To: Membership of the American Law Institute
From: Cem Kaner
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Date: May 15, 2001
Re: Proposed Amendment to proposed Article 2-103(m), defining "Receipt"

Proposed Amendment:

Revise 2-103(m) as follows:

(m) "Receipt" means:

(i) with respect to goods, taking delivery; or

(ii) with respect to a notice:

(A) coming to a person's attention; or

(B) being delivered to and available at an agreed location, or at an information processing system designated by agreement for that purpose in a form capable of being processed by and, if the recipient does not utilize an electronic agent, perceived from a system of that type by the recipient, but a notice that is an electronic record is not received if the sender or its information processing system inhibits the ability of the recipient to print or store the record; or in the absence of an agreed location or system;

(I) in the case of a notice that is not an electronic record, being delivered to the person's residence, or the person's place of business through which the contract was made, or at any other place held out by the person as a place for receipt of notices of the kind.; or

(II) in the case of a notice that is an electronic record, being delivered to and available at a system or at an address in that system in a form capable of being processed by and,

if the recipient does not use an electronic agent, perceived from a system of that type by a

recipient, if the recipient uses, or otherwise holds out, the system or address for receipt of notices

of the kind and the sender does not know that the notice cannot be accessed from that place, but a

notice that is an electronic record is not received if the sender or its information processing

system inhibits the ability of the recipient to print or store the record.

Rationale for the Amendment

The law is still undeveloped with respect to electronic notification that is made either by being posted at a website (for the intended class of recipients to view by accessing the site) or by being sent through electronic mail going through largely unregulated internet service providers.

I submit that it is premature to define receipt for electronic records and that instead we should allow judges to evolve the law based on the fact patterns that emerge.

I am aware that we are seeing similar definitions of "receipt" in other statutes. All the more reason for us to leave the term undefined in the Uniform Commercial Code. Judges who consider the other definitions appropriate will have them on hand as models. Judges who encounter circumstances under which the definition of "receipt" proposed in 2-103 would be inappropriate should have the freedom to fashion a more appropriate rule. As consistent situations and rulings emerge, the developments in UCC law will provide models that can be used to upgrade the definitions in UETA, E-SIGN and UCITA.

As proposed, Section 2-103(m) creates a receipt of a notice, as a matter of law, under circumstances in which a reasonable, honest, reasonably diligent person will not actually have had the notice come to their attention.

Here are two examples. I include several others in my appendix.

The examples consider the position of a buyer or consumer, but the problem of electronic receipt is just as serious for the business who receives notices from customers. Businesses and government agents use filters (for example) at least as often as consumers.

Automatic Deletion of Apparently Offensive Mail

Spam filters are used to automatically delete incoming mail that the intended recipient would find offensive. The message typically arrives at the recipient's computer and is deleted by a local program. Some messages are deleted at the ISP (such as the Spaminator at Earthlink.net), but this service is enabled (turned on) at the request of the intended user.

Spamming is a significant problem. About 30% of the email passing through AOL is spam (typically defined as unsolicited commercial email) and about 30% of that is pornographic. Non-pornographic mass-mailings will also be offensive to some people, such as offers to defraud (stock swindles, etc.), persistent attempts to persuade a recipient to convert to a new religion, political speech that denigrates persons of a certain race, national origin, gender, sexual orientation, political party, etc., offers of birth control advice or sexual aids, commercial offers of "assistance" with term papers or other aids for cheating at school, etc. Some legislation attempts to limit some of this mail, but it is not clear how much will survive First Amendment and other challenges or how broad will be the eventual scope of such laws.

A spam filter is a computer program. Spam filters are typically set up by users, people who have little programming experience. We are currently unwilling to hold *professional* computer programmers and

publishers liable for errors in commercial software (think of UCITA)--surely we should expect end users to make some errors, too.

Here is a plausible example of such an error:

(a)   Joe receives electronic statements from his bank.

(b)   One month, he is deluged with offers of credit cards and other loans.

(c)   He programs his spam filter, with the intent of filtering out offers of new credit while allowing through his bank statements.

(d)   His bank sends him a loan default notice.

Like all computer programs, spam filters are executed by mindless machines, which have no capability to exercise judgment. Depending on the details of Joe's filter, the machine might interpret the default notice as something from a bank that is not a bank statement (to the garbage it goes) or as something from a bank that is not an offer of credit (and so it is not erased). Which will actually happen? Who knows. Joe probably didn't even think through this case when we defined his filter (such a blunder of omitted consideration of an unusual event is common in professionally written code, let alone code specified by an amateur), so whether the message will get through his filter or not is a matter of luck.

Should we hold Joe responsible for receipt of this message if his spam filter deletes it?

What if the message comes to him via an electronic service provider that is widely known for broadcasting pornographic or other offensive mail and whose messages are routinely deleted by many, many people?

Posting of Notices on a Website

The plain language of the definition of receipt allows the vendor to put a notice anywhere that is designated by the customer. The designation can be made in the fine print in the vendor's standard form. It can designate a file on the vendor's website.

In such a case, to discover a notice, you will regularly have to visit that vendor's website. If you deal with 100 vendors, and each one designates its website as a place for delivery of notices, then if you wish to actually see notices that you will be deemed, as a matter of law, to have received, you will have to visit each of these 100 sites on a regular basis (perhaps once every 10 days). This is an enormous burden, and one that few people or businesses will actually accept.

Why create a legal requirement that people spend their time in activities that they will almost certainly not do?

Alternative Amendment

Section 2-103(m) is itself a proposed amendment, from the current

2-103(c) "Receipt of goods" means taking physical possession of them.

Rather than adopting part of the 2-103(m) amendment (as I propose), perhaps we should reject all of it and stick with the original wording of 2-103.

APPENDIX

The proposed Article 2 definition of receipt is very similar to UCITA's. I analyzed that definition in detail in a paper in the John Marshall J. Computer and Information Law. I have slightly revised that analysis to correspond to the Article 2-103 definition. Here is that slightly revised excerpt from that paper.

IV. UCITA'S ELECTRONIC COMMUNICATIONS RULES CREATE RISKS AND WASTE

UCITA's rules for sending and receipt of electronic communications create new risks and impose substantial and wasteful transaction costs associated with e-mail.

UCITA section 102(a) (53) defines "receive" as taking receipt and section 102(a)(52) (II) defines "Receipt" to mean:

> in the case of an electronic notice, coming into existence in an information processing system or at an address in that system in a form capable of being processed by or perceived from a system of that type by a recipient, if the recipient uses, or otherwise has designated or holds out, that place or system for receipt of notices of the kind to be given and the sender does not know that the notice cannot be accessed from that place.

Article 2-103(m) provides two different definitions:

> 103(B) being delivered . . . at an information processing system designated by agreement for that purpose in a form capable of being processed by and, if the recipient does not utilize an electronic agent, perceived from a system of that type by the recipient, but a notice that is an electronic record is not received if the sender or its information processing system inhibits the ability of the recipient to print or store the record; or in the absence of an agreed location or system;
>
> and
>
> 103 (B) (II) . . . being delivered to and available at a system or at an address in that system in a form capable of being processed by and, if the recipient does not use an electronic agent, perceived from a system of that type by a recipient, if the recipient uses, or otherwise holds out, the system or address for receipt of notices of the kind and the sender does not know that the notice cannot be accessed from that place, but a notice that is an electronic record is not received if the sender or its information processing system inhibits the ability of the recipient to print or store the record.

Under section UCITA 215(a) "Receipt of an electronic message is effective when received even if no individual is aware of its receipt."

This definition creates serious problems.

- The definition of receipt is seriously ambiguous.
- Notification (receipt by the customer, as a matter of law) can be mere publication on the licensor's website or delivery to an account that the allegedly intended recipient never uses and may not even realize exists.
- Notification occurs even if the recipient cannot read the message.
- Notification occurs even if the recipient never receives the message.
- Notification occurs at time of delivery to the intended recipient's internet service provider even if the intended recipient rarely checks e-mail.
- Notification occurs even if the message is delivered to an account that was closed by the intended recipient.
- Notification occurs even if the message is formatted or routed in a way that makes it a target for destruction by a reasonably configured spam filter (such as anti-pornography filter).

Some readers will not have thought much about the path that a message takes when it is sent electronically from one computer to another. Here is the tracing of the path of an electronic mail message that was sent by John Young to the Cyberia-L mailing list, and from there to me.

```
1. X-Sender: jya@pop.pipeline.com
```

The message originated at an account associated with John Young

2. ```
Received: from jy01 (user-2inig6t.dialup.mindspring.com [165.121.64.221]) by
   maynard.mail.mindspring.net (8.9.3/8.8.5) with SMTP id QAA25768 for
   <CYBERIA-L@LISTSERV.AOL.COM>; Sun, 19 Mar 2000 16:42:46 -0500 (EST)
```

*From there, it went through a couple of parts of the mindspring.com system, en route to America Online, which hosts the Cyberia-l mailing list.*

3. ```
Received: from maynard.mail.mindspring.net (maynard.mail.mindspring.net
   [207.69.200.243]) by listserv.aol.com (8.8.8/8.8.8) with ESMTP id QAA01444
   for <CYBERIA-L@LISTSERV.AOL.COM>; Sun, 19 Mar 2000 16:42:47  -0500 (EST)
```

The mindspring.com system got it to America Online.

4. ```
Received: from LISTSERV.AOL.COM by LISTSERV.AOL.COM (LISTSERV-TCP/IP release
   1.8d) with spool id 13337329 for CYBERIA-L@LISTSERV.AOL.COM; Sun, 19 Mar
   2000 16:42:48 -0500
```

*America Online sends the message to somewhere else in America Online*

5. ```
Received: from LISTSERV.AOL.COM by lmailaol2.aol.com (LSMTP for Windows NT
   v1.1b) with SMTP id <4.00044CA8@lmailaol2.aol.com>; 19 Mar 2000 16:42:50
   -0500
```

America Online sends the message to somewhere else in America Online

6. ```
Received: from lmailaol2.aol.com (lmailaol2.aol.com [152.163.225.39])by
   proxy1.ba.best.com (8.9.3/8.9.2/best.in) with ESMTP id NAA16116 for
   <kaner@KANER.COM>; Sun, 19 Mar 2000 13:43:22 -0800 (PST)
```

*America Online sends the message to the service provider, best.com, that hosts kaner.com.*

7. ```
Received: from proxy1.ba.best.com (root@proxy1.ba.best.com [206.184.139.12])
   by shell5.ba.best.com (8.9.3/8.9.2/best.sh) with ESMTP id NAA00775 for
   <cemkaner+XRCPT.6b616e6572404b414e45522e434f4d@shell5.ba.best.com>; Sun, 19
   Mar 2000 13:45:01 -0800 (PST)
```

Best.com sends it to an account that I can access by dialing in.

Not shown on this header file is my path to best.com to retrieve my message. Let's add in the steps:

8. Sitting in my hotel-room (I am on the road a lot), I dial a local access number to reach Earthlink.net. Often, I reach a dialsprint.net server, but sometimes it is psi.net or uu.net. This is normally invisible to me.

9. If I am actively working for a rather large client of mine, then I will have reconfigured my computer to access their servers. In that case, messages will route through myaddress.clientcompany.com *(name changed to preserve confidentiality).*

10. Logged onto Earthlink and maybe also clientcompany.com, my mail program sends a message to shell5.ba.best.com, logs me on, and retrieves my mail, which comes back through clientcompany and then Earthlink and then dialsprint.net or uu.net to my hotel's telephone system to the phone on my desk to my computer.

11. At my local computer, my mail program, Eudora, scans every message. I often receive 300 messages in a day. Eudora examines the routing, the return address, and some other aspects of the message. Eudora deletes all messages from certain individuals (this is called "bozo filtering") and most messages advertising pornography, get rich quick schemes, candidates for sheriff of Frogsquat, Minnesota, the joys of conversion to some sect of Christianity, and other such sordid stuff, which I collectively call spam (this is called "spam filtering"). It takes me about 30 seconds to recognize and delete a spam message by hand. I receive up to 100 spams a day, so if I had to manually sort this junk, I would waste almost an hour a day at it. In contrast, the sender simply uses a bulk e-mail package and dumps thousands or millions of these messages onto the Internet for almost nothing. Not surprisingly, the rate of spamming is increasing, making my spam filter more and more invaluable. Unfortunately, sometimes my spam filter deletes perfectly legitimate mail that looks like junk mail.

12. I then attempt to read the remaining incoming messages. Most of them are fine. Every now and again, I get something that looks like this:

```
DUFtZXJpY2FuIEFzc29jaWF0aW9uIGZvciB0aGUgQWR2YW5jZW1lbnQgb2YgU2NpZW5jZQ1BbWVyaWN
```

hbiBBc3NvY2lhdGlvbiBvZiBFbmdpbmVlcmluZyBTb2NpZXRpZXMNQW1lcmljYW4gQXNzb2NpYXRpb2
4gb2YgUGh5c2ljcyBUZ

1. *Ambiguity*

Look at the elements of the definition of receipt. What will courts make of these two (differently worded) definitions:

> (B) being delivered at an information processing system designated by agreement for that purpose in a form capable of being processed by and, if the recipient does not utilize an electronic agent, perceived from a system of that type by the recipient, but a notice that is an electronic record is not received if the sender or its information processing system inhibits the ability of the recipient to print or store the record; or in the absence of an agreed location or system;
>
> and
>
> (II) being delivered to and available at a system or at an address in that system in a form capable of being processed by and, if the recipient does not use an electronic agent, perceived from a system of that type by a recipient, if the recipient uses, or otherwise holds out, the system or address for receipt of notices of the kind and the sender does not know that the notice cannot be accessed from that place, but a notice that is an electronic record is not received if the sender or its information processing system inhibits the ability of the recipient to print or store the record.

- *"in an information processing system or at an address in the system"* could mean too many things. In the tracing through of the message from John Young to Cyberia-L to me, did the message come into existence at AOL in step 3 or 4 or 5 or all of the above? Did it reach me (kaner.com) when it hit proxy1.ba.best.com in step 6 or shell5.ba.best.com in step 7 or when it reached my client's server (step 10) or Earthlink (step 10) or the hotel's phone system (step 10—if you do not think that this is an opportunity for transmission foul-ups, you need to stay in more or more varied hotels) or my computer (step 10) or when it survives my bozo filter (step 11) and my spam filter (step 11)? From the discussion in the UCITA meetings and based on the language of UCITA, I believe that according to UCITA, AOL receipt occurs at step 3 and kaner.com receipt occurs at step 6.

- *"in a form capable of being processed by or perceived"*–What does this mean? The fragment DUFtZXJpY2FuIEFzc29jaWF0aW9uIGZvciB0aGUgQWR2YW5jZW1lbnQgb2YgU2NpZW5jZQ1BbW VyaWNhbhbiBBc3NvY2lhdGlvbiBvZiBFbmdpbmVlcmluZyBTb2NpZXRpZXMNQW1lcmljYW4gQXNzb 2NpYXRpb24gb2YgUGh5c2ljcyBUZ, is from a real message that I received last week. I can process it. And I can perceive it. I even made a copy of it and pasted it into this paper so you can perceive it too. Want to perceive it again? DUFtZXJpY2FuIEFzc29jaWF0aW9uIGZvciB0aGUgQWR2YW5jZW1lbnQgb2YgU2NpZW5jZQ1BbW. *See?* You might even be able to pronounce it: DUFtZXJ? DUFtZXJ! DUFtZXJ! DUFtZXJ! DUFtZXJ! DUFtZXJpY2FuIEFzc29jaWF0aW9u!! Maybe processing and perceiving are not the issue, if you cannot understand the message.

- *"from a system of that type"* — What type is this? The type(s) used by AOL? Best? Earthlink? My Dell / Micron / Toshiba / Amiga / Macintosh computer du jour? When I said my e-mail address is kaner@kaner.com, did this specify or even imply some kind of computer or system?

- *"by a recipient"* – UCITA does not define "recipient" and there are many recipients in the chain from sender to (if it ever reaches me) me.[1] Let's pretend for the rest of this section that the "recipient" means me.

- *"if the recipient uses, or otherwise has designated or holds out, that place or system for receipt of notices of the kind to be given"*–What constitutes designating or holding out? Does my e-mail address on my business card count? What if I am listed in an online e-mail address book? What if the vendor's form designates its

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1. Bob Johnson and I traced out additional details of the e-mail path in Notes on E-Mail Receipt. *See* (Jan. 10, 1998) <www.badsoftware.com/email.htm.>.

web page as the place for receipt of notices?[2] What if the fine print in the vendor's form refers to an e-mail address that it will create for me (kanerxxx23@hotyoohoomail.com). When I clicked OK in order to download my software, did I agree to regularly check the vendor's web page or hotyoohoomail? How many of these web pages and special e-mail addresses am I going to have to manage?

- *"and the sender does not know that the notice cannot be accessed from that place"*—What place? What does accessed mean? What constitutes knowledge on the part of the sender? If the sender sends a message to me that bounces because of a transmission problem, does the sender know? What if the bounce (rejection message) fails to reach the sender? What if it reaches the sender's computer but is wiped out by the sender's bozo filter? (After all, the standard *for the sender* is *knowledge*, not receipt). What if the bounce reaches the sender's clerical staff but the "sender" was an executive who never reads his own e-mail and never reads or interprets bounce messages? What if the sender is a lawyer who does not know how to interpret bounce messages?

For the rest of this section, the following hypothetical facts will be used:

Suppose that your Internet Service Provider (ISP) is YOURISP.COM and your e-mail address is yourname@YOURISP.COM. And suppose that you engaged in an electronic transaction (such as downloading software from a web site) and that the associated non-negotiable contract specified in the fine print that all deliveries and legal notices could be sent to you by e-mail to yourname@YOURISP.COM. By clicking OK to that license, you have designated your internet service provider (in this case, YOURISP.COM) as the place or system for receipt of such notices.

2. *Receipt Occurs Even If the Recipient Never Receives the Message*

Suppose that the vendor sends a copy of the software or document that you ordered to yourname@ YOURISP.COM. The fact that the message (containing your ordered material) reached YOURISP.COM does not mean that it will reach you. There can be a problem at YOURISP's server (they lose your messages[3]) or a transmission problem (the message gets corrupted or lost en route from YOURISP to your machine) or the message might be corrupted at your computer (maybe by a virus or by a bug in your mail program).

If the message reaches YOURISP.COM, but does not reach your computer, I read UCITA to mean that you have received the message. Note the difference between this situation and the mailbox rule. Under the mailbox rule, we create a presumption that a letter has been received with a certain time after it is sent. But that presumption is generally refutable. In this case, even though the message has never reached any screen that lines up with your eyeball, UCITA says that as a matter of law, you have received it.

In the world of hardcopy letters and physical packages, senders use certified mail, registered mail, and couriers who obtain signatures on delivery in order to prove actual delivery in good condition. UCITA's version of the mailbox rule makes these proofs unnecessary, so long as proof of delivery to the ISP is possible.

A problem that UCITA creates for businesses arises out of the difficulty of finding skilled network and system administrators in the current job market. Under UCITA, mail sent to employee@Corporation.com has been received when it reaches Corporation's server, but if Corporation is having trouble breaking in a new system administrator, a lot of mail might never reach any of Corporation's employees. Lost e-mail is not like lost letters that go to the wrong person but can be rerouted back. Losing a day of e-mail is like sending all of your company's mail to the shredder. It's gone. And if you just lose a percentage of it, you might not even realize that you have a lost-mail problem until your company is held accountable for notices that no one ever actually had the opportunity to read.

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2. *See, e.g,* the eFax and AOL terms of service, *supra* note 101.

3. I am not aware of any Internet Service Provider who provides a warranty that they will not lose mail or that they will deliver the mail in a timely manner, nor of any that do not disclaim incidental or consequential damages. As between them and the customer, the risk that they will lose messages is entirely on their customer. UCITA carries this a step further and says that, as between the sender of the message and the ISP's customer, the risk of a lost message falls entirely on the ISP's customer.

3. *Failure of* Actual *Receipt Allows Vendor to Double Charge*

UCITA section 614 (a) carries the receipt rule to its vendor-favorable extreme: "Except as otherwise provided in this section, the risk of loss as to a copy that is to be delivered to a licensee, including a copy delivered by electronic means, passes to the licensee upon its receipt of the copy."

Thus, if the message (containing the software or document that you ordered) is corrupted after UCITA-receipt but under circumstances that make it impossible for you to see it or use it, the burden of the loss falls on you. There is a serious imbalance here. Suppose that you paid $500 for this software. It might cost the software company $5 in processing expense to resend it to you, but if you want that program, the vendor can charge you the full $500 to retransmit.

Where, as here, there is absolutely no cost of goods to the vendor, should the law not allow the customer to simply reimburse the vendor for its additional handling expense, rather than giving the vendor a windfall?

4. *Vendor Can Publish Notices on its Website or to Vendor-Created Accounts*

The plain language of the definition of receipt allows the vendor to put a notice anywhere that is designated by the customer. The designation can be a file on the vendor's website or the fine print in the vendor's form can designate an e-mail address that the vendor will create for you (yourname@hotyoohoomail.com).

The 24 Attorneys General[4] singled this out as an opportunity for abuse and the Motion Picture Association explained how this would plague large customers.[5]

5. *Notification Occurs Even If the Recipient Cannot Read the Message*

As long as the sender does not know that the alleged recipient can not read it, the message is deemed received.

6. *Notification Occurs Even If the Recipient Never Receives the Message*

As an extreme example of abuse, imagine that you have no modem, no e-mail account and no access to the web. You buy a copy of a computer program and the license specifies that all notices and modifications will be posted at the vendor's website. Under UCITA, your receipt of these notices occurs when messages are posted by the vendor at that site, even though you cannot access or read the messages.

7. *Notification Occurs Even If the Message Goes to A Closed Account*

I have had at least 14 different e-mail addresses since 1983, when I opened my first account. Eventually I chose to acquire a domain name, kaner.com, in order to have lifelong consistency. Many other people still use ISP names or business names in their address (yourname@YOURISP.COM) even though they may leave that ISP or that business at any time. Mail sent to my old addresses sometimes bounces and sometimes is received by the ISP but neither forwarded to me nor bounced (rejected with a rejection e-mail to the sender). As I read UCITA's definition of receipt, if the vendor sends a notice to an old e-mail address of mine, I have received it as a matter of law unless the vendor has actual knowledge that the message will not or did not reach me.

8. *Time of Delivery*

Receipt of a message to yourname@YOURISP.COM occurs when the message hits the ISP. But what if you rarely use electronic mail or if you rarely use this account? You might not see this message for months. If there are legal consequences of the date of delivery (such as a 10-day notice), you will suffer those consequences.

- The problem is that people are still learning how to use the Internet.

- There are many free e-mail account providers and some people sign up with several of them without realizing that they might find it a challenge to check their mail at (or even remember how or where to check their mail at) all those accounts.

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4. Letter from Attorneys General, *supra* note 26; discussion *supra* notes 103 - 106.
5. Motion Picture Association of America, *supra* note 105.

There is no cultural expectation of prompt handling of e-mail. Yes, some lawyers say there should be such an expectation, but I sometimes wonder about their zeal. It is often suggested that recent converts to a religion are among the most zealous. Several of the attorneys who are most adamant that humans must be held to high standards of e-mail processing accountability have been relying on e-mail for a relatively short time and are not necessarily the most technologically sophisticated beings in the profession. Many people in the United States have never used electronic mail. When they get a new computer, they do not get large print notices that they have a legal duty to check their e-mail. The expectation that one will promptly read hard copy mail developed over a long period of time. Why should we expect people to immediately assume that they have the same duty for e-mail?

Commercial law should follow common practice. UCITA adopts a regulatory approach, telling all present and future computer users that they must henceforth treat e-mail more seriously than many (I suspect most) do today. At some time in the future, perhaps the culture of e-mail will match that of postal mail. But until then, I think that commercial law should strive to ensure that the time of receipt (as defined by law) bear a reasonable relationship to the time that the intended recipient actually reads the message.

Some of UCITA's proponents have protested that such a rule would make it easy for customers to evade receipt of critical notices. Yes, they might be able to evade electronic notification, but that still leaves postal notification as a fallback. In those cases in which the vendor has no postal address for the customer, UCITA can allow the vendor to obtain constructive notice by sending notice(s) to the place(s) (including e-mail addresses) calculated in good faith to be the most likely to actually notify the customer.

9.   *You* Can not *Filter Your E-Mail*

Filtering is a big problem. According to a recent article in the Boston Globe,[6] a huge proportion of circulating e-mail is spam, unsolicited junk mail. According to the article, 15-30% of the e-mail received by America Online is spam.   The article quotes estimates that pornographers are the source of 30.2 percent of the spam on the Internet, followed by get-rich-quick and work-at-home schemes (29.6 percent of spam). People who receive a lot of electronic mail often use filters, programs that detect spam and erase it before they ever have a chance to notice it.

Suppose that you use a filter that wipes out any message that originates from the domain, SpamSender.com. Someday, someone might send you a legal notice via SpamSender.com. If your filter wipes out messages from that source, you will never see the legal notice. But under UCITA, that notice will have full legal effect because it reached your system, even though it stood no chance of reaching your eyeball.

Under UCITA, anyone who engages in electronic commerce (such as electronic banking) will probably end up with e-mail notification clauses in their contracts. If they filter the junk out of their electronic mail, they risk being held accountable for having received messages that their computer completely hid from them (as it was supposed to do). A risk-averse person will not and should not use spam filters because of the risks of filtering that are imposed on them by UCITA. Under UCITA, these people will have to hand filter every offensive piece of pornography that is dumped to their system.

UCITA's rule creates challenges for the corporation as well. Corporations receive a lot of spam. Today, in many companies, much of this spam is filtered (identified and deleted) as it comes into the system. The corporate computers identify the spam as having a distinguishing title or as originating from an internet service provider that routinely hosts spammers. As they filter, some legitimate mail is inevitably lost. So, imagine yourself as corporate counsel. Do you tell your company they can continue to automatically filter mail? Or, because of the UCITA-imposed risks on filtering, do you say that they have to stop filtering and actually inspect / read every message? How much of your company's time are you willing to waste on this? How much of their time are they willing to let you waste?

How much waste should we impose on individuals and companies, just to make it a little easier for a company to send a legally enforceable electronic notice rather than telling them that if the electronic notice is not read by the intended recipient, the sender will have to rely on a traditional vehicle, like a letter?

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6.   Simson Garfinkel, *Declaring war on spam: Internet service providers and consumers battle electronic junk mail problem*, BOSTON GLOBE (Dec. 9, 1999), *available at* <www.boston.com/ globe/search>.