

A BRIEF INTRODUCTION TO E-SIGNATURES

MAKING SENSE OF ELECTRONIC SIGNATURES



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PART 1: A BRIEF INTRODUCTION TO ESIGNATURE

Making sense of electronic signatures (eSignatures) can be intimidating, especially for small business owners who struggle to understand the reliability, security, and legality of eSignatures. In addition, the eSignature industry is still relatively young (less than 20 years old), which means it can often be more difficult to find reliable, easy-to-understand information to address all of the questions a business owner might have.

This volume is the first in a multi-part, educational series in which we will examine a number of important eSignature-related topics in greater detail, including: eSignature basics, the history of eSignatures, laws governing the use of eSignatures, when to use eSignatures, and how to implement eSignatures in your own business, among other topics.

In Part One of this series, we'll review the basics of eSignatures (components, advantages, etc.) and take a brief look at the history of eSignatures, including two important pieces of federal legislation that legalized eSignatures (and gave birth to an entirely new industry).

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UNDERSTANDING ESIGNATURES

As defined by the *ESIGN Act* (more on this foundational piece of legislation shortly), an eSignature is “any sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.”



If that definition sounds vague or unclear, don't worry. That's sort of the idea; it is, after all, “legal-ese”. In plain English, however, the above definition simply “states” an eSignature as a legal concept. That is, its legal definition simply means that it is possible for an eSignature to carry the same sort of legal “weight” as its pen-and-paper equivalent.

That probably doesn't make too much sense at this very moment.

So, let's take a closer look.

First, there is one critically important point you should understand:

In a strictly legal sense, the term “electronic signature” does not refer to an actual signature. Instead, the term refers more broadly to the process requirements (we'll call them components) that must be met in order for an electronically signed document to be considered legally binding in a court of law.

As far as the law is concerned, a signature is simply one component of an electronically signed document. By itself, it carries no legal authority. In order for an electronic document to stand up in a court of law, all of the components must be present.

The *ESIGN Act* (again, more on this shortly) explicitly outlines these components in an attempt to standardize, well, the process by which an electronic document must be handled so that it carries full, legal authority.

Let's take a quick look at the basic components of an eSignature.

COMPONENTS OF ESIGNATURES

As we just reviewed, the signature itself is only one component of a legally-binding electronic document. However, there are four, primary components that you should care about most:

- 1. Consent:** Basically, any individual who signs an electronic document must explicitly consent to do so in the first place. Should an individual choose not to consent to an electronically signed agreement, a non-electronic option must be made available.
- 2. Intent:** In the simplest terms, this means that the signer clearly understands his or her intent to sign the document, and the process by which the individual signed the document was clear and understood from beginning to end.
- 3. Verification:** For an electronic document to be considered legally binding it must be signed by the same person whose signature appears on the dotted line. In turn, most eSignature solutions have built-in verification methods.
- 4. Auditability:** This is the electronic equivalent of a “paper trail,” whereby each party involved in an electronic agreement (or a legal entity, for instance) can, if necessary, easily access each step of the eSignature process at any time.

So, we’ve covered the legal definition of eSignatures and reviewed some of the most important components of eSignatures.

Before we go any further, though, we need to make an important distinction.

DIFFERENCE BETWEEN AN ESIGNATURE AND A DIGITAL SIGNATURE



Yes, there is a difference.

In fact, if you Google “*eSignature vs. digital Signature*” you’ll find nearly two million search results that will tell the same story. While the two terms are often used interchangeably, they are not one in the same.

So, what’s the difference then?

Remember the intentionally vague definition we reviewed earlier?

An eSignature is “any sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.”

Remember that one?

Like we said earlier, that's because "eSignature" refers to a broad category that encompasses many different types of electronic signatures. As you'll learn shortly, this definition was created back in 2000, way before eSignatures became a widely popular, legally-binding entity.

This language was intended to be vague from the start.

But, why?

Well, lawmakers wanted to leave themselves some "wiggle room," understanding that at some point in the future there would be many different methods to electronically sign a document.

So, they wrote the law to be intentionally inclusive.

What's a digital signature then?

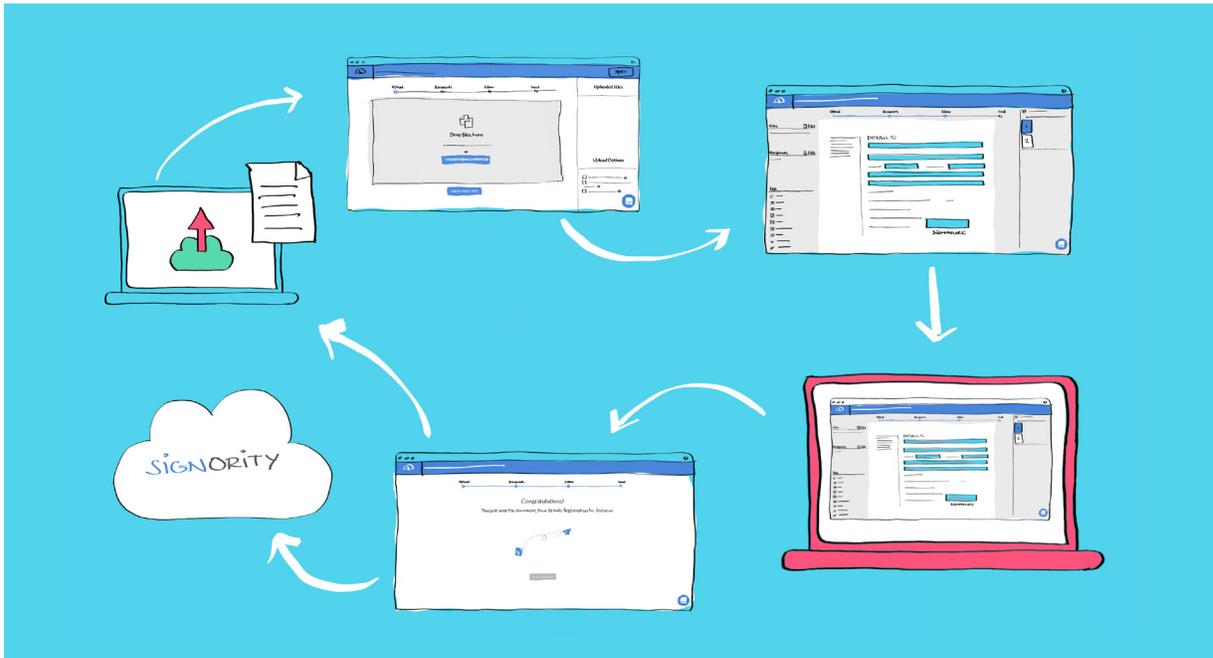
A digital signature is one of these specific types of eSignature. It has its own set of legal rules, standards, and governances. We won't go into the specifics right now (but may do so in a later guide in this series). That's an entire guide in an of itself.

For the purposes of this guide, it's enough to simply understand that there is, in fact, a difference between the two terms.

Now, let's take a quick look at how an eSignature works.



HOW TO GET SIGNED ELECTRONICALLY



Thankfully, most eSignature software is easy to use—even for the most inexperienced users. In fact, it's ease of use has been one of the contributing factors to its sky-high adoption rate.

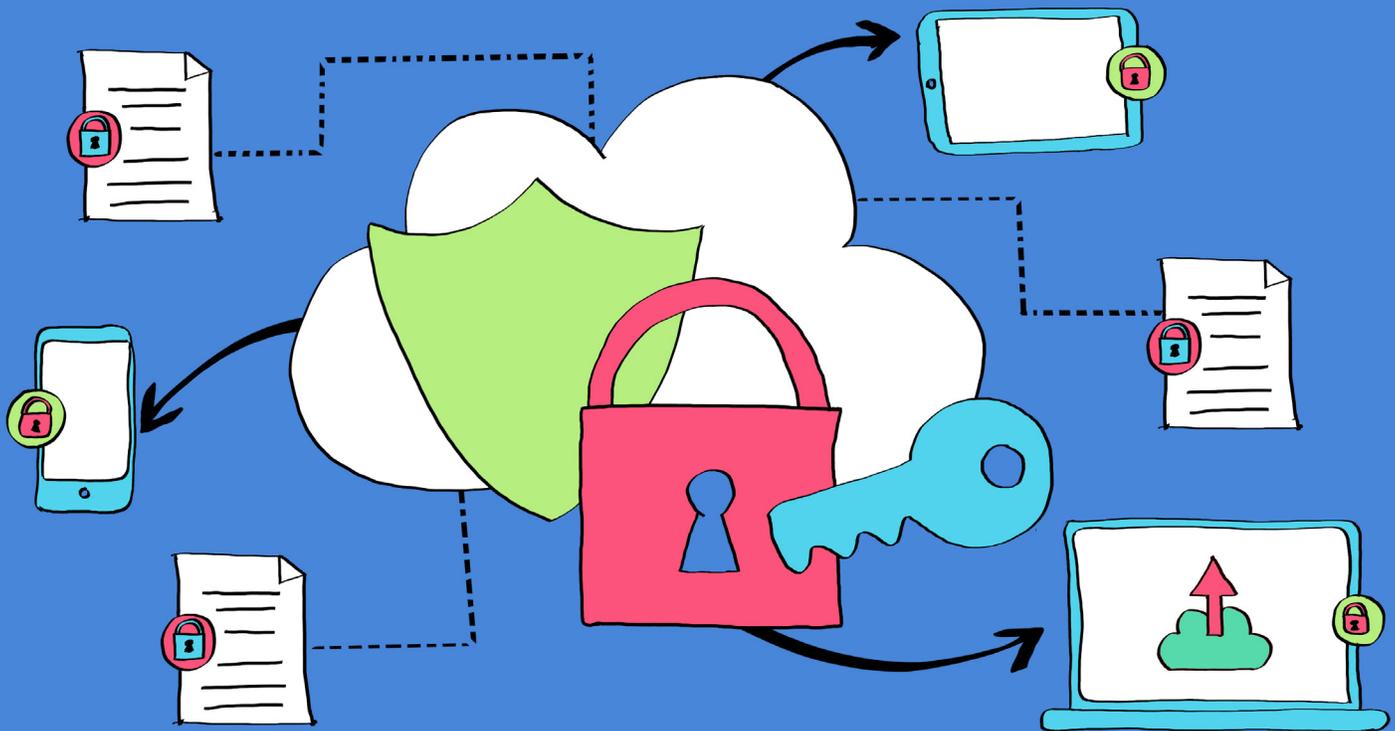
Though the exact process may vary depending on software solution, the basic workflow is virtually the same.

Here's how a basic eSignature works:

1. A document is uploaded to a website (usually a third-party software).
2. The document is tagged to pinpoint exactly where a signature is required.
3. The document is then emailed to the participants who are required to sign.
4. The signer(s) completes all required fields, then signs the document electronically.
5. The completed document is then automatically emailed back to the original sender.
6. The document is automatically stored for safe, secure, and easy access.

Now that you understand the basics of how eSignatures work, let's look at some of the benefits of eSignatures.

BENEFITS OF ESIGNATURES



Legally-binding eSignatures have a number of important benefits for businesses:

- 1. Easy to use.** Signing electronic documents is super simple for all involved. In fact, most eSignature software is intuitive even to complete beginners, which means less time spent learning how to use new software.
- 2. Save money:** Paper isn't cheap, especially when you account for purchasing, copying, scanning, and printing costs, among other paper-related expenditures. Needless to say, these costs add up quickly. Moving to a paperless system can reduce expenditures and instantly increase your profit margins.
- 3. Save time.** Printing, copying, and scanning takes time. Preparing documents for signature takes time. Tracking down (and waiting for) signatures takes even more time. eSignatures can shorten the turnaround time by as much as 90 percent.

4. **Improve accuracy.** There's nothing more frustrating than waiting for a signed document only to realize the recipient forgot to fill out a required piece of information, eSignature software allows you to specify mandatory fields, which, as you probably guessed, require the recipient to complete all such fields before the document can be signed.
5. **Stay organized.** Keeping track of paperwork (regardless of how efficient your filing system may be) is often burdensome. eSignatures create an easily sortable, organized filing system by which you can easily store and retrieve important documents.
6. **Add an extra layer of security:** Electronic documents can be protected by a variety of methods, including passcodes, encryption, two-factor authentication, and even biometric authentication methods. These methods instantly make your important documents more secure.
7. **Make things easier for customers and/or vendors.** While eSignatures provide some obvious benefits for your own business, they also make things much easier for your customers, partners, suppliers, or other vendors (for many of the same reasons we've already covered). Customers prefer eSignature software not only because it is more convenient, but it brings a number of important advantages, including: eliminating unnecessary back-and-forth (saving time), simplifying internal processes, facilitating quicker onboarding, and increasing operational efficiency, among a laundry list of other benefits.

A BRIEF HISTORY OF ESIGNATURES

eSignatures became legally binding (re: recognized as possessing the same legal stature as pen-and-paper signatures) over the course of just two, short years (well, mostly). For the purposes of this guide, we're most concerned with two pieces of federal legislation enacted in 1999 and 2000, respectively.

Just like a notarized pen-and-paper signature, an eSignature carries legal “weight,” which means it can be used in a court of law to settle a potential legal dispute. Hand-written signatures, especially notarized signatures, have always carried such weight. Yet, it was only in the last 20 years that electronic signatures have been granted the same legal power.

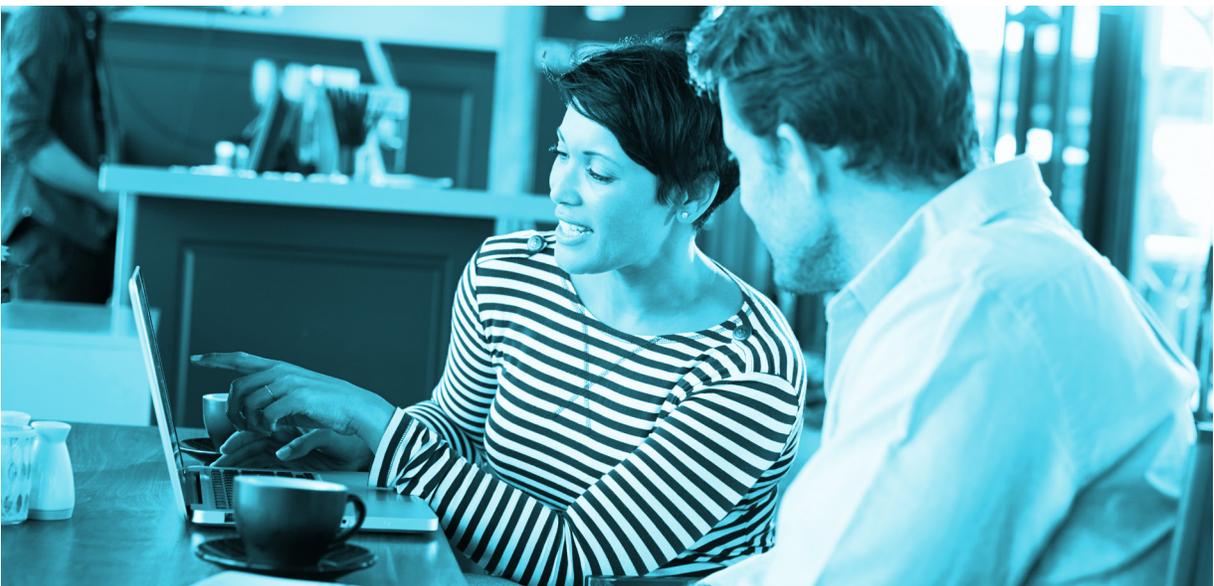
Which begs the question:

How (and when) did eSignatures acquire such power?

To answer this question, we need to go back to the mid-1990s.

The Internet had become a “thing.”

Very quickly, this “thing” became a place where a growing number of business began to conduct business. These were the first days of e-commerce as we know it today. In these early days, just as they do today, businesses struggled to understand the implications of an online economy.



To make things even more difficult, the early days of e-commerce were a regulatory nightmare.

For example, without federal legislation in place, most states adopted their own sets of unique rules to govern online transactions, which created confusion at the highest levels of business. Simply put, businesses had no idea how to handle online transactions and worried about the legality of their online business agreements.

At the same time, the federal government worried that such legal ambiguity might cause U.S. businesses to falter, potentially damaging the U.S. economy.

So, the government decided to act.

In 1999, Congress passed the Uniform Electronic Transactions Act (UETA), which provided a legal framework for the use of electronic signatures and records in government and business transactions.

In its simplest terms:

The *UETA Act* was the first national effort to attempt to create a uniform set of rules to govern electronic transactions in all states.

The Internet made it possible for businesses to, well, conduct business online. This new place of business created a number of uncertainties regarding the legality of electronic transactions and business agreements. In turn, legislators recognized a need to adopt (or at least try to adopt) a uniform set of rules, regulations, and standards that might better govern online transactions.

The *UETA Act* was the result of their efforts.

Still, however, electronic signatures lacked the validity necessary to carry any sort of legal weight. That is, the federal government still hadn't recognized eSignatures as legal.

The second piece of federal legislation—the one that would essentially assign that weight—was enacted just one year later.

Between 1999 and 2000, Congress introduced several more bills aimed at further standardizing e-commerce. Ultimately, however, most of these bills were revised and later combined into a second piece of legislation—the *ESIGN Act*.

ESIGN stands for Electronic Signatures in Global and National Commerce.

In June 2000, President Clinton signed the *ESIGN Act* ([full text here](#)), which gave electronically signed documents the same legal status as pen-and-paper signatures. Furthermore, the *ESIGN Act* said that eSignatures “cannot be denied legal effect or enforceability because it is in electronic form.”

Since it was enacted into federal law, all 50 states including the District of Columbia, Puerto Rico, and the Virgin Islands have adopted state laws validating eSignatures. All but three states (Illinois, New York, and Washington) have adopted the UETA. Even still, those three states have similar laws validating electronic transactions. Essentially, all states are now operating on an even playing field.

The UETA and ESIGN Acts were critically important for two, primary reasons:

1. Established a legal foundation for

eSignatures: Prior to 1999, there were no federal laws governing e-commerce. Businesses were operating in a new marketplace, devoid of any federal rules or regulations. Most had no idea whether or not they were operating legally. In many ways, the UETA and ESIGN Acts gave birth to e-commerce as we know it today, some 15+ years later.

2. Allowed U.S. businesses to keep pace with global commerce:

The UETA and ESIGN Acts allowed U.S. businesses to transition to an online-based economy, along with the rest of the world at that time.



Yet, by most standards, the eSignature market is still quite young (less than 20 years-old).

So, what lies ahead for the global eSignature market?

THE FUTURE OF ESIGNATURES:

According to a report from MarketsandMarkets, one of the largest market research firms in the world, the eSignature market is expected to grow to \$2 billion by 2020. In another three years, the market will quadruple in size.

So, what's driving this incredible growth?

There are three primary factors driving the growth of the eSignature market:

- 1. Online business continues to explode:** More online business is good for the eSignature market. As more and more businesses move online, more legally-binding documents will be required, in order to govern and accommodate this transition. eSignatures are a necessary part of online business. As one goes, so does the other.
- 2. Online security is more important than ever:** It should be relatively easy to see the relationships forming here. As more business moves online, there's more reason to protect that business. More importantly, Digital Signatures make it incredibly easy for business owners to protect their most important documents. Digital Signatures use a combination of public and private keys to encrypt and secure important documents, further reducing the risk of online fraud.
- 3. Businesses will always be in the business of making money:** And eSignatures can drastically reduce operational costs, thereby increasing profit margins. For example, it costs U.S. businesses nearly \$8 billion each year to manage their paper documents. Going paperless brings drastic (and nearly instantaneous) cost benefits. In the end, money talks.

Even still, eSignatures simply make sense for nearly all businesses, regardless of size or industry. It simply makes business easier while saving companies time, money, and unnecessary headaches. When it's all said and done, it wouldn't be the least bit surprising to see the global eSignature market outperform its three-year projections.

LET'S RECAP:

Thanks to foundation established by both the UETA and ESIGN Acts, respectively, the global eSignature market should see exploding growth through 2020.

In **Part One** of this series, you also learned that:

- The term “electronic signature” refers more broadly to the *process requirements* (e.g. components) that must be present in order for an electronically signed document to be considered legally binding in a court of law.
- A signature is simply one *component* of an electronically signed document.
- Legally-binding eSignatures are made up of several, core components, including (but not limited to): consent, intent, verification, and authentication.
- The difference between an eSignature and a digital signature (remember: a digital signature is a specific *type* of electronic signature).
- Most eSignature solutions are very easy to use and follow a rather straightforward workflow.
- eSignatures have a number of important business benefits: they're easy to use, save money and time, improve accuracy and organization in record keeping, and add an extra layer of security.
- In the earliest day of e-commerce, businesses had no idea how to handle online transactions and worried about the legality of their online business agreements.
- The federal government worried that, without laws to govern electronic commerce, the U.S. economy might fall behind.
- The *UETA Act* (1999) was the first national effort to attempt to create a uniform set of rules to govern electronic transactions in all states.
- The *ESIGN Act* (2000) gave electronically signed documents the same legal status as pen-and-paper signatures.

- All 50 U.S. states have enacted laws validating eSignatures (including the District of Columbia, Puerto Rico, and the U.S. Virgin Islands).
- Together, the UETA and E-SIGN Acts established a legal foundation for eSignatures while allowing U.S. businesses to keep pace with global e-commerce.
- The immediate future of the global eSignature market is promising; the market itself is expected to quadruple in size by 2020.

Next in the eSignature series:

In Part Two of Signority's eSignature series, we'll discuss **How Technology Is Changing The Insurance Industry and What That Means for Your Business.**



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