

WHITEPAPER

eSignature Benefits & Regulations

An Introduction to the Legality
& Benefits of eSignature

Paperwork:

Definition of eSignature

eSignature is the common moniker for electronic signature, which is the electronic equivalent of an ink signature that a person applies to a document to indicate consent to an agreement. In the modern digital world, many agreements are just as legally binding when formalized with an eSignature and in many cases can be even more secure.

Whether a signature is electronic or ink, the fundamental purpose is the same. A signature connects a person to a document, typically providing evidence that the person intended to approve or be legally bound by the document's contents. With an eSignature, the connection is made using various digital identifiers that connect the signer to the document accompanied by a visual element adopted by the signer at the time of signing. These elements together form the eSignature.

Benefits of eSignature

The benefits of eSignature are many, but for most organizations the greatest benefit is the time savings. The number of processes in business and government that require signatures by multiple parties is staggering. This isn't such a problem if the other party is just down the hall, but if the other party is in another building (or city, or country) then getting all the necessary signatures on an agreement can take days, weeks, or even months. With eSignature, this process can be shortened to minutes or hours, and rather than being limited by the speed of a courier is limited only by the attentiveness of the second party to their email inbox.

Another major benefit of eSignature is the counterintuitive fact that eSignature is more secure in many cases than an ink signature. While it is possible to make a fraudulent replication of an ink signature, a fraudulent eSignature is more difficult to create and much easier to defeat in a court challenge (provided a highly secure eSignature solution is used).

Lastly, eSignature provides a contactless method of securing consent to an agreement. The COVID-19 pandemic sparked a panic in organizations who hadn't adopted any system for collecting eSignature and suddenly weren't able to carry on with business as usual. Integrating an eSignature solution into an organization's workflow will save time and money, but it will also provide resiliency against unforeseen global factors that can interrupt business operations.

Saving Time and Money with eSignature

One of the best case studies to illustrate the impact eSignature can have on the contract approval process for an organization took place at the Vermont Department of Information and Innovation (DII). In a typical month, the DII circulates roughly 240 vendor contracts to multiple representatives of multiple parties. On average, these contracts required 4 signatures but, in some cases, that number can balloon to as many as 10 signatures.

Before implementing eSignature, the process of getting all necessary signatures could take as long as 4 weeks. After implementing eSignature this process was reduced by approximately 75%, with some contracts being finalized in as little as two business days.

This is a substantial impact. While not every organization will see the same results, eSignature is a digital technology that has already improved the signing process for thousands of organizations worldwide. Implementing eSignature saves staff time, cuts printing costs, and reduces the physical space needed to store records.

Electronic Signature vs. Digital Signature

Electronic Signature and *Digital Signature* are often used interchangeably, but the terms are not interchangeable.

An electronic signature or eSignature refers to the visual component of the signature and/or the process by which the signer indicates that they give their consent to an agreement. This might be the signer's name typed out in a script font, a squiggle they drew with their mouse, or a

scanned image of their ink signature applied to an electronic document. This surface component is the eSignature.

A digital signature is the underlying and corroborating data collected throughout the signing process that solidifies the legitimacy of the signature. To simplify this concept, this can be thought of as more of a fingerprint than a signature. This can include the device ID of the computer or phone used to apply the signature, the signer's IP address at the time of signing, the exact time of each click the signer makes, and innumerable other factors. A strong eSignature relies on a robust digital signature which collects enough data about the signer and the process of signing to make the signature irrefutable.

Together, an electronic signature and digital signature provide a secure eSignature solution.

Legitimacy and Security of eSignature

In many jurisdictions, verbal agreement to a contract is just as legally binding as a paper contract with an ink signature (although evidence to prove a verbal contract is usually more difficult to produce). What matters is consent, and the ability after the fact to prove consent, which is the reason for witnesses and hard-to-forgo signatures.

Unlike ink signatures which can be forged with skill and practice, an eSignature is very difficult to forge. This is because of the additional information collected during the signing process which is stored in the audit trail of the document. Additionally, after an electronic document is signed it is locked, making it impossible to change the contract after signing without voiding the signature.

The audit trail captured as part of an eSignature will collect the IP address of the signer, the date and time that the document was accessed and signed, the image of the eSignature, and other identifying information. This information together can prove the identity of the signer beyond reasonable doubt and gives multiple points of verification in the event of attempted fraud. In most cases eSignature is more secure than ink.

eSignature in Various Jurisdictions

eSignature in Canada

In Canada, eSignature is legal to use and just as legally enforceable as an ink signature. In fact, the Government of Canada has been promoting digital processes, including eSignature, internally through its Digital Government Initiative for years.

Regulations in Canada vary slightly between Quebec and the rest of the country, but generally it is appropriate to use an eSignature for any contract or agreement that does not require notarization or witnessing. This includes service contracts, contracts of employment, and most other typical agreements used by businesses and other organizations.

In cases where formal notarization or witnessing is required by law in Canada, eSignature is not currently an appropriate choice. This includes wills and codicils, power of attorney documents, land transfers, and domestic contracts.

The governing legislature regarding eSignature in Canada is The Personal Information Protection and Electronic Documents Act (PIPEDA). For cases where you are unsure if eSignature is an appropriate option, we recommend you refer to PIPEDA or seek legal counsel.

eSignature in the USA

The USA has legislature that has established electronic signatures and documentation to be just as legally legitimate and enforceable as ink signatures and paper documentation. This means that a document or signature cannot be declared invalid solely because it is electronic.

Regulations in the USA are federal and apply to the whole country regardless of state. eSignature can be used for any contract that does not require notarization or which specifically requires ink signatures. Examples of such cases are wills and codicils, adoption documents, divorce agreements, contracts governed by the Uniform Commercial Code, termination of health or life insurance, and other specific cases.

The relevant legislation regarding eSignature in the USA is the Uniform Electronic Transactions Act (UETA) and the Electronic Signatures in Global and National Commerce Act (ESIGN). Both acts establish that electronic signatures and documents are legally equal to ink signatures and paper documents. We recommend referring to UETA and ESIGN or seeking legal counsel if you are unsure whether eSignature will be legal in your case.

eSignature in the European Union

The EU first created legislation directing how member states should address eSignature in 1999, the eSignatures Directive 1999/93/EC. Despite being an early adopter, the original eSignature directive allowed each member state to interpret the legislation for themselves, and create their own limitations, restrictions, and exceptions. This resulted in each member state having different procedural standards and this prevented any real interoperability of eSignature throughout the EU.

Fortunately, in 2014 the European Parliament repealed the original directive and introduced European Union Regulation No 910/2014, otherwise known as Electronic Identification and Trust Services for Electronic Transactions (shortened to eIDAS), which came into force in July 2016. eIDAS established an eSignature standard across the EU and in doing so made the process of securing agreements within the region significantly.

Similar to Canada and the US, the EU has restrictions on documents that can't be signed electronically. These restrictions can still vary between member states, so it is advisable to consult legal experts for more complex agreements.