



[News & Insights](#) > Publications

Publications

8 APR 2009

Facebook - the future of service of process?

LITIGATION ALERT

Nick S. Puji
Anahit Tagvoryan
Joshua Briones

Recent developments regarding the service of process via social networking websites provide insight into the ways the Internet and technology continue to shape the practice of law.

Facebook, a popular social networking website, currently has more than 200 million active users worldwide.¹ Many users of Facebook and similar websites join to network, keep in touch with family and friends, or just for entertainment. However, recent developments suggest that the implications to an on-line presence may be quite far reaching. It appears that courts outside the United States are increasingly allowing formal court documents to be served via Facebook, and US courts have already admitted evidence obtained from on-line profiles in court proceedings.

What implications does this have on the practice of law--especially for litigation in the US?

Courts in Australia and New Zealand Approve Service of Process Via Facebook

Courts in at least two countries have already allowed legal documents to be served via Facebook. The Australian Capital Territory Supreme Court, for example, allowed formal court papers that gave notice of default on a loan to be served on two individuals via Facebook.² The Supreme Court granted the attorney's request to serve the documents after several failed attempts to personally serve the individuals at home and by e-mail.³ The Supreme Court agreed that the method of service was a reliable and valid way to provide notice after the party's attorney demonstrated that the information the individuals had provided to the lender matched the information in the individuals' profiles on Facebook.⁴

Similarly, the New Zealand High Court allowed a man to be served with process in a case involving failed business dealings.⁵ The New Zealand plaintiff's lawyer argued that the defendant's exact whereabouts were unknown, but demonstrated that the potential defendant maintained a social presence on Facebook.⁶

Current US Jurisprudence

While there is no record yet of courts in the US allowing formal service via Facebook, prosecutors are commonly permitted to use photographs obtained from social networking websites as evidence in court for a variety of proceedings—from divorce to sexual harassment to drunk driving to murder cases.⁷

Federal Rule of Civil Procedure 4(e)(2)(B) allows an individual located within a US judicial district to be served by leaving documents at an "individual's dwelling or usual place of abode..." While the terms "dwelling or usual place of abode" are understood to mean an individual's physical home, it is not unrealistic to predict that this language could one day be expanded by a court to include a person's usual place of *virtual* abode.

Furthermore, Federal Rules of Civil Procedure 4(f)(2) and 4(f)(3) allow an individual located in a foreign country to be served, in the absence of internationally agreed means, "by a method that is reasonably calculated to give notice...as prescribed by the foreign country's law for service" or "by other means not prohibited by international agreement, as the court orders." This language clearly allows room for the service of process via social networking websites on individuals who are outside of the US. It certainly allows service on individuals located in Australia and New Zealand, if a reasonable case can be made.

Implications in the US

The materials and photographs that become a part of an individual's on-line profile are already being used as admissible evidence in US courts.⁸ Will the ability to serve process via the virtual world be the next milestone? The implications of this possibility are considerable. Many Facebook users joined the

website for fun and amusement or to more easily keep in touch with family and friends. Their membership, however, may also make them more accessible to the legal system. Professional process servers may soon no longer be required to play cat-and-mouse games in the physical world in order to personally serve individuals.

In light of these potential legal ramifications, on-line users would do well to rethink the content and accessibility of their own on-line profiles as well as the legal implications of new technology generally.

1 Facebook, Press Room, <http://www.facebook.com/press/info.php?statistics> (last visited April 8, 2009).

2 Rod McGuirk, *You've been served...on Facebook*, Aussies OK sending default notices via social-networking site, Dec. 18, 2008, <http://www.msnbc.msn.com/id/28255716/.dfd>.

3 *Id.*

4 *Id.*

5 Ian Llewellyn, *NZ court papers can be served via Facebook, judge rules*, March 16, 2009, http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10561970.

6 *Id.*

7 Jay Gormley, *MySpace And Facebook Becoming Evidence In Court*, Feb. 3, 2009, <http://cbs11tv.com/local/MySpace.Facebook.Evidence.2.926231.html>; FoxNews.com, *Facebook Evidence Sends Unrepentant Partier to Prison*, <http://www.foxnews.com/story/0,2933,386241,00.html> (last visited April 8, 2009).

8 *Id.*

This information is intended as a general overview and discussion of the subjects dealt with. The information provided here was accurate as of the day it was posted; however, the law may have changed since that date. This information is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper is not responsible for any actions taken or not taken on the basis of this information. Please refer to the full terms and conditions on our website.

Copyright © 2012 DLA Piper. All rights reserved.

