THE ARIZONA ELECTRONIC TRANSACTIONS ACT

By Laura Plimpton

You are cruising through the Internet and find a great deal on just the widget you've always wanted. You click on the widget, indicating you want to purchase it, enter your address and credit card number and scroll to the bottom of the web page where you are told if you click on the square box, you will have purchased the widget. You click and receive a message that your widget will be shipped shortly. Does this transaction have legal effect?

In Arizona, as of July, you have created an electronic contract under the Arizona Electronic Transactions Act ("AETA").[1] Governor Hull signed AETA into law during the 2000 legislative session. AETA took effect in July. AETA is the Arizona version of the Uniform Electronic Transactions Act ("Uniform Act"),[2] which was drafted and adopted by the National Conference of Commissioners on Uniform State Laws ("NCCUSL") in July 1999. NCCUSL also drafted the Uniform Commercial Code. The Uniform Act was drafted and recommended for state enactment as a model law intended to modernize commercial law to be consistent with electronic business practices. After being formally adopted by NCCUSL in July 1999, the Uniform Act was first enacted by Pennsylvania[3] as the last official law in that state in 1999 and was later enacted by California and now Arizona.

In 1997, NCCUSL decided to address the millions of commercial transactions occurring over the Internet despite the legal uncertainty regarding the validity of electronically created contracts and the acceptability of electronic records and documents as evidence of those contracts. The resulting Uniform Act and Arizona's version establishes legal recognition of both electronic records and electronic contracts.

The scope of AETA is limited by the definition of "transaction".[4] AETA does not apply to all writings and signatures. It applies only to interactions between people relating to business, commercial and government affairs where the interaction involves an electronic record and an electronic signature. Most sections of the Uniform Commercial Code ("UCC") are excluded from AETA's scope—primarily because many sections of the UCC address electronic transactions within them. The UCC sections included within the scope of AETA are Articles 2 and 2A and Sections 1-107 and 1-206.[5]

NCCUSL specifically considered whether certain transactions should be excluded from the Uniform Law. Creation of trusts other than testamentary trusts, powers of attorney and real estate transactions were considered for exclusion. However, the Uniform Act was adopted without excluding these transactions. The comments to the Uniform Act ("Comments") specifically state that after extensive discussion no reason was found that these transactions could not be accomplished electronically.[6]

AETA's scope is further defined by the requirement that both parties expressly provide some form of acquiescence or intent on the part of the party to conduct transactions electronically.[7] Without this intent, AETA has no applicability. However, the Comments state that there does not have to be a formal agreement to conduct a transaction electronically—only circumstances indicating the parties' intention to conduct the transaction electronically. Circumstances cited in the Comments[8] include:

A. Automaker and supplier enter into a Trading Partner Agreement setting forth the terms, conditions and methods for the conduct of business electronically.

B. Joe gives out his business card with his business e-mail address. The Comments state that it is reasonable, under the circumstances, for the recipient of the card to infer that Joe has agreed to communicate electronically for business purposes. However, the Comments state that it would not be reasonable to infer that Joe has agreed to communicate electronically for purposes outside the