

Interagency Advisory Board

Meeting Agenda, April 27, 2011

1. **Open Remarks** (*Mr. Tim Baldrige, IAB Chair*)
2. **FICAM Plan for FIPS 201-2** (*Tim Baldrige, IAB Chair and Deb Gallagher, GSA*)
3. **NSTIC Cross-Sector Digital Identity Initiative** (*Keith Ward, Northrup Grumman*)
4. **FiXs, Helping Meet the OMB 11-11 Directive** (*Warren Blosjo, 3Factor*)
5. **Legal Implementation Challenges for NSTIC: Emerging Virginia Solutions for Credential Issuer Liability, Trademarks, and Remote Notarization** (*Tim Reiniger, FutureLaw*)
6. **Closing Remarks** (*Mr. Tony Cieri*)

Implementing NS-TIC: Virginia Legal Strategy for Credential Issuer Liability, Trustmarks, and ID Proofing



PRESENTATION TO

GOVERNMENT SMART CARD INTERAGENCY ADVISORY BOARD (IAB) MEETING
WASHINGTON, DC

BY

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Discussion Outline



- **3 Crises of Network-Based Economy**
- **National Context: NS-TIC, ANSI, and ABA**
- **Virginia Legal Strategy for Electronic Commerce**
- **Establishing Document Authenticity in Cloud:
Online Notarization**
- **Identity Proofing: Verification of Fact as Notarial Act**
- **Limitation of Liability for *Private* Credential Issuers**
- **Trustmark Concept Broadened**
- **Next Steps**

3 Crises of Network-Based Economy



- **Key Network/Cloud Characteristics:**
 - Borderless - Ubiquitous connectivity and access
 - Multiple copies and locations
 - Decentralized

- **3 Resulting Legal Crises:**
 - Authentication Crisis
 - Authenticity Crisis
 - Authority Crises

National Context



- **National Strategy (NS-TIC)**
 - Emphasis on private sector leadership
 - Trust frameworks and trustmarks
- **American Bar Association (FIMAC)**
 - Legal barriers to adoption of Federated Identity Management
 - Liability containment challenges
- **ANSI (Identity Proofing and Verification Standard)**
 - Standard for issuance of identity ‘breeder’ documents by public entities
 - Standard for relying parties to verify identity ‘breeder’ documents issued by public entities

NS-TIC Trustmark Definition



- **“A trustmark is used to indicate that a product or service provider has met the requirements of the Identity Ecosystem, as determined by an accreditation authority The trustmark itself, and the way it is presented, will be resistant to tampering and forgery; participants should be able to both visually and electronically validate its authenticity The trustmark helps individuals and organizations make informed choices about the Identity Ecosystem-related practices of the service providers and identity media they select.” (p. 22)**

Where is the Authority?



- **Public Authorities**
 - States versus federal
 - PIV/PIV-I/PKI Standards
- **Private Sector**
 - Trust Frameworks
 - Trustmarks

Authority: Legal Controls Over Data



- **Federal law-based – Intellectual Property**
- **State law-based – Common Law**
 - Common law – contract
 - Common law – property
 - Uniform laws – statutory enactments of common law
 - Notarial acts

Virginia Legal Strategy



- **Electronic Transactions and Digital Property**
 - Uniform Electronic Transactions Act (UETA) (2000)
 - Uniform Computer Information Transactions Act (UCITA) (2000)
- **UCITA Amendment (HB 2259)**
 - Limitation of Liability for Private Credential Issuers
 - Limitation of Liability for Federation Operators
 - First Recognition of the Trustmark
- **Courts**
 - E-Filing of Court Pleadings (2005)
 - Electronic Certified Court Records (2010)
 - Electronic Power of Attorney (2010)
 - Electronic Sheriff Service of Process (2011)
- **Digital Evidence**
 - Electronic Notarization and Apostilles (2007)
 - New Notarial Act: Verification of Fact (2011)
 - Online or Remote Notarization (2012 effective)

VA Remote Notary: Legal Requirements



- **Two-Way Audio-Video Capability (COV § 19.2-3.1 B 1, 2, and 3)**
- **Recording Requirement (COV §47.1-14 C)**
- **Identification Standard – “Satisfactory evidence of identity” definition (COV §47.1-2)**
 - Personal Knowledge
 - Antecedent Identity Proofing
 - Digital Certificate with biometric or PIV card

New Notarial Act: Verification of Fact



- ***“ ‘Verification of fact’ means a notarial act in which a notary reviews public or vital records to (i) ascertain or confirm facts regarding a person's identity, identifying attributes, or authorization to access a building, database, document, network, or physical site or (ii) validate an identity credential on which satisfactory evidence of identity may be based.***
- Assists with international adoptions
- Validate information used in identity proofing

VA Credential Issuer Liability Amendment



- **Recognizes Identity Credential as License**
- **Liability Limitation for Private Credential Issuers**
- **Federation Operator Liability Limitation**
- **Liability for Credential User Defined**
- **Choice of Law Provision**
- **JCOTS Looking for Interested Parties to Join Advisory Committee**

VA Trustmark Amendment - Introduced



- Trustmark defined – “***Trustmark’ means a tamper resistant official seal, image, or logo that signifies that the licensor and licensee have met defined legal and industry data control and rights requirements for (i) informational content integrity and assurance, (ii) informational content user assurance, or (iii) informational content use assurance.***
- Use license
- No implied warranty for content accuracy

Virginia Next Steps



- **JCOTS Looking for Interested Parties to Join Advisory Committee**
- **Stakeholder Meeting For Deployment of Remote Notary**
- **NS-TIC Pilots**

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