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Issues Brief

Problem of unfair terms

- Over the past 20 years the digital revolution has created tremendous opportunity for every sector of the economy, but it has also led to an imbalance in the power between vendors who sell software and digital products and the people and their customers.
- People expect some basic rights when they purchase any product. While most products—like automobiles, appliances and electronics—offer reasonable rights, most software and other digital products do not.
- Customers now license rather than own such products which include licensing terms that are often unfair to the businesses, institutions and consumers who purchase them.
- Most agreements that govern digital product purchases are offered as standard form contracts --commonly known as “shrink-wrap” or “click-wrap” licenses. These “take it or leave it” transactions require the customer to click “I agree” to show their agreement to the terms that are usually not available for review prior to purchase. Long, hard-to-understand licenses dissuade users from even attempting to read them.
- Many common terms are unfair or sometimes prohibit activities that are otherwise permitted under federal law.
 - In current practice, a customer cannot learn the full terms of the deal until after payment. In many cases, vendors refuse to issue a refund if the “shrink-wrap” has been broken.

- Even though a customer agrees to certain terms initially, many vendors demand the right to change the terms later. The customer is often expected to check a website to see if the terms have changed. Continued use of a product can be considered to be agreement to the changed terms, whether the customer has actually seen them.
- A customer is usually not made aware of nontrivial defects in a product that the vendor may already be aware of. Common terms in an agreement protect vendors from liability for damages caused by even known defects in the product.
- Vendors frequently deny customers a refund even though the product quality may not be reasonable or the product does not measure up to its stated purpose.
- Purveyors of spyware and popup ads often use licenses as a way of gaining a user's agreement to their activities by burying the terms deep in the agreement.
- Vendors of software often collect and share a customer's personal information without their knowledge.
- Customers are often prohibited from studying how a product works in order to adapt it to their system, or to understand security features or even to repair it.
- Terms in a license may prohibit a user from criticizing a product.
- Licenses in products commonly used by educational institutions and libraries often prohibit uses of the product that are otherwise permitted under federal copyright law.

Stop Before You Click Campaign

- Stop Before You Click is an educational and legislative campaign that seeks to promote a fair playing field in the software and digital product marketplace.
- The cornerstone of the campaign is *12 Principles for Fair Commerce in Software and Other Digital Products*, a balanced set of guidelines for fair digital commerce agreements, legislation and regulation. Both the general

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public and technical versions of the 12 Principles are available at www.fairterms.org.

- The Stop Before You Click campaign seeks
 - to raise awareness about the problem and implications of unfair terms among businesses, institutions and consumers
 - to promote voluntary vendor support of fair and balanced licensing terms through the application of the 12 Principles in their business practice
 - to advocate for balanced legislation and regulations

Stop Before You Click and AFFECT

- Stop Before You Click is a project of Americans for Fair Electronic Commerce Transactions (AFFECT), known for its successful campaign to prevent the enactment of the Uniform Computer Information Transactions Act (UCITA). The new campaign continues AFFECT's mission of promoting a fair and competitive digital marketplace.
- AFFECT is a national coalition that represents the interests of retail and manufacturing businesses, financial institutions, technology professionals, consumer advocates and libraries who united in 1999 to oppose the unbalanced, and over-reaching proposed uniform contract law UCITA. See www.ucita.com for a full history of AFFECT's legislative efforts.
- AFFECT's members have been consistently opposed to the UCITA approach to software licensing that consistently favors the interests of software producers to the detriment of end users. This imbalance is evident in the UCITA approach to "shrink-wrap" or "click-wrap" licensing.
- In 2004, with partial funding from the John D. and Catherine T. MacArthur Foundation, AFFECT drafted its *12 Principles for Fair Commerce in Software and Other Digital Products*.