

# Digital Signatures: A Legal Perspective of State and Federal Law

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# Why Do We Use Signatures?

- To comply with legal requirements
- To provide evidence of the intent of the signer . . .
  - I agree to perform this contract
  - I agree to pay this sum of money
  - I acknowledge receipt of a copy of this document
  - I approve this expenditure
  - I certify that the foregoing statements are true
- To function as a security device –
  - To identify the sender/signer of a record
  - To verify the integrity of the record

# Which of These Can Be A Legally Valid E-Signature?



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*James Bond*

*[Digitized image of handwritten signature]*

/s/ James Bond

*[Typed name]*

007

*[Number or PIN]*

X

*["X" or other random letter]*



*[Smiley face or other picture]*

I Agree to these terms

*[Words typed in box]*

I AGREE

*[Button clicked with mouse]*

-----BEGIN SIGNATURE-----

iQCVAwUBMARo7vgyLN8bw6ZVAQF6ygP/fDnuvdAhGIDWsSMXUIR  
MuNHYZdZ00cqkDb/Tc2+DuhuEa6GU03AgZY8K9t5r9iua34E68pCxo  
gUz009b1OcjNt6+o+704Z3j1YY9ijYM8BWNnaSp9L2W4nUuWBdlylWy  
ol/2PjjRVNZEqtSRQnPEpJ2IHtz9iGovHf0Sqh

*[Digital signature]*

-----END SIGNATURE-----

# To Qualify as a Valid E-Signature The Law Requires Only –



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- A sound, symbol, or process,
  - That is attached to or logically associated with an electronic record, *and*
  - Made with the intent to sign
- 
- E-signatures that meet these requirements are considered **legally equivalent to handwritten signatures!**
- 
- Note: Requirements are the same under both --
    - Federal E-SIGN law
    - State Uniform Electronic Transaction Act (47 states)

# Comparison of E-Signature Requirements



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## U.S.

- Symbol or process
- \_\_\_\_\_
- Attached
- Intent
- \_\_\_\_\_

## EU

- Data
- Method of authentication
- Attached
- \_\_\_\_\_
- \_\_\_\_\_

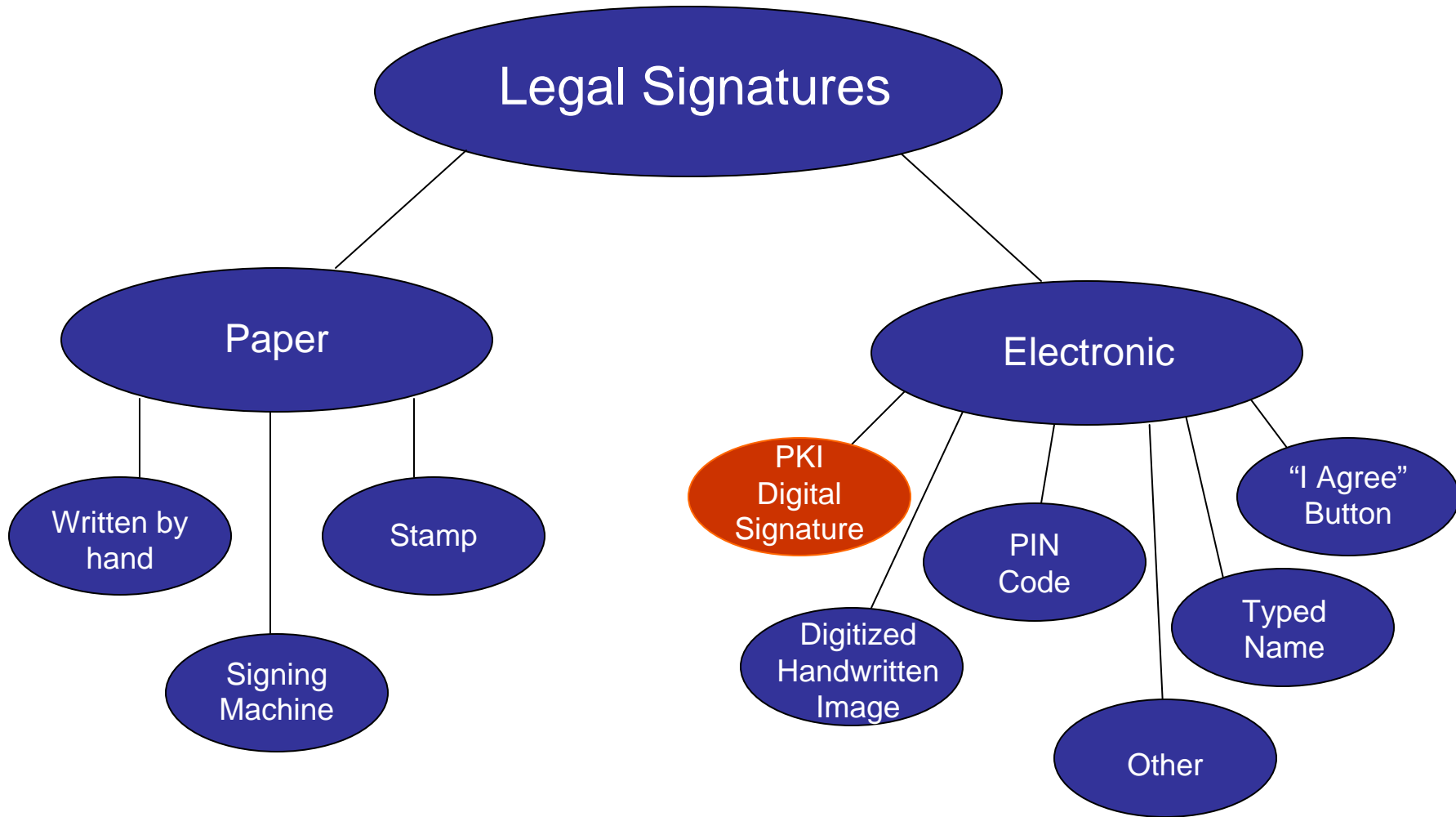
## UN

- Method
- Identify signer
- \_\_\_\_\_
- Intent
- Reliability

# Electronic vs. Digital Signatures



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# Constructing an E-Signature

- Intent is required – a legal signature is an “intent” device
  - I.e., a method for evidencing an individual’s intent
  - If not made with intent to sign, it is not a legally valid signature
  - E.g., an autograph or filling out a form is not a signature
  - E.g., a digital signature not a legal signature w/o intent
- Security\*\* is optional – a legal signature **can** itself provide evidence of --
  - The signer’s identity and/or
  - The integrity of the record signed,but that is ***not required by law*** (in the U.S.)

\*\* As part of the signature itself



# Is This Enforceable?

## PROMISSORY NOTE

I Bill Gates, agree to pay Tom Smedinghoff  
the sum of Five Million Dollars (\$5,000,000) on or  
before February 1, 2010.

Agreed to this 1<sup>st</sup> day of January, 2000

X

# Enforceability of Signed Records Requires . . .



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- A legally valid signature
  - Sound, symbol or process
  - Attached to the record signed
  - Made with intent to sign
- Appropriate security (*to authenticate the record*)
  - The signer must be identified (*to prove “who” signed*)
  - The integrity of the record must be intact

# The Legal Consequences of Inadequate Signature and Security



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- **Failure to provide legally appropriate signature**
  - Can render electronic records unenforceable (if a signature was legally required)
    - E.g., contract not “signed”
- **Failure to provide adequate security**
  - Can render electronic signatures unenforceable
    - *Kerr v. Dillard Store* (Feb. 2009) [identity]
    - *Prudential v. Dukoff* (Dec. 2009) [identity]
  - Can render electronic records legally inadmissible
    - *American Express v. Vinhnee* (Dec. 2005) [integrity]

# Security Is Critical to the Enforceability of Signatures, but . . .



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- **U.S. law does not require that the security come from the signature itself**
  - Some electronic signatures **can** provide the requisite security
    - E.g., digital signatures
  - But the security **can be separate** from the signature
- **For example --**
  - Secure authentication of signer followed by a simple act evidencing intent (e.g., clicking “I Agree”)
  - Such as where a person logs in with a Level 3 credential, and then signs by clicking a button or typing their name

# Possible Role of Digital Signatures



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- No special legal status for a (PKI) digital signature
  - It's just one type of an electronic signature
  - No special legal presumptions
  - Most laws giving it a special status have been repealed
- When used as a legal signature, a digital signature has the capability to address both:
  - The signature requirements, and
  - The record integrity requirements.
- When used as a security device (e.g., for authentication), a digital signature can provide the security necessary to support other not-so-secure form of legal signatures



# Signature vs. Identity & Integrity

- We need to view signature separate from identity
  - Getting a signature is easy, proving “who” signed is the hard part
  - But establishing identity and signing a document can be separate functions
- We need to view signature separate from integrity
  - There are many ways to protect a document
- It's not about signatures per se:
  - it's about identity management
  - It's about evidencing intent
  - It's about record integrity

# Further Information



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