

USING DIGITAL SIGNATURES IN AUSTRALIA

What is a digital signature

A “digital signature” is an electronic form of authentication. It is not a “digitised signature” which is the term used to describe the writing in electronic form of a signature or the use of a signature at the bottom of an email. Instead it is a string of complex digital information attached to a message that can be checked for validity.

Authentication

Email and other forms of electronic communication have become an integral part of conducting business but can sometimes be unreliable.

As a result, there is a growing demand for a recipient to be able to rely on the authenticity of the sender’s message.

Digital signatures increase the level of trust in electronic communications in four important ways.

They provide legally admissible evidence that:

1. the purported sender actually sent the message or authorised its dispatch (authorisation)
2. the sender is who they say they are (authentication)
3. the sender is bound by the contents of the message and will not repudiate it (non-repudiation)
4. the message was not altered from the time it was transmitted until receipt (integrity)

Just as a traditional signature on paper helps eliminate legal problems but does not stop them altogether, digital signatures should be viewed in the same light.

Electronic Transactions Acts

The relevant State and Commonwealth Electronic Transactions Acts recognise the use of digital signatures. They provide a legal foundation for the parties to agree on the use of digital signatures, but do not necessarily regulate their use.

The Acts do not force parties to accept digital signatures, but envisage the use of different levels of authentication.

The Act does not favour any particular technology but it does give the same legal status to properly executed electronic contracts as it would to signed paper contracts.

These laws are important facilitators to e-commerce and can encourage corporations to deal with each other in this manner.

If you require any further information in relation to this topic, please contact Ilona Teremi, Partner on (02) 9375 2258 or email ilona.teremi@kreissonlegal.com.au