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Statement of Harvey K. Morrell, University of Baltimore Law Library, in Opposition to the Maryland Uniform Computer Information Transfer Act

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University of Baltimore Law Library

**MARYLAND UNIFORM COMPUTER INFORMATION TRANSFER ACT
TESTIMONY IN OPPOSITION TO
House Bill 19
Senate Bill 142**

House Bill 19 Senate Bill 142
February 3, 2000

The Law Library Association of Maryland (LLAM) is a chapter of the American Association of Law Libraries (AALL), a national organization representing over 5000 law librarians. Libraries are among the largest consumers of software.

LLAM and AALL join the American Law Institute, the Federal Trade Commission, the Attorneys General of 24 states (including that of Maryland), consumer groups, software customers, several coalitions of law professors, the entertainment industry, the rest of the library community and even some software developers in opposition to the Uniform Computer Information Transaction Act (UCITA), which have been introduced in Maryland as House Bill 19 and Senate Bill 142.

The stated goal of the National Conference of Commissioners on Uniform State Laws, the original drafters of this legislation, was to provide a set of rules to clarify current law governing commercial transactions involving electronic information. Not only do these bills not meet this objective, they also shift the balance of contract law heavily in favor of software developers and publishers at the expense of consumers and users of electronic information.

One concern the library community has with UCITA is that it validates the use of transfer restrictions (Section 21-503) in the mass market that conflict with normal customer expectations and with the long established first sale doctrine. This could effectively deny libraries the right to transfer legally acquired materials through interlibrary loan, or to enhance their collections through gifts and exchanges. Law firm libraries may be forced to repurchase software they already have after corporate acquisitions, mergers or restructuring. Although there is a requirement that such a provision must be conspicuous in a mass-market license, there is no equivalent requirement for standard form contracts that libraries typically use.

A second concern we have is that UCITA's explicit endorsement of shrink-wrap licenses will make many unfair terms enforceable in court, whereas today many such terms are thrown out. The preemption provision of Sections 21-105(a) and (b) is unnecessarily vague and does not guarantee that licensing terms will not restrict uses that are otherwise granted under copyright law.

Another major area of concern are the termination and electronic self-help provisions, which would allow vendors to shut down mission critical software remotely without court approval and without incurring liability for the foreseeable harm causes.

In summary, the provisions of this Act would leave libraries with little bargaining power and few rights. While the library community fully supports the growth electronic commerce, we also believe that the historic balance between the interests of producers and end-users should be maintained in the electronic environment. Because this Act tilts the balance heavily in favor of software developers and vendors, we oppose the Act in its current form and urge that it not be recommended for adoption in Maryland.