

E-Sign Law Removes Dotted Line, Lessens Paperwork

Affordability and trust become major issues regarding E-Sign's utility

By Ari Kaplan

Look out partner, there's a new sheriff in virtual town, and its name is E-Sign. Its purpose: to build the foundation for allowing documents and transactions now requiring an "inked" signature to be signed and maintained "digitally."

Take notice, but have no fear, for now it is really just a little law with a big name. But while the initiative currently lacks much of a bite, as the "E" in its name grows, so will the legislation's impact.

The law, formally known as the Electronic Signatures in Global and National Commerce Act, but popularly referred to as E-Sign, took effect on October 1, 2000. It essentially prohibits the creation of any law that denies the legal effect of an electronic document or an electronic signature.

Significantly, however, is the fact that the new law does not require use or acceptance of electronic records or signatures. What then is the point, you ask?

Well, Congress is, at this stage, walking softly through cyberspace. Big stick in tow, it is legislating ever so carefully as to not hinder the growth of e-commerce. As many over eager venture capitalists are finding out, the NASDAQ will trim the excess fat in the market so the government is merely trying to set certain boundaries within which it would like the Internet to develop.

E-Sign is an effort to merge the offline with the online, to build a comfort zone in which individuals and members of the business community can increase their electronic initiatives and operations.

WHERE DO I SIGN?

So what is a digital signature? Actually, there are (or at least can be) various types

of digital signatures because the new law does not establish any standard or even suggest acceptable methods of electronically signing one's name.

The digital signature generally used today is just a string of numbers that are scrambled and assigned to a particular individual and applied to a document using a smart card (looks like a credit card but smarter).

'Today, only the wealthiest companies have the resources to implement e-signature and electronic distribution policies.'

You may be interested to know that President Clinton signed the E-Sign bill into law using a pen as well as a handy-dandy smart card. Eventually, your digital signature will probably be anything that uniquely identifies you, such as your fingerprint, a blueprint of your retina, or some other biometric-type characteristic.

Until this law was enacted, most Internet-based transactions required hard-copy documents to support whatever deal was struck by the interested parties. But as a result, much of the efficiency in conducting business over the Net is lost.

E-Sign is the first step in enhancing the e-marketplace by giving legitimacy to the electronic maintenance of documents and allowing those documents to be signed by a method other than that which

our founding father, John Hancock, used over 200 years ago.

E-SIGN: NOT FOR EVERYTHING

But before you toss your shredder and donate your printer to charity, bear in mind that the E-Sign law expressly prohibits using the Internet exclusively to distribute certain pieces of information.

For example, when evicting someone from his or her apartment, you are not allowed to e-mail the notice; it will not be valid. The same applies when terminating someone's health insurance or cutting off his or her electricity. I guess this makes sense; after all, if I'm not paying Con Ed and they are going to cut off my juice, how can they expect electronic notice to be sufficient?

Not only does the law prohibit distribution of certain information electronically, it also prohibits digital signatures to be used on documents, such as your will, and items related to various family law proceedings like divorce and adoption.

E-Sign clearly has some advantages. If people start digitally signing and electronically distributing documents, it will inevitably reduce administrative roadblocks to efficient business. For example, a mortgage or other loan application could be completely processed in a few days rather than weeks or months. And we all know that anything that makes that process easier will likely receive a warm welcome.

ACCEPTANCE, AFFORDABILITY

Since E-Sign only provides a framework for the development of a digital

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signature system, the e-business community needs to create standards and safeguards for the use and protection of e-signatures.

Of course, the reason that players in the market are reluctant to use an e-signature is because they do not trust them. Therefore, it will take more than a new law with a catchy nickname to spark interest.

Most people will not sign on the "dot-com" line unless a signature can be tied back to a single person, and only that person. Those receiving the signature will not accept the digitized version until they

can ensure that the signatory cannot back out of the deal.

And both parties will not likely accept the signature unless they are guaranteed that the electronic document itself is secure and cannot be changed without consent. If these assurances cannot be made, where is the added value of the e-autograph?

So what about the age-old issue of affordability? Today, only the wealthiest companies have the resources to implement e-signature and electronic distribution policies, especially because without a standard application, the leadership in this field will probably shift many times before uniform software is adopted.

And, really, who is rushing to e-sign their name anyway? I spent every day in third grade practicing my signature, I am not about to give it up now just because a bunch of East Coast code writers gave me the nod. I must say, though, I would love to get myself one of those smart cards!

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sites you use and their privacy policies. Be sure your transfer of information is done securely and that the information you provide will not potentially end up in the hands of other parties.

Some sites will have posted the logos of Internet security or privacy watchdog groups by which they may have been endorsed. Any site on which you plan to conduct any financial transactions should afford you the use of a secure server.

QUICK RESPONSE REQUIRED

Should you suspect or find that you have been the victim of identity theft, once again, it is up to you to mitigate the disaster. You must act quickly. The protection of the law is on your side to a degree. If someone uses your credit to make purchases or obtain financial gain, you are generally only responsible for the first \$50 by law.

However, this is nothing compared to the pain and expense it may cost to clear your good name and credit. It could take years and cost thousands. The worst case

scenario would be a criminal record that might need to be cleared.

If you have reason to believe someone has stolen your identity, the phone is your best weapon. If credit is involved, you need to contact your creditors, perhaps your bank, and maybe even the credit bureaus.

If it involves your social security number, you need to contact the Social Security Administration immediately. Be advised, however, social security numbers are only cancelled and issued anew in the most extreme of circumstances! There are even a few Web sites where you can report what has happened. In any case, it is imperative that you contact law enforcement authorities immediately!

There can be no doubt. Americans have embraced the Internet. It is a powerful tool for consumerism and for business. Like any other instrument of power, it can be used by the wrong hands to do terrible things.

LEGAL SYSTEM PLAYING CATCH-UP

Laws have already been passed to foster

and protect our online affairs. Newer and tougher bills are constantly being proposed as Internet users become more aware of the growing threats to their privacy and security online.

These are uncharted waters for law enforcement, however. There is still much to be done to make the information superhighway safe for all passengers. Until that time, should it ever come, our best shot at protecting who we are and what we do online is our own vigilance.

For more information on identity theft, see the Privacy Rights Clearing House Web site: www.privacyrights.org, the U.S. government site on ID theft: www.consumer.gov/idtheft, and the Internet Fraud Complaint Center: www.ifccfbi.gov.

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