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# ALA American Library Association

## The Hague Convention on Choice of Court Agreements

Libraries have been involved for the past several years in the redrafting of the Hague Convention on Choice of Court Agreements, a multilateral agreement that creates rules for determining jurisdiction in international lawsuits and provides for recognizing and enforcing judgments by the courts of the Member States (including the U.S.). AFFECT also has submitted comments from time to time to the U.S. Department of State about the various drafts of the Convention.

The Convention will make more readily enforceable “choice of court” provisions in contracts (including those governing copyrighted materials, such as software) and the resulting court judgments, in the event that the parties resort to the courts to settle a legal dispute. Many groups, including libraries and the business community, continue to be concerned about terms in non-negotiated contracts and licenses (including “shrink-wrap” and “click-on” contracts), which allow the licensor to designate in advance which court will hear the parties’ disputes.

To address the concern that the Convention would make these terms more easily enforceable, a number of groups had pressed for an exclusion from the scope of the convention, i.e., an express provision that non-negotiated contracts, such as shrink-wrap and click-on agreements, would not to be covered by the convention. Ultimately, however, the pressure from software and copyright industries in the US and abroad to include non-negotiated contracts was more effective. As concluded in a diplomatic conference on June 30, 2005, the convention contains no such express exclusion. (The convention, which now must be ratified by Member Countries of The Hague Conference, is available on the Hague Conference Web site at [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=98](http://www.hcch.net/index_en.php?act=conventions.text&cid=98).)

Thus, any relief for US businesses and institutions from the enforcement of choice of court terms in non-negotiated agreements will have to come from other provisions of the convention itself (the “escape clauses” are quite limited), from implementing legislation, or from opposition to ratification of the convention. For more information about particular provisions of the Convention, please see ALA’s Web pages, [www.ala.org/copyright/international](http://www.ala.org/copyright/international), and go to the “Hague Convention.”

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