Ucc and ucita models acts

UCC and UCITA Model Acts The first and most important attempts by the US government to promote uniformity in commercial laws from state to state was by the grant of power to congress under Article 8, Section 1, Clause 3 of the U. S. Constitution which was introduced in 1797. This clause which is referred to as the " The Commerce Clause" gave power to congress " to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes" (U. S. House of Representatives 2004). A significant challenge came in 1824 in the case of Gibbon vs. Ogden where Chief Justice Marshall interpreted the Power of Congress to regulate commerce and in the same breadth prohibited states from interfering with the flow of goods and services across state boundaries by passing laws (Find Law n. d.). Chief Justice Marshall indicated that the clause was not limited to interstate commerce but also intrastate commerce. Article 2 of the Uniform Commercial Code (UCC) refers to contracts for sale of goods (Cornell University Law School). The article is limited in scope and does no cover computer information and internet contracting. It governs transactions in tangible goods and does not cover intangible items. Article 2 of the Uniform Computer Information Transactions Act (UCITA) was specifically created to deal with the deficiencies in the UCC. Article 2 of UCITA relates to intangible items such as licenses. According to UCITA Online (n. d) the Act states clearly that contracts relating to computer information are licenses and therefore involves a set of legal considerations that are not applicable to sale of tangible items. The UCITA therefore established a clear set of rules relating to software licensing, online access and other transaction in computer information where none existed before UCITA Online (n. d.). Computer software though purchased with a computer has limitations and

guidelines on how they are used. This license does not constitute a sale but allows the buyer of the license to use the information as agreed in the license and prohibits any misuse of the license. For example, when an application software such as Microsoft Office Suite is ' purchased', except where agreed the software can only be loaded unto a prescribed number of computers based on the license. The license to use the software on one or more machines is purchased and not the software itself. The legal distinction between selling a product and licensing it is that a sale represents the transfer of title to good. The ownership of the item passes from the seller to the buyer who is now free to do just about anything with the good. In terms of a license it a right to use a trademark or a patent or in the case of the computer software – the right to use a program within certain guidelines outlined in the license. The license really gives permission for the licensee to use information within certain pre-agreed terms and conditions. Before the licensee is able to use the product the agreement has to be accepted. Many of the provisions in the UCITA were first proposed as a modification to Article 2 of the UCC. It is my opinion that the drafters decided to propose a separate and distinct Act because of the difficulties in getting different groups in different states to accept the changes. Different groups have different levels of power in their relative states and so the changes would not have been forthcoming to the UCC. UCITA as it is represents a model act that the states may choose to adopt as they please. References Cornell University Law School (2005). UCC: Article 2 – Sales. Retrieved from: http://www. law. cornell. edu/ucc/2/article2. htm Find Law (n. d.) U. S. Constitution Article 1. Retrieved from: http://caselaw. lp. findlaw. com/data/constitution/article01/28. html UCITA Online. (n. d.) UCITA Online:

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