

## I. INTRODUCTION TO “RECORD”

In the early 1990s, the American Bar Association (ABA) Working Group on Electronic Writings and Notices<sup>1</sup> (WG) researched and deliberated for three years, to come up with a defined term—“record”—that would embody both written and electronic communications and documents. The WG’s early goal was to provide a term that could be used in various articles of the Uniform Commercial Code (UCC), as they were redrafted during the 1990s, but the WG soon realized that the newly defined term would also appear in other statutes, regulations, and international conventions dealing with electronic commerce issues. In addition, it would become a common term in contracts and in commentary on electronic commercial law. Finally, the term needed to have longevity of usage, so that it would accommodate future technologies of information storage, not necessarily using electronic technology. The WG’s final product was the following terms and definitions, which were incorporated fairly quickly into various articles of the UCC, the Uniform Electronic Transactions Act (UETA), and a key federal statute, the Electronic Signatures in Global and National Commerce Act (E-SIGN):

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.<sup>2</sup>

“Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.<sup>3</sup>

These definitions were subsequently incorporated into additional statutes, many of which are listed in Appendices A and B.

This Article is a drafting history and a white paper on “record,” setting out the WG’s deliberations and choices, the WG’s interactions with concurrent and subsequent UCC redraft committees, the principles and policies underlying the WG’s final decisions, and uses of “record” in subsequent statutes.

---

<sup>1</sup> The Working Group was within the Electronic Commercial Practices Subcommittee (ECP Subcommittee), in the Uniform Commercial Code Committee (UCC Committee), in the ABA Business Law Section. In 1995, the ECP Subcommittee was granted full Committee status within the Section of Business Law and was renamed the Committee on the Law of Commerce in Cyberspace (Cyberspace Law Committee). The Working Group on Electronic Writings and Notices was later renamed the Working Group on Electronic Contracting Practices and was jointly sponsored by the UCC Committee and the Cyberspace Law Committee until 2005, when it consolidated under the Cyberspace Law Committee.

<sup>2</sup> U.C.C. § 5-102(a)(14) (1995); U.E.T.A. § 2(13) (1999); U.C.C. § 1-201(b)(31) (revised 2001) (enacted in 48 jurisdictions); *see also* E-SIGN § 7006(9); 15 U.S.C. § 7006(9) (2006).

<sup>3</sup> U.E.T.A. § 2(7) (1999); U.C.C. § 2-103(1)(h) (2003 amendments) (not yet enacted in any jurisdiction); UCC § 2-103(1)(cc) (2003 amendments) (not yet enacted in any jurisdiction); *see also* E-SIGN § 7006(4), 15 U.S.C. § 7006(4) (2006) (“The term ‘electronic record’ means a *contract or other* record created . . . .”) (emphasis added).