

Electronic signatures in the United States

Legal considerations and best practices



Electronic signatures, also known as *e-signatures*, simplify the way companies gather, track and manage signatures and approvals. While enterprises and government agencies appreciate the potential improvements in efficiency that e-signatures can deliver, they want to understand the legal implications.

E-signatures have possessed the same legal status as handwritten signatures in the United States for the past 15 years. Learn about the basic requirements of U.S. electronic signature law, as well as best practices that can help your organization successfully improve workflow, reduce costs and promote document integrity.

What is an e-signature?

Under the Electronic Signature in Global and National Commerce (ESIGN) Act of 2000, an e-signature is any electronic sound, symbol or process that is related to an agreement and executed with the intent to sign that agreement.

Except for its digital format, an e-signature is legally identical to a handwritten signature, carrying with it all the same authority and credibility as John Hancock's name on the Declaration of Independence.

The ESIGN Act

Fifteen years ago, President Bill Clinton used a smart card carrying his e-signature to sign the the ESIGN Act.* Spurred by the growing demands of e-commerce, the ESIGN Act gave e-signatures the same validity as ink signatures on contracts, transactions and records. By that time, many states had already adopted the Uniform Electronic Transactions Act (UETA) model law. ESIGN allowed those laws to stay in effect only to the extent that they did not conflict with it. To date, 47 of the 50 states have adopted some form of UETA, leading to a generally consistent legal framework for the use of e-signatures and records throughout U.S. federal and state law.

The ESIGN Act:

- Holds that any law that requires a handwritten signature is satisfied by an e-signature provided one has consented to use e-signatures and not withdrawn that consent
- Assures the contract will be admissible in a court of law
- Prevents denial of legal effect, validity or enforceability of an electronically signed document solely because it is in electronic form

The demand for efficiency is driving adoption

The business environment is trending toward lean operations, and e-signatures fully support that approach. E-signatures help organizations:

- **Reduce operational costs**—Businesses save on the costs of man-hours, paper, printers and accessories, storage and archiving, and transport.
- **Increase workflow efficiency**—Signature and approval processes are streamlined because the need to print or scan documents, wait for approvals and hand-deliver or mail documents is eliminated.
- **Promote document integrity**—E-signed documents are much easier to archive and retrieve, and a complete history of the document can be reviewed at any time.

*Einstein, David. "Clinton Signs Digital Signature Act." Forbes.com. June 3, 2000. <http://www.forbes.com/2000/06/30/mu8.html> (accessed August 18, 2015).

Because these benefits can be achieved without requiring a significant investment or any infrastructure buildout, organizations are finding e-signatures simple to implement. Some companies and agencies are choosing a phased approach, beginning with noncritical processes and then expanding as their comfort level grows, while others are incorporating e-signatures holistically into their enterprise software landscape.

E-signatures are gaining momentum in business

The market has already validated the need for e-signatures. Investment in the sector has grown significantly in the past year, and key research firms, including Gartner and Forrester, are predicting continuing growth. Forrester refers to electronic signatures as a "foundational technology," recommending that enterprises include e-signatures as part of their business process and enterprise content management strategies.[†]

Large businesses and agencies are no longer the only organizations benefiting from electronic signatures. As document management software has become more accessible, small businesses can easily adopt the technology as well.

Positive signals also come from the government sector. Paperless initiatives have been instituted since the E-SIGN Act was signed, and in 2010, both houses of Congress passed a resolution recognizing June 30 as National E-SIGN Day.

Requirements and best practices

While e-signatures are easy to use, organizations can help ensure a successful implementation by making decisions in advance about how they will handle consent, retention, authentication and governing law.

Consent to do business electronically

Both E-SIGN and UETA require consent to conduct business electronically, so many enterprise e-signature solutions have consent built into the workflow. Some organizations include additional language in agreements in the form of a clause such as:

The parties agree that this agreement may be electronically signed. The parties agree that the electronic signatures appearing on this agreement are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.

Record retention

Electronic records have to meet the record retention requirements that are in place for nonelectronic records. All of your organization's usual policies and procedures should apply. Electronic records must be maintained, accessible, and reproducible in an accurate form.

Opt-out clause

Signers should be able to opt out of signing an agreement electronically, so an organization's policies should tell signers how they can opt out and instead sign manually. Consider including the following clause for this purpose:

You may withdraw your consent to receive electronic documents, notices or disclosures at any time. In order to withdraw consent, you must notify the sending party that you wish to withdraw consent and request that your future documents, notices and disclosures be provided in paper format. To request paper copies of documents; withdraw consent to conduct business electronically and receive documents, notices or disclosures electronically; or withdraw consent to sign documents electronically, please contact the sending party by telephone, postal mail or email.

Signed copies

All signers should receive a fully executed copy of their agreement. Many e-signature solutions automatically provide executed copies of agreements to signers as part of the approval workflow. These workflows are easily customizable, so organizations can choose the process that works best for their business processes.

[†]Athow, Désiré. "Digital signatures: what you need to know." TechRadar.com. May 3, 2014. <http://www.techradar.com/news/world-of-tech/digital-signatures-what-you-need-to-know-1246427/2> (accessed August 18, 2015).

Advanced authentication

Organizations can choose advanced authentication options, like knowledge-based authentication, customized passwords or phone authentication for higher risk agreements.

- Knowledge-based authentication requires signers to prove their identity by answering questions unique to them.
- Customized passwords require signers to create and enter a secure unique password before being allowed to sign.
- Phone authentication requires users to enter a one-time verification code that is delivered to their phones via voice or text message.

Governing law and venue

Although the laws surrounding e-signature are different in every country, e-signatures are legally valid and enforceable in nearly every industrialized nation in the world. When conducting business internationally, organizations should designate a governing law or venue that provides the widest protection for e-signatures. The United States, the United Kingdom, Australia, New Zealand and Canada have minimalist e-signature laws that are effective in most situations.

Streamlined processes benefit every organization

The E-SIGN Act set in motion a wave of e-signature adoption that continues to build today. With enterprises, SMBs, and the U.S. government incorporating e-signatures into their business process and content management strategies, e-signatures are changing the way organizations operate.

Many companies rely on enterprise e-signature solutions like Adobe Document Cloud to help them customize and automate their signature and approval workflows. Adobe Document Cloud eSign services let organizations set up templates containing predefined content for different types of agreements. This simplifies authentication by allowing users to select their desired options when they initiate agreements.

Signed documents are held in a central repository, so they are searchable and accessible across an organization. Adobe Document Cloud eSign services are fully compliant with the E-SIGN Act, and they make it easy to build many of the legal requirements for e-signatures right into the signature and approval process.

For more information

For more information about how to effectively incorporate e-signatures into your company's workflows, consult these resources:

- *Electronic signature laws around the globe*
- *Developing an effective electronic signature policy*
- *Adobe Document Cloud for Enterprise*



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