Contracting in Cyberspace under the Proposed Revisions to Article 2 of the U.C.C.

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Abstract

Contracting in "cyberspace" has increased dramatically with the development of electronic data interchange, the popularity of electronic mail as a mode of communication and, most recently, the explosive growth of the Internet. Unfortunately, the existing Uniform Commercial Code ("U.C.C.") was drafted during a much simpler time, a time when paper was the primary form of evidencing the majority of contracts. In an attempt to bring the U.C.C. into synch with the way business is being conducted in the 1990's, the National Conference of Commissioners on Uniform State Laws ("NCCUSL") has been re-working much of Article 2 of the U.C.C.. A significant part of the proposed revisions address issues related to electronic transactions. This paper discusses the revisions to Article 2 proposed by the NCCUSL and the changes they will bring, if enacted, to the law covering the formation of contracts in cyberspace.

Introduction

The rapid advance of technology is working tremendous changes in the way business is conducted in the 1990's. Electronic data interchange ("EDI"), which allows the placement and acceptance of orders for the purchase of goods via computer, is being used by many businesses to streamline order processing. Electronic mail is becoming an increasingly important form of communication, not only within an individual firm, but also between firms. On the Internet, companies such as Tupperware and others now allow online ordering of by customers through their "homepages" on the World Wide Web.[1] These changes are occurring because business is recognizing the real benefits offered by the introduction of computer technology into the contracting process. These technologies allow business to reduce "paper-shuffling," shorten payment cycles, avoid the delays in the postal system, and reduce administrative overhead.[2]

With all of these benefits, however, have come some risks as well. Risk-averse lawyers

and upper management have often been reluctant to rely solely on contracting via computer, often requiring some form of "paper trail." These concerns are not wholly without merit. Lawyers familiar with the rules for introducing paper documents into evidence are less certain when it comes to the sufficiency of evidence necessary to authenticate both content and proof of origin of electronic contracts. Further, the exchange of offers and acceptances via electronic mail may not be enforceable in court, given the ease with which such messages may be fabricated.[3] Since electronic messages are often stored on magnetic media, a further issue is raised in those cases where the law requires a "writing" or a "signature."[4] In addition, computer transactions raise a whole host of other security concerns. There is a need to ensure that transmissions are sent by authorized personnel, and that access by unauthorized personnel is prevented. While similar risks exist with paper transactions, the speed and ease with which parties can access, alter, consolidate, and duplicate information makes this even more significant in the case of electronic transactions.[5]

In its most recent drafts of the Uniform Commercial Code Revised Article 2. Sales ("Revised Article 2"), the National Conference of Commissioners on Uniform State Laws ("NCCUSL") has attempted to address many of the above issues. While a few of the changes consist of minor revisions to existing definitions, others are much more broad-sweeping, changing the existing law of sales significantly. The following discussion focusses on changes made in the most recent drafts of the Revised Article 2 which affect contracting via computer, whether that contracting occurs through the use of EDI, the exchange of e-mail between individuals, or transactions over the Internet (hereinafter collectively referred to as "electronic transactions").

Development of Revised Article 2

In 1988, the Permanent Editorial Board of the U.C.C.[6] appointed a study group to review Article 2 of the U.C.C. and recommend possible revisions. Although the revisions to Revised Article 2 through December 1994 were significant, they continued the basic structure of the existing Article 2. With the May 1995 draft, however, a dramatic restructuring of the entire Article 2 was proposed. Instead of the familiar organization of the existing U.C.C., the drafting committee instead completely rewrote the Article into what was described as the "hub and spoke" structure, with the primary definitional provisions and other general contract provisions at the "hub" with separate spokes containing more specific provisions applicable to certain types of contracts (such as: sales of goods, leases of goods, licenses for intangibles, etc.).

However, after receiving a strong negative reaction to the May 1995 draft, the the drafting committee returned to the original structure. The latest complete draft of Revised Article 2, dated October 1, 1995 ("October Draft"), looks similar to the existing U.C.C., with many of the sections even retaining their original numerical designations. However, a number of new sections have been added and nearly all of the old sections that have been retained have been subjected to some level of revision. The following table shows within which sections various topics are addressed in both Existing Article 2 and Revised Article 2:

Topic	Existing Article 2	Revised Article 2
Definitions	§§2-103,2-104,2-105	§2-102
Statute of Frauds	§2-201	§2-201
Parol Evidence Rule	§2-202	§2-202
Formation in General	§2-204	§2-203
Offer and Acceptance in Formation of Contract	§2-206	§2-205
Additional Terms in Accept.	§2-207	
Assent to Standard Form Records		§2-206
Conflicting Standard Terms		§2-207
Electronic Transactions: Formation		§2-208
Electronic Messages; Attribution		§2-212
Intermediaries in Electronic Messages		§2-213

Part 1 Definitional Changes

The first notable changes which address electronic transactions begin in the definitional provisions of Part 1 of Article 2. Section 2-102 modifies the current definitions of several terms and phrases and adds several entirely new definitions. For example, §2-102(9) modifies the term "conspicuous," to specify that a term will be considered conspicuous:

> in the case of an electronic message intended to evoke a response without the need for review by an individual, in a form that would enable the recipient or the recipient's computer to take it into account or react to it without review of the message by an individual."[7]

Sections 2-102(20) and (21) add two new terms adapted from the United Nation Commission on International Trade Law ("UNCITRAL") Draft Model Law on EDI: "electronic message" and "electronic transaction." Section 2-102(20) defines an "electronic message" as:

> information generated or communicated by electronic, optical or analogous means for transmission from one information system to another. The term includes electronic data interchange and electronic mail.[8]

Subparagraph (21) of §2-102 describes an "electronic transaction" as:

> a transaction in which the party initiates the transaction and the other party contemplates that the creation of an agreement will occur through the use of electronic messages or an electronic response to a message, whether or not either party anticipates that the messages, or records exchanged will be reviewed by an individual.[9]

Common to both §§2-102(9) and 2-102(21) is the reference that electronic messages sent via computer do not have to be reviewed by an individual in order to be considered to be "conspicuous" or otherwise be effective to create an agreement. This reflects a major paradigm shift away from what has, until now, always been assumed: that some human intervention or awareness is required to for legal effectiveness. This shift may not be as dramatic as it sounds, however. Both the common law and U.C.C. have previously recognized that parties can incur legal obligations even by silence, if they have by prior agreement or course of dealing treated such silence as effective for such a purpose (such as accepting an offer). As discussed more fully below, under the Revised Article 2, awareness by one's computer system is treated as sufficient to create a legal obligation or effect under the new provisions.

Part 2 Changes In Formation and Terms

In Part 2 of the October Draft, three sections are devoted specifically to issues of electronic contract formation. Section 2-208 specifies how electronic contracts are formed, §2-212 specifies the conditions under which the party initiating an electronic message is bound by its terms, and §2-213 expands on §2-212 by specifying how the use of an intermediary affects

the liability of the initiating party. Although the three sections of the October Draft remained essentially the same, some minor language changes were made to the sections in the most current draft of Part 2 of Revised Article 2, dated January 4, 1996 ("January Draft"). Unless otherwise indicated below, references to revised sections within Part 2 of Article 2 (such as §2-201, §2-208, §2-212, or §2-213) are to the January Draft of Revised Article 2.

Statute of Frauds

Under the existing U.C.C. a contract for sale of goods for $500 or more will not be enforceable unless there is a "writing" which is "signed" by the party against whom enforcement is sought.[10] Although many commentators have suggested that even under existing law, electronic contracts would satisfy the U.C.C.'s Statute of Frauds, revised §2-201 proposes an effective, albeit arguably radical, resolution to the issue. After considerable debate, the drafting committee elected to repeal the Statute of Frauds in its entirety in cases of sales contracts. The revised language of §2-201(a) states that:

> a contract or modification thereof is enforceable, whether or not there is a record signed by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year after its making.[11]

Although this change removes perhaps what has been considered to be the greatest impediment to widespread use of electronic transactions, the committee's decision to repeal the Statute of Frauds was not done soley to facilitate electronic transactions. The change is also consistent both with the law of Great Britain and the Convention on the International Sale of Goods.[12] The primary rationale for the repeal, as reflected in the drafting committee notes, was their collective opinion that the risk of perjury, which the Statute of Frauds was originally

enacted to reduce, has been:

> neutralized by the modern fact finding process and that current §2-201 was consequently used to avoid liability in cases where there was credible evidence of an agreement and no evidence of perjury. Moreover, there is no persuasive evidence that the valuable habit of reducing agreements to a signed record will be adversely affected by the repeal.[13]

The repeal of the Statute of Frauds does not itself resolve the issue of whether electronic messages satisfy the U.C.C.'s other requirments for a "writing." In the existing U.C.C. there are at least 13 additional references to a "writing" or something "written." Revised Article 2 attempts to resolve the issue of whether electronic messages qualify as a writing for these other purposes by replacing the term "writing" with the term "record" and defining record in §2-102(34) to specifically include information stored in an electronic or other medium as long as it is "retrievable in perceivable form."[14]

Revised §2-102 (37) also modifies the definition of "signed" to allow for electronic signatures, presumably because the continuing controversy over the applicability of the current definition, "any symbol executed or adopted by a party with present intention to authenticate a writing,"[15] to electronic transactions. An electronic record is considered "signed" as long as:

> a method of authentication identifying the originator of the record and indicating the originators approval of the information contained therein is used and (i) that the method has been agreed on between the parties, or (ii) the method used was as reliable as appropriate for the purpose for which the record was generated or communicated in light of all the circumstances.[16]

Subparagraph (i) recognizes existing practice, at least in the case of most EDI transactions. Users of EDI generally agree in advance about what preventative measures will be taken to insure that electronic messages can be authenticated. Means of authentication already in widespread use include a variety of encryption methods, so-called "locked" files which can't be

deleted and call-back procedures whereby the receiving computer automatically returns a verification to the sender's computer upon receipt of a message. Many systems even create audit trails of all transmissions and alterations.[17]

While it is reasonable that the drafting committee should be concerned with allowing parties to a contract to determine the most effective means of authentication given their circumstances, the language in subparagraph (ii) seems to be unnecessarily vague. It can be argued that can also be argued that such a change, which will in all likelihood create new issues to be litigated, was unnecessary. Courts have historically been quite liberal in determining what constitutes a signature under the current definition of "signed." Even a typewritten name,[18] a company letterhead,[19] and a tape recording[20] have been held to be sufficient as long as the parties intended to authenticate the writing. It would seem that electronic signatures are not a far jump from the existing case precedent. At least one court has already ruled that an electronic message should be considered authentic if both the computer and the transmission methods are reliable, and neither the source of the information nor the method or circumstances of preparation or transmission show a lack of trustworthiness.[21]

Parol Evidence Rule

Unlike the Statute of Frauds, the parol evidence rule has survived much of the revision process undertaken by the drafting committee. Under the existing U.C.C., if it is determined that a "writing" is the complete and final expression of the parties' agreement, it may not be contradicted by evidence of any prior agreement or contemporaneous oral agreements.[22] Revised §2-202(a) adopts the much of the language from the existing text of §2-202 with the exception

that "writing" is replaced with the term "record." This change specifically addresses the concern that an electronic message might not qualify as a "writing" under the parol evidence rule, and clarifies that if electronic record is "complete" than it will preclude contradictory evidence. Retention of the parol evidence rule is important, particularly in the case of EDI transactions where the messages exchanged will likely be short containing only quantity, price, and delivery terms. Under revised §2-203 (see below) as long as there are terms sufficient to find the existence of the requisite intent, a contract will be formed on those terms leaving out many standard and non-standard terms. Section 2-202(b), provides considerable flexibility for a court to determine whether the parties intended to form a totally or partially integrated record:

> (b) In determining whether the parties intended a writing or record to be final or complete and exclusive with respect to some or all of the terms, the court shall consider all evidence relevant to intention to integrate the document, including evidence of a previous agreement or representation or of a contemporaneous oral agreement or representation.[23]

If after such a hearing, the court finds the parties intended at least a partially integrated record, then revised §2-202(a) excludes evidence of previous agreements or contemporaneous oral agreements unless such evidence consists of either of the following:

> (1) course of dealing or usage of trade or course of performance; and
> (2) noncontradictory additional terms unless the court finds that the record was intended by the parties as a complete and exclusive statement of the terms of the agreement.[24]

As with existing §2-202, course or dealing, usage of trade, and course of performance are admissible to explain or supplement either a fully integrated or partially integrated record. However, subparagraph (2) represents a liberalization of the parol evidence rule, at least with respect to partial integrations. Existing §2-202(b) allows only evidence of "consistent additional terms." Adopting instead a more liberal approach, new subparagraph (2) allows evidence of

"noncontradictory" terms as long as the parties did not intend that there agreement should be the complete and exclusive statement of the terms of the agreement.

Contract Formation

Revised §2-203(a) continues the existing U.C.C.'s liberal approach to contract formation,[25] providing that a contract may be made in "any manner sufficient to manifest agreement" including by the conduct of the parties "recognizing the existence of the contract."[26] Under subsection (b) of revised §2-203, if the parties so intend:

> an agreement is sufficient to make a contract, even if the time when the agreement was made cannot be determined, one or more terms are left open or to be agreed upon, or standard terms in the records of the parties do not otherwise establish a contract.[27]

Revised §2-205(a) follows the general rule embodied in existing §2-207(1), that unless the contract or the circumstances clearly indicate otherwise:

> an offer to make a contract must be construed as inviting acceptance in any manner and by any medium reasonable under the circumstances, including a definite expression of acceptance containing standard terms which vary the terms of an offer.[28]

Thus, under Revised Article 2, the issue of contract formation has been wholly separated from the issue of what terms control. One must look only to the provisions of revised §§2-203 and 2-205 in order to determine whether or not a contract has been formed. Then, and only then, does one look to revised §§2-206 and 2-207 to determine what standard terms are included in the contract which was formed. (See below.)

As with the Statute of Frauds, a case can be made that such changes were really not necessary. Existing §1-201(11) of the U.C.C. broadly defines a contract as ". . . the total legal obligation which results from the parties' agreement as affected by this Act and any other

applicable rules of law."[29] Article 2 amplifies this by noting in Existing § 2-204(1) that "A contract for the sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract."[30] Thus, an electronic transaction, even without special status afforded by the Revised § 2-102 (20), would almost certainly meet the definition of a contract under existing law. What these revisions do add, however, is increased clarity of application that comes from separating out the question of if a contract exists from the process of determining what the terms are if a contract is found.

Battle of the Forms

Section 2-207 of the existing U.C.C. contains the rules of engagement for what has been come to be known as the "battle of the forms." Unlike the common law, under which an acceptance had to be a mirror image of the offer in order to be effective, the current U.C.C. allows the formation of a contract even where there are additional or different terms contained in the acceptance. The January Draft continues the use of an alternative to the battle of the forms which was first adopted in the December 1994 draft. As discussed above, the issue of contract formation has been separated from the issue of what terms a contract includes. Revised §2-205(a) states that:

> Unless otherwise unambiguously indicated by the language of a contract or the circumstances the following rules apply: (1) An offer to make a contract must be construed as inviting acceptance in any manner and by any medium reasonable under the circumstances, including a definite expression of acceptance containing standard terms which vary the terms of an offer.[emphasis added][31]

The emphasized language makes clear that even if the written documents may contain differing terms, a definite expression of acceptance will be sufficient to accept an offer, even where the

standard term might alter the terms of the offer. The question of how to reconcile any varying terms and of whose terms will control are addressed in revised §§2-206 and 2-207.

Revised §2-206 addresses the situation in which the terms, or a portion of the terms of a contract are contained in a "standard form record" which is defined in revised §2-102(38) as a record "prepared by one party in advance for general and repeated use, which substantially contains standard terms and is actually used without negotiation of the standard terms with the other party."[32] Under revised §2-206, if the party who did not prepare the standard form record "manifests assent" to it, the party manifesting assent adopts all terms contained in the standard form as part of the contract (with the exception of those terms deemed to be unconscionable.) Revised §2-102(29) describes manifesting assent as "if, after having an opportunity to review the terms of the record, the party engages in conduct that constitutes assent to the terms of the record and the party had an opportunity to decline to engage in the conduct." Any term adopted by such manifestation of assent becomes part of the contract "without regard to the knowledge or understanding of individual terms by the party assenting to the standard form and whether or not the party read the form."[33]

If, however, the parties use a standard term in a contract, not included in a standard form record, it is revised §2-207 rather than §2-206(a) that determines whether the terms become part of the contract. Assuming there has been a contract formed under revised §§2-203 and 2-205, revised §2-207 provides the following rules for determining what standard terms (terms which have not been negotiated by the parties) are to be included:

> If one party to a contract assents to standard terms in a record prepared by the other party that is not a standard form and the standard terms vary materially the agreement of the parties, the standard terms are not part of the contract unless the party claiming inclusion

establishes that the other party:

(1) expressly agreed to them, or
(2) had reason to know of them from trade usage, prior course of dealing, or course of performance and that they were intended for inclusion in the contract.[34]

Under the revised §2-207, which deals only with cases where there is an unstructured, partially negotiated transaction where standard terms are contained in the records of one or both parties.[35] The terms of a contract covered by §2-207(a) are thus deemed to include:

(1) standard terms included in subsection (a);
(2) other terms, whether or not contained in a record, to which the parties have agreed; and
(3) supplementary terms incorporated under any other provision of [Article 2].[36]

Whether such standard terms and conditions will be regularly transmitted in electronic contracts remains to be seen. Although it would be possible to transmit plain text files the fact that the contract may be effective without any individual having read the text makes this unlikely to become commonplace. Most EDI transactions today include standardized terms and conditions in "Master Purchase Agreements" or "EDI Trading Partner Agreements" and utilize computer transmissions only for short, coded messages containing price, quantity, and shipping date.[37]

Communication of Offers and Acceptances

Over the general treatment of contract formation discussed above (which is applicable to all sales contracts) is superimposed more specific provisions for electronic transactions. Revised §2-208, although it is similarly broad in its recognition of contracts formed by electronic means, effectively reverses one of the most famous and longstanding rules of the common law of contracts. Under the common law of contracts (also adopted under the existing U.C.C.), where an

acceptance is dispatched via a mode of communication expressly or impliedly authorized by the offeror the acceptance is effective upon dispatch, even if never received by the offeror. Revised § 2-208(a) changes the so-called "mailbox rule" in the case of electronic transactions by providing that if an electronic message initiated by one party evokes an electronic message or other electronic response by the other, a contract is created "when the initiating party receives a message manifesting acceptance." The dispatch of an acceptance in an electronic transaction is of no legal significance. This otherwise dramatic change is tempered somewhat by the fact that even though receipt is necessary to create a contract, there is no requirement that any acceptance actually be communicated to any person. As with the definitional changes discussed above, subparagraph (b) of revised §2-208 expressly states that electronic records exchanged in an electronic transaction are effective when received "even if an individual representing either party was not aware of or did not review the initial message or response or the action manifesting acceptance of the contract." Effectiveness of an electronic communication under §2-208 thus depends only on when they were "received in a form and at a location capable of processing the record even if an individual is not aware of their receipt."[38] Subparagraph (c) provides two rules for determining when an electronic message sent to a party has been "received" for purposes of revised §2-208(a):

> (1) If the recipient of the message, whether or not recorded, has designated an information system for the purpose of receiving such messages, receipt occurs when the message enters the designated information system.
> (2) If the intended recipient has not designated an information system for the receipt of electronic records, receipt occurs when the record enters any information system of the intended recipient.[39]

If no acceptance is received which complies with Revised § 2-208, can the originator of the

message treat the message as void? And should the initiating message still be binding if it should have been acknowledged, but wasn't? These questions remain to be addressed by the drafting committee.[40]

Security Concerns

Revised §2-212 further specifically allocates the risk of liability for contracts formed by unauthorized communication of electronic messages. This provision, applicable equally to both offers and acceptances, states that where an electronic message is sent to another party, the party which initiated the message is bound by the terms of the message if :

> (1) the message was sent by that party or a person who had authority to act on behalf of that party in reference to such messages;
> (2) by properly applying a procedure previously agreed to by the parties for purposes of authentication, the recipient concluded that the message was originated by, or otherwise attributable to, the initiating party; or
> (3) the message as received resulted from actions of a person whose relationship with the party described as the initiating party enabled that person to gain access to and use the method employed by the alleged initiating party to identify data messages as its own.[41]

This clearly places the risk of any unauthorized communications on the sender rather than on the recipient. Senders, whether they be the offeror or offeree in an electronic transaction, must be cautious to safeguard their systems and passwords from unauthorized use. This may be appropriate in light of the fact that recipients presently have only a very limited to ensure authenticity of electronic messages.

Although no other specific section deals with errors made in the transmission of electronic messages, in light of the fact that there is no requirement that an individual be aware of or review an offer or acceptance in order to be bound, how is a question concerning errors in

either the offer or acceptance resolved? Revised §2-213(a) generally provides that a "party who engages the intermediary is liable for any damage arising directly from that intermediary's acts, errors or omissions . . ." of services such as transmitting, logging, or processing of data. The only exceptions are if the party receiving the message either:

> should have discovered the error by the exercise of care reasonable under the circumstances or the receiving party failed to employ a verification or authentication system agreed to by the parties before such transmission.[42]

But since formation occurs even if there is no individual aware of the offer and acceptance, then what constitutes "the exercise of care reasonable in the circumstances?" If the transmission is sent directly without an intermediary, do the same standards apply? And what about errors in the transmission of acceptance, with or without the use of an intermediary? Again, these are questions the draft does not answer.

Conclusion

The most recent drafts of Revised Article 2 of the U.C.C. promulgated by the NCCUSL attempt to deal with many of the issues raised by the increasing reliance of business on electronic transactions. Although there is evidence that many of the legal issues, such as the Statute of Frauds and contract formation (which have been raised in connection with electronic transactions for years) could be addressed under current contract law and legal precedence, the drafters of Revised Article 2 have taken a more proactive approach. Whether such an approach will acceptable to the Executive Committee of the NCCUSL and ultimately adopted by state legislatures remains to be seen. However, the proposals do significantly change the way that business will be conducted and contracts will be formed in cyberspace as well as out of it.

ENDNOTES

1. *Please Bug Tupperware*, Info. Wk., Aug. 7, 1995, at 12.

2. Sharon F. Dipaolo, Comment, *The Application of the Uniform Commercial Code Section 2-201 Statute of Frauds to Electronic Commerce*, 13 J. L. & Com. 143 (1993).

3. Victor J. Consentino, *Virtual Legality*, BYTE, Mar. 1994, at 278.

4. Francoise Gilbert, *An electronic data interchange enables companies to purchase from and sell to each other. But the enforceability of 'electronic contracts' can be problematic.*, Nat'l L. J., May 16, 1994, at B6,B8.

5. *Id.*, at B8.

6. The Permanent Editorial Board was first established in 1950 under the auspices of the American Law Institute and the National Conference of Commissioners on Uniform State laws.

7. Revised Article 2 § 2-102(9).

8. Revised Article 2 § 2-102(20).

9. Revised Article 2 § 2-102(21).

10. U.C.C. § 2-204(1) (1990).

11. Revised Article 2 § 2-201.

12. A statute of frauds for leases of goods, rather than sales, would likely continue to exist under U.C.C. § 2A-201.

13. Drafting Committee notes to U.C.C. § 2-201 (Revised Draft of January 4, 1996).

14. Revised Article 2 § 2-102(34).

15. Revised Article 2 § 2-102(37).

16. *Id.*

17. DiPaolo, *supra* note __, at 148.

18. A & G Construction Co. V. Reid Bros. Logging Co., 547 P.2d 1207 (Alaska 1976).

19. Molinetti, S.p.A. v. Anchor Hocking Corp., 931 F.2d 1178 (7th Cir. 1991); Cox Eng'g., Inc. v. Funston Mach & Supply Co., 749 S.W. 2d 508 (Tex. Ct. App. 1988).

20. Ellis Canning Co. V. Bernstein, 348 F. Supp. 1212 (D. Colo. 1972).

21. United States v. Miller, 771 F. 2d 1219,1237 (9th Cir. 1985).

22. U.C.C. § 2-202 (a) (1990).

23. Revised Article 2 § 2-202 (b).

24. Revised Article 2 § 2-202 (a).

25. U.C.C. § 2-204(1) (1990).

26. Revised Article 2 § 2-203.

27. Revised Article 2 § 2-203(b).

28. Revised Article 2 § 2-205(a)(1).

29. U.C.C. § 1-201(11) (1990).

30. U.C.C. § 2-204(1) (1990).

31. Revised Article 2 § 2-205(1).

32. Revised Article 2 § 2-102(38).

33. Revised Article 2 § 2-206.

34. Revised Article 2 § 2-207(a).

35. Revised Article 2 § 2-207, comment.

36. Revised Article 2 § 2-207(b).

37. Robert W. McKeon, Jr., Electronic Data Interchange: Uses and Legal Aspects in the Commercial Arena, 12 J. Comp. & Info. L 511, 534 (1994).

38. Revised Article 2 § 2-208(b).

39. Revised Article 2 § 2-208(c).

40. Notes to revised § 2-208 state that it has not yet been discussed by the drafting committee.

41. Revised Article 2 § 2-212.

42. Revised Article 2 § 2-213.