

## TechConnect

Your Law Firm Link to Industry News

JULY 2016

### Letter from the Editors

Dear Readers,

One of the interesting facts that we have learned over the years is that there appears to be a correlation between the NASDAQ public market (which is heavily weighted with technology stocks) and activity in the private venture capital markets. When the NASDAQ stock market is bullish, the amount of capital raised for venture investing and the amount of capital invested in private venture backed companies increases. Conversely, when the NASDAQ swoons, then it is quickly followed by a period of restraint in the private venture capital markets. In light of the recent run up in the stock market, there is every indication that it will be a good time to raise capital in the private capital markets in late Q3 and in Q4 for this year. This bodes well for our emerging companies.

In this issue, we answer the question we are asked on a weekly basis: Are electronic signatures enforceable? (spoiler alert...the answer is YES). We also feature an amazing company called SeedInvest, a true pioneer in terms of raising a company online from the crowd. Additionally, consistent with our focus on robotics, we have an interesting article about selling your robotics company.

We would also like to remind our readers that you can always ask us anything at <http://mintzedge.com/ask-anything/>. We built the MintzEdge website as a resource for entrepreneurs and investors, and hope that all of you take advantage of the site and see how it can help you.

Happy Reading!

**Dan + Sam**



A handwritten signature in black ink that reads "Dan".



A handwritten signature in black ink that reads "Sam".

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#### CONTENTS

- ▶ In the Spotlight
- ▶ Innovator Profiles
- ▶ Leaders in the News
- ▶ Featured Article
- ▶ In the News In NYC
- ▶ Upcoming Events

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## In the Spotlight

### Yes, E-signatures are Enforceable

BY [DANIEL DEWOLF](#), [SAMUEL ASHER EFFRON](#), AND [RACHEL GHOLSTON](#)

We are often presented with the question of whether electronic signatures are enforceable. The answer is yes. There is an entire statutory regime under both state and federal law which gives validity to electronic signatures. This article gives a high level overview of best practices for optimizing your use of electronic signatures.

#### Background

Forty-seven states have adopted the Uniform Electronic Transaction Act (UETA). At the federal level, the Electronic Signatures in the Global and National Commerce Act (E-sign Act) recognizes the validity of electronically signed agreements. Though there are some variations among these laws, the goal of a simple and effective way to recognize electronically signed documents has been largely achieved through the UETA, the E-Sign Act, and New York's Electronic Signatures and Records Act (ESRA).

#### Definition of Electronic Signature

The UETA, the ESRA, and the E-sign act have very similar definitions of an "electronic signature." Both the UETA and the ESRA define an "electronic signature" as "an electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record." The E-sign Act defines an "electronic signature" as "an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record." The broad definition of "electronic signature" is intended to avoid favoring one type of technology or format over another. There is no proscribed method or platform.

Under all three statutes, the validity of an e-signature lies in the intent of the parties and in the act, either the act of providing the electronic assent or the act of adopting an electronic signature. The act and the intent are two separate though related conceptions. The action alone does not prove intent. It must be clear that the action is understood by the signatory as agreeing to or acknowledging the contents of the record. The connection between the electronic transmission and the assent being provided must be clear and direct. Showing the intent to be bound can be achieved by providing clear disclosures to the signing party before accepting the electronic signature, such as a contractual provision that makes clear that such an agreement can be signed by electronic means or electronically delivered counterparts. This is no different than the assent language commonly found on signature pages of contracts requiring manual signatures. The signing party should be expressly alerted to the significance of the action being taken. Under all three statutes, if all parties agree to use electronic signatures, a document signed by electronic means will have the same validity and effect as a document signed with "wet ink."

#### Verification

An electronic signature must be provided or adopted by the person to be bound by the document. Electronic signatures function effectively when there is a reliable method of verifying the signing party. Companies can verify the signing party's identity by using password-protected logins, PIN numbers, or third party service providers that have their own well-established verification methods, or, if signatures are sent by email, by identifying the email address of the sender.

Recordkeeping is also crucial when relying on electronic signatures. The UETA requires that records that are required by law to be furnished to your counterparty must be retainable, i.e. able to

be printed or stored by that party. Your digital record retention policy may be inadequate for operating under an e-signature model. Many companies archive electronic files in formats that are costly to access, or worse, they delete the records after a certain period of time. Agreements signed by electronic means should remain easily accessible to a company. The records should include both the agreement itself and information about the verification process, such as login records or some other form of audit trail.

## Conclusion

Electronic signatures are generally enforceable, but the steps you take with respect to verification and disclosure can make all the difference if a dispute arises about the validity or enforceability of the electronic assent. The ability to retain and reproduce electronically signed agreements is at the heart of enforceability as these records may be admitted as evidence in a proceeding. By using an approved format, verifying the signatory, employing language of intent and keeping good records, you can optimize the effectiveness and enforceability of agreements signed electronically. You should consult with your attorney to determine whether the steps you've taken are appropriate to achieve this goal.

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## Innovator Profiles



### SeedInvest

[SeedInvest](#) is a leading equity crowdfunding platform founded in 2012. Its mission is to transform the broken private company fundraising process to make it easier for entrepreneurs to raise capital by opening up access to venture capital and angel investing to everyone. Equity crowdfunding is important because it has the potential to allow founders to spend less time fundraising and more time building their businesses, which is what matters most. It also allows startups to turn their most ardent supporters and customers into investors for the first time.

Historically, only venture capitalists and accredited investors – essentially the wealthiest 2% of the country – were allowed to invest in startups and small businesses. SeedInvest was instrumental in the passage of the 2012 JOBS Act, which changed 80-year-old U.S. securities laws to make it possible for entrepreneurs to raise capital over the internet. Since then, the company has worked closely with the SEC, FINRA, the White House, and the Treasury Department on the implementation of the Act. As a result of the JOBS Act, companies can now raise from all investors up to \$50 million under Regulation A+, which went into effect June 19, 2015, and up to \$1 million under Regulation Crowdfunding (aka Regulation CF), which went into effect on May 16, 2016. The number of potential investors in private companies now skyrockets from about 370,000 active angel investors in the US to over 240 million Americans, as well as millions more investors worldwide.

In addition to the Regulation A+ and Regulation CF avenues of the company, the SeedInvest Selections Fund is currently investing \$200,000 alongside each company that successfully raises capital on SeedInvest under Regulation D. The fund is targeting investments in 50 companies over the next two years and its limited partners are looking for opportunities to make strategic co-investments and follow-on investments.

In April 2014, after building a sizeable investor base and helping dozens of companies raise capital online, SeedInvest raised its Series A round on its own platform. Since then, the SeedInvest team has grown to over 20 team members, helped over 65 companies raise capital, and built a rapidly growing network of over 100,000 investors. In June 2015, due to the implementation of Regulation A+, SeedInvest was the first equity crowdfunding platform to open up to the other 98% of Americans who were previously restricted from investing in startups. And now, due to the May 2016 implementation of Regulation CF, the company is positioned to fully transform the startup fundraising process. Mintz Levin is excited to represent such a transformational company during its rapid rise as it opens up the private company fundraising landscape.

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## Leaders in the News

### **Mintz Levin's Cynthia Larose Named on List of Top 50 Women in Technology by the National Diversity Council**

[Cynthia Larose](#) – Chair of the Privacy & Security Practice Group at Mintz Levin – was named by the National Diversity Council as one of the [50 Most Powerful Women in Technology for 2016](#).

Honorees are women serving as top leaders in their organizations and professions, who maintain a record of accomplishments in areas of expertise, operate with the highest integrity, demonstrate a commitment to corporate citizenship, and serve as effective role models to inspire the next generation of female professionals.

“This is a well-deserved award for Cynthia Larose,” says Michael L. Fantozzi, Division Head of the firm’s Corporate, Tax, Private Client, and Immigration Sections. “She has been at the forefront of technology, particularly as it relates to privacy and data security, for much of her career, and has earned a national reputation in this rapidly evolving and critically important area of law.”

Ms. Larose is Chair of the firm’s Privacy & Security Practice and a Certified Information Privacy Professional (CIPP). She represents companies in information, communications, and technology, including e-commerce and other electronic transactions. She counsels clients through all stages of the “corporate lifecycle,” from start-ups through mid- and later-stage financings to IPO, and has broad experience in technology and business law.

Ms. Larose has extensive experience in privacy, data security, and information management matters, including state, federal, and international laws and regulations on the use and transfer of information, behavioral advertising, data security breach compliance and incident response, data breach incident response planning, as well as data transfers in the context of mergers and acquisitions and technology transactions.

This honor will be presented at the Top 50 Most Powerful Women in Technology Awards Dinner hosted by the California Diversity Council on October 13 at the Hyatt Regency Santa Clara in Santa Clara, CA.

Congratulations, Cynthia!

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## Featured Article

### **Preparing for an Exit: Selling Your Robotics Company**

By [MARC MANTELL](#)

*“Personally, I’m not afraid of a robot uprising. The benefits far outweigh the threats.”*  
– Daniel H. Wilson

Robots are everywhere. Healthcare, logistics, manufacturing, and other critical areas of the economy are being redefined by the robotics and artificial intelligence advances of today's technology entrepreneurs. With this explosion, we are seeing an extraordinary growth in private investment in robotics companies. According to research firm CB Insights, VC investments in robotics more than doubled in 2015 to \$587 million, excluding drones. In addition to increased investment, we are also seeing a flourishing of M&A transactions in the robotics space. Google's shopping spree was well-publicized (eight robotics acquisitions in a period of several months), but the trend has accelerated since then with 32 acquisitions in 2015, totaling over \$2.27 billion, according to The Robot Report.

Just as each warehouse logistics robot or copter-drone will utilize different technologies to address unique problems, each robotics company will follow a unique path to its eventual exit transaction. For those considering a company sale, there are several things you can focus on early in the process that can help give you the best chance of success.

### **Select Your Team**

The sale process is an emotional and potentially life-changing experience for owners. It is also as unpredictable as it is exciting. While some paths are linear and relatively quick to fruition, most are not. It is critical to have advisors on hand who can guide you through this process. Having the right legal, accounting and financial teams in place can help provide critical structuring insight as well as objective advice when decisions become difficult and fraught with risk.

### **Preparing a Data Room**

A potential buyer for your company will only commit to a deal once it has completed a thorough diligence process. The more time this process takes, the more likely a change in circumstance or priority will cause the buyer to move in a different direction and abandon its efforts. Uncertainty, inconsistency, or mistakes in response to the buyer's requests can also lead to distrust, reduced sale prices, or broken deals. Luckily, you can accelerate this timeline by organizing your legal and business information early in the process and populating a secure virtual data room. This will allow you to not only be responsive to buyer requests for information, but also identify and either resolve or better position weaknesses that might otherwise be a red flag to your suitors.

### **Assess and Position Your IP**

Like other technology companies, robotics companies often rely on open source software in order to develop their products. While open source software offers benefits, open source software licenses vary in scope, obligations, and restrictions. Recently, the open source software community has been more aggressive in enforcing open source software licenses through litigation. The discovery of open source software by potential buyers can be a red flag and lead to reduced valuation or even kill a potential deal. In preparation for a sale (and even earlier if possible), companies should rigorously assess and manage their open source compliance. Programs such as Black Duck can be a critical tool and IP counsel can assist in positioning the company to avoid missteps that might threaten your transaction.

Many robotics companies have also funded their early development through contracts with the US government, such as procurement agreements or grants with government agencies such as DARPA. Procurement agreements are generally governed by the Federal Acquisition Regulations, or FAR, which can provide IP rights to the government (such as "March-In Rights") that may be of concern to a potential buyer of the technology. Government and other third party contracts should be assessed early in the process for these and other potential issues.

### **Think Early on About Deal Structure**

For many buyers, the most critical asset of a robotics company, particularly an early stage company, is the talent behind the technology. For that reason, many sale transactions are structured to

incentivize key employees of the business to continue to work for the buyer following the closing. There are many ways to structure a deal around the talent in the business, which may include significant potential bonus payments within a post-closing compensatory scheme or an earnout, where a portion of the deal consideration is contingent upon future performance of the business or other milestones. These arrangements can be very complex and difficult to implement in a way that protects the sellers' opportunity to realize any additional value following a sale. Careful structuring is important because it can have significant tax implications and other consequences for the founders of the business. The structure is often determined early in the negotiation process and set in stone in the term sheet well in advance of a definitive agreement.

### **Protect Your Confidential Information**

In a potential sale of the company transaction with a strategic acquirer, the seller must be very careful with its confidential information to avoid the information being obtained and used by a person that does not buy the company. In an auction process, a banker representing a technology company in a potential sale may reach out to several companies with an interest in the company's technology who may in fact be mounting similar efforts on their own. Carefully managing the flow of information to keep the potential buyers engaged but avoiding the disclosure of sensitive information too early is something your advisors can help you with. It is also possible that a company's important customers or vendors will also participate in a sale process. In this situation, information regarding sales and pricing, including as it relates to other partners, may be particularly sensitive. The virtual data rooms described above can be modulated to provide certain information to some parties in the process and not others, though some sellers are more comfortable withholding certain information from the data room to exercise more control over its distribution and timing of its release.

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## **In the News In NYC**

### **Grey Group Launches Grey Adventures**



New York-based advertising powerhouse [Grey Group](#) has launched a new, tech-focused unit aimed at engaging directly with the cutting-edge material required by its present and future clients. Called Grey Adventures, the unit will work to create new products, services, and business models for the agency. Partnering with both innovative start-ups and established tech companies alike, the practice combines Grey's creative capital with its deep, material understanding of the tech space. The team will be led by Evan Kraut, Grey's managing director of Grey Adventures, and Darren Moran, the agency's head of innovation.

Grey Adventures and its intellectual property platform will serve as a complement to the other divisions in the Brand Experience Group, including Activation and PR; Shopper Marketing; and Connected Experiences, a new practice formed by Grey's recent acquisition of ArcTouch, a mobile development company.

The primary focus for Grey Adventures centers on building intellectual property for both the agency and its clients, as well as working with early-stage companies in non-traditional models such as strategic partnerships, revenue shares, and joint ventures. But Grey is also investing in intellectual

property for Grey Group, which Grey will fund and then continue to grow and manage. If successful, it may take on further investment from outside the company or spin it out into an entirely new endeavor.

With its push for strategic partnerships, be sure to keep an eye on the Grey Group for more innovations – and adventures! – down the road.

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## Upcoming Events

### New York

July 20-21: [New York Venture Summit](#)

July 24-29: [VentureOut July](#)

August 2: [NY Tech Alliance Tech Meetup & After Party](#)

August 4: [FundingPost Summer NYC VC & Angel Conference](#)

August 14-19: [VentureOut EdTech Expedition](#)

September 8-9: [Finnovate Fall 2016](#)

September 10: [Silicon Alley Technology Summit](#)

September 11-16: [VentureOut FinTech Founders Club](#)

September 20-21: [Founders Forum](#)

October 7: [The New Yorker TechFest](#)

October 10-16: [TechWeek](#)

October 28: [NVCA SHIFT: Accelerating Corporate and Venture Partnerships](#)

November 15-16: [New York City Government Technology Forum](#)

### Boston

July 25: [MITX eCommerce Summit 2016](#)

July 28: [Disruptive Innovators Series: "The Anatomy of an Innovator"](#)

August 1-4: [AnDevCon: The Android Developer Conference](#)

August 10: [TUGG Tech Night at the Museum](#)

September 8: [Startup Stir's Founders Forum](#)

September 12-14: [BLN's Business of Software](#)

September 15: [Startup Stir: Boston Startup Summit: A Transformative Daylong Event](#)

September 21: [Alpha DevCon 2016](#)

September 21-22: [Future M Innovation and Design Building](#)

September 22: [Hippo.Connect](#)

September 29: [SIM Boston Technology Leadership Summit](#)

October 13: [Disrupt CRE Boston](#)

October 18-20: [MIT EmTech](#)

October 20: [TUGG 6th Annual Tech Gives Back](#)

November 8-11: [Inbound 2016](#)

### San Francisco

July 22-24: [Web3D 2016](#)  
July 24-28: [Siggraph 2016](#)  
July 29: [TechCrunch Summer party at August Capital](#)  
August 2: [500 Startups Demo Day](#)  
August 9-12: [UX Week 2016](#)  
August 22-24: [Y Combinator Demo Day](#)  
September 10-11: [TechCrunch Disrupt SF Hackathon 2016](#)  
September 12-14: [TechCrunch Disrupt SF 2016](#)  
September 12-16: [Startup Europe comes to Silicon Valley](#)  
September 14-15: [Github Universe](#)  
September 15: [Disrupt CRE San Francisco](#)  
September 20-22: [Tech.Co Innovate! And Celebrate Global Conference](#)  
September 27-28: [SMIC Silicon Valley](#)  
September 28-29: [RoboBusiness & Chief Robotics Officer Summit](#)  
October 10-11: [O'Reilly Next:Economy](#)  
October 12-13: [Corporate Venturing Summit by Innovation Enterprise](#)  
October 17-21: [NewCo Bay Area](#)  
October 18-19: [FinDEVr Silicon Valley 2016](#)  
October 18-20: [Vanity Fair New Establishment Summit](#)

### **San Diego**

July 28: [Tech San Diego CEO Roundtable A](#)  
August 25: [EvoNexus Demo Day Fall 2016](#)  
August 30: [EvoNexus San Diego's Robotics & Intelligent Systems SIG](#)  
September 8: [San Diego Venture Group Venture Summit 2016](#)  
September 13: [Automation Technology Conference](#)  
October 17: [2016 International Conference on Interactive Mobile Communication Technologies/Learning](#)  
October 31: [Tech.Co Adobe MAX](#)  
November 1: [San Diego Tech Summit](#)

### **Washington, DC**

July 25: [Tech.Co Female Founder Showcase](#)  
July 26: [StartupHoyas Summer Launch Showcase](#)  
July 29-30: [2016 RISE Women's Empowerment Conference Weekend](#)  
August 2: [Blockchain Conference](#)  
September 22: [DCInno's DC Fest](#)  
September 27: [NVCA CFO Boot Camp](#)  
November 4: [Ask a VC DC](#)  
November 10-11: [Open Minds Technology & Informatics Institute Conference](#)  
November 10: [Diaspora Demo Experience & Startup Showcase](#)



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