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Virtual Justice: The New Laws of Technology

Commentary: From Jamestowns to the Silicon Valley and Pioneering A Lawless Frontier: The Electronic Signature in Global and National Commerce

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> (This Federal Act is founded on a simple premise. Any requirement in law that a contract be signed or that a document be in writing can be met by an electronically generated, stored or transmitted document or data message. The Act then builds around the same legal effect and admissibility as the medium of paper.)
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> (This Federal Act will eliminate the single most significant vulnerability of electronic commerce, namely, the lack of legal certainty in the use of electronic signatures, documents and records. This uncertainty is created in part because of the lack of by virtue of their being an "electronic" form, rather than in a tangible, ink and paper form, they are not to be given the same legal effect as their paper counterparts. This uncertainty is also created because of the lack of a clear and comprehensive framework to deal with a dense new authority and process for such signatures.)
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> (The Uniform Electronic Commerce Act (UECA) establishes that electronic signatures and records cannot be denied their legal effect solely because they are in electronic form.)[1] Regardless of the nature of the electronic signature, document or record, the UECA establishes that they are to be given the same legal effect as their paper counterparts. The UECA also establishes that electronic signatures and records are admissible as evidence in legal proceedings and that they can be used to satisfy a requirement that something be in writing. Therefore, they are generally allowed flexibility in interpreting writing and signing requirements in other laws, including the common law.
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> In the famous case *Hicks* v. *Whipple*,[2] the New Hampshire Supreme Court determined that the traditional requirement that a will be signed at the end was satisfied by the testator signature appearing at the top of the page:
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> > It makes no difference whether the signature appears at the top or bottom of the page, or in the middle, if it is there as a signature to the instrument, and if it is there with the intent that it should be the signature to a will, it is sufficient. A paper was a signature when it was made so. It either can be through a commissioned to write the name of the testator, or it can be done by the hand of the testator. It is not the place where the name is written, but the purpose for which it is there and the intent with which it is there, that must give it effect as a signature. It is the signature of the testator, wherever it is found, if it is there with the intent that it should be a signature.
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> Many recently enacted laws strikingly resembled the traditional definition of "written instruments" to include electronic signatures and records. For example, the Uniform Electronic Transactions Act (UETA) provides that a record is deemed to be "signed" if it is executed or adopted with the intent to sign the record.[3]
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> Many recently enacted laws also strikingly resembled the traditional definition of "written instruments" to include electronic signature and records. For example, the Uniform Electronic Transactions Act (UETA) provides that a record is deemed to be "signed" if it is executed or adopted with the intent to sign the record.[3]
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> (The proposed electronic signature and record legislation is based on the principle of technology neutrality. Rather than specifically mandating the use of a particular technology, the proposed legislation establishes a set of general rules to be applied to any technology that may be used to create an electronic signature or record. The proposed legislation also establishes a series of equations from simple electronically stored handwritten signatures to complex digital signatures. The proposed legislation also establishes a series of equations from simple electronically stored handwritten signatures to complex digital signature. The proposed legislation also establishes a series of equations from simple electronically stored handwritten signature to complex digital signature.)
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> (This chapter below shows the process of creating a digital signature [sic].)

> (The process described above results in a secure cryptographic digital signature [sic].)

> (1) Many consumer groups argue that the use of for security electronic signatures, defined in the E-Sign Bill, provides insufficient protection for consumers. Consumers, they argue, do not have the same protections as they have with paper documents. For example, many people often use different email storage or a single email address for personal and business use. Consumers
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> (2) Furthermore, many business and professional online services have always established systems of user identification and password protection. Consumers are accustomed to using these systems to access their accounts and to make digital signatures in e-commerce. Legislation presents both benefits and costs.[4] Thus, the broadly drafted E-Sign Bill, which would allow the use of any technology to create an electronic signature, would also allow the use of inexpensive, easy-to-use, relatively simple digital software in order to establish enforceable electronic signatures. Consumers would be able to use the software to create digital signatures. Consumer groups also argue that the implementation of new laws and standards requiring that a valid online contract must be executed with a digital signature would unfairly undermine the ease and efficiency of everyday Internet transactions.

III. Analysis

A. Online Contract Formation

> (1) Whether online or in paper, the core concept of contract law is offer/acceptance. The parties' intention to contract, the offer and acceptance, and consideration are the elements of a valid contract. The E-Sign Bill, the UETA, the Model ECTA and the UECA provide that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. Thus, a contract may not be denied legal effect or enforceability solely because it is in electronic form. Thus, a contract may not be denied legal effect or enforceability