

## Living in a Digital World with Analog Laws

Article By:

Thomas E. Walker, Jr.

---

A few years ago, my family and I visited Disney World for the first time, and I quickly learned a very important lesson about the park: nobody who is anybody at Disney pays for anything with cash or a debit card. For those who are staying at one of the resort, stylish wristbands are the preferred form of payment. These wristbands, which apparently come in an array of colors and styles, store all kinds of information about the Disney patrons they belong to. This includes payment information, which means that paying \$50 for a meal that would be \$10 elsewhere can be as easy as waving your wrist in front of a pay terminal, but it also includes your reservation to ride Space Mountain at 9:15 p.m. without having to wait in line for an hour and a half as well as your ticket into the park. It is your all-in-one golden ticket for everything Disney (as well as Disney's golden ticket to all of your valuable personal information and preferences).

Of course, my children had the dad who decided to use points for a hotel stay "off resort" instead of springing for five nights at the Polynesian, so they did not get to sport one of these trendy MagicBands. However, their prevalence could not be avoided, along with the obvious enthusiasm with which they were embraced. The few times I pulled out a debit card to pay for light sabers or food, the attendant looked at me as if I had just pulled out a checkbook. Obviously, Disney is still an isolated environment and the infrastructure it has in place has not yet been replicated throughout our broader economy, but the outcome to me appears inevitable. As trusting as we now seem to be of technology and as much as we welcome its convenience, the days of non-digital commerce are numbered. The reality of electronic transactions (whether they occur through the internet, an iPhone, or a pretty wristband), that not only allow people to pay for products and services but also allow them to store all of their personal information in a certain medium so that counterparties can quickly bind them to an agreement electronically, is fast approaching, whether the law is ready for it or not.

Unbelievably, though, despite the fact that commerce is rapidly progressing to more digital forms, the law in this area has changed very little over the past 20-plus years. In 1997, the National Conference of Commissioners on Uniform State Laws (NCCUSL) began working on a new uniform law with the goal of bringing order and consistency to the area of electronic commerce law.<sup>[1]</sup> The need for this project became apparent after several different states began passing somewhat dissimilar laws in an attempt to deal with the enforceability of contracts formed by the exchange of electronic messages. Some states passed laws that required specific authentication technology for the signature of electronic documents, and some chose a media-neutral model that replaced the terms "writing" and "signature" in statutes with the words "record" and "authenticate," while still others enacted very narrow statutes that allowed electronic communications in only very specific contexts, such as certain

types of citizen-government communications. Many states combined these approaches or did nothing at all.

As a result, the NCCUSL introduced the Uniform Electronics Transaction Act (UETA) in 1999. However, this law was not quickly adopted by many states, and by June 2000, only 18 states had enacted it. This concerned many in the high-tech and financial services industries, who were not only worried about the amount of time it was likely to take for the UETA to be adopted nationwide but also the continued adoption of laws that differed greatly from the UETA in commercially important jurisdictions, such as New York, as well as the adoption of the UETA in other jurisdictions with substantial changes, such as California. These industries began to push Congress to act to fix these problems, and they effectively asked Congress to use the UETA as the model for a federal law. In response, Congress passed the Electronic Signatures in Global and National Commerce Act (E-Sign), which was signed into law on June 30, 2000. This law eliminated many of the old uncertainties and inconsistencies but in the process also created new questions, such as how its unusual preemption provisions worked. However, it did accomplish uniformity in many important areas of electronic commerce law and provided states with a strong incentive to adopt the UETA in other important areas not covered by E-Sign, such as attribution of electronic signatures, the time when messages are deemed sent or received, mistakes in electronic contracting, admissibility of electronic records as evidence, and the effect of electronic documents of title or promissory notes not secured by real property.

Unfortunately, though, the digital framework has changed drastically since 2000, which was eight years before the first iPhone even came out. The market is now considering, and even using, transaction mediums that could not even be conceived then. While states such as California are at the forefront of addressing some of the concerns raised by these transactions and the storing and sharing of personal information required to consummate them, it is time for Congress to step up to the plate and do its job of providing clarity on issues that E-Sign was never intended to address. Until they do so in a way that preempts state laws that impact the naturally interstate aspect of such commerce, laws such as California's Consumer Privacy Act can hold digital progress hostage throughout the rest of the country.

---

[1]Robert A. Wittie & Jane K. Winn, *Electronic Records and Signatures Under the Federal E-Sign Legislation and the UETA*, 56 Bus. Law 293, 296 (2000). This article was used as a source for most of the historical account provided in this update.

---

© 2025 Jones Walker LLP

National Law Review, Volume IX, Number 108

Source URL: <https://natlawreview.com/article/living-digital-world-analog-laws>