

Press Release

July 16, 2005

In answer to an inquiry from the Mississippi Secretary of State about official use of VoiceBond, the Mississippi Attorney General's office issued the following favorable opinion. This opinion reflects the general law nationwide, as it confirms the Electronic Signatures in Global and National Commerce (E-Sign) Act passed by Congress in 2000 and the Uniform Electronic Transactions Act (UETA) passed by virtually all state legislatures.

Official Opinion of the MS Attorney General:

Re: Voice Record as a Legal Signature under the Uniform Electronic Transaction Act

Dear Mr. Bearman:

Attorney General Mike Moore has received your recent letter on behalf of the Office of the Secretary of State and has asked me to respond. Your letter, which calls for interpretation of the Uniform Electronic Transactions Act, codified at Miss. Code Ann. Section 75-12-1(Supp. 2001), states:

Our office is interested in testing some computer internet applications that, if successful, could greatly enhance the accessibility of our services to the public. These applications use an individual's voice record as the legally binding signature upon the computer generated document. However, before proceeding with our exploration of this technology, we wish to seek your interpretation of one of the key provisions of UETA.

Section 2(8) of UETA provides that an "[e]lectronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." (Emphasis added.) Further, Section 7(a) provides that a "record or signature may not be denied legal effect or enforceability solely because it is in electronic form." It should be noted that the official commentary for the definition of "electronic signature" under UETA states: "No specific technology need be used in order to create a valid signature. One's voice on an answering machine may suffice if the requisite intention is present." See the official commentary at <http://www.law.upenn.edu/bll/ulc/fnact99/ueta99/1990s/.htm>

Under these provisions of UETA, it appears to be clear that a voice record, in which the speaker explicitly states his intention to sign an identified electronic document, would constitute a legally binding signature as to any document requiring such. Indeed, a voice signature record may be considered, as a practical matter, superior if the words spoken in the record are intertwined with the content of the document signed so as to tightly link together the signature and the document. Thus, if used in court, the voice record may be considered more credible evidence of the intent of a party to be bound to a document since his voice record would contain words from the document itself. Such a proposition is also supported by the official commentary for the definition of "electronic signature."

Another important aspect of this definition lies in the necessity that the electronic signature be linked or logically associated with the record. In the paper world, it is assumed that the symbol adopted by a party is attached to or located somewhere in the same paper that is intended to be authenticated, e.g., an allonge firmly attached to a promissory note, or the classic signature at the end of a long contract. These tangible manifestations do not exist in the electronic environment,

and accordingly, this definition expressly provides that the symbol must in some way be linked , or connected with, the electronic record being signed.

Therefore, we seek your opinion as to whether our interpretation of a voice record constituting a proper "electronic signature" under UETA is correct. Put another way, the question is whether a voice record, as outlined in this request, would be a valid "electronic signature" under UETA?

The Uniform Electronic Transactions Act sets forth rules to govern transactions in electronic commerce, the conduct of business with computers or telephone or cable lines. "Electronic" is defined in Section 75-12-3(5) as "relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities." The purpose of UETA is to make sure that transactions in the electronic marketplace are as enforceable as transactions memorialized on paper and with manual signatures, but without changing any rules of substantive law. The rules of UETA, as Section 75-12-5(Supp. 2001) states, are primarily for electronic records and electronic signatures relating to transactions that are not subject to any article of the Uniform Commercial Code, except for Section 75-1-107, Section 75-1-206 and Articles 2 and 2A. A "transaction" is defined in Section 75-12-3(16) as "an action or set of actions occurring between two (2) or more persons relating to the conduct of business, commercial or governmental affairs." Section 75-12-3(7)(Supp. 2001) defines "electronic record" as "a record created, generated, sent, communicated, received, or stored by electronic means." Section 75-12-3(8)(Supp. 2001) defines "electronic signature" as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."

We are of the opinion that a voice record created or adopted by a person may constitute an "electronic signature" pursuant to the Uniform Electronic Transactions Act. Whether a particular voice record is identifiable as belonging to a person and whether a person has created or adopted a voice record with the intention to execute or sign a contract or document are fact questions. If we may be of any further assistance, please let us know.

Sincerely,

MIKE MOORE, ATTORNEY GENERAL

By:

Alice Wise

Special Assistant Attorney General