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## Introductory Note

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## Introductory Note

### Symposium on Approaching E-Commerce Through Uniform Legislation: Understanding the Uniform Computer Information Transactions Act and the Uniform Electronic Transactions Act

The National Conference of Commissioners on Uniform State Laws ("NCCUSL") adopted in 1999 two uniform acts meant to bring legal certainty and clarity to the explosion of electronic commerce in today's information-based economy. These two newcomers to uniform acts, the Uniform Computer Information Transactions Act ("UCITA") and the Uniform Electronic Transactions Act ("UETA"), have been met with varying degrees of criticism and debate during the drafting and approval process. The purpose of this articles symposium is to provide some insight into the scope, rationale, and need for the many new rules contained in UCITA and UETA.

This symposium contains five articles. The first article is my own: *The New Laws That Will Enable Electronic Contracting: A Survey of the Electronic Contracting Rules in the Uniform Electronic Transactions Act and the Uniform Electronic Computer Information Transactions Act*. In my article, I outline the approach of the electronic contracting rules contained in both UETA and UCITA, and focus on the different scope and policy choices of the two acts. I provide some background into the drafting process for

both acts' procedural and substantive rules, and discuss the basis for the controversies surrounding certain of the acts' provisions.

The second article, written by Raymond T. Nimmer, the Reporter for UCITA, is titled *Through the Looking Glass: What Courts and UCITA Say About the Scope of Contract Law in the Information Age*. In his article, Professor Nimmer describes the transition from a goods-based economy to an information-based economy, and traces the sources of law that are currently applied to computer information transactions. After revealing the dangers of applying rules created for the sale of goods to computer information transactions, Professor Nimmer demonstrates the guidance that UCITA provides for today's electronic commerce.

The third article, written by Carlyle C. Ring, Jr., the Chair of the UCITA Drafting Committee, is titled *Uniform Rules for Internet Information Transactions: An Overview of Proposed UCITA*. Mr. Ring makes a compelling case for the need for uniformity due to the nation's surge in economic growth related to information technology. After discussing the general principles that informed the UCITA Drafting Committee, namely the importance of the freedom of contract, the need to maintain fundamental public policies, and the concern for consumer protection, Mr. Nimmer provides a section-by-section overview of the key provisions of UCITA.

The fourth article, written by Holly K. Towle, a partner with Preston Gates & Ellis LLP, is titled *Mass Market Transactions in the Uniform Computer Information Transactions Act*. In her article, Ms. Towle discusses one of the central innovations of UCITA, the mass market transaction, and illuminates its relationship to traditional consumer protection laws. Ms. Towle provides a section-by-section overview of UCITA's mass-market transaction rules and consumer contract rules, and answers criticisms that were raised about UCITA during the drafting and approval process.

The fifth article, written by Lorin Brennan, a principal in the software development firm Gray Matter, LLC, is titled *Why Article 2 Cannot Apply to Software Transactions*. Mr. Brennan provides an extensive, scholarly, and witty analysis of the incompatibility of Article 2 of the Uniform Commercial Code with the Copyright Act, when applied to software transactions. After reviewing section-by-section the provisions of Article 2 that are inconsistent with the requirements of the Copyright Act with respect to software transactions, and demonstrating the fallacy of placing

software transactions within Article 2, Mr. Brennan reaches the inevitable conclusion that a new commercial law is necessary to reconcile contract rules with copyright requirements.

I believe it is fair to say that to the interested reader, the articles in this symposium are both informative and thought-provoking. Our hope is that this symposium will contribute to the on-going discussion of UCITA and UETA as state legislatures debate their usefulness today and tomorrow.

*Mary Jo Howard Dively*

Symposium Organizer

ABA Advisor to the UCITA Drafting Committee

