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VIRGINIA CONSUMER COUNCIL
WALGREEN CORPORATION
WORKSTATION

February 5, 2003

Mr. Jeffrey Kovar
Assistant Legal Advisor for Private International Law
U.S. Department of State
2430 E Street, NW
Suite 203, South Building
Washington, DC, 20037-2851

Dear Mr. Kovar:

AFFECT is a broad-based national coalition of retail and manufacturing businesses, consumers, financial services institutions, technology professionals and librarians. AFFECT has been deeply engaged in the policy debate about the Uniform Computer Information Transactions Act (UCITA), a controversial proposed state contract law developed to regulate transactions in computer information products such as computer software, online access contracts, online databases and all other forms of digital information.

One of our concerns is that UCITA makes it difficult and expensive to challenge surprising or one-sided provisions in "shrink-wrap" and "click-on" contracts, such as clauses allowing the licensor to make unilateral changes to the contract by posting the changes somewhere on its website, or clauses requiring the end user to litigate disputes in the courts of a distant state or country. AFFECT understands that the current draft Hague Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Cases implicates these very issues.

AFFECT appreciates the value of a treaty that brings predictability to settling disputes over business-to-business (B2B) contracts and license agreements. However, we strongly urge the U.S. delegation to consider, as it proceeds, the adverse impact to businesses and institutional users of software and other digital information materials if such a treaty does not provide for some exceptions to the enforceability of choice of forum clauses and other terms that one party (the licensee) has had no opportunity to negotiate.

We would be pleased to speak with you further about our concerns and hope that you will give us the opportunity to do so.

Sincerely,

Miriam Nisbet
President