

## SALES ON THE INTERNET

### PROBLEMS

#### **Problem 1**

Read the pages in the Supplementary Materials titled “Sales on the Internet.” The section on “Disclosures” explains that the federal E-Sign Act permits a seller to make required disclosures electronically. But that Act does not otherwise change disclosure requirements.

The Uniform Commercial Code requires sellers who “disclaim” implied warranties in writing to do so in a disclaimer which is “conspicuous.” That term is defined in the UCC as “so written that a reasonable person against whom it is to operate ought to have noticed it...Language in the body of a form is ‘conspicuous’ if it is in larger or other contrasting type or color.” UCC § 1-201(10).

Examine the disclaimer in the form used by Gateway on their web site: <http://www.gateway.com/about/legal/warranties/terms.pdf> It is in ¶ 7. Does this disclaimer fit within the UCC definition? Should courts decide this by looking solely at ¶ 7, or should the court look at the entire agreement?

See your *Selected Commercial Statutes* (2002 ed.) page 1124 for a proposed new definition of “conspicuous” that would apply to electronic disclosures. Proposed § 2-103(b). The term “record” in that definition refers to both paper and electronic records.

The Gateway disclaimer appears in a document titled “Standard Terms of Sale and Limited Warranty Agreement.” Go to the Gateway Home Page and see if you can find this document from that page. [www.gateway.com](http://www.gateway.com).

#### **Problem 2**

Read the pages in the Supplementary Materials titled “FTC and Internet Advertising.” While the FTC has so far limited the Internet disclosure guidelines discussed therein to advertising, it is possible that the FTC might extend at least some of the “advice” in the guidelines to important disclosures in contracts.

Examine Gateway’s “Standard Terms” again. The FTC’s advertising guidelines require clear and conspicuous disclosure where it is necessary “to provide consumers material information about a transaction.” What information in Gateway’s “Standard Terms” fit within this category of being material? Does the agreement provide material information in a manner that is clear and conspicuous as the FTC describes those terms in its guidelines? Are there things Gateway should do to improve their agreement?

### **Problem 3**

The Supplementary Materials summarize the federal E-Sign Act under “Disclosures.” The second paragraph explains the requirements a seller must follow in order to obtain the consumer’s consent to receive required information and disclosures electronically. As explained, one of the requirements is that the consumer electronically consent or confirm consent electronically. The exact language of the statute requires that the consumer “consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent.” § 101(c) (1)(C)(ii).

### **HYPOTHETICAL**

Dorothy goes into Speedy Car Sales and buys a car on credit, payable for the next 36 months. Speedy knows that federal consumer credit disclosure laws require him to send notices and disclosures to Dorothy while she is paying off her car loan. He wants to be able to send future credit disclosures to her in an electronic form. (You will learn later in the course about federal laws that require these notices.) Is there any way Speedy can comply with this requirement while Dorothy is still in his store? In trying to answer this question, ask yourself how and where Dorothy will be receiving future electronic notices from Speedy. Now ask yourself where she needs to be in order for her to consent “in a manner that...demonstrates [she] can access [the electronic notices].”

**NOTE:** We will cover the rest of the material in this assignment very briefly, but do look at “Competition.” Is the Georgia law described an example of consumer protection or Georgia seller protection?