Electronic Signatures and Commerce
Carlos Sancho

The instruments necessary for efficient electronic consensus currently exist. Citizens often complain about how slow the juridical system is to react in the face of social reality. Nevertheless, we can state that with regards to the information society the legislator, both on a national and on a Community level, is being particularly agile. The application by the Courts is, and shall be, a different question.

Ever since the electronic signature appeared, the legislative machine has taken steps to regulate an area in constant expansion, and hence the existence of directives 1999/83/CE and the directive of 28th February 2000, regarding specific juridical aspects of information society services, especially e-commerce.

On a national level, we have Royal Decree 14/1999 on electronic signatures and the Ministerial Order of 21st February 2000, which passed the Regulation for accreditation of certification service providers for specific electronic signature products. This is the legal situation, but what happens in reality?

E-commerce, which is where what we have called electronic signatures came about, is developing much faster than was forecast. This development is due to the expectations of consumers who approach the Internet in order to obtain a good product or service at a better price.

By way of example, we can cite the amount of e-commerce generated by Spanish companies. AECE, the Third Study of E-commerce in Spain, places the total in millions of pesetas. That is currently the real situation, with regards to which the latest directive of the European Parliament and the Council of the European Union, of 28th February 2001, speaks merely of minimum amounts of information in order to better safeguard the rights of Internet consumers and users.

These minimum contents are aimed mainly at service providers, of whom the following is demanded:

- That the name of the service provider appears clearly.

- Geographical address where the service provider is established.

- Information which allows the service provider to be contacted quickly and allows a direct and effective communication to be established with him, including his e-mail address.

- If the service provider is included in a mercantile register or other similar public register, the name of the said register and the registration number assigned in it to the service provider, or other equivalent means of identification in the register.
Given the situation, what in fact now happens is that the majority of service providers (leisure portals, information web pages, travel and flight portals, etc) place a disclaimer on their home page which usually includes the requirements demanded by the directive of 28th February.

If these requirements do not appear in the portal, it would not be advisable to carry out any operation there. We have now seen the legislation applicable to e-commerce, and the general requirements which the service providers must fulfil.

**How Secure are Electronic Signatures?**

If we understand electronic signatures as being electronic data which allow us to identify the author of the same and with the requirements which the service providers must fulfil, we shall have no problem in identifying who is making the offer or who is offering us information. But it will be much easier and securer if the service provider (Internet portal, web page, etc) has a recognised certificate, in other words, its data system has been verified by a certification service provider.

These certification services are being used mainly by financial entities, where, given the type of data processed, they are indispensable. The certification of the services provides particular security to those users of the said services. The ideal thing would be for all the services to have certifications, but the real situation is very different with regards to the hundreds of thousands of millions of portals. But the service providers are currently replacing the certification of their systems by way of other mechanisms such as the online point-of-sale terminal (better known as the online POS).

Using this system the service providers offer security to the consumers who decide to make an operation with them, in other words, the leisure portal or the online bookshop use the certification system, such as the one used by the financial entity, for the operation to pay for the service or product to be carried out. In conclusion, we must remember two basic points:

1) The speed of change in the information society makes any legislative measure provisional.

2) The Internet cannot eliminate the causes of breach of contract or fraud. That competence belongs exclusively to humans.