



A short primer on applicable US eSignature laws

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Two bodies of law in the United States generally govern the legality of electronic signatures and electronic records: the Electronic Signature in Global and National Commerce Act (ESIGN) and state adoption of the Uniform Electronic Transactions Act (UETA). Here is a quick look at each of them, plus notes on other selected laws governing digital transactions.

ESIGN

ESIGN was enacted into law on June 30, 2000 and took effect October 1, 2000. In short, ESIGN adopts the simple principle that electronic signatures and records should be accorded the same legal status as ink signature and paper records. ESIGN does not change the underlying substance of any law within its scope; instead, it affects only the medium for execution and delivery of writings.

ESIGN treats commercial and consumer transactions differently, however. For commercial transactions, the parties' agreement to conduct the transaction will be implied from the facts and circumstances surrounding the transaction or by an express statement of intent. For consumer transactions, ESIGN requires that companies provide consumers with a specific set of disclosures before being able to provide required disclosures electronically.

Lastly, ESIGN applies to federal law and preempts any inconsistent state law, with the proviso that if a state adopts UETA without amendment, ESIGN will not preempt that enactment.

UETA

UETA was approved and recommended by the National Conference of Commissioners on Uniform State Laws in July 1999. To date, it has been adopted by 47 states as well as Washington, DC and the U.S. Virgin Islands. Illinois, New York and Washington are the three states that have not adopted UETA, though each has adopted its own law governing electronic signatures and records.

Like ESIGN, UETA adopts the simple principle that electronic signatures and records should be accorded the same legal status as ink signature and paper records. UETA, however, differs from ESIGN in a few areas. First, it does not contain any requirement that consumers be provided with specified disclosures before agreeing to proceed electronically (though as noted below, certain states have amended their UETA in various ways, one of which is to require such disclosures). Second, UETA governs attribution of electronic signatures. And third, UETA addresses when an electronic record has been sent and received. As noted above, states have sometimes enacted variations to UETA, with California being the most prominent example.

FURTHERMORE

Among other selected laws impacting digital transactions:

In the United States, Electronic Signature in Global and National Commerce Act and state adoptions of the Uniform Electronic Transactions Act

Telephone Consumer Protection Act (TCPA): Regulates unsolicited calls – including marketing calls – to wireless phones via an autodialer, artificial or recorded voices and unsolicited advertising calls to landlines using artificial or recorded voices. It also prohibits calls to customers on the Do-Not-Call list

Telemarketing Sales Rule (TSR): Requires telemarketers to make specific disclosures and prohibits calls to customers who have been added to the Do-Not-Call list

Controlling the Assault of Non-Solicited Pornography And Marketing Act (CAN-SPAM): Requires senders to provide an opt-out of marketing emails and prohibits false or misleading email header information and deceptive subject lines

Digital Millennium Copyright Act (DMCA): Protects ISPs from copyright infringement liability by their users

Federal Trade Commission Act (FTCA): Prohibits unfair and deceptive acts and practices

The Dodd–Frank Wall Street Reform and Consumer Protection Act: Prohibits unfair, deceptive and abusive acts and practice

Gramm-Leach-Bliley Act (GLBA): Regulates the collection, use, disclosure and protection of non-public personal information by financial institutions

Children's Online Privacy Protection Act (COPPA): Governs the online collection of personal information from children under 13 years of age.

Americans with Disabilities Act (ADA): Prohibits the owner of a place of public accommodation from discriminating on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.

Find out more about these laws by contacting any of the authors.

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