

Second International Forum on e-Notarization and e-Apostilles

*Organized by the National Notary Association of the United States of America,
held on May 28 and May 29, 2006 in Washington, D.C., USA*

CONCLUSIONS

Over 85 government representatives (including several from Competent Authorities designated under the Hague Apostille Convention), notaries, experts and other dignitaries from 24 States, convened in Washington, D.C. (USA) to attend the Second International Forum on e-Notarization and e-Apostilles, organized by the National Notary Association of the USA. The Forum attendees, representing both civil law and common law jurisdictions, enthusiastically addressed a broad variety of recent developments in e-Notarization and e-Apostilles from around the world.

Unanimous agreement was reached on the following Conclusions and Recommendations:

1. Building on the Conclusions adopted by the First International Forum held in 2005, the Second Forum examined practical applications and relevant issues regarding the implementation of e-Apostilles and e-Registers.
2. Presentations and discussions included updates on
 - the electronic Apostille Pilot Program (e-APP) and its two components - the e-Apostille and the e-Register - as promulgated in the models developed jointly by the Hague Conference on Private International Law (HCCH) and the NNA,¹
 - current initiatives in Europe, North and Latin America regarding the application and recognition of electronically signed public documents,
 - the legal and technical issues surrounding the security and authentication of electronic documents and electronic signatures, and
 - different technical approaches to electronically signed public documents already in place in several jurisdictions, including issues of interoperability currently being addressed in these initiatives and their relevance to the e-APP.
3. As noted in the First International Forum, 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.
4. The Forum noted with great interest the launch of the e-APP and welcomed it as an initiative which demonstrates how the Conclusions & Recommendations of the 2003 Special Commission of the HCCH and the 2005 First International Forum on e-Notarization and e-Apostilles can be implemented in practice.

¹ The models as suggested by the HCCH and the NNA are described in the document entitled "Closer and Closer to Reality: the e-Apostille Pilot Program of the HCCH and the NNA" (Prel. Doc. No 10 of March 2006 for the attention of the Special Commission of April 2006 on General Affairs and Policy of the Conference, available on the "Apostille Section" of the HCCH's Web site at < www.hcch.net >).

5. The proposed initiative, involving the use of readily available and widespread technology, was applauded. It was stressed that the e-APP is an important first step in the growth of the application of information technology to the Apostille Convention.
6. Forum participants took note that the e-APP suggests models and is not an obstacle to the study and implementation of models using alternative technologies.
7. Participants also noted that if there are domestic laws, rules, or any regulations relating to the execution of electronic notarial acts, the use and administration of electronic signatures, or the transmission of electronic documents (including notarial acts), these laws, rules, or regulations continue to apply under the suggested models developed for the purposes of the e-APP. In addition, the software models suggested by the e-APP are not meant to impose any technical requirements on the performance of electronic notarial acts in a specific jurisdiction.
8. Taking into account the specific scope of the Convention, the proceedings of the Forum confirmed that any model suggested under the e-APP should be developed so as to:
 - 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 technologies wherever possible and appropriate, thus allowing for a cost-effective operation of the Convention; and
 - facilitate more frequent verification whether the particulars appearing in an Apostille correspond with those in the Register kept by the Competent Authority that issued the Apostille, as envisaged by Article 7 of the Convention, thus providing another effective tool to combat fraud by encouraging greater public awareness of and reliance on Registers of Apostilles.

The Forum acknowledged that the current models suggested under the e-APP satisfy these goals, and would assist Competent Authorities in the performance of their important public function with greater effect.

9. The Forum recognized that e-Apostilles may be issued using different electronic document formats (such as TIFF, PDF, and other possibilities), and that the form of an e-Apostille by itself cannot be the basis for its rejection.
10. In addition, it was emphasized that issuance of e-Apostilles in accordance with the suggested model will serve 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.
11. States were encouraged to strive to achieve high standards in the issuance and management of digital credentials for Competent Authorities, including digital certificates used under the suggested model for the issuance of e-Apostilles.
12. The HCCH and the NNA confirmed their plans to provide educational materials freely to any Competent Authority. The availability of such educational materials was considered an important foundation for the proper and effective implementation and operation of the suggested models.

13. Forum participants recalled that an Apostille:

- whether electronic or paper 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.