ELECTRONIC SIGNATURES AND ELECTRONIC
IDENTITY MANAGEMENT

Stephen Mason, Barrister
UNCITRAL IdM Colloquium
21-22 June 2016
Vienna
Two separate concepts

Identity management:

Who you are

Who I am

Signatures:

There are a range of purposes for a signature, one of which is whether we are obligated because we have demonstrated an intent to be bound
‘Human individuals have continuity of personal existence: you are today the same person you were yesterday, and indeed you remain all your life the same person you were on the day of your birth, despite the many changes that have occurred in you since that day.’

Why identity can be important

To obtain access to your bank account
To establish ownership
To establish who has control
Verifying identity

Verifying identity relationships accurately requires validation (confirmation that a person with a particular set of identity characteristics exists), and verification (confirmation that a person is who they claim to be).

Documents issued by governments are accepted as convincing evidence of what they assert because legislation provides for such an presumption.

But there can be problems with judicial decisions regarding proving identity, for which see:

Shojibur Rahman v Barclays Bank PLC, Clerkenwell & Shoreditch County Court (2012) http://journals.sas.ac.uk/deeslr/article/view/2040

Shojibur Rahman v Barclays Bank PLC (on appeal from the judgment of Her Honour District Judge Millard dated 24 October 2012) http://journals.sas.ac.uk/deeslr/article/view/2041
Some reasons for using a signature

Primary purpose

evidence that the signatory approves and adopts the contents of the document

content of the document shall be binding

Secondary purpose

to comply with a legal requirement that something be signed

authenticate the identity of the person

To help establish that the content of the document has not been altered subsequently to the affixing of the signature

Record keeping purpose

Forms of electronic signature

Typing a name into an e-mail or electronic document

  Interest in property; loan; employment; contract; assignment of guarantee; insurance policy; public administration; judiciary; statute of frauds; wills

Clicking the ‘I accept’ or ‘I agree’ icon

Using a personal identification number (PIN)

Using a scanned signature

Using a biometric measurement

Using a digital signature (a hash cryptographic signature)

Electronic sound

Name in an e-mail address
Proof of intent

Intention makes the signature into a legal signature
The practical issue

In some jurisdictions, the format that an electronic signature takes is not relevant.

Where one party relies on an electronic signature and the other party denies using the electronic signature, the burden remains as for manuscript signatures, that is:

*The party relying on the signature must prove the signature was affixed by the person whose signature it purports to be*

The problems that affect every form of electronic signature are:

*Establishing it was used with the intent to sign [a legal question]*

*Verifying that the signature was affixed by the person whose signature it purports to be [an identity management question]*
The relying party

The party relying on the electronic signature has to ask themselves if they have sufficient evidence in place to rely on the signature.

If a dispute occurs, consideration must be given to:

*How to prove the nexus between the application of the signature, whatever form it takes, and the person whose signature it purports to be*

No form of electronic signature (that is the method, process or technology used) proves the user caused the signature to be affixed to the document or that they did so with intent to sign.
Trust and the signature

When entering a contract (for instance), it is necessary to be sure of a number of things, some of which include:

- The other person or legal entity is who they say they are
- The person signing the contract is who they say they are
- The person signing the contract has the authority to sign on behalf of the legal entity

There is no difference between the physical world and the electronic world
Another reference

Stephen Mason and Timothy S. Reiniger, ““Trust” Between Machines? Establishing Identity Between Humans and Software Code, or whether You Know it is a Dog, and if so, which Dog?’, Computer and Telecommunications Law Review, 2015, Volume 21, Issue 5, 135 – 148

http://www.stephenmason.eu/?page_id=218
Let us not confuse concepts

Is the name that forms part of an e-mail address a signature?

Consider some case law:

Australia (Limitation Act 1969 (NSW))

England & Wales (s4, Statute of Frauds 1677)

Greece (‘private document’ – articles 443 and 444 of the Greek Civil Procedure Code)

Israel (Legal fees arrangement)

Italy (summary proceedings, article 1(1)(b) of Presidential Decree 445/2000)

Singapore (Civil Law Act (Cap 43, 1994 Rev Ed))

United States of America (Means of authentication)
Identity management

The identity management question

If it is a signature, how can we be sure that it is the person whose signature it is, and not somebody else masquerading as the signatory or some unrelated software code?

It is usually necessary to have sufficient evidence of the identity of the person that purported to sign

The separate legal question around the electronic signature remains:

Once it is established that it is a signature and we know who it is, then we need to ascertain what their intention is with respect to the signed communication
Thank you

http://www.stephenmason.eu

Convention on Electronic Evidence http://conventiononelectronicevidence.org/

Digital Evidence and Electronic Signature Law Review http://journals.sas.ac.uk/deeslr