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Social Media: A Good Alternative, for Alternative Service of Process

Emily Davis

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SOCIAL MEDIA: A GOOD ALTERNATIVE, FOR ALTERNATIVE SERVICE OF PROCESS

*Emily Davis**

A cost efficient and effective means of alternative service of process in civil and commercial cases upon both domestic and international defendants lies in social media. Traditional methods of service of process are preferred, but are not always practicable. When a defendant cannot be reached through traditional methods, judges should use their discretion and allow alternative service by social media in appropriate cases. Current methods of alternative service, such as publication, are not efficient or effective. By allowing alternative service of process via social media in certain cases, the defendant is much more likely to receive actual notice in a cost-effective manner.

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INTRODUCTION

In April 2018, the Democratic National Committee (“DNC”) filed a lawsuit against Russia, the Trump campaign, and Wikileaks, alleging

a conspiracy to influence the 2016 presidential election for Donald Trump.¹ On August 10, 2018, Cohen Milstein, the firm representing the DNC, took a leap and served process on Wikileaks via Twitter.²



Search Twitter



Cohen Milstein Sellers & Toll Process Server
@ProcessServiceC

@wikileaks By Court order, you are being served with the following legal documents:

cohenmilsteinprocessserver.com/wp-content/upl...,
cohenmilsteinprocessserver.com/wp-content/upl...,
cohenmilsteinprocessserver.com/wp-content/upl...,
cohenmilsteinprocessserver.com/wp-content/upl...

All of these documents may be found here:

cohenmilsteinprocessserver.com.

12:52 PM · Aug 10, 2018 · Twitter Web Client

1.4K Retweets 2.8K Likes



* Emily Davis is a J.D. candidate at Case Western Reserve University School of Law, Cleveland, Ohio, May 2020; B.S. Justice Studies, Arizona State University, May 2016.

¹ Matt Binder, The DNC Just Served WikiLeaks with a Lawsuit Over Twitter, MASHABLE (Aug. 10, 2018), https://mashable.com/article/dnc-serves-lawsuit-wikileaks-twitter/#gOvkr_51fSq7 [perma.cc/L2MD-DQWV].

² Cohen Milstein Sellers & Toll Process Server (@ProcessServiceC), TWITTER (Aug. 10, 2018, 9:52 AM), https://twitter.com/ProcessServiceC/status/1027960972504457217?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwtterm%5E1027960972504457217&ref_url=https%3A%2F%2Ftechcrunch.com%2F2018%2F08%2F12%2Fthe-dncs-lawyers-subpoena-wikileaks-with-a-tweet%2Fperma.cc/BC2V-ZU4C].

In a motion by the DNC filed in the Southern District of New York District Court, the DNC successfully “obtained leave of court to serve process on Wikileaks via Twitter in its lawsuit....”³ Wikileaks was a seemingly unincorporated “virtual” presence with no confirmable physical address.⁴ The motion states, “WikiLeaks is an organization of unknown structure whose primary activity is running a website, Wikileaks.org, on which it publishes confidential or classified information.”⁵ The motion continues, “While WikiLeaks’ physical presence is difficult to discern, it has a robust online presence, including an active presence on Twitter, using the handle @WikiLeaks.”⁶ WikiLeaks’s Twitter account had millions of followers and tweeted actively on a daily basis.⁷ While the DNC filed its original complaint on April 20, 2018, WikiLeaks openly admitted to having read the complaint through Twitter on April 21, 2018.⁸

The DNC attempted to serve WikiLeaks before filing this motion for alternative service via Twitter and email.⁹ The DNC researched all attorneys who may have previously represented WikiLeaks in order to determine who may accept service on behalf of WikiLeaks.¹⁰ Of those attorneys confirmed to have represented WikiLeaks in the past, none would admit to currently representing WikiLeaks and none would accept service on behalf of WikiLeaks.¹¹ Since personal service was also unattainable with no known physical location, the DNC relied on the Federal Rules of Civil Procedure, including FRCP(f)(3).¹² The DNC cited numerous cases for the proposition that, “[The court] may authorize any means of service that is ‘reasonably calculated, under all

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3. Ted Folkman, *US Court Authorizes Service By Twitter on Wikileaks*, LETTERS BLOGATORY (Aug. 13, 2018), <https://lettersblogatory.com/2018/08/13/us-court-authorizes-service-by-twitter-on-wikileaks/> [perma.cc/8DJY-EUME]. See Motion to Serve Defendant Wikileaks by Twitter and Mail, Democratic Nat’l Comm. v. Russian Fed’n, No. 1:18-cv-03501 (JGK) (S.D.N.Y. July 20, 2018), 2018 WL 4292571.
 4. Folkman, *supra* note 3.
 5. Motion to Serve Defendant Wikileaks by Twitter and Mail at 1, Democratic Nat’l Comm. v. Russian Fed’n, No. 1:18-cv-03501 (JGK) (S.D.N.Y. July 20, 2018), 2018 WL 4292571, [hereinafter Motion to Serve Wikileaks by Twitter].
 6. *Id.* at 2.
 7. *Id.*
 8. See *id.* at 2–3.
 9. *Id.* at 1.
 10. *Id.* at 4.
 11. Motion to Serve Wikileaks by Twitter, *supra* note 5, at 4–5.
 12. See *id.* at 6–7; FED. R. CIV. P. 4(f)(3).

circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections' and comports with international law."¹³ As the physical address and location of any officers of WikiLeaks are unknown,¹⁴ the Hague Convention does not apply, so there is no violation of international law by serving in an alternative way.¹⁵ The court granted the motion and allowed service on WikiLeaks via Twitter.¹⁶

While many commentators have expressed their opinion on this subject, this note will argue that this is merely the beginning of an age where alternative service in civil and commercial federal cases will be performed regularly through social media outlets. Further, alternative, or substitute, service of process in this context refers to anything approved by the court to provide the constitutionally required notice upon the defendant outside those methods specified in the Federal Rules of Civil Procedure. Most jurisdictions in the United States require proof that the plaintiff has attempted to directly serve the defendant and that the defendant cannot be reached through those methods.¹⁷ It is then up to the judge's discretion whether to allow alternative service through the plaintiff's proposed method, assuming it meets the constitutional requirements of notice.¹⁸

Part I of this Note will detail the history of alternative service of process. It will discuss the constitutional requirements of notice and give examples of courts using alternative service. Part II will detail the development of service of process internationally, including the creation

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13. Motion to Serve Wikileaks by Twitter, *supra* note 5, at 6–7 (quoting *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1014, 1016 (9th Cir. 2002)) (also citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Elsevier, Inc. v. Siew Yee Chew*, 287 F. Supp. 3d 374, 379–80 (S.D.N.Y. 2018); *Microsoft Corp. v. Does*, No. 12-CV-Case 1:18-cv-03501-JGK 1335 SJ RLM, 2012 WL 5497946, at *2 (E.D.N.Y. Nov. 13, 2012); *Philip Morris USA Inc. v. Veles Ltd.*, No. 06 CV 2988 GBD, 2007 WL 725412, at *2 (S.D.N.Y. Mar. 12, 2007)).
 14. See W.J. Hennigan, *WikiLeaks' New Home is in a Former Bomb Shelter*, L.A. TIMES (Dec. 10, 2010), <https://latimesblogs.latimes.com/technology/2010/12/wikileaks-bahnhof-amazon.html> [perma.cc/HZ8M-3BVU] (noting that the servers are located in a converted bunker).
 15. Folkman, *supra* note 3.
 16. Debra Cassens Weiss, *DNC Lawsuit Against WikiLeaks Served via Twitter*, ABA J. (Aug. 14, 2018), http://www.abajournal.com/news/article/dnc_lawsuit_against_wikileaks_served_via_twitter_after_federal_judge_all [https://perma.cc/22YW-9EH6].
 17. *What is Substituted Service?*, SERVE NOW (Aug. 24, 2011), <https://www.serve-now.com/articles/501/substituted-service> [https://perma.cc/B3GK-2JKC].
 18. See FED. R. CIV. P. 4(f)(3).

of the Hague Service Convention. The United States has specific federal rules as to service of process internationally.¹⁹ Further, the Hague Service Convention is not applicable to all cases involving foreign litigants.²⁰ Part III is on the development of service of process via social media. Over three billion people use online social media.²¹ Although, service through social media has only been used in a few cases,²² it could possibly provide a cost-effective and efficient method of alternative service.²³

Part IV considers the benefits of alternative service of process through social media. In our society today, litigation upon international defendants is recurrent, and defendants often flee to a foreign country to avoid litigation.²⁴ However, most individuals, at least in the United

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19. See Fed. R. Civ. P. 4(f).
 20. *Service in Foreign Jurisdictions*, ABA (Apr. 3, 2019), https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2011/april_may/service_in_foreignjurisdictions/ [https://perma.cc/R6LF-EQQW].
 21. J. Clement, *Percentage of U.S. Population with a Social Media Profile from 2008 to 2018*, STATISTA (Aug. 9, 2019), <https://www.statista.com/statistics/273476/percentage-of-us-population-with-a-social-network-profile/> [https://perma.cc/YGP6-PLNN] (stating that according to estimates, the number of worldwide social media users is anywhere from 3 to 3.5 billion); Jessica Brown, *Is Social Media Bad for You? The Evidence and the Unknowns*, BBC (Jan. 5, 2018), <http://www.bbc.com/future/story/20180104-is-social-media-bad-for-you-the-evidence-and-the-unknowns> [https://perma.cc/95D5-TM8D] (“Three billion people, around 40% of the world’s population, use online social media ...”).
 22. Amanda Sexton, *Service of Process Via Social Media*, LAW PRACTICE TODAY (Jan. 13, 2017), <https://www.lawpracticetoday.org/article/service-process-via-social-media/> [https://perma.cc/A9ER-BWJM].
 23. *Id.*
 24. See, e.g., Aileen Wingblad, *Doctor on the Lam Amid Sex Assault Allegations, Lawsuit Against Him and Henry Ford Health System*, THE OAKLAND PRESS (Nov. 16, 2018), https://www.theoaklandpress.com/news/copscourts/doctor-on-the-lam-amid-sex-assault-allegations-lawsuit-against/article_0b7db76e-e9be-11e8-b4f6-5f832c60daf6.html [https://perma.cc/B846-XTH9] (reporting on a doctor who fled the country after allegations of criminal sexual misconduct); Rob Tornado, *Ex-Fox News, Fox29 Host Clayton Morris Leaves Country Amid N.J. Lawsuits over Alleged Ponzi Scheme*, PHILA. ENQUIRER (Jul. 16, 2019), <https://www.inquirer.com/news/fox-news-clayton-morris-lawsuits-fox-friends-fraud-real-estate-20190716.html> [https://perma.cc/JXX9-LQ4G] (reporting on news station host who moved to Portugal shortly before being accused of fraud); Max Londberg, *‘The Hospital Never Told Us:’ Cincinnati Children’s Loses \$2 Million Spine Surgery Lawsuit*, CIN. ENQUIRER (Dec. 24, 2018), <https://www.cincinnati.com/story/news/2018/12/24/cincinnati-childrens-loses-2-million-suit-fugitive-spine-surgeon-case/2394654002/>

States, and corporations have an online presence. There are “...over 1.5 billion active Facebook users and 315 million active Twitter users worldwide,”²⁵ meaning service via social media is more tenable than ever. This is particularly true if a defendant is evading service or is an international defendant. Part V will address the problems with alternative service of process through social media, including issues with authenticity, online scams and deception. But courts have recognized that alternative service via Facebook may follow in the footsteps of email²⁶ – which has slowly been adopted in many jurisdictions.²⁷

I. HISTORY OF ALTERNATIVE SERVICE OF PROCESS

a. *In the U.S. on Domestic Defendants*

In the United States, in order for a plaintiff to proceed with litigation, they must notify the defendant of a pending action against them.²⁸ This comes from the Due Process Clause of the United States Constitution.²⁹ Specifically, “nor shall any State deprive any person of life, liberty, or property, *without due process of law.*”³⁰ The Supreme Court has defined this to mean:

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.³¹

In order to serve someone properly today in a civil or commercial federal case, Rule 4 of the Federal Rules of Civil Procedure must be followed.³² Scholars say that service of process is the most basic

[<https://perma.cc/P5SZ-WSKD>] (reporting on doctor who was arrested on federal criminal charges including fraud and fled the country later that year).

25. Sexton, *supra* note 22.

26. See Lisa McManus, *Service Of Process Through Facebook*, LEXISNEXIS (Nov. 9, 2011), <https://www.lexisnexis.com/legalnewsroom/lexis-hub/b/legal-technology-and-social-media/posts/service-of-process-through-facebook> [<https://perma.cc/6B4W-RG2S>].

27. *See id.*

28. FED. R. CIV. P. 5(a)(1).

29. *What is Service of Process?*, HG.org (last accessed Oct. 31, 2019), <https://www.hg.org/legal-articles/what-is-service-of-process-34098> [<https://perma.cc/L8GF-ZQUW>].

30. U.S. CONST. amend. XIV, § 1 (emphasis added).

31. *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

32. FED. R. CIV. P. 4.

procedure of litigation.³³ But the question remains if that is still true today.

For thousands of years, “claimants have been required to take concrete steps to bring a putative defendant before the governing tribunal.”³⁴ Traditionally, service of process was completed in person.³⁵ This is still the most effective way to provide service and leaves the least room for the defendant to argue that the service was inadequate.³⁶ The Federal Rules of Civil Procedure provide that service may be completed by anyone who is at least eighteen years old and is not a party to the case.³⁷ Further, when serving an individual within a judicial district of the United States, they may be served by:

(1) Following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or

(2) [D]oing any of the following: (A) delivering a copy of the summons and of the complaint to the individual personally; (B) leaving a copy of each at the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there; or (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.³⁸

However, since personally serving every defendant is not always possible or practical, the rules allowed alternative service by certified mail, publication, or other means depending on the jurisdiction.³⁹ Courts have broad discretion as to what alternative forms of service of process plaintiffs may use.⁴⁰

For example, in *Windham v. Allen*, the United States District Court for the District of Utah granted a motion for alternative service by mail to a defendant’s father after a private investigator’s numerous

33. Kent Sinclair, *Service of Process: Rethinking the Theory and Procedure of Serving Process Under Federal Rule 4(c)*, 73 VA. L. REV. 1183, 1184 (1987).

34. *Id.* at 1187.

35. *Service of Process*, THE FREE DICTIONARY, <https://legal-dictionary.thefreedictionary.com/Service+of+Process> [<https://perma.cc/ZVL8-HRAM>] (citing JEFFREY LEHMAN & SHIRELLE PHELPS, WEST’S ENCYCLOPEDIA OF AMERICAN LAW (2d ed. 2004)).

36. *Id.*

37. FED. R. CIV. P. 4(c)(2).

38. FED. R. CIV. P. 4(e).

39. *Service of Process*, *supra* note 35.

40. See Lauren A. Rieders, *Old Principles, New Technology, and the Future of Notice in Newspapers*, 38 HOFSTRA L. REV. 1009, 1021 (2010).

failed attempts to personally serve the defendant.⁴¹ In *Windham*, the plaintiff's private investigator conducted a thorough search that resulted in thirteen possible addresses.⁴² Yet after many attempts, the investigator was unable to serve the defendant at any of them.⁴³ The plaintiff's private investigator also contacted the defendant's father who refused to receive service on behalf of the defendant.⁴⁴ The plaintiff requested alternative service to an attorney who represented the defendant in a previous case.⁴⁵ The court denied alternative service to the defendant's attorney, as it was unclear if the attorney had consulted with the defendant on this matter.⁴⁶ However, the court then granted alternative service by certified mail to the defendant's father.⁴⁷

Similarly, the Court of Appeals of Utah has ruled that alternative service by publication is appropriate when the plaintiff mailed service by certified mail and hired a process server who attempted to serve the defendant on five different days, at various times.⁴⁸ The court held that, "Alternative service is constitutionally sufficient if the district court finds that the 'litigants...first [undertook] *reasonably diligent* efforts to locate the party to be served.'"⁴⁹ The district court authorized the plaintiff's request for alternative service and allowed publication on two occasions in consecutive weeks in the newspaper.⁵⁰ Shortly after receiving a default judgment in the mail, the defendant responded and alleged that the order allowing service through publication was void.⁵¹ The court rejected this argument and found that the plaintiff was reasonably diligent in its efforts to serve the defendant and, therefore, the process was valid.⁵²

While publication and certified mail have been commonly accepted forms of alternative service, a judge in New York stated that publication, specifically, ". . . is almost guaranteed *not* to provide a defendant with notice of the action for divorce, or any other lawsuit for

41. *Windham v. Allen*, No. 2:18-cv-00054-JNP-DBP, 2018 U.S. Dist. LEXIS 112891, at *5-6 (D. Utah July 6, 2018).

42. *Id.* at *4.

43. *Id.* at *4-5.

44. *Id.* at *4.

45. *Id.* at *5.

46. *Id.*

47. *Windham*, 2018 U.S. Dist. LEXIS 112891, at *6.

48. C504750P LLC v. Baker, 397 P.3d 599, 602 (Utah Ct. App. 2017).

49. *Id.* (quoting *Jackson Constr. Co. v. Marrs*, 100 P.3d 1211, 1215 (Utah 2004)) (emphasis in original).

50. *Id.* at 601.

51. *Id.*

52. *Id.* at 603.

that matter . . . “⁵³ Further, publication is expensive – costing upward of \$1,000 for a single week.⁵⁴ With much more effective available methods, alternative service by publication is one that is no longer efficient or effective.⁵⁵ Additionally, the United States newspaper industry is rapidly growing online.⁵⁶ Over 1.3 billion people who read the newspaper are digital readers.⁵⁷ If this data is considered, publication via an online newspaper would seem more likely to provide notice than publication in a print newspaper. But, if that is allowed, skipping to publication on a specific user or company’s social media site where they are much more likely to receive actual notice would be more effective.⁵⁸

In *Dobkin v. Chapman*, the Court of Appeals in New York stated that “[d]ue process is not...a mechanical formula or a rigid set of rules”⁵⁹ and that “in modern jurisprudence, the term has come to represent a realistic and reasonable evaluation of the respective interests of plaintiffs, defendants and the state under the circumstances of the particular case”.⁶⁰ The Court of Appeals continued in *Dobkin* that “[o]ur law has long been comfortable with many situations in which it was evident, as a practical matter, that parties to whom notice was ostensibly addressed would never in fact receive it.”⁶¹ As long as we meet the requirements of due process, the notion that a plaintiff would be very unlikely to see a summons, for example, within a newspaper publication, does not stop courts from allowing this.⁶² In reality, a far

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53. Baidoo v. Blood-Dzraku, 5 N.Y.S.3d 709, 715 (N.Y. Sup. Ct. 2015) (citing Snyder v. Alternate Energy Inc., 857 N.Y.S.2d 442 (N.Y. Civ. Ct. 2008)).
54. *Id.* at 716.
55. David Moore, *The Problem with Service by Publication*, SC LAWYER, March 2015, at 19, 21–23.
56. Michael Barthel, *Newspapers Fact Sheet*, PEW RESEARCH CTR. (Jul. 9, 2019), <https://www.journalism.org/fact-sheet/newspapers/> [https://perma.cc/7TKK-J285].
57. Amy Watson, *U.S. Newspaper Industry - Statistics & Facts*, STATISTA, (Dec. 6, 2018), <https://www.statista.com/topics/994/newspapers/> [https://perma.cc/9DHZ-K8ZN].
58. See Angela Upchurch, “*Hacking*” *Service of Process: Using Social Media to Provide Constitutionally Sufficient Notice of Process*, 38 U. ARK. LITTLE ROCK L. REV. 559, 574 (2016).
59. *Dobkin v. Chapman*, 236 N.E.2d 451, 457 (N.Y. 1968).
60. *Id.* at 458.
61. *Id.*
62. Mark Schwartz, *Service of Process via Facebook ... The Future?*, ONE LEGAL (Oct. 2, 2014), <https://www.onelegal.com/blog/service-process-via-facebook-the-new-paradigm/> [https://perma.cc/Y8X6-B5HT].

greater number of individuals would receive *actual* notice if process were served via social media.

b. In the U.S. on International Defendants

Since every case filed in the United States requires service of process, the foundational idea of service has dramatically grown.⁶³ The Federal Rules of Civil Procedure give the specification for service upon individuals in a foreign country, stating:

Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents,

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice, or

(3) by other means not prohibited by international agreement as may be directed by the court.⁶⁴

One of the first cases to include new technology when serving an international defendant was in *New England Merchants National Bank v. Iran Power Generation and Transmission Co.*⁶⁵ The court allowed service via telex in order to serve an Iranian defendant.⁶⁶ The Honorable Kevin Thomas Duffy stated:

I am very cognizant of the fact that the procedure which I have ordered in these cases has little or no precedent in our jurisprudence. Courts, however, cannot be blind to changes and advances in technology. No longer do we live in a world where communications are conducted solely by mail carried by fast sailing clipper or steam ships. Electronic communication via satellite can and does provide instantaneous transmission of notice and information. No longer must process be mailed to a defendant's door when he can receive complete notice at an electronic terminal inside his very office, even when the door is steel and bolted shut.⁶⁷

63. Steven W. Teppler, *The Continuing Relevance of Personal Service of Process*, NAT'L L. REV. (Nov. 28, 2011), <https://www.natlawreview.com/article/continuing-relevance-personal-service-process> [https://perma.cc/4JTE-8QBZ].

64. Fed. R. Civ. P. 4(f).

65. *See* *New England Merchants Nat. Bank v. Iran Power Generation & Transmission Co.*, 495 F. Supp. 73 (S.D.N.Y. 1980).

66. *Id.* at 81.

67. *Id.*

Twenty years later, the United States Bankruptcy Court for the Northern District of Georgia authorized service by email.⁶⁸ In 2002, the Court of Appeals for the Ninth Circuit also allowed service via email.⁶⁹ The Ninth Circuit notably held that, “[b]y all indications, court-directed service under Rule 4(f)(3) is as favored as service available under Rule 4(f)(1) to the text of the note or Rule 4(f)(2).”⁷⁰ In essence, stating that service by other means not prohibited by international agreement is on equal footing with the other proscribed methods.⁷¹

II. SERVICE OF PROCESS INTERNATIONALLY

a. *The Hague Service Convention*

The Hague Service Convention was created in the 1960’s to provide “a mechanism which (1) simplifies and expedites the service of documents abroad, and (2) guarantees that service will be brought to the notice of the recipient in sufficient time to defend.”⁷² Before the Hague Service Convention, American litigants had an extremely difficult time serving process on foreign defendants.⁷³ It was an enormous task to comply with constitutional due process standards as well as with foreign laws.⁷⁴ Further, foreign litigants had difficulty finding anyone in the United States willing to effectuate service of process.⁷⁵ However, only signatory parties are bound, which leaves many countries unaffected by the treaty.⁷⁶ Further, countries may formally object to certain articles in the treaty.⁷⁷ As Article 10 states,

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68. *Broadfoot v. Diaz (In re Int’l Telemedia Assocs., Inc.)*, 245 B.R. 713 (Bankr. N.D. Ga. 2000).
69. *Rio Properties v. Rio Int’l Interlink*, 284 F.3d 1007, 1017 (9th Cir. 2002).
70. *Id.* at 1015.
71. *Id.*
72. Gary A. Magnarini, *Service of Process Abroad Under the Hague Convention*, 71 MARQUETTE L. REV. 650, 664 (1988).
73. *Id.* at 653.
74. *See id.* at 653-655.
75. *Id.* at 645.
76. *Id.* at 658.
77. Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters art. 10, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163 [hereinafter Hague Service Convention]. *See also Table Reflecting Applicability of Articles 8(2), 10(a)(b) and (c), 15(2) and 16(3) of The Hague Service Convention*, HAGUE CONFERENCE ON PRIVATE INT’L LAW (Feb. 2019), <https://assets.hcch.net/docs/6365f76b-22b3-4bac-82ea-395bf75b2254.pdf> [https://perma.cc/4PY3-VHYN] (providing a comparison of countries and the articles that they have objected to).

“Provided the State of destination does not object...,”⁷⁸ reflecting the reservations countries may unilaterally impose and render certain provisions moot to them. In the United States, “...district courts typically require strict compliance with the Service Convention, a practice that protects the due process interests of foreign defendants and the jurisdictional interests of other nations.”⁷⁹ With international litigation on the rise, this issue is becoming more and more relevant.⁸⁰ Finding which countries are signatories, what oppositions they have to specific articles, and where their Central Authority for such matters is located is easily found online.⁸¹ For example, France has a clearly listed “Central Authority & practical information” page.⁸²

[Insert Image – Frances Central Authority page]

The process sounds relatively simple. Plaintiffs can send a request for service to the foreign state’s Central Authority,⁸³ which must be listed on the website as shown above. The Central Authority will then effectuate service for the plaintiff.⁸⁴ Issues arise when locating the defendant is not possible or the country has opposition to the type of service. That is in large part why the Hague Service Convention allows for countries to permit additional methods of service,⁸⁵ so long as they are not in violation of any international law.⁸⁶ Further, Article 11 provides, “The present Convention shall not prevent two or more contracting States from agreeing to permit, for the purpose of service of judicial documents, channels of transmission other than those provided for in the preceding articles and, in particular, direct communication between their respective authorities.”⁸⁷ Despite these

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78. *Hague Service Convention*, *supra* note 77, 20 U.S.T at 363, 658 U.N.T.S. at 169–71.
79. Maggie Gardner, *Parochial Procedure*, 69 STAN L. REV. 941, 994 (2017).
80. *See* Magnarini, *supra* note 72, at 664–65.
81. *See Status Table*, HAGUE CONFERENCE ON PRIVATE INT’L LAW (July 29, 2019) <https://www.hcch.net/en/instruments/conventions/status-table/?cid=17> [<https://perma.cc/A2CV-PTTJ>] (showing the adoption and ratification statuses of contracting parties to the Hague Service Convention).
82. *France – Central Authority & Practical Information*, HAGUE CONFERENCE ON PRIVATE INT’L LAW (Jan. 8, 2019), <https://www.hcch.net/en/states/authorities/details3/?aid=256> [<https://perma.cc/CE2V-3UBF>].
83. Gardner, *supra* note 79, at 994.
84. *Id.* at 995.
85. *Id.*
86. *See id.* at 995–96.
87. Hague Service Convention, *supra* note 77, 20 U.S.T at 363–64, 658 U.N.T.S. at 171.

rules, there have still been numerous issues presented as to the proper ways to effectuate service upon international defendants.

Only recently did the Supreme Court of the United States end a division between lower courts as to whether the Hague Convention prohibits service of process via mail in *Water Splash, Inc. v. Menon*.⁸⁸ The defendant in *Water Splash* resided in Canada.⁸⁹ Water Splash obtained permission to serve process to the defendant by mail, but the defendant refused to answer or appear so the trial court issued a default judgment in favor of Water Splash.⁹⁰ Upon several appeals, the Supreme Court granted certiorari to resolve the conflict.⁹¹ The main conflict revolved around Article 10(a) of the Hague Convention which states, “Provided the State of destination does not object, the present Convention shall not interfere with—(a) the freedom to send judicial documents, by postal channels, directly to persons abroad.”⁹² While the defendant maintained that this provision did not specifically state “service of process documents,” the Court concluded that when interpreting the document as a whole it did mean to include such documents and that mail was an acceptable format in this case.⁹³ The Court stated, “...in cases governed by the Hague Service Convention, service by mail is permissible if two conditions are met: first, the receiving state has not objected to service by mail; and second, service by mail is authorized under otherwise-applicable law.”⁹⁴

With this now finally confirmed, the next step is presumably service upon international defendants through email and social networking, which is already seemingly well on its way.

b. Exceptions to the Hague Service Convention

Service under the Hague Service Convention must be completed when the case is within its scope and with countries that are signatories.⁹⁵ The Hague Service Convention does not apply when the defendant’s address is unknown or if service can be completed without transmitting documents abroad.⁹⁶ Further, “...if the foreign state’s

88. *Water Splash, Inc. v. Menon*, 137 S. Ct. 1504, 1507 (2017).

89. *Id.* at 1505.

90. *Id.*

91. *Id.* at 1508.

92. *Id.*

93. *Id.* at 1509–10.

94. *Water Splash, Inc.*, 137 S. Ct. at 1513.

95. Gardner, *supra* note 79, at 995.

96. *Id.*

Central Authority does not respond to a valid request for service within six months, the local court may move ahead with a default judgment.”⁹⁷

An example of when service can be completed without transmitting documents abroad is a case where a son sued for the wrongful death of his parents following a car accident.⁹⁸ The son sued the domestic subsidiary of a German company and later amended the complaint to add the German company as a defendant.⁹⁹ The United States and the Federal Republic of Germany have both agreed to the Hague Service Convention.¹⁰⁰ But, the subsidiary was “registered to do business in Illinois and [had] a registered agent for receipt for process in Illinois,”¹⁰¹ and “...the German corporation and its subsidiary were so closely related that, as a matter of law, the subsidiary was the German corporation’s agent for service of process.”¹⁰² Because the documents were not required to be transmitted abroad and could instead be served in Illinois, the Hague Convention did not apply despite the international defendant.¹⁰³

As for the Hague Service Convention not applying when the defendant’s address is unknown, the WikiLeaks’s case critics have something to say.¹⁰⁴ Ted Folkman states, “If one thinks of Wikileaks as an organization whose location is unknown and whose officers are unknown, then subject to Due Process considerations, the service seems valid: the Convention does not apply because the address of the person to be served is unknown.”¹⁰⁵ This follows the decision of the DNC case, discussed in the introduction of this note.¹⁰⁶ But, Folkman argues that, “Wikileaks is Mr. Assange’s project, and he is in charge of it. So to serve Wikileaks, you should serve Mr. Assange, whose location at any hour of the day can be known with greater certainty than the location of most people on the planet who are not prisoners.”¹⁰⁷ Mr. Assange is being held in the Ecuadorian embassy in London.¹⁰⁸ Folkman therefore

97. *Id.* at 996.

98. *See Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 696 (1988).

99. *Id.* at 696–97.

100. *Id.* at 698.

101. *Id.* at 697.

102. *Id.*

103. *Id.* at 707–08.

104. *See Folkman*, *supra* note 3.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

believes that the Hague Service Convention applies, and that service was improper via Twitter.¹⁰⁹

III. THE DEVELOPMENT OF SERVICE OF PROCESS VIA EMAIL AND SOCIAL MEDIA

a. *Email*

Email has “been around” since the late 1960s,¹¹⁰ with modern forms of email since 1972.¹¹¹ Engineer, Ray Tomlinson, chose the “@” symbol for email addresses and wrote software to send the first network email.¹¹² Email has slowly been adopted as an accepted method of alternative service.¹¹³

The United States District Court of Utah granted a motion for alternative service by email after the plaintiffs had attempted to serve process on defendants in person and by certified mail in *Turbo Style Prods., LLC v. Does*.¹¹⁴ In *Turbo Style*, the plaintiffs identified four possible addresses for the defendant.¹¹⁵ However, of those four, two were mail-forwarding companies, one was the location of a swap meet, and the other was fictitious.¹¹⁶ The plaintiff mailed service and attempted personal service through a process server at the three addresses that were not fictitious.¹¹⁷ For service in the alternative, the plaintiff requested service by email.¹¹⁸ The plaintiff stated, “According to Utah law, where the identity or whereabouts of a defendant is unknown and cannot be ascertained through reasonable diligence, service may be

109. *Id.*

110. Dave Crocker, *Email History*, LIVING INTERNET, <https://www.livinginternet.com/e/ei.htm> [https://perma.cc/QBY2-MU22].

111. Barry M. Leiner et al., *A Brief History of the Internet* (Jan. 23, 1999), <https://arxiv.org/html/cs/9901011v1> [https://perma.cc/9BYY-DVRK].

112. Crocker, *supra* note 110.

113. *See Broadfoot v. Diaz*, 245 B.R. at 713 (authorizing service by email); *Rio Properties v. Rio Int’l Interlink*, 284 F.3d at 1017 (authorizing service by email).

114. *Turbo Style Prod., LLC v. John Does 2-5*, No. 2:14-CV-912 TS, 2015 WL 2184029, at *2 (D. Utah Apr. 28, 2015).

115. Motion for and Memorandum in Support of Acceptance of Service of Process or in the Alternative for Alternate Service at 2–3, *Turbo Style Prod., LLC v. John Does 2–5* (No. 2:14-cv-00912), 2015 WL 13732216, at *2.

116. *Id.* at 3.

117. *Id.*

118. *Id.* at 5.

accomplished by other means, including email.”¹¹⁹ The judge granted the plaintiff’s motion for alternative service.¹²⁰

b. Social Media

Facebook has been defined by a New York court as, “a social networking website that allows its users to interact with friends, relatives, acquaintances and individuals with common interests.”¹²¹ Further, “...there are no geographic limitations on Facebook - people with whom an individual interacts with on Facebook can be as close as the house next door or as far away as a continent on the other side of the world.”¹²² The use of Facebook and other social media sites is growing rapidly and internationally.¹²³ For example, users in the Philippines spend an estimated average of nine hours on social media daily.¹²⁴ Further, international courts have used social media to effect alternative service of process.¹²⁵ In 2008, an Australian judge allowed service of process via Facebook.¹²⁶ In 2012, a High Court judge in

119. *Id.* at 6.

120. *Turbo Style Prod., LLC*, 2015 WL 2184029, at *2. *Cf.* *Joshi Techs., Int’l v. Consorcio Pegaso*, No. 17-CV-359-GKF-FHM, 2017 WL 3151282, at *1 (N.D. Okla. July 25, 2017) (“Even in the best of circumstances, notice by email has significant limitations . . .”).

121. *Noel B v. Anna Maria A*, No. F00787-13/14B, 2014 N.Y. Misc. LEXIS 4708, at *2 (N.Y. Fam. Ct. Sept. 12, 2014).

122. *See id.* at *2-3.

123. Dave Chaffey, *Global Social Media Research Summary 2019*, SMART INSIGHTS (Feb. 12, 2019), <https://www.smartinsights.com/social-media-marketing/social-media-strategy/new-global-social-media-research/> [<https://perma.cc/7V5L-4PWK>].

124. Joey Maceda, *Filipinos Now Spend More Than 9 Hours Online*, YUGA TECH (Jan. 31, 2018), <https://www.yugatech.com/news/filipinos-now-spend-more-than-9-hours-online/#sthash.wOI0sjJY.dpbs#8jfi3zgJhr93L10c.97> [<https://perma.cc/V7UA-697P>].

125. Alyssa Eisenberg, *Keep Your Facebook Friends Close and Your Process Server Closer: The Expansion of Social Media Service of Process to Cases Involving Domestic Defendants*, 51 SAN DIEGO L. REV. 779, 780 (2014).

126. Bonnie Malkin, *Australian Couple Served with Legal Documents via Facebook*, THE TELEGRAPH (Dec. 16, 2008, 11:42 AM), <http://www.telegraph.co.uk/news/newsttopics/howaboutthat/3793491/Australian-couple-served-with-legal-documents-via-Facebook.html> [<https://perma.cc/Q8CW-DKDN>].

England approved the use of Facebook to serve process¹²⁷ Some American courts are taking note.¹²⁸

In New York, the family court in Richmond County accepted alternative service via Facebook in *Matter of a Support Proceeding Noel B v. Anna Maria A.*¹²⁹ The next year, the Supreme Court of New York gave a plaintiff permission to serve the defendant with divorce summons using a private message on Facebook in *Baidoo v. Blood-Dzraku.*¹³⁰

The judge in *Baidoo* believed evidence of back and forth private messages between the plaintiff and defendant on Facebook private messenger showed that the defendant would receive actual notice.¹³¹ After the *Baidoo* decision, a New Jersey court allowed service by Facebook under similar circumstances in *Axberg v. Langston.*¹³² The judge's opinion in *Baidoo* set precedent for what a court will look for when reaching a determination on process via social media in these types of cases.¹³³ In *Baidoo*, the defendant had no email address and no known current address despite searches within cell phone billing records and checks with the DMV.¹³⁴ It was clear in this instance some type of alternative service would be required in order to serve this defendant.¹³⁵

IV. HOW ALTERNATIVE SERVICE OF PROCESS THROUGH SOCIAL MEDIA CAN BE COST EFFICIENT AND EFFECTIVE

Studies have found that Twitter is possibly harder to resist than cigarettes and alcohol.¹³⁶ With people now constantly checking Twitter, Facebook, Instagram, etc., it is no wonder courts have chosen to allow service of process through these platforms. If the purpose of service is

127. Raphael Satter, *UK Court Oks Legal Claim to be Served via Facebook*, THE DAILY TEXAN (Feb. 21, 2012), <https://www.dailytexanonline.com/news/2012/02/21/uk-court-oks-legal-claim-to-be-served-via-facebook> [<https://perma.cc/XVF9-9GTL>].

128. See Sexton, *supra* note 22.

129. Noel B v. Anna Maria A, 2014 N.Y. Misc. LEXIS 4708, at *4-5.

130. *Baidoo*, 5 N.Y.S.3d at 716.

131. See *id.* at 714.

132. Nicole Black, *New Jersey Judge Permits Service via Facebook*, LEGALNEWS.COM (June 13, 2017), <http://legalnews.com/detroit/1444033> [<https://perma.cc/S3BP-64FA>].

133. Sexton, *supra* note 22.

134. *Baidoo*, 5 N.Y.S.3d at 715.

135. *Id.*

136. James Meikle, *Twitter is Harder to Resist than Cigarettes and Alcohol, Study Finds*, THE GUARDIAN (Feb. 3, 2012), <https://www.theguardian.com/technology/2012/feb/03/twitter-resist-cigarettes-alcohol-study> [<https://perma.cc/7P8G-BG95>].

to actually provide a defendant with notice, then using social media makes a lot of sense, especially when cost is a factor. One website stated, “The cost of a routine serve (a serve that is first attempted within 5-7 days of receiving the papers) can be as low as \$20 and can go up to \$100, but the national average is somewhere between \$45 and \$75.”¹³⁷ And that is for routine service, not factoring the numerous variables to service of process. If you need to have service at multiple locations, have documents translated, or need to effect service on a defendant that is international the cost increases dramatically.¹³⁸ Courts in many jurisdictions still use alternative service by publication.¹³⁹ Alternative service by publication can cost upwards of \$1,000.¹⁴⁰ Service of process via social media is basically free. Twitter, Instagram, and Facebook are all completely free to access and to create accounts on.¹⁴¹

V. PROBLEMS WITH ALTERNATIVE SERVICE OF PROCESS THROUGH SOCIAL MEDIA

a. *Authenticity*

Courts are still skeptical of service by Facebook.¹⁴² In *Joe Hand Promotions*, the plaintiff represented that he unsuccessfully attempted to serve the defendants several times, exhausted all standard means to serve the defendants, and asked the court to allow service via Facebook.¹⁴³ The court stated, “It is clear...plaintiff has exhausted all conventional methods of service for both defendants in this case. It is unclear, however, that allowing an unconventional method of service via Facebook would comport with traditional notions of due process, or

137. *About Process Serving*, SERVENOW, <https://www.serve-now.com/about-process-serving> [<https://perma.cc/F2CW-ENCV>].

138. *See International Process Service*, DGR LEGAL, <https://www.dgrlegal.com/international-process-server/> [<https://perma.cc/M6TU-DQQQ>].

139. *See e.g.*, Keis George, *Using Service by Process to Serve the Defendant Whose Address is Unknown*, KEIS GEORGE LLP (Apr. 24, 2017), <https://www.keisgeorge.com/news/2017/04/24/using-service-by-publication-to-serve-the-defendant-whose-address-is-unknown/> [<https://perma.cc/4J5W-D6GY>] (detailing Ohio’s requirements for service by publication).

140. *Baidoo*, 5 N.Y.S.3d at 716.

141. *See* Tom Johansmayer, *Social Media Is Free, Social Media Marketing Is Not*, ADWEEK (Jan. 11, 2011), <https://www.adweek.com/digital/social-media-is-free-social-media-marketing-is-not> [<https://perma.cc/DZ3F-LBCB>].

142. *See e.g.*, *Joe Hand Promotions, Inc. v. Carrette*, No. 12-2633-CM, 2013 U.S. Dist. LEXIS 109731, at *1 (D. Kan. July 9, 2013).

143. *Id.* at *2.

would achieve the desired result of effectuating service on defendants.”¹⁴⁴ The court acknowledged that service by Facebook may eventually become as accepted as service by email.¹⁴⁵ However, the court stated, “It would be unfair to allow service through this alternative means unless the court could be reasonably sure that this service would reach the defendant.”¹⁴⁶ The main concern is with authenticity of the Facebook profile and determining it actually belongs to that person.¹⁴⁷ The court noted, “In *F.T.C. v. PCCARE247, Inc.*, the plaintiffs asked to serve the defendants through e-mail as well as Facebook, and were allowed to do so.”¹⁴⁸ However, Facebook was a supplemental form of service in addition to email.¹⁴⁹ In *FTC v. PCCARE247 Inc.*, the FTC submitted the summons, complaint, and related documents to the Indian Central Authority for service on defendant – through the Hague Service Convention, along with other standard means of service.¹⁵⁰ Further, the court in *PCCARE247* knew the email belonged to the particular defendant and was the email used to create the Facebook profile.¹⁵¹ Without authentication, the court in *Joe Hand Promotions* accordingly denied Facebook as a form of alternative service.¹⁵²

Further, in 2016, a Brooklyn judge denied a woman’s request to serve her husband by Facebook.¹⁵³ Manal Qaza, wanted to divorce her husband Abdulla Saeed Hazza Alshalabi, who had left her several years before, and had not left any contact information.¹⁵⁴ Qaza believed her husband was living in Saudi Arabia because both of his Facebook pages state that as his location.¹⁵⁵ Qaza moved to serve her husband by

144. *Id.* at *3.

145. *Id.* at *4.

146. *Id.* at *4–6.

147. *Id.* at *6.

148. *Joe Hand Promotions*, 2013 U.S. Dist. LEXIS 109731, at *6 (citing *F.T.C. v. PCCare247 Inc.*, No. 12 Civ. 7189(PAE), 2013 U.S. Dist. LEXIS 31969, at *4 (S.D.N.Y. Mar. 7, 2013)).

149. *Id.*

150. *FTC v. PCCare247 Inc.*, No. 12 Civ. 7189(PAE), 2013 U.S. Dist. LEXIS 31969, at *2–5 (S.D.N.Y. Mar. 7, 2013).

151. *See id.* at *13–16.

152. *Joe Hand Promotions*, 2013 U.S. Dist. LEXIS 109731, at *7–8.

153. *Qaza v. Alshalabi*, 54308/2016, 2016 NYLJ LEXIS 4146, at *9–10 (N.Y. Sup. Ct. Dec. 5, 2016).

154. *Id.* at *2.

155. *Id.* at *3.

Facebook because service by traditional means was impractical.¹⁵⁶ But, the court stated, “in the application before this Court plaintiff has failed to sufficiently authenticate the Facebook profile as being that of defendant and has not show[n] that, assuming arguendo that it is defendant’s Facebook profile, that defendant actually uses this Facebook page for communicating.”¹⁵⁷ The court also noted that there was no indication that the husband’s profile had been updated since April 2014.¹⁵⁸

Verifying that the Facebook page or other social media profile actually belongs to the individual is one of the largest obstacles with service via these methods. Numerous sites now have dual verification in an attempt to help.¹⁵⁹ For example, celebrities and companies receive a “blue checkmark” on Instagram to verify the profile actually belongs to the celebrity or company (pictured below).¹⁶⁰ In order to be verified, Instagram states:

In addition to following Instagram’s Terms of Service and Community Guidelines, your account also needs to be:

- Authentic: Your account must represent a real person, registered business or entity.

- Unique: Your account must be the unique presence of the person or business it represents. Only one account per person or business may be verified, with exceptions for language-specific accounts. We don’t verify general interest accounts (example: @puppymemes).

- Complete: Your account must be public and have a bio, profile photo and at least one post. Your profile can’t contain “add me” links to other social media services.

Notable: Your account must represent a well-known, highly searched for person, brand or entity. We review accounts that are featured in multiple news sources, and we don’t consider paid or promotional content as sources for review.¹⁶¹

156. *Id.* at *4 (“She argues that she cannot obtain foreign service upon defendant because Saudi Arabia is not a signatory to the Hague Convention . . . [and] the cost of publishing the summons in a local newspaper ‘could cost in excess of three thousand (\$3,000.00) DOLLARS’ . . .”).

157. *Id.* at *6.

158. *Id.* at *7. *See also* Sexton *supra* note 22.

159. *See* Abhishek Kurve, *How to Set Up Two-Factor Authentication on All Your Social Accounts*, MAKEUSEOF (Oct. 13, 2017), <https://www.makeuseof.com/tag/setup-two-factor-authentication-social-accounts/> [<https://perma.cc/UPL9-5BAV>].

160. *See* *Verified Badges*, INSTAGRAM, <https://help.instagram.com/854227311295302> [<https://perma.cc/3FVJ-VK8Z>].

161. *Id.*

[Insert Image – Instagram “badge”]

Facebook verification is only widely available for businesses and organizations.¹⁶² Facebook pages that have been authenticated allow direct messages and state how long the company typically takes to reply.¹⁶³ This is a feature that potentially benefits consumers attempting to serve a corporation via Facebook by showing proof the account is frequently used (pictured below).

[Insert Image = Facebook account example]

On Facebook and Instagram, there are also read receipts that let others know you read their message.¹⁶⁴ Instagram and Facebook read receipts are “mandatory.”¹⁶⁵ BuzzFeed quotes, “But *required* read receipts? In 2018? Zuckerberg, sweetie, they gotta go. Get them off Instagram, and while you’re at it, take them off Facebook Messenger too. They simply have no place in a civilized society.”¹⁶⁶ There have been numerous posts about “tricks” to keep others from knowing you read their message on Instagram.¹⁶⁷ This involves numerous steps, including disabling the internet on your device while reading the message, and then logging out of Instagram completely.¹⁶⁸ Additionally, while Facebook doesn’t have an option to disable read receipts either, you can install an extension to your browser to prevent read receipts from going through.¹⁶⁹

Aside from read receipts showing the actual message was read, how do we verify the account belongs to that person? For one, many people have other social media and email accounts linked with their Facebook

162. See Alejandro Rioja, *Get Verified on Facebook: Page or Profile (Blue + Gray Verification Badge) for Free*, ALEJANDRO RIOJA (June 24, 2019), <https://alejandrorioja.com/blog/get-facebook-verified/> [<https://perma.cc/U4Z7-HFRU>].

163. *The Admin’s Guide to Page Messaging*, FACEBOOK BUS. (Aug. 20, 2015), <https://www.facebook.com/business/news/pages-messaging-tips> [<https://perma.cc/8V6L-ATRX>].

164. Stephen LaConte, *Why Oh Why Does Instagram Force Us To Have Read Receipts Turned On?*, BUZZFEED (July 8, 2018), <https://www.buzzfeed.com/stephenlaconte/instagram-turn-off-read-receipts> [<https://perma.cc/H4AN-53J2>].

165. *Id.*

166. *Id.*

167. Hermant Mendiratta, *How To Undo/Hide Seen From Instagram Story, Messages*, TECHUNTOLD (Jan. 17, 2019), <https://www.techuntold.com/hide-instagram-direct-message-seen-read-receipt/> [<https://perma.cc/8QTD-VBA3>].

168. *Id.*

169. Brendan Hesse, *How to Turn Off the ‘Seen’ Function in Facebook Messenger, iMessage, and More*, DIGITAL TRENDS (Oct. 9, 2016, 5:03 AM), <https://www.digitaltrends.com/social-media/how-to-turn-off-read-receipts/> [<https://perma.cc/3TXR-VABD>].

account.¹⁷⁰ For example, if you look at a Facebook friend's "About" section and select "Overview" it will show where they live, go to school, LinkedIn accounts, birthday, email, etc.¹⁷¹ But this is all provided by the individual and will not be there unless they affirmatively choose to add such information.¹⁷²

This problem is, however, greatly reduced in the commercial setting. Corporations are largely available on social media platforms to answer questions, provide updates, and post advertisements for consumers.¹⁷³ If a corporation denies its authenticity on a social media platform in regards to receiving service of process, it will likely lose credibility to consumers. For example, take Bissell,¹⁷⁴ a well-known floor cleaning supply company whose Facebook account is pictured above. Bissell is very active on Instagram, using a handle @bissellclean, where they regularly post photographs.¹⁷⁵ Bissell also routinely posts on Twitter, using the handle @bissellclean as well.¹⁷⁶ They have over 19,600 followers on Twitter and respond to questions frequently.¹⁷⁷ While Bissell is a structured company that has a legal team in place to receive service of process,¹⁷⁸ if they did not – or they denied service,

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170. *See Benefits of Linking Instagram to Facebook: Making the Most of Social Media*, TOCMEDIA (Jan. 23, 2018), <https://toc-media.com/2018/01/23/benefits-linking-instagram-facebook-making-social-media/> [<https://perma.cc/J8YN-8JZZ>] (discussing linking social media accounts); *How Do I Add or Remove an Email from my Facebook Account?*, FACEBOOK, <https://www.facebook.com/help/162801153783275> [<https://perma.cc/LX8C-G6QE>] (discussing linking email addresses and Facebook accounts).
171. *How Do I Edit Basic Info on my Profile and Choose Who Can See It?*, FACEBOOK, <https://www.facebook.com/help/276177272409629?helpref=related> [<https://perma.cc/NV3Q-2DAT>].
172. *Id.*
173. *See Steve Foster, How Social Media is Now Used in Corporations*, INCITE GROUP (Aug. 6, 2014), <http://usefulsocialmedia.com/brand-marketing/how-social-media-now-used-corporations> [<https://perma.cc/HB8N-66X4>].
174. BISSELL, <https://www.bissell.com> [<https://perma.cc/Y7DS-YV4R>].
175. *See* Bissell (@bissellclean), INSTAGRAM, <https://www.instagram.com/bissellclean/?hl=en> [<https://perma.cc/5H6A-C4Z6>].
176. @BISSELLclean, TWITTER, <https://twitter.com/bissellclean?lang=en> [<https://perma.cc/4F6J-MWFL>].
177. *Id.*
178. *See BISSELL U.S. Terms of Use*, BISSELL (Aug. 20, 2018), <https://www.bissell.com/terms-of-use> [<https://perma.cc/2KMW-KC9E>] (referencing BISSELL's legal services group).

alternative service by either of these platforms would be extremely effective.

b. Deception Online

Deception online is not a new subject. The most popular method of deception is something known as “catfishing” others online.¹⁷⁹ A “catfish” is “a person who is intentionally deceptive when creating a social media profile, often with the goal of making a romantic connection.”¹⁸⁰ This terminology was popularized through a documentary following the relationship of a photographer, Nev, and a young woman he met online.¹⁸¹ When Nev finally met the young woman in person, he found out that she had lied to him about nearly everything.¹⁸² Nev then takes the documentary further by filming other couples that met online when they finally decide to meet in person.¹⁸³ Unfortunately, “often there’s an element of deception; for example, people may look nothing like their photographs or may be pretending to be of another gender or are in another relationship.”¹⁸⁴ This type of deception, which frequently fools average people, has the possibility to also deceive courts.

While “catfishing” potentially poses a problem for individuals, diligent research can usually correct this. As mentioned earlier, in *Baidoo v. Blood-Dzraku*, the New York court set some precedent as to what a judge should look at.¹⁸⁵ In *Baidoo*, the plaintiff and defendant had numerous previous conversations via private messenger on Facebook.¹⁸⁶ The plaintiff also knew the defendant well, as opposed to a stranger she had only met online.¹⁸⁷ Additionally, the plaintiff had a cell phone number for the defendant, therefore she could easily text the defendant and tell him to check his Facebook messages.¹⁸⁸

179. See generally Krystal D’Costa, *Catfishing: The Truth About Deception Online*, SCIENTIFIC AMERICAN (Apr. 25, 2014), <https://blogs.scientificamerican.com/anthropology-inpractice/catfishing-the-truth-about-deception-online/> [<https://perma.cc/5DBL-MVHR>].

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Baidoo*, 5 N.Y.S.3d at 714.

186. See *id.*

187. See *id.* at 712.

188. *Id.* at 714.

The Better Business Bureau (“BBB”) has also seen numerous scams being attempted online.¹⁸⁹ On Facebook, a scammer will pose as someone an individual knows, and will send a private message saying the individual has won something or can get “free money.”¹⁹⁰ Then, the scammer will try to force them to pay a fee, claiming it is for “delivery or processing.”¹⁹¹ There are similar scams being attempted on Instagram as well.¹⁹² The Federal Trade Commission recently charged a man named Travis Deloy Peterson for using a fake veteran’s charity to get people to donate items such as cars and boats, which he would then sell for his own profit.¹⁹³ While Peterson used illegal robocalls as his main strategy to entice donations, he also created numerous websites where people could donate and gather information on the alleged charity.¹⁹⁴ These websites looked extremely realistic and convinced many people to donate to this scam charity.¹⁹⁵

VI. RECOMMENDATION

The recommendation of this Note is to persuade federal judges to use their discretion in allowing alternative service via social media more openly. Changing any of the current Federal Rules of Civil Procedure or the Hague Service Convention is not suggested. Yet, that may be a topic for future consideration. Service of process in all cases should first be attempted through traditional means. If the traditional means have not worked or have proven to be impracticable, social media should be given priority as a method of alternative service in appropriate cases. Relevant cases include those where the defendant has a prominent

189. *10 Steps to Avoid Scams*, BETTER BUS. BUREAU (July 27, 2017), <https://www.bbb.org/AvoidScams> [<https://perma.cc/49SE-P3NJ>].

190. *Scam Alert: Con Artists Use Facebook Messenger to Contact Victims*, BETTER BUS. BUREAU (June 1, 2018), <https://www.bbb.org/article/scams/13037-scam-alert-con-artists-use-facebook-messenger-to-contact-victims> [<https://perma.cc/CV5S-82LF>].

191. *Id.*

192. Hackers attempted to have people log in to “instagramn.com” instead of Instagram.com, in order to steal the account’s log-in information. *Influencers BEWARE of This NEW Instagram Scam!*, WOLF MILLIONAIRE, <https://blog.wolfmillionaire.com/influencers-instagram-scam/> [<https://perma.cc/4DRC-MN82>].

193. *FTC and States Combat Fraudulent Charities That Falsely Claim to Help Veterans and Servicemembers*, FED. TRADE COMM’N (July 19, 2018), <https://www.ftc.gov/news-events/press-releases/2018/07/ftc-states-combat-fraudulent-charities-falsely-claim-help>.

194. Complaint at 8–9, Fed. Trade Comm’n v. Travis Deloy Peterson, No. 4:18-cv-00049-DN (D. Utah July 10, 2018).

195. *See id.* at 9.

social media presence.¹⁹⁶ The plaintiff should be able to meet certain conditions, such as, provide proof of the authenticity of the account, recent use of the account, and any other relevant information in regards to the defendant and the account.

The WikiLeaks case, as previously discussed, is an example of the appropriate use of social media as a form of alternative service. WikiLeaks was an online presence with no verifiable physical address.¹⁹⁷ Despite numerous attempts to serve process on WikiLeaks previous attorneys and researching various P.O. Boxes, the DNC had no success.¹⁹⁸ The WikiLeaks Twitter was used frequently, held itself out to represent WikiLeaks and even provided confirmation of having notice of the DNC's complaint before service of process was "completed."¹⁹⁹

Further, alternative service of process via social media costs less and provides more notice than other forms of alternative service.²⁰⁰ Specifically, more so than publication – an often-accepted form of alternative service. Publication, although widely used throughout the United States,²⁰¹ provides very little notice to defendants, if it provides any notice at all. Alternative service via social media seeks to increase the likelihood that the defendant will actually receive the summons, therefore meeting the constitutional requirements of being "reasonably calculated to actually provide the defendant with notice."²⁰²

Social media is widely used internationally, making this a sustainable option for alternative service of process on foreign defendants as well. Especially in cases where the defendant is known to be abroad but the plaintiff is unable to obtain a physical address. With no known physical address, the Hague Service Convention would not apply. After proof of attempting service through traditional means, possibly including email, a U.S. federal court may then use its discretion and allow alternative service via social media if the conditions above are met.

196. Cf. Sexton, *supra* note 22 (describing a case in which a judge denied service process via Facebook because the defendant hadn't updated his Facebook page in a few years).

197. See Folkman, *supra* note 3.

198. Motion to Serve Wikileaks by Twitter, *supra* note 5, at 5.

199. See *id.* at 5–6.

200. See Sexton, *supra* note 22. See also Keely Knapp, *#serviceofprocess @socialmedia: Accepting Social Media for Service of Process in the 21st Century*, 74 LA. L. REV. 547, 568 (2014) (comparing social media to other alternative methods of service).

201. Knapp, *supra* note 200, at 566.

202. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).