunications industry and under these changes they have agreed to support enactment of UCITA. The changes do not alter the substantive policy of the Act and the substance was already discussed in the Comments.

Amendment to Section 104(1)

This is merely a clarification of the intent to include statutory rules and adds clarity in light of discussion in several States.

1

Amendment to Section 816

2

These amendments clarify the limitations on electronic self-help. The prohibition for mass-market transactions more clearly states a result that was the most likely effect of the existing limitations in the section. The addition to subsection (d) is a non-substantive clarification the inclusion of which was indicated by discussion in the various States.

3

4

5

6

1
2
3

**AMENDMENTS TO
UNIFORM COMPUTER INFORMATION
TRANSACTIONS ACT**

4

SECTION 102. DEFINITIONS.

5 (a) In this [Act]:

6 (1) “Access contract” means a contract to obtain by electronic means
7 access to, or information from, an information processing system of another person,
8 or the equivalent of such access.

9 (2) “Access material” means any information or material, such as a
10 document, address, or access code, that is necessary to obtain authorized access to
11 information or control or possession of a copy.

12 (3) “Aggrieved party” means a party entitled to a remedy for breach of
13 contract.

14 (4) “Agreement” means the bargain of the parties in fact as found in
15 their language or by implication from other circumstances, including course of
16 performance, course of dealing, and usage of trade as provided in this [Act].

17 (5) “Attribution procedure” means a procedure to verify that an
18 electronic authentication, display, message, record, or performance is that of a
19 particular person or to detect changes or errors in information. The term includes a
20 procedure that requires the use of algorithms or other codes, identifying words or
21 numbers, encryption, or callback or other acknowledgment.

22 (6) “Authenticate” means:

1 (A) to sign; or

2 (B) with the intent to sign a record, otherwise to execute or adopt an
3 electronic symbol, sound, message, or process referring to, attached to, included in,
4 or logically associated or linked with, that record.

5 (7) “Automated transaction” means a transaction in which a contract is
6 formed in whole or part by electronic actions of one or both parties which are not
7 previously reviewed by an individual in the ordinary course.

8 (8) “Cancellation” means the ending of a contract by a party because of
9 breach of contract by another party.

10 (9) “Computer” means an electronic device that accepts information in
11 digital or similar form and manipulates it for a result based on a sequence of
12 instructions.

13 (10) “Computer information” means information in electronic form
14 which is obtained from or through the use of a computer or which is in a form
15 capable of being processed by a computer. The term includes a copy of the
16 information and any documentation or packaging associated with the copy.

17 (11) “Computer information transaction” means an agreement or the
18 performance of it to create, modify, transfer, or license computer information or
19 informational rights in computer information. The term includes a support contract
20 under Section 612. The term does not include a transaction merely because the
21 parties’ agreement provides that their communications about the transaction will be
22 in the form of computer information.

1 (12) “Computer program” means a set of statements or instructions to
2 be used directly or indirectly in a computer to bring about a certain result. The term
3 does not include separately identifiable informational content.

4 (13) “Consequential damages” resulting from breach of contract
5 includes (i) any loss resulting from general or particular requirements and needs of
6 which the breaching party at the time of contracting had reason to know and which
7 could not reasonably be prevented and (ii) any injury to an individual or damage to
8 property other than the subject matter of the transaction proximately resulting from
9 breach of warranty. The term does not include direct damages or incidental
10 damages.

11 (14) “Conspicuous,” with reference to a term, means so written,
12 displayed, or presented that a reasonable person against which it is to operate ought
13 to have noticed it. A term in an electronic record intended to evoke a response by
14 an electronic agent is conspicuous if it is presented in a form that would enable a
15 reasonably configured electronic agent to take it into account or react to it without
16 review of the record by an individual. Conspicuous terms include the following:

17 (A) with respect to a person:

18 (i) a heading in capitals in a size equal to or greater than, or in
19 contrasting type, font, or color to, the surrounding text;

20 (ii) language in the body of a record or display in larger or other
21 contrasting type, font, or color or set off from the surrounding text by symbols or
22 other marks that draw attention to the language; and

1 (iii) a term prominently referenced in an electronic record or
2 display which is readily accessible or reviewable from the record or display; and

3 (B) with respect to a person or an electronic agent, a term or
4 reference to a term that is so placed in a record or display that the person or
5 electronic agent cannot proceed without taking action with respect to the particular
6 term or reference.

7 (15) “Consumer” means an individual who is a licensee of information
8 or informational rights that the individual at the time of contracting intended to be
9 used primarily for personal, family, or household purposes. The term does not
10 include an individual who is a licensee primarily for professional or commercial
11 purposes, including agriculture, business management, and investment management
12 other than management of the individual’s personal or family investments.

13 (16) “Consumer contract” means a contract between a merchant
14 licensor and a consumer.

15 (17) “Contract” means the total legal obligation resulting from the
16 parties’ agreement as affected by this [Act] and other applicable law.

17 (18) “Contract fee” means the price, fee, rent, or royalty payable in a
18 contract under this [Act] or any part of the amount payable.

19 (19) “Contractual use term” means an enforceable term that defines or
20 limits the use, disclosure of, or access to licensed information or informational
21 rights, including a term that defines the scope of a license.

1 (20) “Copy” means the medium on which information is fixed on a
2 temporary or permanent basis and from which it can be perceived, reproduced, used,
3 or communicated, either directly or with the aid of a machine or device.

4 (21) “Course of dealing” means a sequence of previous conduct
5 between the parties to a particular transaction which establishes a common basis of
6 understanding for interpreting their expressions and other conduct.

7 (22) “Course of performance” means repeated performances, under a
8 contract that involves repeated occasions for performance, which are accepted or
9 acquiesced in without objection by a party having knowledge of the nature of the
10 performance and an opportunity to object to it.

11 (23) “Court” includes an arbitration or other dispute-resolution forum if
12 the parties have agreed to use of that forum or its use is required by law.

13 (24) “Delivery,” with respect to a copy, means the voluntary physical or
14 electronic transfer of possession or control.

15 (25) “Direct damages” means compensation for losses measured by
16 Section 808(b)(1) or 809(a)(1). The term does not include consequential damages
17 or incidental damages.

18 (26) “Electronic” means relating to technology having electrical, digital,
19 magnetic, wireless, optical, electromagnetic, or similar capabilities.

20 (27) “Electronic agent” means a computer program, or electronic or
21 other automated means, used by a person to initiate an action, or to respond to
22 electronic messages or performances, on the person’s behalf without review or

1 action by an individual at the time of the action or response to the message or
2 performance.

3 (28) “Electronic message” means a record or display that is stored,
4 generated, or transmitted by electronic means for the purpose of communication to
5 another person or electronic agent.

6 (29) “Financial accommodation contract” means an agreement under
7 which a person extends a financial accommodation to a licensee and which does not
8 create a security interest governed by [Article 9 of the Uniform Commercial Code].
9 The agreement may be in any form, including a license or lease.

10 (30) “Financial services transaction” means an agreement that provides
11 for, or a transaction that is, or entails access to, use, transfer, clearance, settlement,
12 or processing of:

13 (A) a deposit, loan, funds, or monetary value represented in
14 electronic form and stored or capable of storage by electronic means and retrievable
15 and transferable by electronic means, or other right to payment to or from a person;

16 (B) an instrument or other item;

17 (C) a payment order, credit card transaction, debit card transaction,
18 funds transfer, automated clearing house transfer, or similar wholesale or retail
19 transfer of funds;

20 (D) a letter of credit, document of title, financial asset, investment
21 property, or similar asset held in a fiduciary or agency capacity; or

1 (E) related identifying, verifying, access-enabling, authorizing, or
2 monitoring information.

3 (31) “Financier” means a person that provides a financial
4 accommodation to a licensee under a financial accommodation contract and either
5 (i) becomes a licensee for the purpose of transferring or sublicensing the license to
6 the party to which the financial accommodation is provided or (ii) obtains a
7 contractual right under the financial accommodation contract to preclude the
8 licensee’s use of the information or informational rights under a license in the event
9 of breach of the financial accommodation contract. The term does not include a
10 person that selects, creates, or supplies the information that is the subject of the
11 license, owns the informational rights in the information, or provides support for,
12 modifications to, or maintenance of the information.

13 (32) “Good faith” means honesty in fact and the observance of
14 reasonable commercial standards of fair dealing.

15 (33) “Goods” means all things that are movable at the time relevant to
16 the computer information transaction. The term includes the unborn young of
17 animals, growing crops, and other identified things to be severed from realty which
18 are covered by [Section 2-107 of the Uniform Commercial Code]. The term does
19 not include computer information, money, the subject matter of foreign exchange
20 transactions, documents, letters of credit, letter-of-credit rights, instruments,
21 investment property, accounts, chattel paper, deposit accounts, or general
22 intangibles.

1 (34) “Incidental damages” resulting from breach of contract:
2 (A) means compensation for any commercially reasonable charges,
3 expenses, or commissions reasonably incurred by an aggrieved party with respect to:
4 (i) inspection, receipt, transmission, transportation, care, or
5 custody of identified copies or information that is the subject of the breach;
6 (ii) stopping delivery, shipment, or transmission;
7 (iii) effecting cover or retransfer of copies or information after
8 the breach;
9 (iv) other efforts after the breach to minimize or avoid loss
10 resulting from the breach; and
11 (v) matters otherwise incident to the breach; and
12 (B) does not include consequential damages or direct damages.
13 (35) “Information” means data, text, images, sounds, mask works, or
14 computer programs, including collections and compilations of them.
15 (36) “Information processing system” means an electronic system for
16 creating, generating, sending, receiving, storing, displaying, or processing
17 information.
18 (37) “Informational content” means information that is intended to be
19 communicated to or perceived by an individual in the ordinary use of the
20 information, or the equivalent of that information.
21 (38) “Informational rights” include all rights in information created
22 under laws governing patents, copyrights, mask works, trade secrets, trademarks,

1 publicity rights, or any other law that gives a person, independently of contract, a
2 right to control or preclude another person’s use of or access to the information on
3 the basis of the rights holder’s interest in the information.

4 (39) “Insurance services transaction” means an agreement between the
5 insurer and the insured that provides for, or a transaction that is, or entails access to,
6 use, transfer, clearance, settlement, or processing of:

7 (A) an insurance policy, contract, or certificate; or

8 (B) a right to payment under an insurance policy, contract, or
9 certificate.

10 ~~(39)~~ (40) “Knowledge,” with respect to a fact, means actual knowledge
11 of the fact.

12 ~~(40)~~ (41) “License” means a contract that authorizes access to, or use,
13 distribution, performance, modification, or reproduction of, information or
14 informational rights, but expressly limits the access or uses authorized or expressly
15 grants fewer than all rights in the information, whether or not the transferee has title
16 to a licensed copy. The term includes an access contract, a lease of a computer
17 program, and a consignment of a copy. The term does not include a reservation or
18 creation of a security interest to the extent the interest is governed by [Article 9 of
19 the Uniform Commercial Code].

20 ~~(41)~~ (42) “Licensee” means a person entitled by agreement to acquire or
21 exercise rights in, or to have access to or use of, computer information under an

1 agreement to which this [Act] applies. A licensor is not a licensee with respect to
2 rights reserved to it under the agreement.

3 ~~(42)~~ (43) “Licensor” means a person obligated by agreement to transfer
4 or create rights in, or to give access to or use of, computer information or
5 informational rights in it under an agreement to which this [Act] applies. Between
6 the provider of access and a provider of the informational content to be accessed,
7 the provider of content is the licensor. In an exchange of information or
8 informational rights, each party is a licensor with respect to the information,
9 informational rights, or access it gives.

10 ~~(43)~~ (44) “Mass-market license” means a standard form used in a mass-
11 market transaction.

12 ~~(44)~~ (45) “Mass-market transaction” means a transaction that is:

13 (A) a consumer contract; or

14 (B) any other transaction with an end-user licensee if:

15 (i) the transaction is for information or informational rights

16 directed to the general public as a whole, including consumers, under substantially

17 the same terms for the same information;

18 (ii) the licensee acquires the information or informational rights in

19 a retail transaction under terms and in a quantity consistent with an ordinary

20 transaction in a retail market; and

21 (iii) the transaction is not:

1 (I) a contract for redistribution or for public performance or
2 public display of a copyrighted work;

3 (II) a transaction in which the information is customized or
4 otherwise specially prepared by the licensor for the licensee, other than minor
5 customization using a capability of the information intended for that purpose;

6 (III) a site license; or

7 (IV) an access contract.

8 ~~(45)~~ (46) “Merchant” means a person:

9 (A) that deals in information or informational rights of the kind
10 involved in the transaction;

11 (B) that by the person’s occupation holds itself out as having
12 knowledge or skill peculiar to the relevant aspect of the business practices or
13 information involved in the transaction; or

14 (C) to which the knowledge or skill peculiar to the practices or
15 information involved in the transaction may be attributed by the person’s
16 employment of an agent or broker or other intermediary that by its occupation holds
17 itself out as having the knowledge or skill.

18 ~~(46)~~ (47) “Nonexclusive license” means a license that does not preclude
19 the licensor from transferring to other licensees the same information, informational
20 rights, or contractual rights within the same scope. The term includes a
21 consignment of a copy.

1 ~~(47)~~ (48) “Notice” of a fact means knowledge of the fact, receipt of
2 notification of the fact, or reason to know the fact exists.

3 ~~(48)~~ (49) “Notify,” or “give notice,” means to take such steps as may be
4 reasonably required to inform the other person in the ordinary course, whether or
5 not the other person actually comes to know of it.

6 ~~(49)~~ (50) “Party” means a person that engages in a transaction or makes
7 an agreement under this [Act].

8 ~~(50)~~ (51) “Person” means an individual, corporation, business trust,
9 estate, trust, partnership, limited liability company, association, joint venture,
10 governmental subdivision, instrumentality, or agency, public corporation, or any
11 other legal or commercial entity.

12 ~~(51)~~ (52) “Published informational content” means informational content
13 prepared for or made available to recipients generally, or to a class of recipients, in
14 substantially the same form. The term does not include informational content that
15 is:

16 (A) customized for a particular recipient by one or more individuals
17 acting as or on behalf of the licensor, using judgment or expertise; or

18 (B) provided in a special relationship of reliance between the
19 provider and the recipient.

20 ~~(52)~~ (53) “Receipt” means:

21 (A) with respect to a copy, taking delivery; or

22 (B) with respect to a notice:

1 (i) coming to a person’s attention; or
2 (ii) being delivered to and available at a location or system
3 designated by agreement for that purpose or, in the absence of an agreed location or
4 system:

5 (I) being delivered at the person’s residence, or the person’s
6 place of business through which the contract was made, or at any other place held
7 out by the person as a place for receipt of communications of the kind; or

8 (II) in the case of an electronic notice, coming into existence
9 in an information processing system or at an address in that system in a form capable
10 of being processed by or perceived from a system of that type by a recipient, if the
11 recipient uses, or otherwise has designated or holds out, that place or system for
12 receipt of notices of the kind to be given and the sender does not know that the
13 notice cannot be accessed from that place.

14 ~~(53)~~ (54) “Receive” means to take receipt.

15 ~~(54)~~ (55) “Record” means information that is inscribed on a tangible
16 medium or that is stored in an electronic or other medium and is retrievable in
17 perceivable form.

18 ~~(55)~~ (56) “Release” means an agreement by a party not to object to, or
19 exercise any rights or pursue any remedies to limit, the use of information or
20 informational rights which agreement does not require an affirmative act by the
21 party to enable or support the other party’s use of the information or informational
22 rights. The term includes a waiver of informational rights.

1 ~~(56)~~ (57) “Return,” with respect to a record containing contractual
2 terms that were rejected, refers only to the computer information and means:

3 (A) in the case of a licensee that rejects a record regarding a single
4 information product transferred for a single contract fee, a right to reimbursement of
5 the contract fee paid from the person to which it was paid or from another person
6 that offers to reimburse that fee, on:

7 (i) submission of proof of purchase; and

8 (ii) proper redelivery of the computer information and all copies
9 within a reasonable time after initial delivery of the information to the licensee;

10 (B) in the case of a licensee that rejects a record regarding an
11 information product provided as part of multiple information products integrated
12 into and transferred as a bundled whole but retaining their separate identity:

13 (i) a right to reimbursement of any portion of the aggregate
14 contract fee identified by the licensor in the initial transaction as charged to the
15 licensee for all bundled information products which was actually paid, on:

16 (I) rejection of the record before or during the initial use of
17 the bundled product;

18 (II) proper redelivery of all computer information products in
19 the bundled whole and all copies of them within a reasonable time after initial
20 delivery of the information to the licensee; and

21 (III) submission of proof of purchase; or

1 (ii) a right to reimbursement of any separate contract fee
2 identified by the licensor in the initial transaction as charged to the licensee for the
3 separate information product to which the rejected record applies, on:

4 (I) submission of proof of purchase; and

5 (II) proper redelivery of that computer information product
6 and all copies within a reasonable time after initial delivery of the information to the
7 licensee; or

8 (C) in the case of a licensor that rejects a record proposed by the
9 licensee, a right to proper redelivery of the computer information and all copies from
10 the licensee, to stop delivery or access to the information by the licensee, and to
11 reimbursement from the licensee of amounts paid by the licensor with respect to the
12 rejected record, on reimbursement to the licensee of contract fees that it paid with
13 respect to the rejected record, subject to recoupment and setoff.

14 ~~(57)~~ (58) “Scope,” with respect to terms of a license, means:

15 (A) the licensed copies, information, or informational rights involved;

16 (B) the use or access authorized, prohibited, or controlled;

17 (C) the geographic area, market, or location; or

18 (D) the duration of the license.

19 ~~(58)~~ (59) “Seasonable,” with respect to an act, means taken within the
20 time agreed or, if no time is agreed, within a reasonable time.

21 ~~(59)~~ (60) “Send” means, with any costs provided for and properly
22 addressed or directed as reasonable under the circumstances or as otherwise agreed,

1 to deposit a record in the mail or with a commercially reasonable carrier, to deliver a
2 record for transmission to or re-creation in another location or information
3 processing system, or to take the steps necessary to initiate transmission to or re-
4 creation of a record in another location or information processing system. In
5 addition, with respect to an electronic message, the message must be in a form
6 capable of being processed by or perceived from a system of the type the recipient
7 uses or otherwise has designated or held out as a place for the receipt of
8 communications of the kind sent. Receipt within the time in which it would have
9 arrived if properly sent, has the effect of a proper sending.

10 ~~(60)~~ (61) “Standard form” means a record or a group of related records
11 containing terms prepared for repeated use in transactions and so used in a
12 transaction in which there was no negotiated change of terms by individuals except
13 to set the price, quantity, method of payment, selection among standard options, or
14 time or method of delivery.

15 ~~(61)~~ (62) “State” means a State of the United States, the District of
16 Columbia, Puerto Rico, the Unites States Virgin Islands, or any territory or insular
17 possession subject to the jurisdiction of the United States.

18 ~~(62)~~ (63) “Term,” with respect to an agreement, means that portion of
19 the agreement which relates to a particular matter.

20 ~~(63)~~ (64) “Termination” means the ending of a contract by a party
21 pursuant to a power created by agreement or law otherwise than because of breach
22 of contract.

1 ~~(64)~~ (65) “Transfer:”

2 (A) with respect to a contractual interest, includes an assignment of
3 the contract, but does not include an agreement merely to perform a contractual
4 obligation or to exercise contractual rights through a delegate or sublicensee; and

5 (B) with respect to computer information, includes a sale, license, or
6 lease of a copy of the computer information and a license or assignment of
7 informational rights in computer information.

8 ~~(65)~~ (66) “Usage of trade” means any practice or method of dealing that
9 has such regularity of observance in a place, vocation, or trade as to justify an
10 expectation that it will be observed with respect to the transaction in question.

11 (b) The following definitions in [the Uniform Commercial Code (1998
12 Official Text)] apply to this [Act]:

13 (1) “Burden of establishing” [Section 1-201]

14 (2) “Document of title” [Section 1-201].

15 (3) “Financial asset” [Section 8-102(a)(9)].

16 (4) “Funds transfer” [Section 4A-104].

17 (5) “Identification” to the contract [Section 2-501].

18 (6) “Instrument” [Sections 9-105(i) (1995 Official Text) or 9-102(a)(47)
19 (1998 Official Text)].

20 (7) “Investment property” [Section 9-115(f) (1995 Official Text) or
21 9-102(a)(49) (1998 Official Text)].

22 (8) “Item” [Section 4-104].

1 (9) “Letter of credit” [Section 5-102].

2 (10) “Payment order” [Section 4A-103].

3 (11) “Sale” [Section 2-106].

4 *Legislative Note: If your State’s definition differs from the 1998 Official Text,*
5 *include the definition from the Official Text in subsection (a).*

6 **SECTION 103. SCOPE; EXCLUSIONS.**

7 (a) This [Act] applies to computer information transactions.

8 (b) Except for subject matter excluded in subsection (d) and as otherwise
9 provided in Section 104, if a computer information transaction includes subject
10 matter other than computer information or subject matter excluded under subsection
11 (d), the following rules apply:

12 (1) If a transaction includes computer information and goods, this [Act]
13 applies to the part of the transaction involving computer information, informational
14 rights in it, and creation or modification of it. However, if a copy of a computer
15 program is contained in and sold or leased as part of goods, this [Act] applies to the
16 copy and the computer program only if:

17 (A) the goods are a computer or computer peripheral; or

18 (B) giving the buyer or lessee of the goods access to or use of the
19 program is ordinarily a material purpose of transactions in goods of the type sold or
20 leased.

21 (2) Subject to subsection (d)(2)(A), if a transaction includes an
22 agreement for creating or for obtaining rights to create computer information and a

1 motion picture, this [Act] does not apply to the agreement if the dominant character
2 of the agreement is for creating or obtaining rights to create a motion picture. In all
3 other such agreements, this [Act] does not apply to the part of the agreement that
4 involves a motion picture excluded under subsection (d)(2), but does apply to the
5 computer information.

6 (3) In all other cases, this [Act] applies to the entire transaction if the
7 computer information and informational rights, or access to them, is the primary
8 subject matter, but otherwise applies only to the part of the transaction involving
9 computer information, informational rights in it, and creation or modification of it.

10 (c) To the extent of a conflict between this [Act] and [Article 9 of the
11 Uniform Commercial Code], [Article 9] governs.

12 (d) This [Act] does not apply to:

13 (1) a financial services transaction;

14 (2) an insurance services transaction;

15 (3) an agreement to create, perform or perform in, include information
16 in, acquire, use, distribute, modify, reproduce, have access to, adapt, make available,
17 transmit, license, or display:

18 (A) a motion picture or audio or visual programming that is provided
19 by broadcast, satellite, or cable as defined or used in the Federal Communications
20 Act and related regulations as they existed on July 1, 1999, or by similar methods of
21 delivering that programming, other than in (i) a mass-market transaction or (ii) a

1 submission of an idea or information or release of informational rights that may
2 result in making a motion picture or a similar information product; or

3 (B) a ~~motion picture~~, sound recording, musical work, or
4 phonorecord as defined or used in Title 17 of the United States Code as of July 1,
5 1999, or an enhanced sound recording, other than in the submission of an idea or
6 information or release of informational rights that may result in the creation of such
7 material or a similar information product.

8 ~~(3)~~ (4) a compulsory license; or

9 ~~(4)~~ (5) a contract of employment of an individual, other than an
10 individual hired as an independent contractor to create or modify computer
11 information, unless the independent contractor is a freelancer in the news reporting
12 industry as that term is commonly understood in that industry;

13 ~~(5)~~ (6) a contract that does not require that information be furnished as
14 computer information or a contract in which, under the agreement, the form of the
15 information as computer information is otherwise insignificant with respect to the
16 primary subject matter of the part of the transaction pertaining to the information; or

17 ~~(6)~~ (7) unless otherwise agreed in a record between the parties:

18 (A) telecommunications products or services provided pursuant to
19 federal or state tariffs; or

20 (B) telecommunications products or services provided pursuant to
21 agreements required or permitted to be filed by the service provider with a federal or

1 state authority regulating these services or under pricing subject to approval by a
2 federal or state regulatory authority.

3 (8) subject matter within the scope of [Article 3, 4, 4A, 5, [6,] 7, or 8 of
4 the Uniform Commercial Code].

5 (e) As used in subsection (d)(2)(B), “enhanced sound recording” means a
6 separately identifiable product or service the dominant character of which consists of
7 recorded sounds but which includes (i) statements or instructions whose purpose is
8 to allow or control the perception, reproduction, or communication of those sounds
9 or (ii) other information so long as recorded sounds constitute the dominant
10 character of the product or service despite the inclusion of the other information.

11 (f) In this section, “motion picture” means:

12 (1) “motion picture” as defined in Title 17 of the United States Code as
13 of July 1, 1999; or

14 (2) a separately identifiable product or service the dominant character of
15 which consists of a linear motion picture, but which includes (i) statements or
16 instructions whose purpose is to allow or control the perception, reproduction, or
17 communication of the motion picture or (ii) other information as long as the motion
18 picture constitutes the dominant character of the product or service despite the
19 inclusion of the other information.

20 (g) In this section, “audio or visual programming” means audio or visual
21 programming that is provided by broadcast, satellite, or cable as defined or used in

1 the Communications Act of 1934 and related regulations as they existed on July 1,
2 1999, or by similar methods of delivery.

3 **SECTION 104. MIXED TRANSACTIONS: AGREEMENT TO OPT-IN**

4 **OR OPT-OUT.** The parties may agree that this [Act], including contract-formation
5 rules, governs the transaction, in whole or part, or that other law governs the
6 transaction and this [Act] does not apply, if a material part of the subject matter to
7 which the agreement applies is computer information or informational rights in it
8 that are within the scope of this [Act], or is subject matter within this [Act] under
9 Section 103(b), or is subject matter excluded by Section 103(d)(1) or (2).

10 However, any agreement to do so is subject to the following rules:

11 (1) An agreement that this [Act] governs a transaction does not alter the
12 applicability of any statute, rule, or procedure that may not be varied by agreement
13 of the parties or that may be varied only in a manner specified by the rule or
14 procedure, including a consumer protection statute [or administrative rule]. In
15 addition, in a mass-market transaction, the agreement does not alter the applicability
16 of a law applicable to a copy of information in printed form.

17 (2) An agreement that this [Act] does not govern a transaction:

18 (A) does not alter the applicability of Section 214 or 816; and

19 (B) in a mass-market transaction, does not alter the applicability under
20 this [Act] of the doctrine of unconscionability or fundamental public policy or the
21 obligation of good faith.

1 (3) In a mass-market transaction, any term under this section which changes
2 the extent to which this [Act] governs the transaction must be conspicuous.

3 (4) A copy of a computer program contained in and sold or leased as part of
4 goods and which is excluded from this [Act] by Section 103(b)(1) cannot provide
5 the basis for an agreement under this section that this [Act] governs the transaction.

6 **SECTION 112. MANIFESTING ASSENT; OPPORTUNITY TO**
7 **REVIEW.**

8 (a) A person manifests assent to a record or term if the person, acting with
9 knowledge of, or after having an opportunity to review the record or term or a copy
10 of it:

11 (1) authenticates the record or term with intent to adopt or accept it; or

12 (2) intentionally engages in conduct or makes statements with reason to
13 know that the other party or its electronic agent may infer from the conduct or
14 statement that the person assents to the record or term.

15 (b) An electronic agent manifests assent to a record or term if, after having
16 an opportunity to review it, the electronic agent:

17 (1) authenticates the record or term; or

18 (2) engages in operations that in the circumstances indicate acceptance
19 of the record or term.

20 (c) If this [Act] or other law requires assent to a specific term, a
21 manifestation of assent must relate specifically to the term.

1 (d) Conduct or operations manifesting assent may be proved in any manner,
2 including a showing that a person or an electronic agent obtained or used the
3 information or informational rights and that a procedure existed by which a person
4 or an electronic agent must have engaged in the conduct or operations in order to
5 do so. Proof of compliance with subsection (a)(2) is sufficient if there is conduct
6 that assents and subsequent conduct that reaffirms assent by electronic means.

7 (e) With respect to an opportunity to review, the following rules apply:

8 (1) A person has an opportunity to review a record or term only if it is
9 made available in a manner that ought to call it to the attention of a reasonable
10 person and permit review.

11 (2) An electronic agent has an opportunity to review a record or term
12 only if it is made available in manner that would enable a reasonably configured
13 electronic agent to react to the record or term.

14 (3) If a record or term is available for review only after a person
15 becomes obligated to pay or begins its performance, the person has an opportunity
16 to review only if it has a right to a return if it rejects the record. However, a right to
17 a return is not required if:

18 (A) the record proposes a modification of contract or provides
19 particulars of performance under Section 305; or

20 (B) the primary performance is other than delivery or acceptance of a
21 copy, the agreement is not a mass-market transaction, and the parties at the time of

1 contracting had reason to know that a record or term would be presented after
2 performance, use, or access to the information began.

3 (4) The right to a return under paragraph (3) may arise by law or by
4 agreement.

5 (f) The effect of provisions of this section may be modified by an agreement
6 setting out standards applicable to future transactions between the parties.

7 (g) Providers of online services, network access, and telecommunications
8 services, or the operators of facilities thereof, do not manifest assent to a contractual
9 relationship simply by their provision of these services to other parties, including but
10 not limited to transmission, routing, or providing connections, linking, caching,
11 hosting, information location tools, or storage of materials at the request or
12 initiation of a person other than the service provider.

13 **SECTION 201. FORMAL REQUIREMENTS.**

14 (a) Except as otherwise provided in this section, a contract requiring
15 payment of a contract fee of \$5,000 or more is not enforceable by way of action or
16 defense unless:

17 (1) the party against which enforcement is sought authenticated a record
18 sufficient to indicate that a contract has been formed and which reasonably identifies
19 the copy or subject matter to which the contract refers; or

1 (2) the agreement is a license for an agreed duration of one year or less
2 or which may be terminated at will by the party against which the contract is
3 asserted.

4 (b) A record is sufficient under subsection (a) even if it omits or incorrectly
5 states a term, but the contract is not enforceable under that subsection beyond the
6 number of copies or subject matter shown in the record.

7 (c) A contract that does not satisfy the requirements of subsection (a) is
8 nevertheless enforceable under that subsection if:

9 (1) a performance was tendered or the information was made available
10 by one party and the tender was accepted or the information accessed by the other;
11 or

12 (2) the party against which enforcement is sought admits in court, by
13 pleading or by testimony or otherwise under oath, facts sufficient to indicate a
14 contract has been made, but the agreement is not enforceable under this paragraph
15 beyond the number of copies or the subject matter admitted.

16 (d) Between merchants, if, within a reasonable time, a record in
17 confirmation of the contract and sufficient against the sender is received and the
18 party receiving it has reason to know its contents, the record satisfies subsection (a)
19 against the party receiving it unless notice of objection to its contents is given in a
20 record within ~~10 days~~ a reasonable time after the confirming record is received.

1 (e) An agreement that the requirements of this section need not be satisfied
2 as to future transactions is effective if evidenced in a record authenticated by the
3 person against which enforcement is sought.

4 (f) A transaction within the scope of this [Act] is not subject to a statute of
5 frauds contained in another law of this State.

6 **D. IDEA OR INFORMATION SUBMISSIONS**

7 **SECTION 216. IDEA OR INFORMATION SUBMISSION.**

8 (a) The following rules apply to a submission of an idea or information for
9 the creation, development, or enhancement of computer information which is not
10 made pursuant to an existing agreement requiring the submission:

11 (1) A contract is not formed and is not implied from the mere receipt of
12 an unsolicited submission.

13 (2) Engaging in a business, trade, or industry that by custom or practice
14 regularly acquires ideas is not in itself an express or implied solicitation of the
15 information.

16 (3) If the recipient seasonably notifies the person making the submission
17 that the recipient maintains a procedure to receive and review submissions, a
18 contract is formed only if:

19 (A) the submission is made and a contract accepted pursuant to that
20 procedure; or

1 (B) the recipient expressly agrees to terms concerning the
2 submission.

3 (b) An agreement to disclose an idea creates a contract enforceable against
4 the receiving party only if the idea as disclosed is confidential, concrete, and novel to
5 the business, trade, or industry or the party receiving the disclosure otherwise
6 expressly agreed.

7 **SECTION 816. LIMITATIONS ON ELECTRONIC SELF-HELP.**

8 (a) In this section, “electronic self-help” means the use of electronic means
9 to exercise a licensor’s rights under Section 815(b).

10 (b) On cancellation of a license, electronic self-help is not permitted, except
11 as provided in this section. Electronic self-help is prohibited in mass-market
12 transactions.

13 (c) ~~A~~ If the parties agree to permit electronic self-help, a licensee shall
14 separately manifest assent to a term authorizing use of electronic self-help. The
15 term must:

16 (1) provide for notice of exercise as provided in subsection (d);

17 (2) state the name of the person designated by the licensee to which
18 notice of exercise must be given and the manner in which notice must be given and
19 place to which notice must be sent to that person; and

20 (3) provide a simple procedure for the licensee to change the designated
21 person or place.

1 (d) Before resorting to electronic self-help authorized by a term of the
2 license, the licensor shall give notice in a record to the person designated by the
3 licensee stating:

4 (1) that the licensor intends to resort to electronic self-help as a remedy
5 on or after 15 days following receipt by the licensee of the notice;

6 (2) the nature of the claimed breach that entitles the licensor to resort to
7 self-help; and

8 (3) the name, title, and address, including direct telephone number,
9 facsimile number, or e-mail address, to which the licensee may communicate
10 concerning the claimed breach.

11 (e) A licensee may recover direct and incidental damages caused by
12 wrongful use of electronic self-help. The licensee may also recover consequential
13 damages for wrongful use of electronic self-help, whether or not those damages are
14 excluded by the terms of the license, if:

15 (1) within the period specified in subsection (d)(1), the licensee gives
16 notice to the licensor's designated person describing in good faith the general nature
17 and magnitude of damages;

18 (2) the licensor has reason to know the damages of the type described in
19 subsection (f) may result from the wrongful use of electronic self-help; or

20 (3) the licensor does not provide the notice required in subsection (d).

21 (f) Even if the licensor complies with subsections (c) and (d), electronic self-
22 help may not be used if the licensor has reason to know that its use will result in

1 substantial injury or harm to the public health or safety or grave harm to the public
2 interest substantially affecting third persons not involved in the dispute.

3 (g) A court of competent jurisdiction of this State shall give prompt
4 consideration to a petition for injunctive relief and may enjoin, temporarily or
5 permanently, the licensor from exercising electronic self-help even if authorized by a
6 license term or enjoin the licensee from misappropriation or misuse of computer
7 information, as may be appropriate, upon consideration of the following:

8 (1) grave harm of the kinds stated in subsection (f), or the threat thereof,
9 whether or not the licensor has reason to know of those circumstances;

10 (2) irreparable harm or threat of irreparable harm to the licensee or
11 licensor;

12 (3) that the party seeking the relief is more likely than not to succeed
13 under its claim when it is finally adjudicated;

14 (4) that all of the conditions to entitle a person to the relief under the
15 laws of this State have been fulfilled; and

16 (5) that the party that may be adversely affected is adequately protected
17 against loss, including a loss because of misappropriation or misuse of computer
18 information, that it may suffer because the relief is granted under this [Act].

19 (h) Before breach of contract, rights or obligations under this section may
20 not be waived or varied by an agreement, but the parties may prohibit use of
21 electronic self-help, and the parties, in the term referred to in subsection (c), may
22 specify additional provisions more favorable to the licensee.

1 (i) This section does not apply if the licensor obtains possession of a copy
2 without a breach of the peace and the electronic self-help is used solely with respect
3 to that copy.