

3rd International Forum Conclusions

Over 120 experts and government representatives, including several from Competent Authorities designated under The Hague Apostille Convention; civil and common law Notaries; and other dignitaries from 25 states attended the Third International Forum on Digital Evidence, organized by the National Notary Association. The Forum attendees congratulated the National Notary Association for its efforts to bring leading experts and authorities together to discuss the issues of digital evidence, especially as they relate to eNotarization and eApostilles.

The following Conclusions and Recommendations were drafted as a result of the presentations and discussions during the session on the electronic Apostille Pilot Program:

- 1 The attendees congratulated the Permanent Bureau of The Hague Conference on Private International Law (HCCH) and the National Notary Association of the United States on its efforts related to the e-APP. Participants welcomed in particular the recent launch of the official e-APP Web site (<http://www.e-APP.info>), the availability of free and comprehensive educational material on the Web site, and the mailing that accompanied this launch to all the relevant authorities, including the more than 1000 Competent Authorities designated under Article 6 of the Apostille Convention.
- 2 Attendees congratulated the state of Kansas, the state of Rhode Island and the Republic of Colombia for being the first three jurisdictions to join the e-APP.
- 3 Presentations included updates on:
 - the e-APP and its two components – the eApostille and the eRegister – as promulgated in the technology developed jointly by the HCCH and the NNA;
 - the recent exchange of the first test eApostille between the state of Kansas and Colombia, as well as Colombia's presentation of its plans relating to eApostilles and an eRegister;
 - current initiatives in Europe, North and Latin America regarding the application and recognition of electronically signed public documents; and
 - the legal and technical issues surrounding the security and authentication of electronic documents and electronic signatures.
- 4 In discussing practical applications and relevant legal issues regarding the implementation of eApostilles and eRegisters, the session participants built on the Conclusions and Recommendations of The Hague Special Commission meeting of 2003 on the practical operation of the Apostille Convention, as well as on the Conclusions and Recommendations adopted by the First and Second International Fora held in 2005 and 2006. In particular, it was again emphasized that the spirit and letter of the Apostille Convention are not an obstacle to the use of modern technology to further improve the operation and application of the Convention.
- 5 Participants responded enthusiastically to the news that some of the state representatives planned implementation of either or both components of the e-APP in the near future, and the participants expressed their hope that other jurisdictions would soon do the same.
- 6 While the technologies suggested under the e-APP were considered perfectly appropriate by the session attendees, the e-APP partners emphasized again that implementing this software is a suggestion only – the e-APP does not impose any specific software or technology. Competent Authorities can develop or use comparable open source or proprietary software to accomplish the same goals under the e-APP for both components (i.e., eApostilles and eRegisters).
- 7 The attendees recognized that the technologies suggested under the e-APP dramatically increase the security associated with the issuance and use of Apostilles by providing simple, yet effective, tools to combat fraud.
- 8 In particular, the attendees recognized that in comparison to the current methods of affixing paper Apostilles (e.g., by using staples or other insecure forms of attachment), the use of PDF eApostilles in combination with digital certificates or any comparable open-source or proprietary technology offers dramatically increased security and effective fraud-fighting tools to Competent Authorities and all users of Apostilles.
- 9 The e-APP partners recalled that under the e-APP, Competent Authorities who contemplate issuing eApostilles are encouraged to contact receiving jurisdictions to inquire whether these jurisdictions will accept the envisaged eApostilles.
- 10 The participants recognized that e-Registers should encourage greater use of the Register as a public convenience and an additional deterrent to forgery and fraud.
- 11 The participants further acknowledged that not only Competent Authorities would benefit from implementing the e-APP but indeed any user of Apostilles (whether as a requesting person or final recipient), as the overall operation of the Convention is greatly improved, security dramatically enhanced and fraud effectively combated.
- 12 The e-APP partners emphasized that the initiative is designed to be continually evolving and welcomed the possibility of innovative suggestions and developments in the future.
- 13 Taking into account the specific scope of the Convention, the proceedings of the Forum confirmed that any technology suggested to issue eApostilles or to create and operate an eRegister should:
 - render the issuance and use of Apostilles faster and cheaper, and thus further increase the overall efficiency of the Convention's practical operation;
 - ensure that the issuance of and reliance on Apostilles offers a level of security which significantly exceeds the current standard resulting from the Convention's operation in a paper-only environment;
 - rely on the use of open-source or freely licensed technologies wherever possible and appropriate, thus allowing for a cost-effective operation of the Convention; and
 - facilitate more frequent verification whether the Apostille has really been issued by the Competent Authority whose name appears on the Certificate, and whether the particulars appearing on the Apostille correspond with those in the Register kept by that Competent Authority, as envisaged by Article 7 of the Convention.
- 14 In addition, it was emphasized that implementing the e-APP serves to harmonize the operation of the Convention by the many and varied Competent Authorities, and help to identify and resolve any possible inconsistencies in their approach.
- 15 The session participants recalled that States should strive to achieve high standards in the issuance and management of digital credentials for Competent Authorities, including personal appearance before a qualified Registration Authority operating on behalf of a Certificate Authority issuing digital certificates used to digitally sign eApostilles.
- 16 Finally, the participants recalled that an Apostille, whether issued in electronic or paper form:
 - cannot stand alone and must always be attached to the underlying public document to which it relates;
 - simply certifies the origin of the underlying public document; and
 - does not confer any additional legal validity upon the underlying public document and that the established rules governing the international effectiveness of a public document cannot be ignored.

