

# The Issue

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## The Armageddon of Paper

*Technology has given Paperpushers a bad “Wrap”*

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Chris Chillingworth  
Jess Gutierrez  
Doug Kennedy  
Ed O’Dea  
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### **Chris Chillingworth**

Partner, CFOs2Go Partners

### **Lisa Chapman**

Attorney, Royse Law Firm

Ever wonder where the promise of a paperless society went? Pundits have been talking about “going paperless” since the advent of the personal computer in the early 1980’s. Yet how many of us maintain file drawers full of paper files, continue to receive paper solicitations through the mail, take notes on paper pads, fill out paper forms, complete paper applications, sign paper agreements, write paper checks, receive and deposit paper checks, and otherwise contribute to the decimation of what was once the Sahara “forest”?

Although change is slow, believe it or not change is coming. Many (not all) of retirement age and older individuals never embraced technology completely. (Chris’ father had a “secretary” his entire career to do all of his paperwork until he retired at age 86). For them, writing checks, keeping a paper calendar (remember the pocket Day-Timers™?), taking notes on note pads and keeping paper files has always worked, and are reluctant to make changes they fear or don’t understand. However, our children’s generation (some in their 30’s) never knew life without a computer. And our grandchildren will never know life without a smartphone.

Technology has brought us many benefits that are impossible to ignore and our laws are changing to keep pace with the demands of the marketplace. First and foremost, the personal computer and its progeny platforms, the laptop, the tablet, reader and the smartphone have put technology in formats that are easy to access, and the user interface software has made it so

*continued on page 2*

The Issue 1

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intuitive, that Chris' grandson was playing Angry Birds™ at the championship level and downloading YouTube™ videos at the age of two!

Second, the value of only having to enter data only once (or even “nonce”, as we call it, downloading it from a bank, a website, or another user) and having it synchronized across all platforms simultaneously introduces monstrous efficiencies.

Third, there is the development of the Internet, and the introduction of WiFi and cellular services that deliver a variety of applications, by providing access to news, weather, sports, and information; global positioning, travel, maps and directions; online shopping; online banking; online investing; streaming videos, movies and music; download and read books and periodicals from anywhere; mobile business communication, sharing and conferencing applications; fitness and entertainment; and global Internet Search, to mention a few.

Finally, there is the public embracing of social media as a means of building communities of users who stay in touch through (largely) free services such as Facebook™, LinkedIn™, and Twitter™, among others. The public has given up much of its privacy to be able to instantly connect with “friends”, share photo's and video's (created through the same handheld devices they use to communicate), “like” products or issues, and otherwise comment on their activities and those of others in their community in real time.

But we digress.

The real purpose of this Newsletter is to point out ways in which technology can be used to eliminate paper from our lives. Environmentalists should embrace this concept totally. When can electronic records replace paper? We're finding the younger generation of entrepreneurs forming startups, which constitute a significant area of our professional practices, do not want to touch paper in any way, preferring such applications as Expensify™, Shoeboxed™, and BizCardReader™ to turn images into data, which can then be catalogued and stored, or used as a basis for transactional activity in accounting and reporting systems.

The first question should be does any transaction, contract or agreement require an original document anymore?

#### **Documents which cannot be electronic**

The answer is, unfortunately, “yes.” According to Nolo Press, electronic versions of the following documents would be “invalid and unenforceable”, in order “...to protect consumers from potential abuses”:

continued on page 3

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- Wills, codicils, and testamentary trusts
- Documents relating to adoption, divorce, and other family law matters
- Court orders, notices, and other court documents such as pleadings or motions
- Notices of cancellation or termination of utility services
- Notices of default, repossession, foreclosure, or eviction
- Notices of cancellation or termination of health or life insurance benefits
- Product recall notices affecting health or safety, and
- Documents required by law to accompany the transportation of hazardous materials.

These documents must be provided in traditional paper and ink format.”

I would add to their list (until proven otherwise):

- Passports
- Proof of identification / citizenship
- Driver’s license
- Workplace rules, minimum wage disclosures (must be posted in a conspicuous place)
- Business licenses, health permits, and other regulatory documents requiring posting

Also documents which are traditionally recorded by the County Recorder must be in writing and in most cases, notarized. The most significant real estate documents fall into this category:

- Grant Deeds
- Deeds of Trust
- Mortgages
- Leases (although most leases are not recorded, and not required to be notarized unless recorded)

**Lisa reminds us to keep in mind, that in litigation, the “Best Evidence” rule would require parties in a dispute to produce original documents wherever possible.**

continued on page 4

But that leaves a myriad of documents which *can* replace paper documents.

**Documents that can be electronic**

- ACH, wire transfers, and *electronic* checks
- Bank deposit images
- Tax returns (federal, and some states)
- Tax receipts (provided they meet the IRS standards for “who, what, when, where, why”)
- Most contracts (see limitations above)
- Warranties
- End-User Software License Agreements (EULA’s)
- Product descriptions
- Product use instructions
- Financial statements
- SEC reports (EDGAR and XBRL)
- Proof of Auto Insurance certificates (GEICO)
- Marketing collateral
- Conference materials
- E-mails, text messages, tweets
- Voicemails
- Video and photographs
- Trademark registrations
- Employee Handbooks

Note that some of the above documents must be reproducible in paper if an individual or party to the document requests.

**Electronic documents and electronic signatures**

“Electronic contracts and electronic signatures are just as legal and enforceable as traditional paper contracts signed in ink. Federal legislation enacted in 2000, known as the Electronic Signatures in Global and International Commerce act (ESGICA), removed the uncertainty that previously plagued e-contracts.

“This 2000 e-signature law made electronic contracts and signatures as legally valid as paper contracts, which was great news for companies that conduct business online, particularly companies that provide financial, insurance, and household services to consumers. The law also benefits B2Bs (business-to-business websites) who need enforceable agreements for ordering supplies and services. For all of these companies, the law helps them conduct business entirely on the Internet.”<sup>1</sup>

Continued on page 5

An electronic contract is an agreement that is created and "signed" in electronic form (think bits and bytes). Since ink signatures can't be applied to e-contracts, often acceptance is indicated by typing the signer's name into the signature area, pasting in a scanned version of the signer's signature, clicking an "I accept" button, or using a more secure cryptographic technology, such as public key infrastructure, or PKI. Generally, the term "digital signature" refers to cryptographic signature methods and "electronic signature" refers to other paperless signature methods.

The advantage to a digital signature over the other methods is that a valid digital signature:

- Enhances the recipient's belief that the e-document as sent by a known sender ("authentication"),
- That the sender can't deny later that it was sent ("non-repudiation"), and
- That the document was altered in transit ("integrity").<sup>2</sup>

An e-contract can also be in the form of a "Click to Agree" contract, commonly used with downloaded software: The user clicks an "I Agree" button on a page containing the terms of the software license before the transaction can be completed.

### **Footnotes**

<sup>1</sup> Nolo Press, <http://www.nolo.com/legal-encyclopedia/electronic-signatures-online-contracts-29495.html>

<sup>2</sup> "Digital Signatures", 10/23/13, [Wikipedia, www.en.wikipedia.com](http://www.en.wikipedia.com)

### **Summary**

The use of electronic documents and electronic transactions has become commonplace, providing both convenience to the consumer and efficiency to the business. If you have not already embraced technology, it will pay to do so, saving time and storage space, while reducing errors. Encourage others to send documents, marketing collateral, and conference material to your e-notebook or tablet as a means of saving the enormous consumption of paper.

For assistance in implementing any of these technologies, contact Chris Chillingworth at (408) 309-1343, or your CFOs2Go Partner. And for questions on legal issues related to contracts, contact Lisa Chapman at the Royse Law Firm (650) 813-9700.

Continued on page 6

continued from page 5



*Chris Chillingworth is a partner with CFOs2Go Partners specializing in the high tech manufacturing, software, and service industries. He has over 30 years experience in financial leadership including multiple roles as a CFO in both the public and private sector.*

*He leads our financial systems, stock compensation accounting, equity crowdfunding, and corporate governance practice groups.*



*Lisa Chapman is an attorney with the Royse Law Firm and has represented startup and mid-sized companies for over twenty years in the areas of employment counseling, employment litigation, commercial litigation and trade secret litigation. Lisa has litigated a wide variety of commercial and employment related matters, cases involving sexual harassment, discrimination, and class action wage and hour claims, and handled commercial litigation and trade secret matters, with substantial experience handling intellectual property related claims.*

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(925) 299-4450

The Issue 6

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