

## **Report of Subcommittee on Clarity**

**May 11, 2002**

The Chair of the Standby Committee on the Uniform Computer Information Transactions Act, in consultation with the leadership of the National Conference of Commissioners on Uniform State Laws, appointed a Subcommittee on Clarity. The Subcommittee was requested to review the Uniform Computer Information Transactions Act to determine if further revisions could be made that would enhance the clarity and usability of the statute. The Subcommittee consisted of Bruce Munson, Commissioner from Wisconsin, chair, Leon M. McCorkle, Jr., Commissioner from Ohio, and Patricia Brumfield Fry, Commissioner from Missouri. Each member of the Subcommittee is a member of the Standby Committee on the Uniform Computer Information Transactions Act. In addition, the reporter for UCITA, Raymond T. Nimmer, Jr., acted as an ex officio member of the Subcommittee and attended and participated in its deliberations.

The Subcommittee was appointed in response to the Report dated January 31, 2002 prepared by the American Bar Association Working Group chaired by the Honorable John Vittone. Among other things, the Working Group's report criticized UCITA on the ground that the Act is difficult to understand. The report conceded the necessary complexity of a statute governing transactions in the dynamic field of information licensing and access. While the report did not recommend specific clarifying amendments, it further pointed to some areas of word usage. It further pointed to some instances of word usage and to the interaction of multiple provisions of UCITA in specific cases as matters which might exacerbate the difficulty some attorneys might find in using the statute.

The members of the Subcommittee on clarity, along with the President, K. King Burnett, the Chair of the NCCUSL Executive Committee, Fred H. Miller, the Chair of the Standby Committee, Carlyle C. Ring, Jr., and the Reporter for UCITA, Raymond T. Nimmer, Jr., entered into lengthy discussions of the parameters of the task to be undertaken by the Subcommittee. After several conference calls, consensus was reached on the charge of the Subcommittee. The Subcommittee was instructed to review and examine the provisions of UCITA, their expression and organization, in order to determine if changes could be recommended which would enhance the clarity and comprehensibility of UCITA. The Subcommittee also was requested to propose changes in the Official Comments if clarity and understanding might be advanced thereby.

It was understood by the Subcommittee that the text it was to study had been reviewed by the NCCUSL Committee on Style throughout the ten year drafting process and conformed to the NCCUSL style protocols. It was understood that at least two states had enacted UCITA after a thorough and painstaking review of its provisions. It was

understood that a substantial portion of the provisions of UCITA, perhaps as much as 75 percent of its text, was based upon existing provisions of the Uniform Commercial Code, Uniform Electronic Transactions Act, other uniform acts, and NCCUSL standard provisions. In addition, it was understood that the Standby Committee has recommended certain revisions to UCITA which may be considered by NCCUSL at its Annual Meeting in August 2002. The Subcommittee was directed to focus on provisions unique to UCITA, but was authorized to review those provisions derived from other uniform laws or recently amended if it determined additional clarification was possible. The central charge to the Subcommittee, however, was to make recommendations for the purpose of enhancing the clarity of UCITA. It was not charged with and did not undertake to recommend any changes to the text of UCITA which affected the substantive and policy decisions made by the UCITA Drafting Committee or NCCUSL during the drafting of the Act or during its debate at annual meetings of NCCUSL.

The individual members of the Subcommittee reviewed the text in an effort to identify areas wherein the text or comments could be improved or questions clarified. In addition, they reviewed and had before them during conference calls the Report of the ABA Working Group, the substantive textual changes recommended by the Standby Committee at its December 2001 meeting and the recommendations of the Committee on Style. During five conference calls, each lasting not less than two hours, the members of the Subcommittee reviewed and discussed their individual analyses of each section of UCITA and each of the foundation documents. Each conference call included all of the members of the Subcommittee and the reporter. In the course of these discussions, they raised questions, suggested solutions, and debated each. At times, they encouraged the reporter to add examples or illustrations to the comments. At times, they recommended the movement of specific subsections, modification of wording, or rephrasing of specific provisions.

The unanimous recommendations of the Subcommittee on clarity are listed below. These recommendations include the addition of titles for statutory subsections, which the Subcommittee members believes will provide useful signposts for those seeking to understand UCITA, particularly because it applies to transactions governing new contexts and types of transactions in new forms of commerce. For the same reason, the Subcommittee has asked the reporter to include in appropriate places in the comments some hypotheticals describing different types of covered transactions, in order to assist users of UCITA in understanding how provisions apply to various transaction types. The Subcommittee has recommended that some provisions, either sections or parts thereof, be moved in order to assist readers seeking to identify similar or related provisions, and has made several recommendations in order to clarify and assist in the use of inter-related provisions. Finally, in some places the Subcommittee recommended clarification of text. All members of the Subcommittee agreed to each of these recommendations and the reporter has incorporated their recommendations into statutory or commentary language.

The recommendations of the Subcommittee appear below. In addition, they have been incorporated into the text of UCITA which follows this Report as an addendum.

## AMENDMENTS/ ACTIONS PROPOSED BY CLARITY SUBCOMMITTEE

### I. Amendment #C1: Subheadings

After extensive review of the Official Draft of UCITA and consideration of other uniform laws promulgated by NCCUSL, the Subcommittee concluded that one step that would improve the readability of UCITA would be the adoption of non-substantive sub-headings. This is an approach used in current Article 9. It is especially useful in complex statute and in a statute that deals with material not previously codified.

The proposed subheadings are included in the attached draft of UCITA. They follow the model used in Article with one exception. The subheadings are used for subsections and for paragraphs if, in the latter case, the paragraph starts a new sentence. Having reviewed the draft with the subheadings provided, the Subcommittee strongly believes that this step will greatly improve the ability of the user of the statute to work with the material presented.

Although the Subcommittee views the subheadings as more important than ordinary style issues, it does not intend the subheadings to have substantive effect. The non-substantive section headings and subheading are reflected in the specific amendments below and the full set of subheadings are available in the attachment.

The Subcommittee proposes the following amendment to Section 106:

#### Add subsection 106 (e)

(e) ~~[Headings as Part of Act]~~ Section headings are part of the [Act], but subsection headings are not.

### II. Amendment # C2: Section 102 (definitions)

(a). There is a pending recommended amendment of Section 102(a)(11) which the Subcommittee reviewed but did not recommend further changes for clarity purposes.

#### RECOMMENDED RESPONSE TO ABA REPORT (UNDER CONSIDERATION):

(11) "Computer information transaction" means an agreement or the performance of it to create, modify, transfer, or license computer information or informational rights in computer information. The term includes a support contract under Section 612. The term does not include an agreement for performance of professional services by a member of a regulated profession, such as a doctor or lawyer, or an agreement providing that transaction merely because the parties' agreement provides that their communications about the transaction will be in the form of computer information.

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**(b) The Sub-Committee recommends amendment of Section 102(a)(58) as follows:**

- (58) “Scope”, with respect to a license, means:
  - (A) the licensed copies, information, or informational rights involved;
  - (B) the use or access authorized, prohibited, or controlled; ...

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**III. Amendment C3: Section 104 (Opt In)**

There is a pending Recommendation to delete Section 104 in response to the comments of the ABA Committee. The Subcommittee, accordingly, did not review Section 104.

**IV. Amendment C4: Section 105:**

**(a) Section 105(c) and (d)**

These subsections were the subject of an approved amendment in December and of a further, recommendation responding to the ABA report. The clarity Sub-Committee reviewed both. The Style Committee has also reviewed the December amendment. The further changes are as indicated.

**1. RECOMMENDED RESPONSE TO ABA (EDITED BY CLARITY SUBCOMMITTEE)**

**Delete Current Section 105(c) and (d) and replace with the indicated text:**

~~(c) [Consumer Statutes Govern] Except as otherwise provided in subsection (d), if this [Act] or a term of a contract under this [Act] conflicts with a consumer protection statute [or administrative rule], the consumer protection statute [or rule] governs.~~

~~(d) [Electronic Commerce] If a law of this State in effect on the effective date of this [Act] applies to a transaction governed by this [Act], the following rules apply:~~

~~(1) [Waiver, Notice, Disclaimer] A requirement that a term, waiver, notice, or disclaimer be in a writing is satisfied by a record.~~

~~(2) [Signature] A requirement that a record, writing, or term be signed is satisfied by an authentication.~~

~~(3) [Conspicuousness or the Like] A requirement that a term be conspicuous, or the like, is satisfied by a term that is conspicuous under this [Act].~~

~~(4) [Consent or Agreement] A requirement of consent or agreement to a term is satisfied by a manifestation of assent to the term in accordance with this [Act].~~

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~~(c) [Consumer Protection Law Governs] Subject to paragraphs (1) through (5), this [Act] does not limit, modify or supersede a consumer protection law applicable to the subject matter of this [Act] that is consistent with [Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et. seq.], and, to the extent the consumer protection law provides greater protection to consumers than is provided in this [Act], the more protective consumer protection law applies.~~

Deleted: and except to the extent that the consumer protection law would conflict with [Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et. seq.]

~~(3) [Required Writing or Signature Assent] Subject to the consumer laws identified under Section 905, if a consumer protection law requires a writing or a signature, a record or an authentication suffices.~~

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~~(4) [Required Assent] If a consumer protection law addresses assent, consent or manifestation of assent, the standard of assent, consent or manifestation of assent under the consumer protection law applies and subject to the consumer laws identified under Section 905~~

an electronic record may be used. However, nothing in the consumer protection law requiring assent, consent or manifestation of assent precludes the assent or consent or manifestation of assent from being accomplished electronically.

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(54) **[Applicability of Consumer Law]** Except as otherwise provided in this paragraph, the applicability of a consumer protection law is determined by that law and not by this [Act]. [However, the consumer protection laws of this State which apply to the subject matter of this [Act] include:]

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*[Insert statutes that, on review by the legislature and amendment as appropriate, are determined to be applicable to the subject matter of this [Act] such as a state's unfair and deceptive practices act with amendments as appropriate.]*

(d) **[Lawful Public Comment Not Prohibited]** In a transaction in which a copy of computer information is offered in its final form is made generally available in commerce to the general public including consumers, a term of a contract is unenforceable to the extent that the term prohibits an end-user licensee from engaging in otherwise lawful public discussion of the quality of performance of the computer information. However, this subsection does not preclude enforcement of a term that establishes or enforces rights under trade secret, trademark, defamation, commercial disparagement, or other laws.

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**Note: Comments to reference that, under Section 905, UCITA defers E-Sign in matters relevant to consumer consents and notices.**

#### (b) Legislative Comment

The Legislative note to Section 105(C) was amended in December to read as follows. The Sub-Committee proposes no changes in that legislative note as amended.

#### DELETE LEGISLATIVE NOTE TO SUBSECTION C AND REPLACE WITH:

*Legislative Note: Subsection (c) makes clear that a "consumer protection law" controls in the case of a conflict between that law and this [Act]. Irrespective of this [Act], however, not all consumer protection statutes apply to computer information because many apply to goods or services but not to intangibles. Accordingly, states must review their consumer protection statutes to determine if they should be applied to computer information and, if so, what amendments are required to adapt them to that subject matter. In most cases, the state's unfair and deceptive practices act should apply, but some modification may be required. For example, if a state's "unfair acts and practices" statute requires the origin of the product to be specified on the "label or package", such a provision needs consideration before being applied to electronic information that has no "label" or "package." It may also be appropriate to consider such issues as whether the provision should apply to computer information for which no charge is made, or how the provision can be applied to products having multiple "origins" such as software written by an unaffiliated community of programmers. A consumer protection statute applicable to health club contracts may not apply but a consumer protection statute requiring that a vendor's refund policy be posted on the "premises" might apply if amended to allow compliance in an Internet or other electronic environment. Amendments of consumer protection laws must be consistent with the federal Electronic Signatures in Global and Electronic Commerce Act which requires technological neutrality and that the amended statute reference the federal act.*

#### (c) A New subsection (g) was added.

The Sub-Committee suggests the edits of new subsection (g) as follows:

~~(d) [Non-Contractual Notices] This [Act] does not apply to a noncontractual copyright permission notice. The effect of any such notice is determined by other law.~~

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### V. Amendment #C5: Section 110 (forum)

An Amendment in December was approved adding a new subsection (c). The Subcommittee proposes editing that amendment by substituting “competent” for “appropriate” as follows:

#### Amend Section 110 as follows:

(a) The parties in their agreement may choose an exclusive judicial forum unless the choice is unreasonable ~~and~~ or unjust.

~~(c) The enforceability of an agreed choice of exclusive forum is a question for determination by a court of competent jurisdiction of the state in which the action is brought.~~

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### VI. Amendment #C6: Section 112 (Manifesting Assent)

Section 112 contains two important concepts in UCITA, the ideas of manifesting assent and of an opportunity to review. These were originally stated in two separate sections, but during the drafting process, were compressed into one section. The Subcommittee recommends separating the two for purposes of clarity in the following manner:

#### Amend Section 112 as follows:

##### SECTION 112. MANIFESTING ASSENT; OPPORTUNITY TO REVIEW.

(a) [How Person Manifests Assent] A person manifests assent to a record or term if the person, acting with knowledge of, or after having an opportunity to review the record or term or a copy of it: .....

~~(e) [Agreement For Future Transactions] The effect of provisions of this section may be modified by an agreement setting out standards applicable to future transactions between the parties.~~

~~(f) [Online Services, Network Access and Telecommunications Services] Providers of online services, network access, and telecommunications services, or the operators of facilities thereof, do not manifest assent to a contractual relationship simply by their provision of those services to other parties, including, without limitation, transmission, routing, or providing connections, linking, caching, hosting, information location tools, or storage of materials, at the request or initiation of a person other than the service provider.~~

Deleted: (e) With respect to an opportunity to review, the following rules apply:¶  
(1) A person has an opportunity to review a record or term only if it is made available in a manner that ought to call it to the attention of a reasonable person and permit review.¶  
(2) An electronic agent has an opportunity to review a record or term only if it is made available in manner that would enable a reasonably configured electronic agent to react to the record or term.¶  
(3) If a record or term is available for review only after a person becomes obligated to pay or begins its performance, the person has an opportunity to review only if it has a right to a return if it rejects the record. However, a right to a return is not required if:¶  
(A) the record proposes a modification of contract or provides particulars of performance under Section 305; or¶  
(B) the primary performance is other than delivery or acceptance of a copy, the agreement is not a mass-market transaction, and the parties at the time of contracting had reason to know that a record or term would be presented after performance, use, or access to the information began.¶  
(4) The right to a return under paragraph (3) may arise by law or by agreement.¶  
(f) The effect of provisions of this section may be modified by an agreement setting out standards applicable to future transactions between the parties.

##### SECTION 113. OPPORTUNITY TO REVIEW [new]

(a) [Manner of Availability, Generally] A person has an opportunity to review a record or term only if it is made available in a manner that ought to call it to the attention of a reasonable person and permit review.

(b) [Manner of Availability, Electronic Agent] An electronic agent has an opportunity to review a record or term only if it is made available in manner that would enable a reasonably configured electronic agent to react to the record or term.

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(c) [When Right of Return Required] If a record or term is available for review only after a person becomes obligated to pay or begins its performance, the person has an opportunity to review only if it has a right to a return if it rejects the record. However, a right to a return is not required if:

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

(2) the primary performance is other than delivery or acceptance of a copy, the agreement is not a mass-market transaction, and the parties at the time of contracting had reason to know that a record or term would be presented after performance, use, or access to the information began.

(d) [How Right of Return Created] The right to a return under this section may arise by law or by agreement.

(e) [Agreement For Future Transactions] The effect of provisions of this section may be modified by an agreement setting out standards applicable to future transactions between the parties.

## **VII. Amendment # C7 Section 211 (Internet Review)**

Section 211 provides incentives for online transactions to use pre-transaction disclosures of a particular type. The Sub-Committee believes that the relationship between this section and the sections on assent and opportunity to review are clarified if the section is moved to a location in the draft closer to the other section.

### **Move Section 211 and renumber it as Section 114.**

#### **SECTION 114 [former 211]. PRETRANSACTION DISCLOSURES IN INTERNET-TYPE TRANSACTIONS.**

(a) [Scope of Section] This section applies to a licensor that makes its computer information available to a licensee by electronic means from its Internet or similar electronic site.

(b) [Sufficient Opportunity to Review] In such a case, the licensor affords an opportunity to review the terms of a standard form license which opportunity satisfies [Section 113] Section 112(e) with respect to a licensee that acquires the information from that site, if the licensor:

(1) makes the standard terms of the license readily available for review by the licensee before the information is delivered or the licensee becomes obligated to pay, whichever occurs first, by:

(A) displaying prominently and in close proximity to a description of the computer information, or to instructions or steps for acquiring it, the standard terms or a reference to an electronic location from which they can be readily obtained; or

(B) disclosing the availability of the standard terms in a prominent place on the site from which the computer information is offered and promptly furnishing a copy of the standard terms on request before the transfer of the computer information; and

(2) does not take affirmative acts to prevent printing or storage of the standard terms for archival or review purposes by the licensee.

(c) [Other Methods of Giving Opportunity to Review] Failure to provide an opportunity to review under this section does not preclude providing an opportunity to review by other means pursuant to Section 113 or other law.

## VIII. Amendment # C8: Section 113 – 114 and New 115

### (a) Restructure Former Sections 113 and 114.

The Sub-Committee recommends that the format and content of Sections 113 – 114 into three sections as follows in order to bring provisions into closer juxtaposition with similar other provisions. Also, the comments to subsection (b) will refer to the rules on disclaimer or modification of the warranty regarding informational content.

### Amend Section 113 and 114 as follows:

#### **SECTION 115. VARIATION BY AGREEMENT.**

(a) ~~[Variation By Agreement] Except as provided in subsection (b), the effect of any provision of this [Act], including an allocation of risk or imposition of a burden, may be varied by agreement of the parties.~~

~~(b) [Rules Not Variable By Agreement] The following rules are not variable by agreement:~~

~~(1) [Obligations of Good Faith, Diligence, Reasonableness, and Care Imposed by this Act] Obligations of good faith, diligence, reasonableness, and care imposed by this [Act] may not be disclaimed by agreement, but the parties by agreement may determine the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable.~~

~~(2) [Unconscionability and Fundamental Public Policy] The limitations on enforceability imposed by unconscionability under Section 111 and fundamental public policy under Section 105(b) may not be varied by agreement.~~

~~(3) [Other Non-Variable Rules] Limitations on enforceability of, or agreement to, a contract, term, or right expressly stated in the sections listed in the following subparagraphs may not be varied by agreement except to the extent provided in each section:~~

- ~~(A) the limitations on agreed choice of law in Section 109(a);~~
- ~~(B) the limitations on agreed choice of forum in Section 110;~~
- ~~(C) the requirements for manifesting assent and opportunity for review in Section~~

~~112;~~

- ~~(D) the limitations on enforceability in Section 201;~~
- ~~(E) the limitations on a mass-market license in Section 209;~~
- ~~(F) the consumer defense arising from an electronic error in Section 214;~~
- ~~(G) the requirements for an enforceable term in Sections 303(b), 307(g), 406(b)~~

~~and (c), and 804(a);~~

- ~~(H) the limitations on a financier in Sections 507 through 511;~~
- ~~(I) the restrictions on altering the period of limitations in Section 805(a) and (b);~~

~~and~~

- ~~(J) the limitations on self-help repossession in Sections 815(b) and 816.~~

#### **SECTION 116. SUPPLEMENTAL PRINCIPLES; GOOD FAITH; COMMERCIAL PRACTICE.**

(a) ~~[Supplemental Principles] Unless displaced by this [Act], principles of law and equity, including the law merchant and the common law of this State relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, and other validating or invalidating cause, supplement this [Act]. Among the laws supplementing and not displaced by this [Act] are trade secret laws and unfair competition laws.~~

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Deleted: (b) Any usage of trade of which the parties are or should be aware and any course of dealing or course of performance between the parties are relevant to determining the existence or meaning of an agreement.¶

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(b) [Good Faith] Every contract or duty within the scope of this [Act] imposes an obligation of good faith in its performance or enforcement.

(c) [Usage of Trade, etc.] Any usage of trade of which the parties are or should be aware and any course of dealing or course of performance between the parties are relevant to determining the existence or meaning of an agreement.

**SECTION 117. DECISION FOR COURT; LEGAL CONSEQUENCES;  
REASONABLE TIME; REASON TO KNOW**

(a) [Decision for Court] Whether a term is conspicuous or is unenforceable under Section 105(a) or (b), 111, or 209(a) and whether an attribution procedure is commercially reasonable or effective under Section 108, 212, or 213 are questions to be determined by the court.

(b) [Legal Consequences] Whether an agreement has legal consequences is determined by this [Act].

(c) [Reasonable Time] Whenever this [Act] requires any action to be taken within a reasonable time, the following rules apply:

(1) [Nature of Circumstances Controls] What is a reasonable time for taking the action depends on the nature, purpose, and circumstances of the action.

(2) [Manifestly Unreasonable Term Precluded] Any time that is not manifestly unreasonable may be fixed by agreement.

(d) [Reason to Know Defined] A person has reason to know a fact if the person has knowledge of the fact or, from all the facts and circumstances known to the person without investigation, the person should be aware that the fact exists.

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**(b) No Further Change to Amendments of Sections 113 and 114 and new 115.**

The Standby Committee in March reviewed a recommended change to Section 113 in response to ABA Committee Report and in December approved a change to Section 114. The clarity Sub-Committee reviewed these proposals and recommends no further changes to them. The Committee also adopted a new Section 115 in December, which the Sub-Committee reviewed and recommends no further changes. The December Amendments were also reviewed by the Style Committee with changes as indicated.

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**Section 113: RECOMMENDED ACTION (UNDER CONSIDERATION)**

**Add the following to the list in (a)**

“the provisions of Section 304(b)(2), in cases where the party seeks to come within that subsection.”

**AMENDMENT (DECEMBER APPROVED)**

**Amend Section 114 [116] as follows:**

(a) Unless displaced by this [Act], principles of law and equity, including the law merchant and the common law of this State relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, and other validating or invalidating cause, supplement this [Act]. Among the laws supplementing and not displaced by this [Act] are trade secret laws and unfair competition laws. This Act does not displace the law of fraud, misrepresentation and unfair and deceptive practices as they may relate to intentional failure to disclose defects that are known to be material.

**MODIFICATION OF DECEMBER AMENDMENT (UNDER CONSIDERATION)**

**Modify the recommended amendment of Section 114 [116] as follows:**

(a) Unless displaced by this [Act], principles of law and equity, including the law merchant and the common law of this State relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, and other validating or invalidating cause, supplement this [Act]. Among the laws supplementing and not displaced by this [Act] are trade secret laws, and unfair competition laws and ~~and. This Act does not displace the law of fraud, misrepresentation and unfair and deceptive practices, including as they may deal with failure to disclose defects, may relate to intentional failure to disclose defects that are known to be material.~~

**Section 115: Adopt New Section (December, Approved)**

**Add the following subpart and section:**

**Section 118. Terms on Reverse Engineering.**

~~(a) [Interoperability Defined] In this section, "interoperability" means the ability of computer programs to exchange information, and of such programs mutually to use the information that has been exchanged.~~

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~~(b) [Contract Term Unenforceable] Notwithstanding the terms of a contract subject to this [Act], a licensee that lawfully obtained the right to use a copy of a computer program may identify, analyze and use those elements of the program necessary to achieve interoperability of an independently created computer program with other programs, including adapting or modifying the licensee's computer program, if:~~

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- (1) the elements have not previously been readily available to the licensee;
- (2) the identification, analysis, or use is performed solely for the purpose of enabling such interoperability; and
- (3) the identification, analysis or use is not prohibited by law other than this

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[Act].

~~(c) [Section 105 Applies] As applicable, identification, analysis or use of elements of a computer program for a purpose other than described in this section is governed by Section 105(b).~~

Deleted: (b) In this section, "interoperability" means the ability of computer programs to exchange information, and of such programs mutually to use the information that has been exchanged.

**IX. Amendment # C9: Formation**

To clarify the committee's intent, the Subcommittee recommends amendment of Section 202(d) as follows:

(d) [Material Disagreement Bars Formation] In the absence of conduct or performance by both parties to the contrary, a contract is not formed if there is a material disagreement about a material term, including a term concerning scope. For purposes of this rule, the material disagreement must exist at the time of attempted contracting and does not refer to a later dispute about the meaning of agreed terms.

**X. Amendment # C10: Varying terms**

For consistency with other sections, the sub-committee recommends amending Section 204(a) as follows:

**SECTION 204. ACCEPTANCE WITH VARYING TERMS.**

(a) [When Acceptance Materially Alters Offer] An acceptance materially alters an offer if it contains a term that materially conflicts with or varies a term of the offer or that adds a material term not contained in the offer.  
[[The Comments will be revised to show the relationship between this section and Section 202(d).]]

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**XI. Amendment # C11: Conditional Offer**

The sub-committee recommends amending Section 204(a) as follows:

**SECTION 205. CONDITIONAL OFFER OR ACCEPTANCE.**

(a) [When Offer or Acceptance is Conditional] An offer or acceptance is conditional if it is conditioned on agreement by the other party to all the terms of the offer or acceptance.

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(b) [Effect of Conditional Offer or Acceptance] Except as otherwise provided in subsection (c), a conditional offer or acceptance precludes formation of a contract unless the other party agrees to its terms, such as by manifesting assent.

(c) [Conditional Offer or Acceptance in Standard Form] If the offer and acceptance are in standard forms and at least one form is conditional, the following rules apply:

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(1) [Acts Consistent with Conditions] Conditional language in a standard term precludes formation of a contract based on the offer or acceptance if the actions of the party proposing the form are consistent with the conditional language, such as by refusing to perform, refusing to permit performance, or refusing to accept the benefits of the agreement, until its proposed terms are accepted.

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(2) [Agreement to Conditions] A party that agrees, such as by manifesting assent, to a conditional offer that is effective under paragraph (1) adopts the terms of the offer under Section 208 or 209, except for a term that conflicts with an expressly agreed term regarding price or quantity.

**XII. Amendment # C12: Releases**

Based on the approved deletion of Section 308, the sub-committee recommends amendment of Section 207 as follows:

**SECTION 207. FORMATION: RELEASES OF INFORMATIONAL RIGHTS.**

(a) [Consideration Not Required] .....

Deleted: (c) In cases not governed by subsection (b), the duration of a release is governed by Section 308.

**XIII. Amendment # C13: Section 208**

To clarify the relationship between this section and Section 209, the sub-committee recommends amending this section as follows:

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**SECTION 208. ADOPTING TERMS OF RECORDS.**

(a) [Adoption of Terms] A party adopts the terms of a record, including a standard form, as the terms of the contract if the party agrees to the record, such as by manifesting assent.

Deleted: Except as otherwise provided in Section 209, the following rules apply:

(b) [Later Terms] The terms of a record may be adopted after beginning performance or use if the parties had reason to know that their agreement would be represented in whole or

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part by a later record to be agreed on and there would not be an opportunity to review the record or a copy of it before performance or use begins. If the parties fail to agree to the later terms and did not intend to form a contract unless they so agreed, Section 202(e) applies.

(c) [Effect of Terms] If a party adopts the terms of a record, the terms become part of the contract without regard to the party's knowledge or understanding of individual terms in the record, except for a term that is unenforceable because it fails to satisfy another requirement of this [Act].

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(d) [Limits on Mass-Market Terms] The rules of Section 209 also apply in the case of a mass-market license.

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#### XIV. Amendment # C14: Section 209

Section 207 was the subject of an approved amendment in December and a further change in the amendment recommended in response to the ABA report. The sub-committee reviewed both. The December amendment was also reviewed by the style committee. The following indicates changes recommended:

##### SECTION 209. MASS-MARKET LICENSE.

(a) [Limitation on Terms] Adoption of the terms of a mass-market license under Section 208 is effective only if the party agrees to the license, such as by manifesting assent, before or during the party's initial performance or use of or access to the information. A term is not part of the license if: ..

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- (1) the term is unconscionable or is unenforceable under Section 105(a) or (b); or
- (2) subject to Section 301, the term conflicts with a term to which the parties to the

license have expressly agreed.

(b) [Right of Return and Reimbursement] If a mass-market license or a copy of the license is not available in a manner permitting an opportunity to review by the licensee before the licensee becomes obligated to pay and the licensee does not agree, such as by manifesting assent, to the license after having an opportunity to review, the licensee is entitled to a return under Section 112 and, in addition, to:

(1) reimbursement of any reasonable expenses incurred in complying with the licensor's instructions for returning or destroying the computer information or, in the absence of instructions, expenses incurred for return postage or similar reasonable expense in returning the computer information; and

(2) compensation for any reasonable and foreseeable costs of restoring the licensee's information processing system to reverse changes in the system caused by the installation, if:

(A) the installation occurs because information must be installed to enable review of the license; and

(B) the installation alters the system or information in it but does not restore the system or information after removal of the installed information because the licensee rejected the license.

(c) [Licensor Opportunity to Review] In a mass-market transaction, if the licensor does not have an opportunity to review a record containing proposed terms from the licensee before the licensor delivers or becomes obligated to deliver the information, and if the licensor does not agree, such as by manifesting assent, to those terms after having that opportunity, the licensor is entitled to a return.

##### Amendment (December Approved)

##### Amend Section 209(a) as follows:

- (a) ..... A term is not part of the license if:

(1) the term is unconscionable or is unenforceable under Section 105(a) or (b); or  
(2) subject to Section 301, the term conflicts with a term to which the parties to the license have expressly agreed;

(3) ~~there is no opportunity to review the term under Section [112]; or~~  
(4) ~~the term is not available to the licensee after assent to the license in one or more~~

~~of the following forms:~~

~~(A) an immediately available nonelectronic record that the licensee may keep;~~

~~(B) an immediately available electronic record that can be printed or stored by the licensee for archival and review purposes; or~~

~~(C) a copy available at no additional cost on a reasonable request in a record by a licensee, that was unable to print or store the license for archival and review purposes.~~

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#### Recommendation in Response to ABA Report (under consideration)

Consider further amendment of the above as follows:

(a) ... A term is not part of the license if:

~~(3) under Section [112], the licensee does not have an opportunity to review the terms before agreeing to them; or~~

~~(d) [Notice of Refund] In a case governed by subsection (b), notice must be given in the license or otherwise that a refund may be obtained if the terms are refused.~~

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### XV. Amendment # C15: Section 212

The sub-committee recommends amendment of Section 212 as follows:

#### SECTION 212. EFFICACY AND COMMERCIAL REASONABLENESS OF ATTRIBUTION PROCEDURE.

~~(a) [Decision for Court]. The efficacy, including the commercial reasonableness, of an attribution procedure is determined by the court.~~

~~(b) [Applicable Standards]. In making the determination under subsection (a), the following rules apply: ....~~

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### XVI. Amendment # C16: Section 216

The Standby Committee in December adopted a new section 216. It has under consideration a recommendation to withdraw that recommendation based on the ABA Report and to place the material into the comments. The following is based on the Style Committee and the Subcommittee's review of the proposed section.

#### Amendment (December Approved)

##### Add the following new Section:

Section 216 Summary of Rules Governing Later Terms

If terms of a standard form contract are not available in a manner permitting review before a party becomes obligated to pay, and the terms are supplied later, the following rules of this [Act] apply:

(1) If the party receiving the terms did not have reason to know that terms would be presented later, the terms are proposed modifications that may be accepted or rejected under rules applicable to contractual modification including Section 303.

(2) If the party receiving the terms had reason to know that terms would be presented

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later, the following rules apply:

(A) The later terms do not become part of the contract unless the party agrees to them, such as by manifesting assent after an opportunity to review in accordance with Section 112, including the right of return as applicable in Section 112(e), and adopts them pursuant to applicable sections of this [Act], including Sections ~~102(a)(57)~~, 208, 209, ~~and~~ 211, and ~~v~~

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(B) If the parties did not intend to have a contract unless the later terms are agreed ~~to~~, agreement ~~to the terms~~ creates a contract, but if the later terms are rejected, there is no contract and the parties' obligations are determined by this [Act], including Sections ~~202(e)~~, 208, ~~and~~ 209, as applicable.

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(C) If the parties intended to have a contract even if the later terms are rejected and they are rejected, the rejected terms are left open pursuant to this [Act], including Section 306, unless subject to other agreement of the parties.

#### Renumber Section 216, Idea submissions as Section 217

### XVII. Amendment # C17: Section 302

The Subcommittee recommends amendment of Section 302 as follows:

(d) ~~[Question of Fact]~~ The existence and scope of a usage of trade must be proved as a ~~matter of~~ fact.

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### XVIII. Amendment # C18: Section 303

The Sub-Committee recommends amendment of Section 303 as follows:

(d) ~~[Waiver]~~ ~~Subject to Section 702~~, an attempt at modification or rescission which does not satisfy subsection (b) or (c) may operate as a waiver.

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### XIX. Amendment # C19: Section 307

The Standby Committee approved an amendment in December to delete subsection (c). The Sub-Committee reviewed the section and proposes no further changes but concluded that the comments should be adjusted to make clear that the requirement of a record to alter the scope rules differs from the statute of frauds requirement in Section 201.

#### Amendment (December Approved)

Delete Section 307(c) Renumber if adopted

~~(e) [Users or Uses Permitted] An agreement that does not specify the number of permitted users permits a number of users which is reasonable in light of the informational rights involved and the commercial circumstances existing at the time of the agreement.~~

### XX. Amendment # C20: Section 308

The Standby Committee approved an amendment in December to delete Section 308 (duration of contract).

### XXI. Amendment # C21: Section 309

The Sub-Committee proposes the following amendment of Section 309:

(b) [When Subjective Satisfaction Standard Applies] Performance must be to the subjective satisfaction of the other party if:

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(1) the agreement expressly so provides, such as by stating that approval is in the “sole discretion” of the party, or words of similar import; or

(2) the agreement is for informational content to be evaluated in reference to subjective characteristics such as aesthetics, appeal, or suitability to taste.

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## XXII. Amendment # C22: Section 401

The Standby Committee in December approved an amendment to Section 401. The Sub-committee proposes the following further revision of that section.

### Amendment (December Approved) With Style Amendments

#### Amend Section 401(d) as follows:

(d) [Disclaimer or Modification] Except as otherwise provided in subsection (e), a warranty under this section may be disclaimed or modified only by specific language or by circumstances that give the licensee reason to know that the licensor does not warrant that competing claims do not exist or that the licensor purports to grant only the rights it may have.

An obligation to hold harmless under this section may be disclaimed or modified only by specific language or by circumstances giving the other party reason to know that the licensee does not provide a hold-harmless obligation to the licensor. In an automated transaction, language is sufficient if it is conspicuous. Otherwise, language in a record is sufficient if it states

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(1) as to a licensor’s obligation. “There is no warranty against interference with your enjoyment of the information or against infringement”, or words of similar import; or

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(2) as to a licensee’s obligation. “There is no obligation to hold you harmless from any actions taken in compliance with the specifications or methods provided in this contract”, or words of similar import.

## XXIII. Amendment # C23: Section 402

The Standby Committee in December approved an amendment of this section as indicated below. The Sub-committee recommends one further change in the section.

Amend Subsection (a):

(a) [How Created] Except as provided in subsection (c), an express warranty by a licensor is created as follows: .....

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### December Approved Amendment:

#### Amend Section 402(a) as follows:

(3) Any sample, model, or demonstration of a final product which is made part of the basis of the bargain creates an express warranty that the performance of the information will ~~reasonably~~ conform to the performance of the sample, model, or demonstration, taking into account differences that would appear to a reasonable person in the position of the licensee between the sample, model, or demonstration and the information as it will be used.

## XXIV. Amendment # C24: Section 403

The Standby Committee approved the following amendment to this section. The Style Committee reviewed that amendment, but apparently without the indicated changes. The Sub-committee would make no changes in the section or the amendment as approved.

**Amend Section 403 as follows:**

(a) [Terms of Implied Warranty] Unless the warranty is disclaimed or modified, a licensor that is a merchant with respect to computer programs of the kind warrants:

(1) to its end user licensee that the computer program is fit for the ordinary purposes for which such computer programs are used;

(2) to its distributor that:

(A) the program is adequately packaged and labeled as the agreement requires;

and

(B) in the case of multiple copies, the copies are within the variations permitted by the agreement, of even kind, quality, and quantity within each unit and among all units involved; and

(3) to the parties in subsections (1) and (2) that the program conforms to any promises or affirmations of fact made on the container or label.

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**XXV. Amendment # C25: Section 404**

For consistency with other language previously proposed, the Sub-Committee recommends amending Section 404 as follows:

.....

(b) [When No Warranty Exists] There is no warranty under subsection (a) with regard to:

(1) subjective characteristics of the informational content, such as the aesthetics, appeal, or suitability to taste; or .....

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**XXVI. Amendment # C26: Section 410**

The Standby Committee in December approved a new section 410 dealing with free software warranties. Based on the ABA Report, the Standby Committee has under consideration a revision of that new section. The Sub-Committee reviewed both and recommends the following further revision:

**(1) Amendment (December Approved)**

**Add the following new section:**

**Section 410. WARRANTIES FOR FREE COMPUTER PROGRAM**

(a) [No Implied Warranty] Except as otherwise provided in subsection (b), the warranties under Sections 401, and 403 do not apply to a computer program if the licensor makes a copy of the program available to the licensee in a transaction in which there is no contract fee for the right to use, make copies of, modify, or distribute copies of the program.

(b) [Program Contained in Goods] Subsection (a) does not apply if the copy of the computer program is contained in and sold or leased as part of goods or if the transaction is with a consumer licensee that is not a software developer.

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**(2) Recommended Response to ABA Report (Under consideration):**

**Modify the prior amendment as follows:**

**Add the following new section:**

**Section 410. NO IMPLIED WARRANTIES FOR FREE COMPUTER PROGRAM**

(a) ~~Except as provided in subsection (b),~~ The warranties under Sections 401 and 403 ~~do not~~ apply to a computer program only if the licensor intends to make a profit from the distribution of the

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~~copy of the program or acts generally for commercial gain derived from controlling use, or making, modifying or redistributing copies of the program, makes a copy of the program available to the licensee in a transaction in which there is no contract fee for the right to use, make copies of, modify, or distribute copies of the program.~~

**Deleted:** engaging in any of these activities:

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(b) Subsection (a) does not apply if the copy of the computer program is contained in and sold or leased as part of goods or if the transaction is with a consumer licensee that is not a software developer.

## XXVII. Amendment # C27: Section 503

The Standby Committee approved an Amendment of Section 503 in December. The amendment was reviewed by the Style Committee, with the indicated changes proposed. The sub-committee reviewed both the section and the amendment.

### (a) Sub-Committee Changes

**Amend paragraph (1) as follows:**

..... (1) ~~[When Transfer of Contract Permitted] Except as otherwise provided in paragraph (3), a~~ party's contractual interest may be transferred unless the transfer:

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(A) is prohibited by other law; or

(B) ~~would materially change the duty of the other party, materially increase the burden or risk imposed on the other party, or materially impair the other party's property or its likelihood or expectation of obtaining return performance.~~

**Deleted:** except as otherwise provided in paragraph (3),

### (b) December Approved Amendment as Styled:

The Subcommittee recommends no further changes in this amendment.

**Amend Section 503(2) by adding:**

(C) the term is in a mass-market license ~~and~~ the transfer complies with 17 U.S.C. Section 117, is made with the computer containing the authorized copy, and ~~is a gift or donation~~

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- (i) to a public elementary or secondary school,
- (ii) to a public library, or
- (iii) from a consumer to another consumer.

## XXVIII. Amendment # C28: Section 504

The Sub-committee recommends the following amendment of Section 504:

(b) ~~[Effect of Transfer, General Rules]~~ The following rules apply to a transfer of a party's contractual interests:

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(1) ~~[Contractual Use Terms Apply]~~ The transferee is subject to all contractual use terms.

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(2) ~~[Delegation of Duties]~~ Unless the language or circumstances otherwise indicate, as in a transfer as security ~~under [UCC Article 9]~~, the transfer delegates the duties of the transferor and transfers its rights.

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## XXIX. Amendment # C29: Section 601

The sub-committee recommends amendment of Section 601 as follows:

(b) [Effect of Uncured Material Breach] If an uncured material breach of contract by one party precedes the aggrieved party's performance, the aggrieved party need not perform except with respect to restrictions in contractual use terms. In addition, the following rules apply:

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.....  
(2) [Right to Cancel] The aggrieved party may cancel the contract only if the conditions of Section 802 are met.

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(3) [Information From Other Sources] The contractual use terms do not apply to information or copies properly received or obtained from another source not covered by the agreement.

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### XXX. Amendment # C30: Section 604

The sub-committee recommends amendment of Section 604(2) as follows and recommends that the comments be revised to include illustrations of when the section applies:

(2) [Section 601 and Usage of Trade] The rights of the parties are determined under the other provisions of this [Act], including Section 601, and the ordinary standards of the business, trade, or industry.

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### XXXI. Amendment # C31: Section 605

In December, the Standby Committee approved two amendments to this Section. The Sub-Committee proposes no further changes in the section.

#### Amendment (December Approved)

#### Amend Section 605(c), (d) and (f) as follows:

(c) This section does not authorize an automatic restraint that affirmatively prevents or makes impracticable a licensee's access to its own information or authorized access to information of a third party, other than the licensor, if that information is in the possession of the licensee or a third party and accessed without use of the licensor's information or informational rights.

(d) A party that includes or uses an automatic restraint in accordance with consistent subsection (b) or (c) is not liable for any loss caused by the use of the restraint to prevent use of information contrary to the contract or applicable law. This subsection does not alter the effect or enforceability of contract terms such as warranties or of other laws. .....

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(f) This section does not authorize use of an automatic restraint to enforce remedies because of breach of contract or for cancellation for breach. If a right to cancel for breach of contract and a right to exercise a restraint under subsection (b)(4) exist simultaneously, any affirmative acts constituting self-help may only be taken pursuant to the limitations in Sections 815 and 816, including the prohibition on mass-market transactions, instead of this section....

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### XXXII. Amendment # C32: Section 610

The sub-committee recommends the following changes in Section 610. Also, comments to earlier sections should spell out the limited effect of pre-inspection payment.

(c) [Post Acceptance Notification of Disputes] If a copy has been accepted, the accepting party shall: ....

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(1) except with respect to claims of a type described in Section 805(d)(1), within a reasonable time after it discovers or should have discovered a breach of contract, notify the other party of the breach or be barred from any remedy for the breach; and

(2) if the claim is of a type described in Section 805(d)(1) and the accepting party is sued by a third party for such claim, notify the party making the warranty within a reasonable time after receiving notice of the litigation or be precluded from any remedy over for the liability established by the litigation.

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### XXXIII. Amendment # C33: Section 613

The Standby Committee in December approved an amendment to this section. The Sub-committee reviewed that amendment and the section and proposes the following:

Amend Section 613(b) as follows:

(2) [Right of Return to Dealer] Unless the end user agrees, such as by manifesting assent, to the terms of the publisher's license, the end user has a right to a return from the dealer. A right under this paragraph is a return for purposes of Sections 112, 208, and 209.

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December Approved Amendment:

**Amend Section 613 as follows:**

(c) If an agreement provides for distribution of copies on a tangible medium or in packaging provided by the publisher or an authorized third party, a dealer may distribute those copies and documentation only:

(1) in the form as received; and

(2) subject to the terms of any license ~~the publisher~~ the publisher provides to the dealer to be furnished to end users.

### XXXIV. Amendment # C34: Section 701

The Sub-committee recommends that Section 701 be amended as follows:

(a) [When Breach Occurs: Effect of Breach] Whether a party is in breach of contract is determined by the agreement and this [Act]. A breach occurs if a party without legal excuse fails to perform an obligation in a timely manner, repudiates a contract, or exceeds a contractual use term, or otherwise is not in compliance with an obligation placed on it by this [Act] or the agreement. A breach, whether or not material, entitles the aggrieved party to its remedies. ....

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### XXXV. Amendment # C35: Section 702

The Sub-committee recommends that Section 702 be reorganized and amended as follows:

(a) [Waiver as to Executory Performance] Except for a waiver in accordance with subsection (b) or a waiver supported by consideration, a waiver affecting an executory portion of a contract may be retracted by seasonable notice received by the other party that strict performance will be required in the future, unless the retraction would be unjust in view of a material change of position in reliance on the waiver by that party.

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(b) [Waiver in a Record] A claim or right arising out of a breach of contract may be discharged in whole or part without consideration by a waiver in a record to which the party making the waiver agrees after breach, such as by manifesting assent, or which the party making the waiver authenticates and delivers to the other party after breach.

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(c) [Waiver by Acceptance of Performance] A party that accepts a performance with knowledge that the performance constitutes a breach of contract and, within a reasonable time after acceptance, does not notify the other party of the breach waives all remedies for the breach, unless acceptance was made on the reasonable assumption that the breach would be cured and it has not been seasonably cured. However, a party that seasonably notifies the other party of a reservation of rights does not waive the rights reserved.

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(d) [Waiver by Failure to Inform] A party that refuses a performance and fails to identify a particular defect that is ascertainable by reasonable inspection waives the right to rely on that defect to justify refusal only if:

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- (1) the other party could have cured the defect if it were stated seasonably; or
- (2) between merchants, the other party after refusal made a request in a record for a full and final statement of all defects on which the refusing party relied.

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(e) [Effect of Waiver on Similar Future Performance] Waiver of a remedy for breach of contract in one performance does not waive any remedy for the same or a similar breach in future performances unless the party making the waiver expressly so states.

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(f) [No Retraction of the Waived Breach] A waiver may not be retracted as to the performance to which the waiver applies.

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### XXXVI. Amendment # C36: Section 802

The Subcommittee recommends that Section 802 be amended as follows:

(a) [When Cancellation Allowed] An aggrieved party may cancel a contract for breach if the breach is a material breach of the whole contract that has not been cured or waived or the agreement allows cancellation for the breach. ....

Deleted: (f) Except for a waiver in accordance with subsection (a) or a waiver supported by consideration, a waiver affecting an executory portion of a contract may be retracted by seasonable notice received by the other party that strict performance will be required in the future, unless the retraction would be unjust in view of a material change of position in reliance on the waiver by that party.

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### XXXVII. Amendment # C37: Section 815

The Standby Committee approved an amendment of this section in December as indicated and has under consideration of further change in that amendment. The Subcommittee reviewed the section and both proposals. It has no further changes to recommend.

#### AMENDMENT (DECEMBER APPROVED)

Amend Section 815 as follows:

##### SECTION 815. RIGHT TO POSSESSION AND TO PREVENT USE.

(b) [Limitation on Exercise Without Judicial Process] Except as otherwise provided in Sections 814 and 816, a licensor may exercise its rights under subsection (a) without judicial process only if this can be done by taking possession of a tangible copy; ~~(1) without a breach of the peace, in which event the licensor may take further steps with respect to the copy, including erasing the copy by electronic means; and~~

~~(2) without a foreseeable risk of personal injury or significant physical damage to information or property other than the licensed information; and~~

~~(3) in accordance with Section 816.~~

#### RECOMMENDED ACTION (UNDER CONSIDERATION)

Modify the prior recommendation as follows:

(b) [Limitation on Exercise Without Judicial Process] Except as otherwise provided in Sections 814 and 816, a licensor may exercise its rights under subsection (a)

without judicial process only if this can be done ~~by taking possession of a tangible copy:~~<sup>(4)</sup> without a breach of the peace, in which event the licensor may take further steps with respect to the copy, including erasing the copy by electronic means, subject to Section 618(a) relating to return of the licensee's information.

### XXXVIII. Amendment # C38: Section 816

The Standby Committee in December approved an amendment that would delete and replace this section as indicated below. The Subcommittee reviewed the amended language, as did the Style Committee. The changes recommended by Style are as indicated.

#### Amendment (December Approved)

Delete 816 and Replace with the following:

##### SECTION 816. LIMITATIONS ON ELECTRONIC SELF-HELP.

(a) [Electronic Self-Help Defined] In this section, “electronic self-help” means the use of electronic means to exercise without court order a licensor’s rights in the event of cancellation of a license due to the licensee’s breach of contract, but does not include actions expressly permitted under Sections 814 and 815(b).

(b) [Electronic Self-Help Prohibited] Use of electronic self-help under this [Act] is prohibited.

(c) [Attorneys Fees Award] In an action by a licensor for prejudgment relief pursuant to contractual rights to prevent continued use of the information by the licensee, a court may award the prevailing party in that proceeding attorneys fees with respect to the proceeding notwithstanding any term of a license.

(d) [Limitations not Waivable] The limitations under this section may not be waived or varied by an agreement before breach of contract.

(e) [Other Law Not Affected] This section does not apply to rights or obligations under other laws, including title 17 of the United States Code.

### XXXIX. Amendment # C39: Section 905

The Standby Committee approved an amendment of this section in December to conform to new, standard language. The Style Committee made substantial edits, to conform to still newer standard language. The Subcommittee has no further changes to recommend.

#### Amendment December, Approved, as styled.

##### Section 905. Relation to Electronic Signatures in Global and National Commerce Act.

~~This [Act] modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et. seq., but does not modify, limit, or supercede Section 101(c) of that act (15 U.S.C. Section 7001(c) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).~~

Respectfully Submitted,

Clarity Subcommittee

Bruce Munson, Chair

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**Patricia Fry  
Leon McCorkle**