

HIPSSA PROJECT

Capacity building on E-transactions and E-commerce
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Areas of discussion

- **Electronic signatures**
- **Electronic evidence**



Most of the consumer protection provisions in the bill make good business sense and promotes best practices. It is in the realm of business to ensure that they comply with the law, legislation has no value if not enforced.



Signature

- As a general rule, written agreements need not be signed to become binding.
- Legislation requiring signatures e.g. Bills of Exchange Act,
- Serves to (a) confirm or endorse the intent
(b) Identify the signatory and (c) authenticate and confirm integrity of the document
- Faceless, impersonal environment of the internet



Electronic signatures

Means data, including an electronic sound, symbol or process executed or adopted to identify a party and to indicate that party's approval or intention in respect of the information contained in the electronic communication and which is attached to or logically associated with such electronic communication



The regulation of signatures:

- In the absence of standards, the party relying on an electronic signature would have to prove to a court that the underlying technology achieves the objectives.
- **Consideration:** to what extent should government introduce legislation on recognition of electronic signature as equivalent to traditional signature and what considerations should be taken into account?
- No regulation or standards
- Private sector regulation
- Compulsory adherence to legislated standards or
- Voluntary registration in terms of legislated standards



Cryptography service providers

- The bill defines these as any service which is provided to a sender or a recipient of an electronic communication or to anyone storing an electronic communication, and which is designed to facilitate the use of cryptographic techniques for the purpose of ensuring;
- (a) that such data or electronic communication can be accessed or can be put into an intelligible **form only by certain persons**;
- (b) that the authenticity or integrity of such data or electronic communication is **capable of being ascertained**



Accreditation

Accreditation of authentication products or services:

- *Licensing procedures and products*
- *Standards*
- *including recognition of foreign signatures*



Example:

- ***South African Accreditation Authority established in terms of their Electronic Communications and Transactions Act, 2002., Accreditation Regulations and Foreign Recognition Policy - www.saaa.gov.za***



E-Evidence

- Broadly defined, e-evidence is electronically-stored information on any type of computer device that can be used as evidence in a legal action
- Two tiers of evidence- Admissibility and weight



Issues on e-evidence

- **Admissibility issues:**

court or investigator may issue an evidence preservation order for a company's e-records, including active data, data archives, metadata, network logs, cookies, web usage logs, email, and IM. Almost without exception, this order will disrupt Information Systems. To ensure e-evidence preservation, backup or maintenance operations that might alter requested data or e-records must be prevented from doing so.

Bill provides for the requirements of admissibility, Section 21 ss4- testimony to corroborate potential vulnerability of the data in processes of retrieval/storage etc

Caselaw- USA *In re Vee Vinhnee, 2005 WL 3609376 (9th Cir.BAP (Cal.),2005) Admissibility of computer business records. The court suggested that prior cases admitting computer records may not have required sufficient showings of their trustworthiness and that admissibility requires more detailed foundation to satisfy the question of what has, or may have, happened to the computer record in the interval between creation and trial. The court suggested testimony as to the following: Policies and procedures for the use of the equipment, database, and programs...*



Issues on e-evidence

Weight issues: Common law - direct/ firsthand evidence carries the greatest weight

- **Best Evidence Rule** the legal doctrine that an original piece of evidence, particularly a document, is superior to a copy – An electronic document shall be regarded as the equivalent of an original document if it is a printout or output readable by sight or other means, shown to reflect the data accurately.

Caselaw- *South Africa – EVIDENTIARY WEIGHT OF PRINTOUT in Ndlovu v The Minister Of Correctional Services 2004 JDR 0328 (W) Delictual claim for wrongful imprisonment. Issue: Whether computer-print-out can be regarded as hearsay evidence. The printout a diary recording captured information. Document is no different from a handwritten or typed document on which the events of succeeding days are recorded contemporaneously. Thus, the probative value of each entry depends upon the credibility of the person who made that entry.*



Application of the law in the case

- **Evidential weight of the printout, applying section 15(3) of the ECT Act.**
- **Two of the persons who made entries on the printout gave evidence before the court,**
 - **their entries do not amount to **hearsay evidence****
 - **other entries, the authors of which were not called to give evidence, do however amount to hearsay evidence.**
- **Section 15(4)**
 - **Data messages – ordinary course of business, copy/printout certified correct admissible**



- **Electronic evidence must meet certain criteria to be meaningful to an investigation or prosecutor:**
- ***criteria*** ;admissible?, authentic?, complete?, reliable?, accurate and believable for it to pass any standard of weight
- **Failure to adhere to well-documented collection and analysis procedures could cast doubt on the authenticity and veracity of the evidence.**
- *Example Philippines Rules on E-commerce law [R.A. No. 8792]*



THANK YOU

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