
HIPSSA Project

Support for Harmonization of the ICT Policies
in Sub-Sahara Africa

TRANSPOSITION OF SADC CYBERSECURITY MODEL LAWS INTO
NATIONAL LAWS FOR THE REPUBLIC OF RWANDA 2013

Capacity Building on Electronic Transactions and Communications Bill

11-12 July 2013



Topics

- Effect of legal recognition of:
 - Writing
 - Digital signatures
- Incorporation by reference
- .rw DNS



Jafta v Ezemvelo KZN Wildlife [2008] 10 BLLR 954 (LC)



- Jafta: offer of employment on condition that he accepts via e-mail by 24h00 31 December 2007



The plot thickens...

- SMS from Wildlife's HR Manager stating that Wildlife needed to know whether Jafta was going to accept its offer.
- Jafta replied via SMS:
 - Have responded to the affirmative through a letter emailed to you this evening for the attention of your CEO. Had problems with email I had to go to internet café.



Jafta court

- The Court held: Jafta's SMS reply "to the affirmative" was a direct and unequivocal acceptance of the offer and formed a valid contract.

Text messages may seem casual, it would be a mistake to treat them as having no legal effect. A valid and enforceable contract can be formed through the exchange of text messages.



Legal Implications

- Burden of use of technology has shifted
 - Postal – offeror risk
 - E-communications addressee carries risk
- Designated info system: amended through SMS message



SMS sent in Haste

- *SIHLALI, MAFIKA v SABC* CASE NO: J 700/08
- Suspended - SMS message - Chair of Board resigning
- Resignation accepted via e-mail message and a follow-up letter
- Retraction – not proper resignation
- Not able to retract after resignation was accepted



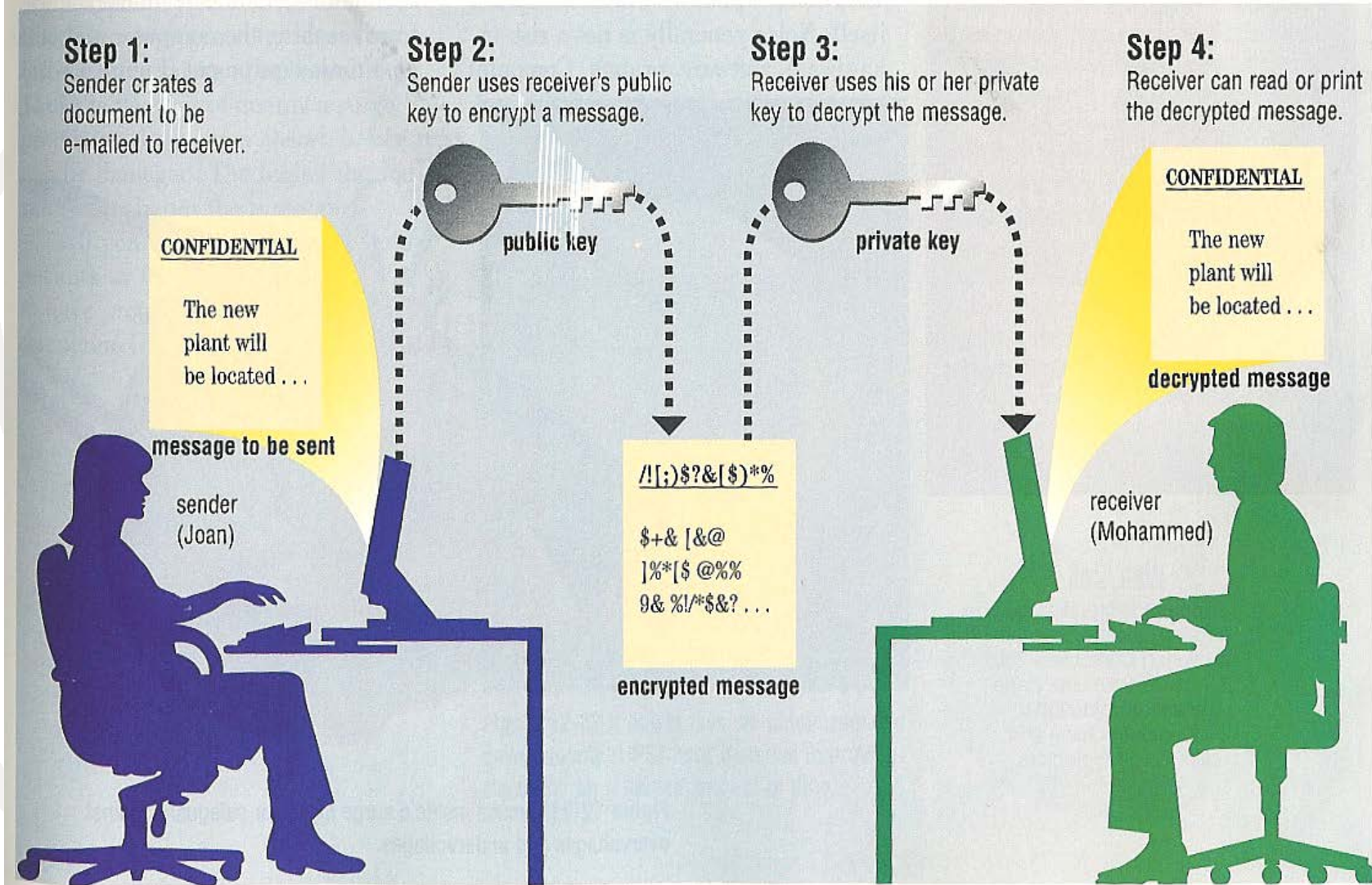
Attributes of a secure electronic signature

- Uniquely linked to user
- Capable of identifying user
- Created using means maintained sole control of user
- Linked to electronic communication in such a manner subsequent changes noted

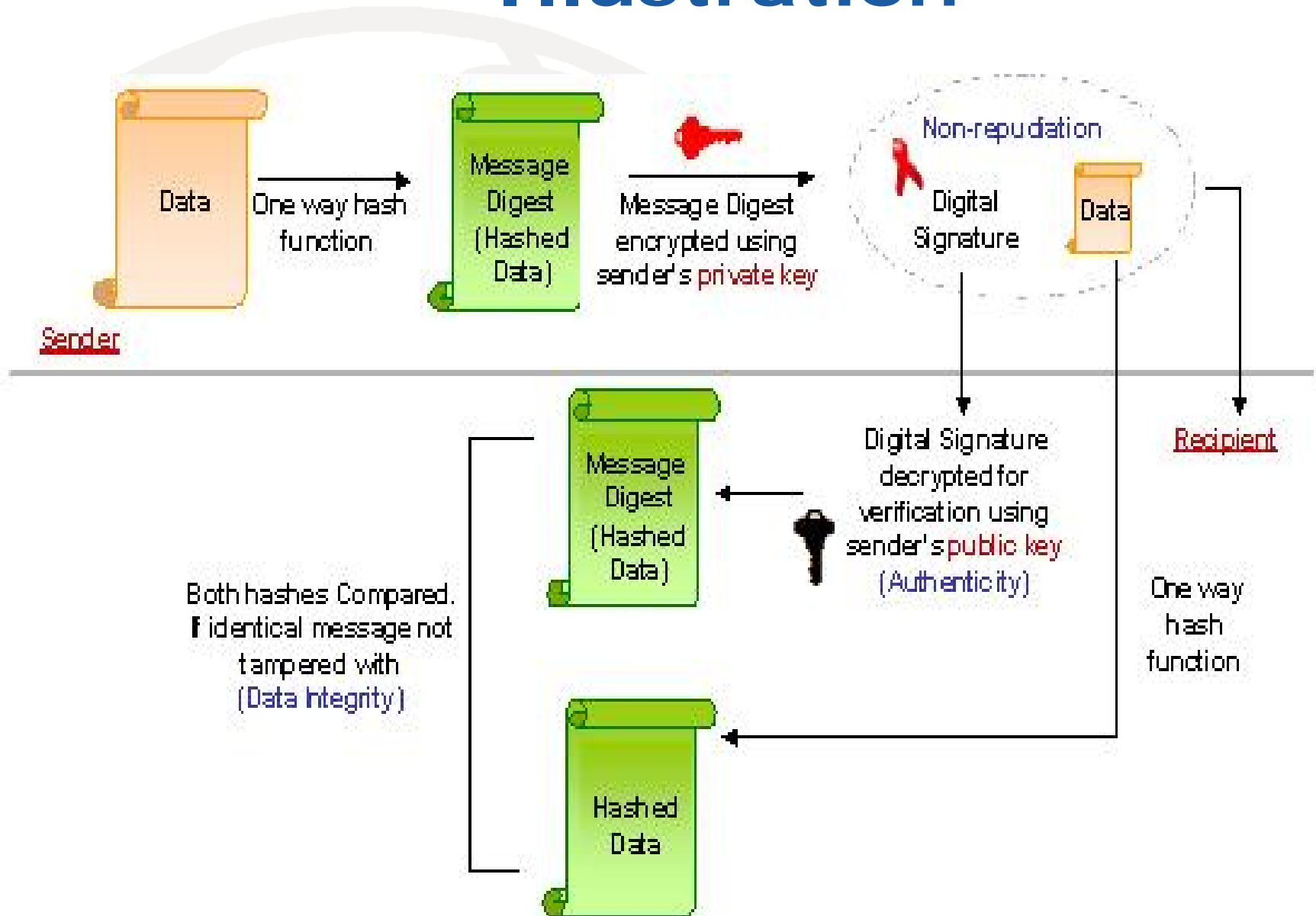


Public Key Encryption

Figure 12-20 AN EXAMPLE OF PUBLIC KEY ENCRYPTION



Illustration



Correct the spelling of one word in message: "withdrawal"

- Message digest:
874E9EED73DDDCF55
- Previous message digest:
1A25CF6990F82C0RIPEM128



Value

- Digital & Electronic Signatures' advantages:
 - authenticates and identifies e-commerce parties;
 - authorises transactions;
 - provides proof of messages sent &
 - verifies integrity of info sent over Internet



Art 175 Incorporation by reference

- Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is not contained in the data message purporting to give rise to such legal effect, but is merely referred to in that data message.
- Best practice: Ticket cases



Were terms expected?



Yes

No

Would reasonable person have noted the incorporation?

Not bound

Yes

No



Bound whether terms were read or not.

Example

New Tariffs New Telkom tariffs w.e.f. 1 August 2007... [more>>](#)
Buy a PC from Telkom! Buy a PC on your Telkom account for as little as R219.37 per month... [more>>](#)
Telkom PrepaidFone Waya-Waya Stay connected all year for R120 and ringa waya-waya [more>>](#)
Moving home? Now Telkom SmartMoves has an easy to use service to inform your friends and family your new contact details in one go!..... [more>>](#)
Let your opinion be heard... Have your say and earn exciting rewards... [more>>](#)

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[Online Full Terms and Conditions](#)

[Ease-e-Bill Terms and Conditions](#)

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Best practices links:

Referred to in a way in which a **reasonable person would have noticed the reference thereto** and incorporation thereof

- Font size / colour
- Place on web page

Links **MUST** work










Animals are **not** ours to eat, wear, experiment on, use for entertainment, or abuse in any way.

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Meat	Leather	Fur	Taxidermy	Hunting	Fishing
 Pets	 Research	 Miscellaneous		 Comments	 Hate Mail

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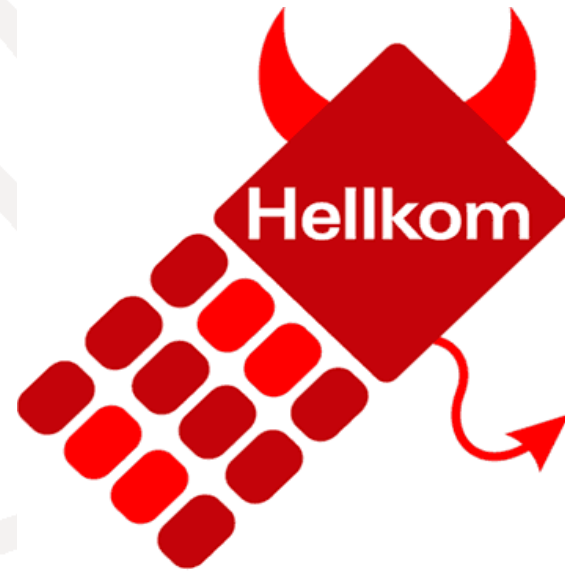
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Protest sites

- Telkomsucks.co.za
- F*cktelkom.co.za
- Hellkom.co.za
- Tarnishment?



*Prices that'll
make you sweat*



Limits of tm in the on-line world

- Use in course of trade: **passive holding or non-use**
- Use in relation to **unrelated goods/services** or **non-commercial use**
- Only one domain name registration not differentiation identical marks for different goods / services; split marks
- Cybergripping



Conclusion I

- DNS plays an important part in Rwanda's ICTs
- Compelling policy imperatives for the management of the .rw DNS
- Regulations should be adopted for
 - Authority; responsibilities registries; registrars and policy directives
 - ADR proceedings and accreditation of ADR providers



Conclusion II

- Paper-based contracts e-amended
- Incorporation by reference-technical requirement
- Secure e-signatures – NB role in authentication & integrity



THANK YOU...

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