



W H I T E P A P E R

POLICY ISSUES IN E-COMMERCE APPLICATIONS:
ELECTRONIC RECORD AND SIGNATURE COMPLIANCE

15 USC 7001 et. seq. (E-SIGN) and

Uniform Electronic Transactions Act (UETA)

ALPHATRUST PRONTO™ SERVER

ELECTRONIC RECORDS AND SIGNATURE SYSTEM

This white paper is written for senior executives (CEO, CFO, CIO, CTO), line of business managers, legal staff, risk management staff, technical managers and security managers involved in deploying document solutions intended to comply with the US Federal E-SIGN law as codified in 15 USC 7001 et. seq. as well as the state law known as UETA making its way through the majority of state legislatures. The implications for additional compliance with other legislative initiatives such as E-SIGN (US), UETA (US), and Electronic Signature Directive (EU) are also discussed.

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Executive Summary

Electronic records and signatures have the legal and commercial equivalence of paper records and handwritten signatures and promise to decrease the cost of business, increase the speed at which business is done, and add needed security to electronic business transactions.

An effective electronic record and signature solution must address these business questions:

1. Does the technology deliver the needed technical security requirements (authentication, data integrity, and technical non-repudiation)?
2. Does the solution address the business requirements for:
 - a. Compliance with laws and regulations?
 - b. Enforceability of transactions (legal recourse)?
 - c. Acceptance by users of the solution?
3. Does the solution provide a mechanism for managing business risk?
4. Does the solution provide for growth / easy scalability as my organization identifies future potential for electronic documents?

These requirements have been the cornerstone of most successful electronic transactions systems such as ATM and credit card systems.

This white paper will discuss key parts of E-SIGN requirements, section by section, and demonstrate how AlphaTrust's PRONTO™ Server ERSS software offers the superior solution, by addressing the technical, business process, and risk management needs of an E-SIGN compliant application.

In addition to the E-SIGN and UETA requirements, it is also important to look at the bigger picture. While you want a solution that meets the requirements of E-SIGN, the introduction of electronic records and signatures provides a shift in business processes that affect many business applications. Your electronic solution should not merely address the needs of one E-SIGN application, but be capable of easily extending to other applications and areas to meet the growing needs of your enterprise, supply chain, industry, and governmental requirements. AlphaTrust's PRONTO™ Server ERSS software meets these requirements today and is architected with the flexibility to meet even larger global requirements in the future.

Detailed Compliance Specifications – 15 USC 7001 (E-SIGN)

The following table details important requirements spelled out in E-SIGN, section by section, and details AlphaTrust's PRONTO™ ERSS software compliance with these requirements. At the end of the table, UETA comments are also provided.

Requirement	AlphaTrust PRONTO™ Server ERSS
<p>101(a) In General. --Notwithstanding any statute, regulation, or other rule of law (other than this title and title II), with respect to any transaction in or affecting interstate or foreign commerce--</p> <p>(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and</p> <p>(2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.</p>	<p>The law states that an electronic signature means "an electronic 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". PRONTO™ Server captures this human intent which is so critical to E-SIGN, and our custom of signatures, by presenting the user with the exact form of the document to be signed, displaying a signature line on the document, asking the user to "click to sign" (or using alternative methods of signature capture) after having given consent to conduct the transaction electronically, and by inserting a graphic signature block that evidences the user's intent. Audit trail and other detailed information are also captured for evidentiary support.</p>
<p>101(c) Consumer Disclosures. -- (1) Consent to electronic records. --Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that such information be in writing if--</p> <p>(A) the consumer has affirmatively consented to such use and has not withdrawn such consent;</p> <p>(B) the consumer, prior to consenting, is provided with a clear and conspicuous statement--</p> <p>(i) informing the consumer of (I) any right or option of the consumer to have the record provided or made available on paper or in non-electronic form, and (II) the right of the consumer to withdraw the consent to have the record provided or made available in an electronic form and of any conditions, consequences (which may include termination of the parties' relationship), or fees in the event of such withdrawal; (ii) informing the consumer of whether the consent applies (I) only to the particular transaction which gave rise to the</p>	<p>The consumer consent provisions can be confusing at first reading. Basically, they only apply if a law or regulation REQUIRES you to provide consumer information or records in writing. These are generally consumer disclosure laws. If your document or information is subject to such laws (consult your attorney) then the consumer notice provisions apply.</p> <p>Importantly, note that the validity of an electronically signed document cannot be denied because of consent failures, but it may run you afoul of consumer protection laws.</p> <p>PRONTO™ Server really shines with the hardware and software disclosure and demonstration requirements. Since only a Web browser is required, the very act of consenting to the disclosure demonstrates consumer ability. The fact that the document is in HTML (the universal open Web page language) guarantees compatibility into the future and covers the re-disclosure requirements. (Acrobat PDF is also supported).</p>

obligation to provide the record, or (II) to identified categories of records that may be provided or made available during the course of the parties' relationship;

(iii) describing the procedures the consumer must use to withdraw consent as provided in clause (i) and to update information needed to contact the consumer electronically; and
(iv) informing the consumer (I) how, after the consent, the consumer may, upon request, obtain a paper copy of an electronic record, and (II) whether any fee will be charged for such copy;

(C) the consumer--

(i) prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

(ii) 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; and

(D) after the consent of a consumer in accordance with subparagraph (A), if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record--

(i) provides the consumer with a statement of (I) the revised hardware and software requirements for access to and retention of the electronic records, and (II) the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed under subparagraph (B)(i); and

(ii) again complies with subparagraph (C).

(2) Other rights. --

(A) Preservation of consumer protections.-- Nothing in this title affects the content or timing of any disclosure or other record required to be provided or made available to any consumer under any statute, regulation, or other rule of law.

(B) Verification or acknowledgement.--If a law that was enacted prior to this Act expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the

<p>record may be provided or made available electronically only if the method used provides verification or acknowledgment of receipt (whichever is required).</p> <p>(3) Effect of failure to obtain electronic consent or confirmation of consent.--The legal effectiveness, validity, or enforceability of any contract executed by a consumer shall not be denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with paragraph (1)(C)(ii).</p> <p>(4) Prospective effect.--Withdrawal of consent by a consumer shall not affect the legal effectiveness, validity, or enforceability of electronic records provided or made available to that consumer in accordance with paragraph (1) prior to implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent shall be effective within a reasonable period of time after receipt of the withdrawal by the provider of the record. Failure to comply with paragraph (1)(D) may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this paragraph.</p> <p>(5) Prior consent.--This subsection does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of this title to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.</p> <p>(6) Oral communications.--An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this subsection except as otherwise provided under applicable law.</p>	
<p>(d) Retention of Contracts and Records.--</p> <p>(1) Accuracy and accessibility.--If a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be retained, that requirement is met by retaining an electronic record of the information in the contract or other record that--</p> <p>(A) accurately reflects the information set forth in the contract or other record; and</p> <p>(B) remains accessible to all persons who are entitled to access by statute, regulation, or rule of law, for the period required by such statute, regulation, or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.</p>	<p>PRONTO™ Server meets accuracy and accessibility requirements by placing a seal (digital signature) over an electronic signature of each signer as well as sealing the entire document, once all parties have signed. This seal protects the document and detects any tampering or changes made to the document, even years later.</p> <p>Accessibility is provided by using the open HTML document standard, which can be readable decades into the future, as it is a plain text document standard. Acrobat PDF is also supported as it is a popular document format. If a document needs to be printed, PRONTO™ Server documents can be printed with all information visible.</p> <p>PRONTO™ Server documents satisfy the "original document" requirement through the use of a digital</p>

<p>(2) Exception.--A requirement to retain a contract or other record in accordance with paragraph (1) does not apply to any information whose sole purpose is to enable the contract or other record to be sent, communicated, or received.</p> <p>(3) Originals.--If a statute, regulation, or other rule of law requires a contract or other record relating to a transaction in or affecting interstate or foreign commerce to be provided, available, or retained in its original form, or provides consequences if the contract or other record is not provided, available, or retained in its original form, that statute, regulation, or rule of law is satisfied by an electronic record that complies with paragraph (1).</p>	<p>seal, providing document integrity (accuracy).</p>
<p>UETA comments</p>	<p>UETA is a uniform state law now enacted in over 40 states. Its requirements generally parallel those of E-SIGN. AlphaTrust's PRONTO™ Server has been designed with state and international law in mind.</p>

Summary

AlphaTrust's PRONTO™ Server Electronic Records and Signature System (ERSS) is designed from the ground up to meet the requirements for technical security, transaction enforceability, legal and regulatory compliance and risk management. AlphaTrust provides a comprehensive solution with significant value delivered in the non-technical / solution arena, inclusive of proper user management, system, and operational procedures, legal and regulatory compliance, and risk management.

AlphaTrust is the clear solution for meeting the challenge of UETA, E-SIGN and other electronic record and electronic signature requirements. We welcome the opportunity to work with you to meet your specific business requirements.