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

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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.

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