

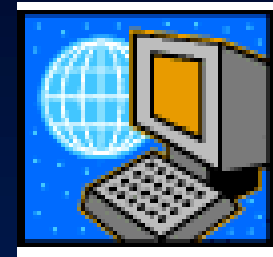


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Overview of Presentation

- Brief summary of E-SIGN's consumer consent provisions



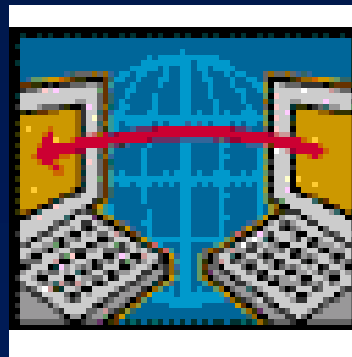
- FTC/Commerce study of the “demonstration” requirement in Section 101(c)(1)(C)(ii)

- What we learned from the study



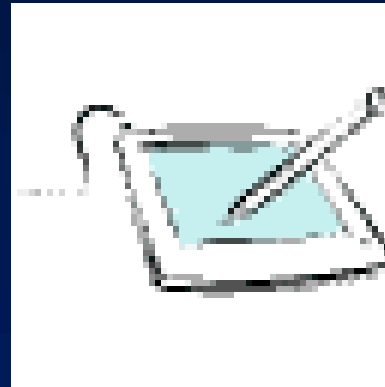
ESIGN

- Congress enacted E-SIGN in June 2000; effective in Oct 2000
- Goal is to promote e-commerce by facilitating the use of electronic records and signatures



Sec 101(a): General Validity

- An electronic signature, contract or other record may not be denied legal effect *solely* because of its electronic nature



Sec 101(b): Preservation of Existing Laws

- Overlays, rather than supplants, existing federal and state laws
- Preserves all existing consumer protection and contract laws, except those that require signatures, contracts and other records to be in *written form*



Sec 101(c)(1)(A) & (B): Consent & Disclosures

- If a business is required to provide consumers with information “*in writing*,” then it can do so electronically **if**:
 - (A) Consumer affirmatively consents to receive e-records; and
 - (B) Prior to consenting, business provides consumer with clear and conspicuous disclosures



Sec 101(c)(1)(C)(ii): “Demonstration” Requirement

- Requires that a consumer “consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent”



FTC/Commerce Study of the “Demonstration” Provision

- FTC and Commerce must study benefits and burdens of 101(c)(1)(C)(ii)
- Joint Report required to Congress by June 30, 2001
- Report is being prepared jointly by the two agencies



FTC/Commerce Report Requirements

- Evaluate benefits and burdens to consumers and business of the “demonstration” requirement
- Weigh benefits against burdens
- Absence of provision increase fraud?
- Recommend changes, if any



What We Did

- Met informally with industry to identify issues regarding implementation
- Issued Federal Register notice seeking comment and announcing a public forum
- Held public workshop on April 3rd to discuss issues raised by comments



Informal Meetings

- Who: online businesses, technology developers, consumer advocates, trade associations, academics
- Why: to learn what businesses were doing to implement the provision, and evaluate the technology available to implement



Federal Register Notice

- Requested comment on compliance issues, benefits and burdens, technology, and other relevant issues
- Announced April 3rd public forum
- Notice sent to several hundred contacts
- Posted on agencies' web sites
- Comments received electronically



Public Workshop

- One-day workshop to discuss issues raised by comments
- Twenty-one participating entities and individuals
- Discussed: legal and technology issues, benefits and burdens, and best practices for complying with the “demonstration” provision



FTC's Web Page

Public Workshop: Electronic Signatures In Global And National Commerce Act - Netscape

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Bookmarks Location: file:///D:/data/WordPerfect documents (starting 3.11.99)/ESign/index2.html What's Related

Federal Trade Commission

Federal Trade Commission and National Telecommunications and Information Administration, Department of Commerce

Esign Public Workshop

April 3, 2001



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What We Learned

- Little empirical evidence to evaluate the demonstration provision's impact
- Few are providing electronic information pursuant to § 101(c)(1)(C)(ii)
- Agreement by consumer advocates and industry that it is too early to recommend changes to the statute



Burdens of Provision (identified by commenters)

- Adds an extra step that interrupts the flow of e-transactions
- Increases likelihood that consumers will abandon use of electronic records
- Unnecessary because other consumer protection laws exist
- Results in uncertainty about how to comply



Benefits of Provision (identified by commenters)

- Effective tool to prevent deception and fraud
- Increases consumer confidence in electronic transactions
- Ensures that consumers will be able to access information provided electronically
- Provides a “bright line” to identify legitimate businesses to consumers
- Provides a “safe harbor” for businesses
- Technologically neutral - allows marketplace to determine which technology appropriate

Fraud Prevention (identified by commenters)

- Discourages use of e-records to provide information to a consumer who doesn't have Internet access
- Deters businesses from changing terms of electronic contract
- Ensures ability of consumers to access and retain important e-records
- If transaction begins in face-to-face setting, gives consumer time to reflect on terms before confirming consent electronically



Workshop Participant Views

- Overall, E-SIGN provides benefits to consumers and e-commerce
- Premature to recommend changes to Section 101(c)(1)(C)(ii)
- For now, implementation issues should be worked out in marketplace and through state and federal guidance



FTC/Commerce Report

- Due in 2 ½ weeks
- Will be submitted on time
- What will it say?
- You'll have to wait until June 30th . . .





FEDERAL TRADE COMMISSION

WORKING FOR CONSUMER PROTECTION
AND A COMPETITIVE MARKETPLACE

THANK YOU

Marianne Schwanke