

CLAYTON UTZ

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# Information Transactions in Trade and Customs Facilitation

## 25th International Trade Law Conference

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# Data Flows are Crucial to International Trade

- Creation, Collection, Use, Disclosure and Reliance on Data by all parties in international trade
- Traders, Suppliers, Customers, Agents, Carriers, Banks, Government Agencies

# The Difference Digital Networks Make

- An increasing amount of this data is electronic not paper-based
- More data is available and accessible (e.g. supply chain data)
- That data can be sent and assessed faster than paper

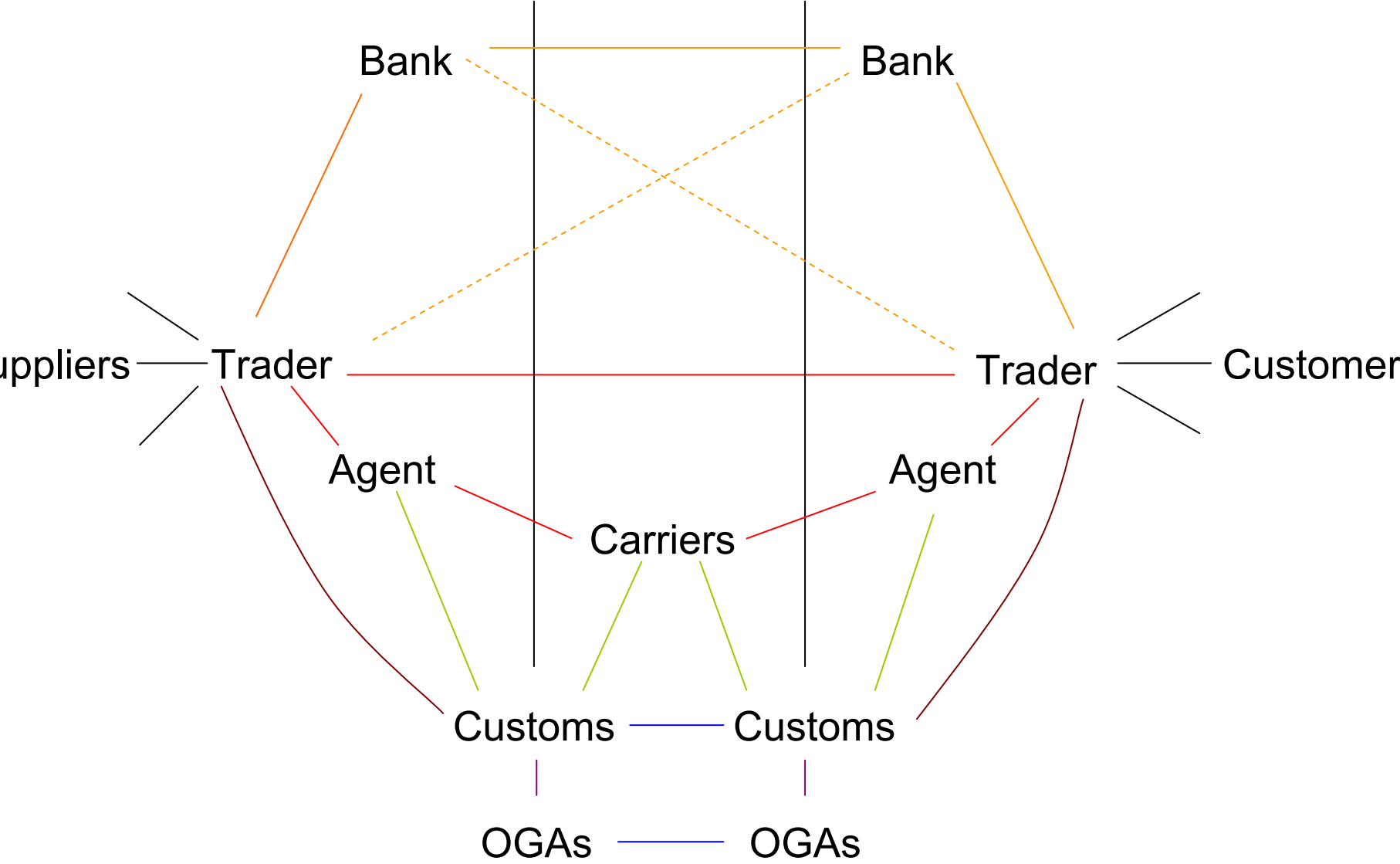
# Legal Systems and Business and Government Implications

- Integrity and confidentiality of electronic data
- Authentication of sender / author / owner of data
- "Non-repudiation" of electronic messages
- Admissibility and weight of electronic data in evidence
- Achieving these cross-border

# Legal Systems and Business and Government Implications (cont)

- Compliance with other laws e.g. privacy, secrecy and anti-terrorism laws
- Cooperation between states in investigation, evidence-gathering, recognition of foreign evidence and judgments

# Data Flows



# Agreements of All Kinds Need to be Put in Place

Agreement on:

- Data Sets
- Communications Protocols
- Methods for Authentication, Integrity, Confidentiality
- Delivery, Back-Up, Recovery
- Liability Allocation

# Agreements of All Kinds Need to be Put in Place (cont)

- Agreements may be within a group e.g. Bolero, Identrus, Customs-clients (Gatekeeper PKI), Express Carrier Groups
- May be Government to Government e.g. Netherlands and Sweden MOU or by formal intergovernmental agreements e.g. APEC BluePrint for Action on E-Commerce includes Paperless Trading

# Agreements of All Kinds Need to be Put in Place (cont)

- May be Government to Business e.g. US CTPAT and Australian Customs MOUs with accredited clients
- Need to manage domestic privacy / confidentiality / data protection law compliance
- WCO Draft Guidelines for the Development of National Laws for the Collection and Transmission of Customs Information

# Electronic Records

## Converting Paper to Electronic Records

- Potential obstacles
  - Legislative document retention requirements
  - Non-legislative requirements (eg. industry codes of practice)
  - Contractual obligations (especially under government contracts)
  - Privacy legislation
  - Evidentiary requirements
- Electronic Transactions Legislation

# Electronic Records (cont)

- Issues which need to be managed:
  - Data security and integrity
  - Reliable chain of evidence
  - Searchability
  - Backward compatibility of retrieval devices
  - Degradation of storage medium and protection mechanisms

# Electronic Records (cont)

- Practical strategies to manage issues:
  - Access controls and encryption
  - Date and time stamping
  - Metadata and search engines
  - Encryption (and re-encryption)
  - Be able to change some metadata but not core data
- Contracts with vendors and service providers

# Solutions to Authentication

- PKI is a robust but higher cost solution to providing authentication, confidentiality and integrity in electronic communications
- ACS Cargo Management Reengineering using PKI
  - CEOs IT Determination
  - Client Registration Agreement
  - Certification Services Agreement with Certification Authority

# Solutions to Authentication (cont)

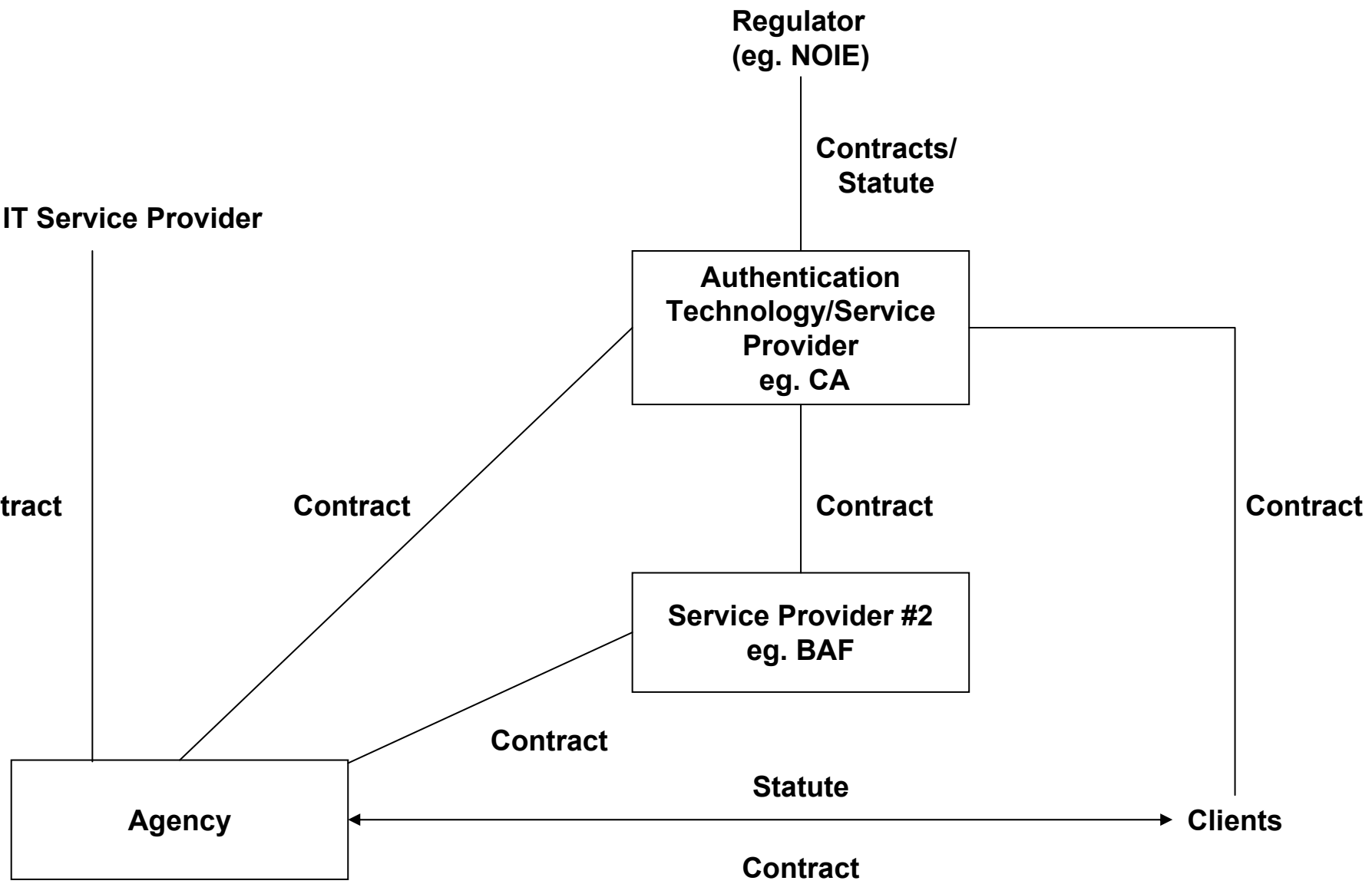
- Range of Gatekeeper evaluated Certificate Policies and Certificate Practice statements
- Licence of Secure EDI messaging software
- Bolero is based on messages using PKI
- Identrus (60+ of world's largest bank) have a PKI solution can be used for trade contracts and payments
- ANZ's Identrus solution recognised by Gatekeeper

# PKI Issues

- PKI key pairs provide sender authentication, message integrity and encryption (passwords don't offer the last two)
- Strong solution to these issues for insecure comms networks, eg. Internet
- But requires CA/RA infrastructure and management or outsourcing of these

# PKI Issues (cont)

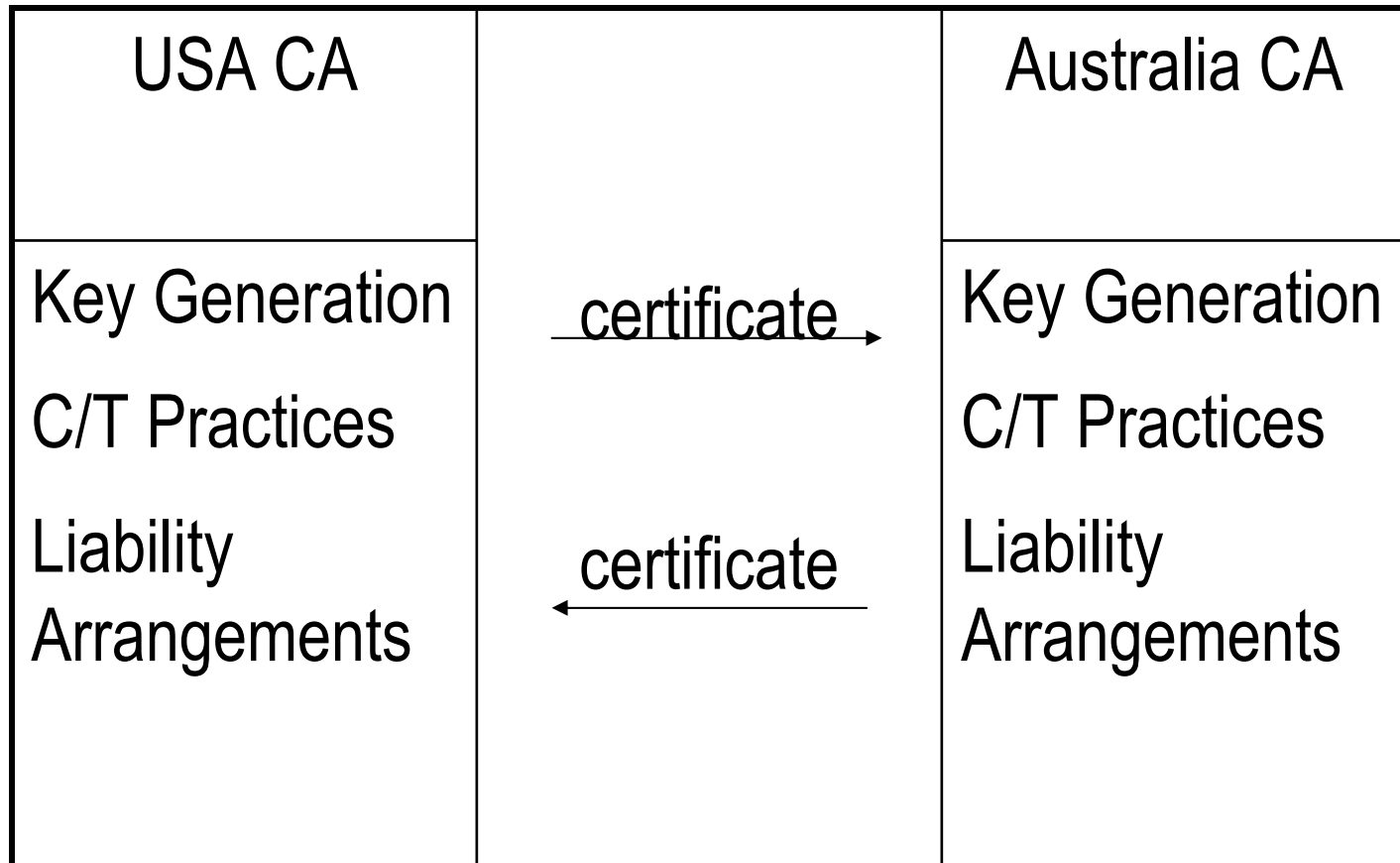
- Involves Gatekeeper regulation by NOIE
- End user insecure platforms for key storage a problem
- Value of a certificate for non-repudiation is a function of transactional context:
  - EOI standards
  - certificate validity checking and revocation service levels
  - Liability / risk allocation between agency, CA / RA and client - a network of contracts and NOIE's liability policy



# International Cross-Recognition of PKI Domains

- The issue
- Free Trade Agreements
- Australia - Taiwan discussions

# International Cross-Recognition of PKI Domains (cont)



# International Cross-Recognition of PKI Domains (cont)

Requires one or more of:

- International PKI structure (e.g. Bolero, Identrus) - may need domestic government approval in some countries
- Private sector agreements or MOUs - CA to CA
- Government to Government MOUs for regulator cross-recognition

# International Trade in Digital Goods

- Internet enables import / export without intermediation or inspection e.g. software, music, video, books, pictures
- Business importers need to declare and pay withholding tax in order to deduct costs of inputs
- Consumers - no such incentive to declare
- Currently, no cost-effective way to track consumer imports or impose duty / GST or monitor copyright infringing works at the digital "border"

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