



# Online Contract Compliance

# Introduction

In order to succeed in today's business landscape; organizations must adapt a contract execution system that is both efficient and compliant with all government regulations. Many companies have begun to consider online management solutions as the most suitable replacement for disorganized and outdated paper systems. As with any significant transition, questions arise pertaining to the legitimacy and enforceability of online contracts. Current case law has set strong precedents for the validity of online contracts as long as organizations follow specific guidelines when implementing online management solutions. With these procedures in place, legal teams have precedence regarding enforceability, opening the door to a decrease in sales cycle length and an increase in revenue.

## Fundamentals of an Enforceable Contract

To gain a deeper understanding of the issues surrounding the legality of online contracts, it is beneficial to realize what elements are required to render any contract enforceable. In order to stand up in court, a contract must have mutual agreement, consideration, legal purpose, and capacity. Mutual agreement is accomplished through an offer being tendered and accepted, and the offer can be rescinded at any time prior to acceptance. Consideration refers to a promised exchange of value from both parties. If a contract does not comply with public policy or law, than it lacks legal purpose and is not valid. Finally, both parties must understand the terms of the contract and act under their own free will when completing the transaction. When all of these elements are achieved, a contract is said to be valid and enforceable in a court of law. Until the turn of the century, the validity of online contracts was questionable, but the E-SIGN initiative passed by congress helped to clarify much of the murkiness surrounding digital signatures.

## Regulations Regarding Online Contract Validity

In June 2000, Congress passed into law the Electronic Signatures in Global and National Congress Act, ensuring that electronic records and signatures in

interstate and foreign commerce were legally binding when completed digitally. The general intent of the E-SIGN Act was to assure the public that a contract or signature "may not be denied legal effect, validity, or enforceability solely because it is in electronic form." In other words, an online contract is an equal substitute to a paper contract and thereby subject to the same legal scrutiny applied to its paper equivalent. The federal law broadly defined an electronic signature as "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." This further paved the way for the development and implementation of a variety of technologies that comply with the aforementioned legislature. Today, businesses and their clients can utilize pin numbers, passwords, or personal question responses, or they can click through pages or punch keypad responses and still meet the terms outlined by the E-SIGN Act. After E-SIGN went into effect in October, 2000, the Uniform Electronic Transactions Act was signed into law in order to align differing state laws over the validity of electronic contracts. All but four states adopted the UETA legislation, and those states have their own laws supporting the legality of online contracts. This act served to further facilitate and promote commerce by validating and authorizing electronic records and signatures.



## Requirements for Electronic Document Compliance

In order for electronic documents to be considered valid and enforceable by the court system, several items need to be present. In addition to the four components of paper contracts, the executors of digital agreements need to establish some additional safeguards to ensure contract legitimacy. An essential part of establishing the validity of online contracts is the verification of the signer's identity. This can be somewhat challenging due to the nature of online services and their lack of face to face contact, but many solutions have recently arisen. When implementing contract management systems, companies must incorporate meticulous mechanisms guaranteed to authenticate the intended user's signature as truly originating from that person. Current available options include PIN numbers, passwords, smart-cards, and digital certificates. Future innovations incorporating biometrics should add more security layers to the online transaction process. In order to withstand scrutiny, online contracts also need a strong audit trail to avoid repudiation issues. Non-reputable contracts refer to those documents that are completed in such a way as to make it impossible for someone to deny they entered into the contract for one of several reasons. Most often, signers try to renege on executed contracts by stating that they did not actually sign it, that changes were made without consent or after the agreement was already executed, or that they didn't see certain parts of the document. To avoid repudiation of the facts surrounding a contract, companies should look for a robust online process that provides a strong audit trail detailing the contents of the document and irrefutable evidence linking the contract to both signing parties.

## Case Law Precedents

The introduction of E-SIGN/UETA a few years ago has resulted in several court cases that have defined the enforceability of online agreements. While the case law precedent has been established by numerous legal decisions, the inclusion of a few major cases should offer sufficient support of online contract legitimacy. One of the first significant cases pertaining to the validity of signing a binding document online came in *Caspi vs. Microsoft Network, LLC*, when the courts found in favor of Microsoft. The judge refused to treat paper and electronic and paper presentations of terms differently, and stated that when Mr. Caspi had the choice to click "I Agree" or "I Don't Agree," he was consenting to the terms of the contract. In *Rudder vs. Microsoft Corp.*, an online click-through contract was held valid where the sign-up procedure required the user to accept agreement terms each time they appeared on the screen. The court was determined not to undermine the integrity of online contracts. As the statutes surrounding online contract enforceability are still relatively new, the case law resides mainly in the formative stages. However, courts appear resolute in upholding the legitimacy of digital agreements.

# Conclusion

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By implementing the online contract execution service provided by ContractPal, companies feel safe and secure knowing that they have selected a solution that is easily integrated into existing infrastructure and effortlessly accessed by the end user. Accelerating revenue recognition and minimizing the drop off rate with secure, compliant contracts has never been easier.