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J. Douglas Cuthbertson
Miles & Stockbridge P.C.

Glen L. Gross
Miles & Stockbridge P.C.

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TECHNOLOGY LAW

J. Douglas Cuthbertson *
Glen L. Gross **

I. INTRODUCTION

In 2000, the Virginia General Assembly enacted the Uniform Computer Information Transactions Act (“UCITA”)¹ and the Uniform Electronic Transactions Act (“UETA”),² which were based on uniform acts approved by the National Conference of Commissioners on Uniform State Laws.³ Both statutes are designed to facilitate electronic commerce in Virginia. UCITA governs computer information transactions, which are “agreement[s] . . . to create, modify, transfer, or license computer information or informational rights in computer information.”⁴ “Computer information” is defined, in part, as “information in electronic form”⁵ The purpose of UETA is to make electronic commerce possible “by validating and effectuating electronic records and signatures.”⁶

The Joint Commission on Technology and Science (“JCOTS”) is a permanent legislative commission that studies, promotes, and

* Associate, Miles & Stockbridge P.C., McLean, Virginia. B.A., 1993, University of Richmond; J.D., 1997, University of Houston Law Center. Mr. Cuthbertson is a commercial and business litigator and a member of Miles & Stockbridge’s Intellectual Property and Technology Practice Group.

** Associate, Miles & Stockbridge P.C., McLean, Virginia. B.S.M.E., 1992, The Pennsylvania State University; J.D., 1996, University of the Pacific, McGeorge School of Law. Mr. Gross is a patent attorney with Miles & Stockbridge’s Intellectual Property and Technology Practice Group.

1. VA. CODE ANN. §§ 59.1-501 to -509.2 (Repl. Vol. 2001 & Cum. Supp. 2002).

2. *Id.* §§ 59.1-479 to -501 (Repl. Vol. 2001 & Cum. Supp. 2002).

3. *See* UNIF. COMPUTER INFO. TRANSACTIONS ACT, 7 U.L.A. pt. II, at 8 (Supp. 2002); UNIF. ELEC. TRANSACTIONS ACT, 7A U.L.A. pt. I, at 81 (Supp. 2002).

4. VA. CODE ANN. § 59.1-501.2(11) (Repl. Vol. 2001).

5. *Id.* § 59.1-501.2(10) (Repl. Vol. 2001).

6. *Id.* § 59.1-479 cmt. (Repl. Vol. 2001 & Cum. Supp. 2002).

assists in the development of technology and science in Virginia.⁷ In years past, JCOTS has “examined issues such as the Federal Telecommunications Act, [UCITA], electronic signatures, [Virginia’s] information technology infrastructure, and the adequacy of civil and criminal laws in the electronic environment. [JCOTS] also advises the General Assembly, the Governor, and agencies and institutions of government upon matters related to technology and science.”⁸ As in years past, JCOTS—after receiving the reports of its various advisory committees—made several legislative recommendations to the General Assembly during its 2002 session.⁹

In 2002, the General Assembly passed several bills recommended by JCOTS, as well as amendments to UCITA, UETA, and other technology-related laws. This article discusses the most significant changes.

II. ELECTRONIC COMMERCE

A. *Uniform Computer Information Transactions Act*

Again, UCITA deals with “computer information,” that is, information in an electronic format.¹⁰ House Bill 576 amended the provisions of UCITA relating to the transferability of a contractual interest in computer information.¹¹ The amendment removed the prohibition on limiting transferability in the case of a merger, acquisition, or sale of a subsidiary or affiliate.¹² Further, it amended and reenacted Virginia Code section 59.1-505.3, which previously provided as follows:

(2) [A] term prohibiting transfer of a party’s contractual interest is enforceable, and a transfer made in violation of that term is a breach

7. *Id.* § 30-85 (Repl. Vol. 2001).

8. Press Release, Joint Commission on Technology & Science (Apr. 4, 2002), available at http://198.246.135.25/documents/press/02-04-04_press.htm (last visited Oct. 4, 2002).

9. See REPORT OF THE JOINT COMM’N ON TECH. & SCI. ON SPACE TECH., INFRASTRUCTURE, PRIVACY, ELEC. GOV’T AND CRITICAL INFRASTRUCTURE, H. Doc. No. 36, at 1 (Va. 2002) [hereinafter JCOTS REPORT].

10. VA. CODE ANN. § 59.1-501.2(10) (Repl. Vol. 2001).

11. H.B. 576, Va. Gen. Assembly (Reg. Sess. 2002) (enacted as Act of Apr. 2, 2002, ch. 403, 2002 Va. Acts 630) (codified at VA. CODE ANN. § 59.1-505.3 (Cum. Supp. 2002)).

12. *Id.*

of contract and is ineffective to create contractual rights in the transferee against the nontransferring party, except to the extent that:

....

(D) the transfer is in connection with a merger or the acquisition or sale of a subsidiary or affiliate involving the licensee and another person¹³

Initially, subsection (2)(D) was included to “provide[] an exception to the provision that allows the prohibition of a transfer of a contractual interest.”¹⁴ It permitted, therefore, a transfer of rights “in connection with the acquisition or sale of a subsidiary or affiliate” and where it was “necessary to preserve the integrity of the information systems of the resulting entity.”¹⁵ House Bill 576, however, removed the exception provided for in subsection (2)(D).¹⁶

B. *Uniform Electronic Transactions Act*

The purpose of UETA is to facilitate electronic commerce by authorizing electronic records and signatures.¹⁷ House Bill 826, pertaining to lobbyist reports, recognizes that UETA prohibits a signature from being denied legal effect or enforceability solely because it is in electronic form.¹⁸ The bill amends and reenacts Virginia Code section 2.2-426, which required “original or electronic” signatures by principals and lobbyists on lobbyist annual disclosure statements.¹⁹ The amendment removes the words “or electronic” because UETA already treats electronic signatures as originals.²⁰ This amendment recognizes the fundamental premise of UETA—that a signature’s legal significance is not affected if it is created electronically.²¹

13. VA. CODE ANN. § 59.1-505.3(2)(D) (Repl. Vol. 2001).

14. REPORT OF THE JOINT COMM’N ON TECH. & SCI., S. Doc. No. 24, at 27 (Va. 2001).

15. *Id.*

16. Va. H.B. 576.

17. VA. CODE ANN. § 59.1-479 cmt. (Repl. Vol. 2001 & Cum. Supp. 2002).

18. H.B. 826, Va. Gen. Assembly (Reg. Sess. 2002) (enacted as Act of Mar. 22, 2002, ch. 248, 2002 Va. Acts 310).

19. VA. CODE ANN. § 2.2-426(c) (Repl. Vol. 2001).

20. *See id.* (Cum. Supp. 2002).

21. *Id.* § 59.1-485 cmt. 1 (Repl. Vol. 2001).

III. ELECTRONIC GOVERNMENT

A. *Electronic Filing*

Citizens and governments are more frequently conducting transactions electronically.²² As with online business transactions, privacy and security issues often arise.²³ In the case of government transactions, however, the information—"including tax returns, social security numbers, criminal history, and involvement in previous lawsuits"—is generally more sensitive.²⁴ Among the topics that the Electronic Government Advisory Committee of JCOTS studied in 2001 and 2002 were "E-Litigation," such as, electronic document filing and electronic discovery.²⁵

Although JCOTS made no recommendation on legislation in this regard, the General Assembly amended the Virginia Code to authorize clerks of the circuit courts to establish systems for electronic filing of documents.²⁶ The statute provides that "electronic filing of documents" may be accomplished via the Internet.²⁷ Also, the clerk must utilize the security procedures defined in UETA for transmitting notarized documents.²⁸

A circuit court clerk may now "enter into an agreement with banks, mortgage companies or other lending institutions . . . for the purpose of electronically recording certificates of satisfaction and assignments of the underlying notes secured by previously recorded deeds of trust."²⁹ This amendment expands the authority of the clerks to establish electronic filing systems, accessible only to "federal, state, and local governmental entities, or political subdivisions thereof, and quasi-governmental agencies, corporations, or authorities, including but not limited to Fannie Mae, Freddie Mac, and [the Virginia Housing Development Authority]."³⁰ These entities "may electronically file land records, in-

22. JCOTS REPORT, *supra* note 9, at 54.

23. *Id.*

24. *Id.*

25. *Id.*

26. See VA. CODE ANN. § 17.1-256 (Cum. Supp. 2002).

27. *Id.* § 17.1-255 (Cum. Supp. 2002).

28. *Id.* § 17.1-256.

29. *Id.*

30. *Id.*

struments, judgments, U.C.C. financing statements, and any other papers in civil or criminal actions.”³¹

B. *Filing Patent Applications Electronically in the United States Patent and Trademark Office*

The electronic filing of patent applications is also likely to impact practitioners in Virginia. Section 22 of Title 35 of the United States Code expressly provides for the electronic filing of documents in the United States Patent and Trademark Office (“USPTO”).³² The current policies of the USPTO, however, only provide for the electronic filing of certain types of patent applications and other documents related to patent applications.³³ The USPTO provides authoring tools and software for creating and assembling the patent applications, as well as a digital certificate to secure the electronic transmission.³⁴ Practitioners should be aware that the USPTO’s rules of patent practice currently do not provide guidance regarding electronic filings.³⁵ A rule of practice will be waived if it is inconsistent with the USPTO’s electronic filing system.³⁶ The USPTO intends to update its rules of practice after it has gained more experience with regard to electronic filings.³⁷

C. *Freedom of Information Act*

The General Assembly amended and reenacted certain provisions of the Virginia Freedom of Information Act (“FOIA”).³⁸ The Virginia FOIA provides that all public records generally “shall be open to inspection and copying by any citizens of the Commonwealth.”³⁹ “Public records” are defined as all documents or data

31. *Id.*

32. 35 U.S.C. § 22 (2000).

33. See United States Patent & Trademark Office, Electronic Filing System, at <http://www.uspto.gov/ebs/efs/index.html> (last modified Oct. 4, 2002).

34. See *id.*

35. See Rules of Practice in Patent Cases, 37 C.F.R. pt. 1 (2001).

36. See 37 C.F.R. §§ 1.182, 1.183 (2002); see also Stephen G. Kunin, *Electronic Filing System Available to Public*, 1240 OFFICIAL GAZETTE OF THE U.S. PAT. & TRADEMARK OFF. 45 (Nov. 14, 2000).

37. Kunin, *supra* note 36.

38. See VA. CODE ANN. §§ 2.2-3700 to -3714 (Repl. Vol. 2001 & Cum. Supp. 2002).

39. *Id.* § 2.2-3704(A) (Cum. Supp. 2002).

compilations in the possession of a public body.⁴⁰ The amendments provide an exemption from the mandatory disclosure requirements of FOIA for personal information, "including [e-mail] addresses, furnished to a public body for the purpose of receiving [e-mail] from the public body."⁴¹ They provide, however, that the e-mail recipient first must have requested that the public body not disclose the information.⁴² The amendments further provide that "access shall not be denied to the person who is the subject of the record."⁴³

Senate Bill 38, which was recommended by JCOTS, extended the authorization presently given to certain public bodies to use videoconferencing as a means of conducting public meetings.⁴⁴ It is a violation of FOIA for certain public bodies to "conduct a meeting wherein the public business is . . . transacted through telephonic, video, electronic or other communication means where the members are not physically assembled."⁴⁵ This legislation extends the exemption from this provision from July 1, 2002 to July 1, 2004 for any public body in the legislative branch of state government or responsible to or under the supervision, direction, or control of the Secretary of Commerce and Trade or the Secretary of Technology, as well as the State Board for Community Colleges.⁴⁶

The Electronic Government Advisory Committee recommended that, in the coming year, JCOTS study the "efficacy of the FOIA provisions for electronic meetings for certain public bodies with a goal of expanding, maintaining, modifying, or discontinuing the provisions."⁴⁷

40. *Id.* § 2.2-3701 (Cum. Supp. 2002).

"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.

Id.

41. *Id.* § 2.2-3705(A)(78) (Cum. Supp. 2002).

42. *Id.*

43. *Id.*

44. S.B. 38, Va. Gen. Assembly (Reg. Sess. 2002) (enacted as Act of Apr. 2, 2002, ch. 429, 2002 Va. Acts 668) (extending authorization for an additional two years).

45. VA. CODE ANN. § 2.2-3708(A) (Repl. Vol. 2001 & Cum. Supp. 2002).

46. See Va. S.B. 38.

47. JCOTS REPORT, *supra* note 9, at 7.

D. *Internet Privacy*

During the 2001 General Assembly Session, privacy legislation was considered by the House Committee on Science and Technology and the House Committee on Corporations, Insurance and Banking.⁴⁸ Both committees recognized the need to review this issue in greater depth. Therefore, they requested that JCOTS study Internet privacy during the 2001 interim.⁴⁹ In its 2001–2002 work plan, JCOTS described the privacy issues associated with the Internet as follows:

In recent years, the public has been inundated with media stories about the use and abuse of personal information. Citizens and governments have become increasingly aware of the issues and concerns as more transactions are conducted and more information is provided through computer networks. We have seen laws mandating privacy policies and lawsuits regarding their enforcement.⁵⁰

JCOTS also reviewed whether consumers should have a choice about what personal information they provide when conducting a commercial transaction through the Internet, in addition to the information necessary to complete the transaction.⁵¹

JCOTS met on December 18, 2001 to receive the advisory committees' final reports and to vote on its legislative agenda for the 2002 General Assembly Session.⁵² Delegate Robert H. Brink asked JCOTS to support "a resolution that encourages all state and local government agencies and individuals to incorporate machine-readable privacy policies and the Platform for Privacy Preferences Project ("P3P") specification into all agency and personal government websites."⁵³ In a letter to the Commission, Delegate Brink wrote:

I'm certain you are aware that a major inhibition to the growth of e-commerce is consumers' justifiable concern about control over personal information that they submit to websites. JCOTS has been briefed on the Platform for Privacy Preferences Project (P3P), a machine-readable specification developed by the World Wide Web Con-

48. *Id.* at 53.

49. *Id.*

50. *Id.* at 53–54.

51. *Id.* at 54.

52. *Id.* at 2.

53. *Id.*

sortium, which will allow users to set their individual privacy preferences and warn users or block websites whose privacy policies do not comply with those preferences. This voluntary approach is a means of addressing legitimate privacy concerns without government intervention or regulation.

In order for P3P to be successful, two things must happen: P3P must be adopted by individual Internet users, and more websites must become P3P-compliant. My resolution . . . would promote the expansion of P3P by encouraging state and local government agencies and individuals to make their websites P3P-compliant, and would encourage the Virginia Information Providers Network (VIPNET) to deploy P3P-compliant policies on websites using their portal.

My resolution parallels similar legislation at the Federal level, where HJRes 159 has been introduced in the U.S. House of Representatives and a similar resolution will be introduced early next year in the U.S. Senate. If my resolution passes, Virginia will once again show its technology leadership as the first state to advance Internet privacy in this manner.⁵⁴

JCOTS voted unanimously to endorse the resolution.⁵⁵ Delegate Brink's resolution was the only piece of legislation passed by the General Assembly in 2002 that addressed Internet privacy.⁵⁶ The resolution found that Internet users are justifiably concerned about their personal information being collected when they visit sites on the World Wide Web.⁵⁷ It also found that providing consumers with notice "as to what information will be collected and how it will be used is necessary to allow them to make informed decisions about the disclosure of personal information."⁵⁸ As a result, House Joint Resolution 172 encourages all state and local government agencies and individuals to incorporate machine-readable privacy policies and the P3P specification into all agency and personal government Web sites.⁵⁹

54. *Id.* at 2-3.

55. *Id.* at 3.

56. H.J. Res. 172, Va. Gen. Assembly (Reg. Sess. 2002).

57. *Id.*

58. *Id.*

59. *Id.* Machine-readable privacy policies "allow websites to transmit information about their privacy practices in a standardized format that can be read by a web browser or other software, automatically be compared to the pre-established privacy preferences of the user, and warn a user when the site's policy does not match the user's preferences." *Id.* The World Wide Web Consortium, "the 500-member international consortium that sets interoperability standards for Internet technology, has developed a specification for [these] privacy policies under the auspices of the . . . P3P." *Id.*

The joint resolution found that machine-readable privacy policies “empower Internet users to make fully informed choices without restricting or impeding their online activities; and . . . such empowerment of users leads to further growth of the Internet by creating an environment of trust for Internet-based transactions and interactions.”⁶⁰ As a result, the development and implementation of the P3P specification should promote the future growth of the Internet.⁶¹

Finally, the joint resolution requests the Virginia Information Providers Network (“VIPNet”) to work with its parent company, National Information Consortium, Inc., to encourage other governments to adopt P3P into their Web sites.⁶²

E. *My Virginia PIN*

The Council on Technology Services (“COTS”) was created in 1998 to develop an information technology plan for state government.⁶³ The Secretary of Technology, in partnership with COTS, the Department of Information Technology (“DIT”), and the Department of Motor Vehicles (“DMV”), developed the *My Virginia Personal Identification Number*—or “*My Virginia PIN*”—program.⁶⁴ It allows citizens electronic access to various government services offered by state agencies, educational institutions, and local governments.⁶⁵ A confidential number allows the user to conduct secure transactions with all participating organizations.⁶⁶ The Secretary of Technology has described *My Virginia PIN* as “the most highly demanded, comprehensive electronic access tool ever put forward by state government.”⁶⁷ Some of the services that were to be available to *My Virginia PIN* users in 2002 included “filing tax returns and checking tax refund status, chang-

60. *Id.*

61. *Id.*

62. *Id.*

63. JCOTS REPORT, *supra* note 9, at 45.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

ing addresses with DMV, renewing driver's licenses, reporting sold or traded vehicles, and verifying voter registration status."⁶⁸

The General Assembly supported the efforts of these organizations and agencies to develop the *My Virginia* PIN program by passing House Joint Resolution 100, finding that "the continued development of electronic government is critical for bringing newer and more improved government services to the citizens of the Commonwealth."⁶⁹

One recommendation made to the Electronic Government Advisory Committee of JCOTS, but which the committee did not have time to address during the 2001 interim, would have protected "the use of *My Virginia* PIN by clarifying that it is a digital signature and by stating that its misuse is a crime."⁷⁰

IV. CRIMINAL LAW

A. *Computer Crimes Act*

In 2002, the General Assembly also passed an amendment to the Virginia Computer Crimes Act.⁷¹ House Bill 304 amended and reenacted Virginia Code section 18.2-152.4—the computer trespass statute.⁷² This section specifies certain acts that, through the use of a computer or computer network, constitute computer trespass.⁷³ The amendment added the following language: "[n]othing in this section shall be construed to prohibit the monitoring of computer usage of, the otherwise lawful copying of data of, or the denial of computer or Internet access to a minor by a parent or legal guardian of the minor."⁷⁴

68. *Id.* at 45–46.

69. H.J. Res. 100, Va. Gen. Assembly (Reg. Sess. 2002).

70. JCOTS REPORT, *supra* note 9, at 50.

71. VA. CODE ANN. §§ 18.2-152.1 to -152.15 (Cum. Supp. 2002).

72. H.B. 304, Va. Gen. Assembly (Reg. Sess. 2002) (enacted as Act of Mar. 22, 2002, ch. 195, 2002 Va. Acts 198) (codified as amended at VA. CODE ANN. § 18.2-152.4 (Cum. Supp. 2002)).

73. VA. CODE ANN. § 18.2-152.4(A)–(B) (Cum. Supp. 2002).

74. *Id.* § 18.2-152.4(D).

B. *Dissemination of Sexually Harmful Material to Juveniles*

Virginia Code section 18.2-391 criminalizes the dissemination by computer of sexually harmful material to minors.⁷⁵ The statute provides that it is unlawful for any person to sell, rent, or loan to a juvenile any “electronic file or message containing an image” that depicts sexually explicit nudity or conduct, or any “electronic file or message containing words” depicting the same.⁷⁶ The prohibitions covering “electronic file[s] or message[s]” were added by amendments passed in 1999.⁷⁷

In *PSINet Inc. v. Chapman*,⁷⁸ the United States District Court for the Western District of Virginia held that Virginia Code section 18.2-391 is unconstitutional as applied to the Internet.⁷⁹ Therefore, the court permanently enjoined and prohibited the enforcement of the statute.⁸⁰ The plaintiffs in that case included “internet service providers, organizations representing booksellers, publishers, and other media interests, online businesses, [and] individual authors and artists.”⁸¹ They communicated “online both within and from outside the Commonwealth of Virginia, and [their] speech was accessible both within and outside of Virginia.”⁸² After obtaining a preliminary injunction, the claimants moved for summary judgment, seeking a final injunction against the enforcement of the statute.⁸³

Pointing out that similar federal statutes, as well as statutes in New York, New Mexico, and Michigan have already been found unconstitutional, the court held that Virginia Code section 18.2-391 violates the First Amendment of the United States Constitution.⁸⁴ The court found that, “in its efforts to restrict the access of minors to indecent material on the Internet, the Act imposes, albeit unintentionally, an unconstitutional burden on protected

75. *Id.* § 18.2-391(A)(1)–(2) (Cum. Supp. 2002).

76. *Id.*

77. *Id.*

78. 167 F. Supp. 2d. 878 (W.D. Va. 2001).

79. *Id.* at 881

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* at 880.

84. *Id.* at 880–81.

adult speech.”⁸⁵ Although the court found that Virginia’s “interest in protecting, and helping parents to protect, minors from sexually explicit materials is compelling,” the law was not “narrowly tailored.”⁸⁶ In other words, it did not employ “the least restrictive means to achieve its goal.”⁸⁷ That is, the implementation of the statute would restrict the access of both adults and children.⁸⁸ The court further found that

[t]he critical fact that distinguishes the 1999 Act from its pre-amendment version is the former’s inclusion of material on the Internet. The pre-amendment version of section 18.2-391 applied only to traditional media in physical spaces, and thus made it possible to restrict minors’ access to indecent material without substantially burdening adult access. For example, in a brick and mortar bookstore, a magazine considered harmful to minors can be wrapped in protective covering and placed behind the counter where only adults can purchase it. Presently, the same cannot be said for material on the Internet. That is, efforts to comply with the 1999 Act will result in the exclusion of too many adults from accessing material to be constitutionally sound.⁸⁹

The court went on to say that it “recognizes the need for some regulation of online content, and finds myopic the arguments of those who advocate an anarchical cyberspace. However, because, in the aggregate, the 1999 Act imposes a substantial burden on protected speech, its enforcement must be enjoined.”⁹⁰ The court’s primary rationale for its holding was the indefinite language of the statute and its lack of available affirmative defenses, as well as the significant burden it poses on “bulletin boards, newsgroups and commercial Websites that consist predominantly of material suitable for minors.”⁹¹ Furthermore, the court found that “[t]he proposed compliance measures may also chill the willingness of adults to access adult Websites.”⁹²

Finally, the court found that the statute violates the Commerce Clause in that it “discriminates against or unduly burdens interstate commerce and thereby impede[s] free private trade in the

85. *Id.* at 884.

86. *Id.* at 886.

87. *Id.*

88. *Id.* at 887.

89. *Id.*

90. *Id.* at 890.

91. *See id.*

92. *Id.*

national marketplace.”⁹³ That is, Virginia Code section 18.2-391 unduly burdens interstate commerce by placing restrictions on electronic commercial materials in all states, not just in Virginia.⁹⁴

V. CIVIL LAW

A. Identity of Persons Communicating Anonymously Over the Internet

Finally, several legislative changes were made to technology-related civil laws in Virginia. House Bill 819 added a new Virginia Code section numbered 8.01-407.1, which provides a detailed procedure governing subpoenas in civil proceedings where it is alleged that an anonymous individual has engaged in tortious Internet communications.⁹⁵ Section 8.01-407.1 governs subpoenas seeking information only from a nongovernmental person or entity that would identify the anonymous individual.⁹⁶ First, “[a]t least thirty days before the date on which disclosure is sought,” the party seeking the information must file a copy of the subpoena with the circuit court.⁹⁷ The party must also file supporting material showing the following:

- a. That one or more communications that are or may be tortious or illegal have been made by the anonymous communicator, or that the party requesting the subpoena has a legitimate, good faith basis to contend that such party is the victim of conduct actionable in the jurisdiction where the suit was filed. A copy of the communications that are the subject of the action or subpoena shall be submitted.
- b. That other reasonable efforts to identify the anonymous communicator have proven fruitless.
- c. That the identity of the anonymous communicator is important, is centrally needed to advance the claim, relates to a core claim or defense, or is directly and materially relevant to that claim or defense.
- d. That no motion to dismiss, motion for judgment on the pleadings,

93. *Id.* (quoting *Gen. Motors Corp. v. Tracey*, 519 U.S. 278, 287 (1991)).

94. *Id.* at 890–91.

95. H.B. 819, Va. Gen. Assembly (Reg. Sess. 2002) (enacted as Act of Apr. 18, 2002, ch. 875, 2002 Va. Acts 716) (codified at VA. CODE ANN. § 8.01-407.1 (Cum. Supp. 2002)).

96. VA. CODE ANN. § 8.01-407.1(A) (Cum. Supp. 2002).

97. *Id.* § 8.01-407.1(A)(1).

or judgment as a matter of law, demurrer or summary judgment-type motion challenging the viability of the lawsuit of the underlying plaintiff is pending. The pendency of such a motion may be considered by the court in determining whether to enforce, suspend or strike the proposed disclosure obligation under the subpoena.

e. That the individuals or entities to whom the subpoena is addressed are likely to have responsive information.

f. If the subpoena sought relates to an action pending in another jurisdiction, the application shall contain a copy of the pleadings in such action, along with the mandate, writ or commission of the court where the action is pending that authorizes the discovery of the information sought in the Commonwealth.⁹⁸

The new statute also requires that notice be given, including via e-mail, to the anonymous communicator and that any interested person be given the opportunity to file a “written objection, motion to quash, or motion for protective order.”⁹⁹ Finally, “[t]he party requesting or issuing a subpoena for information identifying an anonymous Internet communicator shall serve along with each copy of such subpoena,” prescribed notices to the Internet service provider and to the Internet user, setting forth their rights under section 8.01-407.1.¹⁰⁰

B. Corporations—Notice of Shareholders’ Meetings and Voting by Electronic Transmission

Several sections of the Virginia Stock Corporation Act¹⁰¹ and the Virginia Nonstock Corporation Act¹⁰² were amended and re-enacted.¹⁰³ Essentially, the bill changed the statutes to allow meeting notices for stock and nonstock corporations to be given by electronic transmission.¹⁰⁴ It also allows the votes of shareholders or members, as the case may be, to be submitted by electronic transmission if authorized by the corporation’s board.¹⁰⁵

98. *Id.* § 8.01-407.1(A)(1)(a)–(f).

99. *Id.* § 8.01-407.1(A)(4).

100. *Id.* § 8.01-407.1(B).

101. *Id.* §§ 13.1-601 to -780 (Repl. Vol. 1999 & Cum. Supp. 2002).

102. *Id.* §§ 13.1-801 to -944 (Repl. Vol. 1999 & Cum. Supp. 2002).

103. *See id.* §§ 13.1-603, -610, -658, -664.1, -686, -803, -842, -846, -847, -866 (Cum. Supp. 2002).

104. *See id.* §§ 13.1-610(H), -842 (A)(3) (Cum. Supp. 2002).

105. *See id.* §§ 13.1-664.1(E), -847(A) (Cum Supp. 2002).

The bill, as passed by the House and Senate, added new language to Virginia Code section 13.1-610 to provide that “any notice to shareholders given by the corporation, under any provision of this chapter, the articles of incorporation or the bylaws, shall be effective if given by a form of electronic transmission consented to by the shareholder to whom the notice is given.”¹⁰⁶ “Electronic transmission” is defined as “any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by the recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.”¹⁰⁷ The means of giving such notice include facsimile, e-mail, and posting on an electronic network, along with separate notice to the shareholder.¹⁰⁸

While Virginia Code section 13.1-658 previously provided that only a corporation with 300 or more record shareholders could give notice of annual and special shareholders’ meetings by electronic transmission,¹⁰⁹ the amendment removed this limitation.¹¹⁰ The provisions of the Virginia Stock Corporation Act pertaining to voting procedures and inspectors of elections were also modified.¹¹¹ A new subsection E was added to Virginia Code section 13.1-664.1, providing that

[i]f authorized by [a corporation’s] board of directors, any shareholder vote to be taken by written ballot may be satisfied by a ballot submitted by electronic transmission, provided that [the] electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the shareholder or the shareholder’s proxy.¹¹²

Finally, Virginia Code section 13.1-686—“Notice of directors’ meetings”—was amended to allow any notice of a regular or special meeting of the board of directors to be given by a form of elec-

106. *Id.* § 13.1-610(H) (Cum. Supp. 2002).

107. *Id.* §§ 13.1-603, -803 (Cum. Supp. 2002). Sections 13.1-603 and 13.1-803 expressly incorporate any term that is defined in § 59.1-480 of UETA.

108. *Id.* §§ 13.1-610(H), -842(F) (Cum. Supp. 2002).

109. *Id.* § 13.1-658(G) (Repl. Vol. 1999).

110. *See id.* § 13.1-658 (Cum. Supp. 2002). See Editor’s note following Virginia code section 13.1-658 for additional information. *Id.*

111. *See id.*

112. *Id.* § 13.1-664.1(E) (Cum. Supp. 2002).

tronic transmission, if consented to by the director to whom the notice is given.¹¹³ The bill also made analogous changes to the Virginia Nonstock Corporation Act.¹¹⁴

VI. CONCLUSION

In 2000, the General Assembly enacted sweeping legislation in its adoption of UCITA and UETA. By comparison, the technology-related legislation enacted over the past year was not as remarkable, but it did affect areas of major public interest, such as electronic commerce, electronic filing of documents, Internet privacy, and the criminal and civil law of Virginia.

During the 2001 interim, JCOTS and its advisory committees examined these issues confronting the Commonwealth's citizens and government. In its advisory role to the General Assembly, it considered "[e]veryday matters such as unsolicited bulk e-mail, personal privacy in the information age and citizen interaction with the government online."¹¹⁵ In 2002–2003, JCOTS will continue to "assist the General Assembly in identifying the most pressing technology and science issues for closer scrutiny and possible legislation."¹¹⁶ In its final report, JCOTS stated: "[t]o ensure that the Commonwealth remains at the forefront of the business of technology and science, JCOTS will continue to help Virginia distinguish itself by actively addressing—whether through legislation, formal study or simple consideration—some of today's most challenging technology and science issues."¹¹⁷

113. *Id.* § 13.1-686(C) (Cum. Supp. 2002).

114. *See id.* § 13.1-866(C) (Cum. Supp. 2002).

115. JCOTS REPORT, *supra* note 9, at 52.

116. *Id.*

117. *Id.*