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**“Some Thoughts on The Legal Aspects of
New Technologies in Latin America”**

**Maria Gabriela
Sarmiento**



SNC

Sarmiento Núñez Consulting

Consultas y Asesorías al alcance de todos

Introduction



e-Documents

as listed and defined by the Laws and/or Bill of Latin American countries

Digital documents

Data Messages: Es toda información creada, generada, procesada, enviada, recibida, comunicada o archivada por medios electrónicos, que puede ser intercambiada por cualquier medio. Serán considerados como mensajes de datos,...: documentos electrónicos, registros electrónicos, correo electrónico, servicios web, telegrama, télex, fax e intercambio electrónico de datos.

Electronic Documents

Electronic Acts

Electronic Contracts



Are these documents considered as writings and as originals? Moreover, do they have evidential weight under the legislation (in force or bills) of Latin American Countries?



e-Documents

Latin American countries were the rules and regulations (in force and/or bills) were e-documents are considered to be in writing



Digital documents



Documents and contracts electronically signed (exceptions)



Documents and contracts digitally signed



Data messages that can be consulted *a posteriori*



e-acts and contracts that could be consulted *a posteriori*



e-documents related to merchandise



e-Documents

Latin American countries were the rules and regulations (in force and/or bills) recognize evidential weight to e-documents and considers them as to be originals



e-documents related to merchandise



e-documents and contracts **digitally** signed and **digitally** supported by any mean.



e-documents and contracts **digitally** signed



Data messages **digitally** signed



any e-documents, e-contracts and data messages



Documents or contract transmitted through e-means that could be consulted *a posteriori* and its integrity be demonstrated

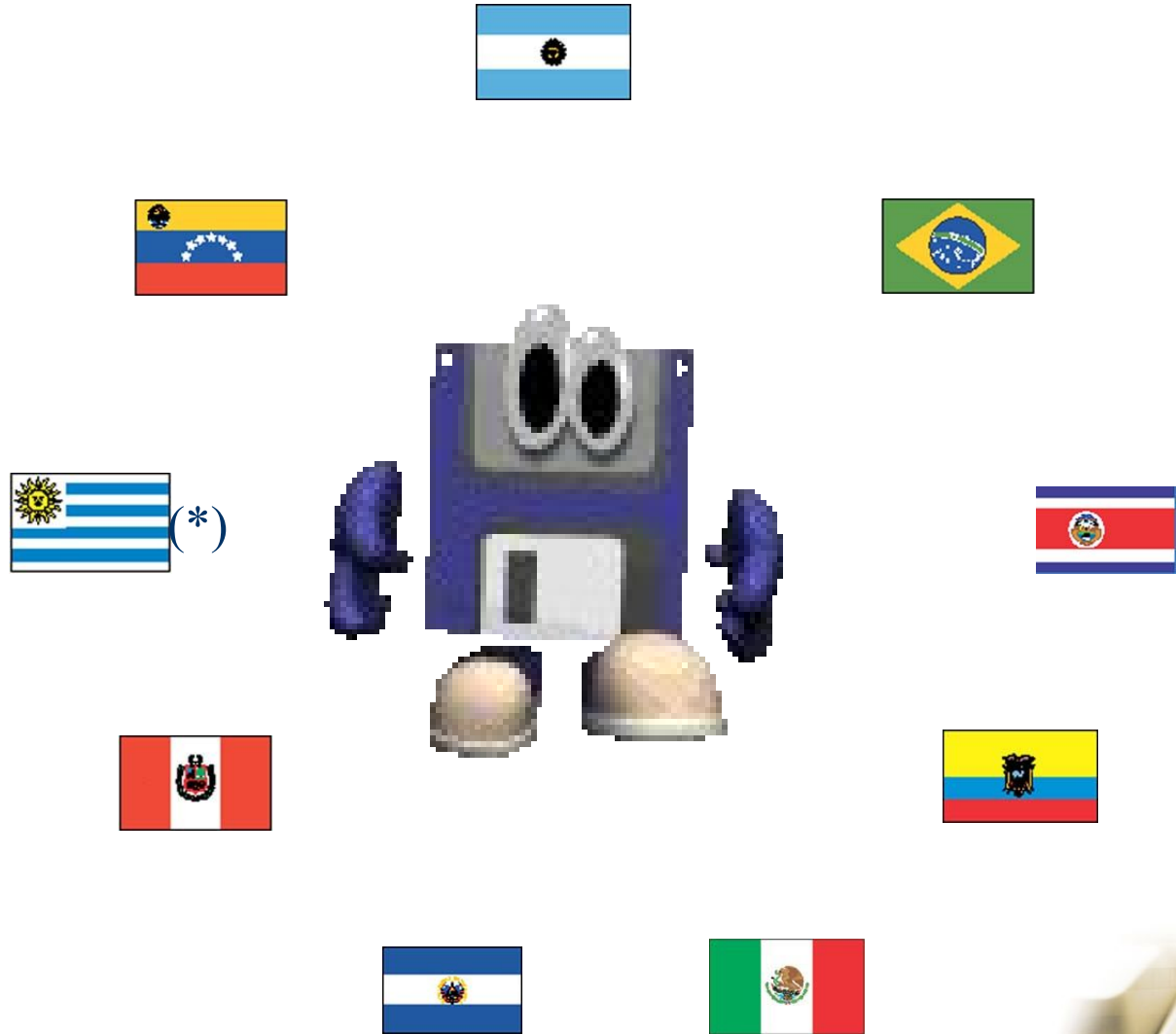


Data messages



e-Documents

Latin American countries were the rules and regulations (in force and/or bills) allow official documents and acts to be produced and transmitted electronically.



(*) digital and electronic signatures are allowed among officials



e-Billing

Latin American countries that have adopted legislation recognizing the validity and legal effects of e-bill either within the governmental authorities and for the public and private sectors



Antes de fin de año comenzará a operar la factura electrónica, será gradual y se iniciará en las grandes empresas. se trata simplemente de generar un código de autorización de cada lote de facturas antes de enviarlas electrónicamente a los clientes. Toda factura que se emita se enviará de manera simultánea a la AFIP



“Factura electrónica”: facturas de venta, facturas de compra, facturas exentas y liquidaciones factura, generadas como un documento electrónico emitido y firmado por un contribuyente autorizado por el Servicio de Impuestos Internos.



Factura Electrónica: Conjunto de registros lógicos almacenados en soportes susceptibles de ser leídos por equipos electrónicos de procesamiento de datos, que documentan la transferencia de bienes y servicios, cumpliendo con los requisitos exigidos por las Leyes Tributarias y los Reglamentos vigentes.



El Sistema de Administración Tributaria (SAT), liberó recientemente los lineamientos para la elaboración de facturas electrónicas, documentos que se obtienen de una planilla electrónica con los datos del contribuyente y que se pueden guardar digitalmente.



Son documentos equivalentes a la factura de venta ... la factura electrónica ...

e-Billing

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Son documentos equivalentes a la factura de venta ... la factura electrónica ...



La Administración Tributaria podrá establecer procedimientos para la elaboración, transmisión y conservación de facturas, libros, registros y documentos por medios electrónicos o distintos al papel.

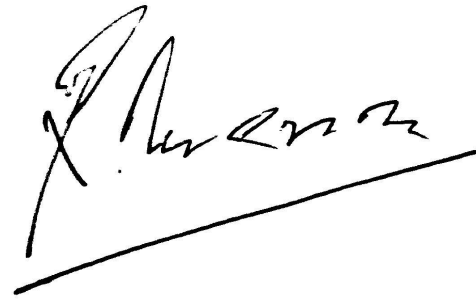


Los Procedimientos de PAGOS DE BIENES Y SERVICIOS A TRAVES DE RESOLUCIONES ADMINISTRATIVAS Y BOLETAS PARA PAGOS DE BIENES Y SERVICIOS (EXCLUYE REINTEGROS DE CAJA CHICA) del Ministerio de Hacienda incluyen un párrafo que reza: “... sin perjuicio del uso de la factura electrónica para tales efectos”

e-Signatures

as listed and defined by the Laws and/or Bill of Latin American countries

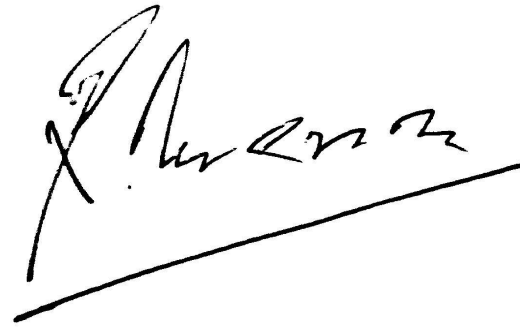
There is a conceptual and technical difference between electronic and digital signatures but the legislator seems to disregard this fact in Latin America

A handwritten signature in black ink, appearing to be 'R. Arce', written over a horizontal line.

Are these signatures considered validity and recognition? Moreover, do they have evidential weight under the legislation (in force or bills) of Latin American Countries?

e-Signatures

e-signatures are given the same validity and legal effects to as a hand-written signature in the following Latin American countries



e-signatures are given evidential weight by the rules (in force and bills) and regulations of these countries



Provides the same evidential weight as handwritten signatures



e- signatures can submitted as evidence into court

Digital signatures

Are provided by Law (in force and/or bill) the same validity and legal effects as to handwritten signatures in the following Latin American countries

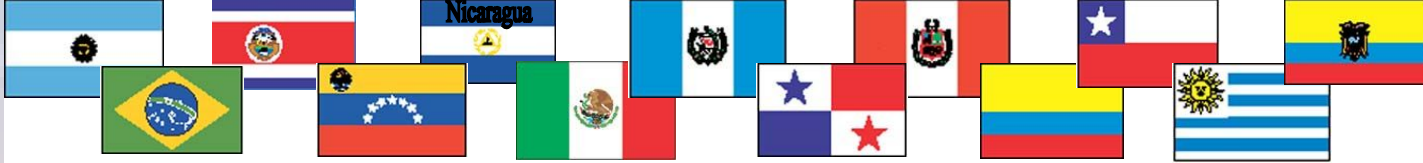


Digital signatures

Digital signatures are granted the same evidential weight as handwritten signatures by the laws (in force and/or bills) of these Latin American countries



Digital Certificates and Certification Authorities



Latin American
countries that have
regulated
Certification
authorities and
digital certificates

Important principle:
Mutual recognition of foreign digital certificates

CAs in Latin America

AR: Certificado Digital S.A., Aptix y SECAPH.

BR: CertiSign.

CO: CertiCamaras.

CL: e-CertChile y Cámara Nacional de Comercio, Servicios y Turismo (CNC).

UR: ID-Digital y Cámara Nacional de Comercio y Servicios del Uruguay.

PE: Peru Secure E Net.

GU: Bancared.

AR y CL: CertiSur (Clerk's digital certification)

Online Consumers' protection

Main principles adopted by the rules and regulations of the following Latin American countries



- Full contact details of the seller.
- Consumers shall consent to use data messages in a relationship with a seller
- Clear and precise contractual rights and obligations
- Clear and precise sale's terms and conditions
- Exhaustive information on the goods and services



- Online offers and advertisements are bounding.
- Possibility to withdraw the acceptance of an offer
- Personal data should be treated as confidential
- Information on how to access and update the consumer's personal data
- Forum: place of residence of the consumer



Privacy protection online

Main principles adopted by the rules and regulations of the following Latin American countries



Collected personal data should remain private and confidential



Individuals have the right to know what for is their personal information collected



Databases should be secured



Individuals should consent on the transfer and use of their personal data



Individuals have the right to know, update, and rectify information gathered about them in data banks and the records of public & private entities



Copyrights and the Internet

All works expressed
through any means
are protected
including databases
and computer
programs.



Copies, reproduction, and redistribution of copyrighted material
are forbidden except for scientific or didactic purposes or for a
private use.

This provision applies to foreign copyrighted material.



Copyrights and free software

Free software is
regulated under the
laws of the
following Latin
American
countries



Non-solicited emails (SPAM)

Main principles adopted by the rules and regulations (in force and/or bills) of the following Latin American countries

Illegality in particular cases

Opt-in and opt-out rules

ISPs to provide mechanisms for denouncing SPAM

ISPs to block the transmission of SPAM

Fines and indemnities

Full information of the SPAM sender



Cyber-crime

Latin American countries where cyber-crimes are regulated by law



Who reveals and diffuses restricted data stored in a computer system commits a crime

Illegitimate access to restricted computer systems or data stored electronically and who modifies, destroys, cancels or makes a computer system or data inaccessible or, more generally, causes any damages to it commits a crime penalized by law



Computer fraud is penalized



Penalize the falsification of electronic documents

Cyber-Crime

Latin American countries where cyber-crimes are regulated by law



The possession of equipment for sabotage or falsification or the provision of such services; the violation of private data and communications; the intellectual property violation; the fraudulent use and illegitimate acquisition of smart cards; the theft through informatics means; the illegitimate acquisition and provision of goods and services; and false or fraudulent advertisements are crimes

It forbids kids from accessing pornographic sites



They have adopted legal provisions against online child's pornography.



The violation of private electronic correspondence and personal data is considered a crime

Limitation of Liability of intermediaries

Vacuum on the
legal framework of
Latin American
countries

Jurisdiction and Applicable Law



Establishment of the jurisdiction to rule e-contracts



Jurisdiction is established in case a cyber-crime is committed

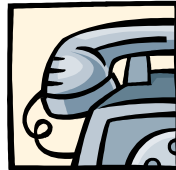
Greetings and Contact details

Thank you for your attention

We are at your disposal in Caracas @



Edificio EASO, Piso 5, Oficina 5-CD,
Avenida Francisco de Miranda,
El Rosal, Caracas 1060 Venezuela



Tel (+58 212) 951 0560/1359 and)+58 412)
200 12 00

Fax: (+58 212) 951 72 13

Email: experts@snconsult.com



Skype: snconsult



MSN Messenger snconsult@hotmail.com

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www.msn.com and
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