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Bits and Bytes from the Chair

By Charlie Bieneman, Rader, Fishman & Grauer PLLC

Happy new year to everyone! As we begin 2012, I am pleased to report that the IT Law Section is looking forward to an action-packed slate of events this year. In addition to our flagship event, the annual IT Law seminar that we hold every fall conjunction with ICLE, we are planning a number of meetings that will feature enriching discussion as well as the opportunity for us all to socialize with one another.

Our first meeting of the year will begin at 6:30 pm on Thursday, January 26, 2012, at Sweet Lorraine's Cafe and Bar in Southfield (a Section Council meeting, which all are welcome to attend, will begin at 5:45 pm). Local attorney Steven Hanson will discuss "Determining the Scope of Software Copyright Protection." A buffet of heavy appetizers and drinks will be provided by the Section. There is no charge to attend. However, I do need to obtain a head count, so please RSVP to me at cab@raderfishman.com.

Next, please set aside the evening of March 29, 2012, for a presentation by Ward Classen, Deputy General Council of Computer Sciences Corporation. Ward gave a great presentation at our annual seminar a few years ago, and is coming back to give us some good practical tips on "Responding to Vendor Strategies in IT Contracts." We will be announcing the location of this event soon.

Our Spring Networking Event is scheduled for the evening of May 17, 2012. We are tentatively planning to once again hold this event in conjunction with Detroitnet.org, the local IT networking organization. The venue is the Black Finn Saloon in Royal Oak. This is a great opportunity for our members to intermingle with the IT community that we serve. I can personally tell you that I attended a Detroitnet.org event just before the holidays, and chatted with a lot of interesting people. Please be watching for further announcements about this event.

Michigan IT Lawyer is published every other month. Previously published issues of the *Michigan IT Lawyer*, and its predecessor the *Michigan Computer Lawyer*, are available at <http://www.michbar.org/computer/newsletters.cfm>. If you have an article you would like considered for publication, send a copy to:

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2011-2012

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Finally, we will begin planning soon for the Annual Seminar to be held in September at the St. John's Inn in Plymouth. Karl Hockhammer is chairing the seminar committee this year. If you have ideas for topics or speakers you would like to see, please let Karl know.

Again, best wishes to everyone for the new year, and I hope to see all of you at one of our meetings soon!

Charlie Bieneman
2011-2012 Section Chair

■ ■ ■

2012 Edward F. Langs Writing Award

Essay Competition Rules

1. Awards will be given to up to three student essays, which in the opinion of the judges make the most significant contribution to the knowledge and understanding of information technology law. Factors to be taken into consideration include: originality; timeliness of the subject; depth of research; accuracy; readability; and the potential for impact on the law.
2. Essay must be original, deemed to be of publishing quality, and must not have been submitted to any other contest within the previous 12 months.
3. Essay must be typed, double spaced, at least ten pages in length, must contain proper citations listed as either endnotes or footnotes, and must have left, right, top, and bottom margins of one inch.
4. Essay must include the submitter's name, email address, mailing address, telephone number, and school attended.
5. A total of \$1,500 in US dollars shall be divided between the award winning essays, and all rights to award winning essays shall become the property of the State Bar of Michigan.
6. The Information Technology Section of the State Bar of Michigan reserves the right to make editorial changes, and to publish award winning essays in the Section's newsletter, the *Michigan IT Lawyer*.
7. Essay must be submitted as a Microsoft Word document, postmarked by June 30, 2012, and emailed to dsyrowik@brookskushman.com. ■

The *Michigan IT Lawyer* is pleased to present “Facebook: The New Service of Process Agent” by Darrin Dimoff, J.D. 2011, University of Detroit Mercy School of Law; B.A., *magna cum laude*, 2007, Kent State University. The author wishes to thank his family for their support all through his years and those professors who have had a profound impact on his life.

The statements made and opinions expressed in this essay are strictly those of the author, and not the State Bar of Michigan or the Information Technology Law Section. Comments regarding this article can be forwarded to the *Michigan IT Lawyer*, care of michael@gallo.us.com. Enjoy!

Facebook: The New Service of Process Agent

By Darrin Dimoff

Introduction

Imagine for one moment you are representing a plaintiff faced with the following *real life* service of process situation:

[The] defendant worked and lived full-time in a high security company compound where armed guards were under orders not to allow a process server access. Thus, unless the plaintiff retained the *services of a James Bond or a Chuck Norris* to infiltrate the compound, she would be unable to serve the divorce papers on her husband.¹

Now imagine that James Bond and Chuck Norris are unavailable or the mission is too risky for either of them to complete service of process. Who or what would you turn to? Cue the Rocky theme music...“Facebook” enters the room. Who is this hero you may ask? Facebook has more than 500 million active users.² About 70% of Facebook users are outside the United States.³ 50% of active users log on to Facebook in any given day.⁴ People spend over 700 billion minutes per month on Facebook.⁵ In addition, there are more than 200 million active users currently accessing Facebook through their mobile devices.⁶ Since its inception in 2004, Facebook has been hailed by younger generations as the premier social media network for connecting with friends, family, and coworkers. Among other things, it is been used as a tool for communicating, sharing pictures, and providing content (e.g., web links, news stories, blog posts, notes, etc.). However, Facebook is no longer the exclusive domain of technophiles and college students. In fact, the fastest growing demographic for Facebook and other social media networks are those over the age of 50.⁷ While Facebook has served the interest of those wishing to stay “connected,” it has also been a catalyst for entrepreneurs, software developers, and companies wishing to reach out to customers.⁸ Yet,

the legal utility of Facebook is currently untapped in many respects. This paper will advocate for the use of Facebook as a service of process agent. The term “agent” is used loosely in the present context and is merely meant to convey the idea that Facebook is a viable means of completing service of process upon someone. Because service of process on organizational entities may in many cases be accomplished by delivering process to an authorized corporate officer or agent of the defendant,⁹ using Facebook to complete service of process becomes especially useful when dealing with *individuals or online businesses* that lack such formal “authorized agents.” Thus, service of process via Facebook might be more properly termed a “quasi-agent” in this sense.

For purposes of analysis, this paper will mainly focus on the Federal Rules of Civil Procedure rather than state procedural rules which vary and are inconsistent with other jurisdictions. This paper will not focused on a linguistic analysis on how the proposed amendment for allowing service of process via Facebook should be written—merely that one should be adopted.¹⁰ Because Facebook is currently the premier social media network it was chosen to be used as a conduit to examine the issues surrounding service of process on the internet and more specifically social media networks. However, it is notable that much of the analysis is applicable to other social media networks such as Twitter¹¹, LinkedIn¹², MySpace¹³, etc. Upon completion of this paper, readers will be left wondering why the legal community is stubbornly attached to antiquated service of process methods.

I. Service of Process

In General

The notice function of service of process protects an individual’s Fifth and Fourteenth Amendment rights not to

be deprived of life, liberty, or property without due process of law.¹⁴ “The fundamental requisite of due process of law is the opportunity to be heard.”¹⁵ “[T]he core function of service is to supply notice of the pendency of a legal action, in a manner and at a time that affords the defendant a fair opportunity to answer the complaint and present defenses and objections.”¹⁶

Service of process is usually completed by a process server. The term “process server” refers to any person authorized by the federal rules or state statutes to perform service of process. Fed. R. Civ. P. 4 states that service of process may be effected by “[a]ny person who is at least 18 years old and not a party....[T]he court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court.”¹⁷

Case Law History

The United States Supreme Court in *Pennoyer v. Neff* gave rise to the rule that a court’s jurisdiction could be established by service of process on a defendant only within the forum state.¹⁸ This territorial concept of jurisdiction greatly restricted the use of service by publication. In fact, according to the Court in *Pennoyer* service by publication was always invalid where the defendant was a nonresident and the cause of action did not involve property within the state.¹⁹ As a defendant’s absence from the forum state became more prevalent, this rigid rule proved to be unworkable and outdated. The U.S. Supreme Court later relaxed the requirements of personal jurisdiction. In *International Shoe Co. v. State of Washington* the Court required an analysis of the defendant’s minimum contacts within the state, rather than domiciliary status alone.²⁰ Despite the Court’s expansion of the rule, the requirements for affecting substituted service remained relatively unchanged. The Court merely stated that the standard of a particular form of substitute service is adequate where it “gives assurance that the notice will be actual.”²¹

In 1950, the standard for publication was challenged in *Mullane v. Central Hanover Bank and Trust*.²² In *Mullane* the United States Supreme Court held that notice is sufficient under due process requirements when individuals whose interests are at stake in legal proceedings are provided with notice reasonably calculated to apprise them of an action and afford them an opportunity to present their objections.²³ The notice must be of such nature as to reasonably convey the required information, and it must afford a reasonable time for those interested to make their appearance.²⁴ Ultimately, this “reasonably calculated” language became the heart of the constitutional standard at which service of process is judged by today.

Other cases, guided by the constitutional standard outlined in *Mullane*, have slowly expanded acceptable service of process methods. For example, in *New England Merchants National Bank v. Iran Power Generation and Transmission Co.*, a group of American plaintiffs were unable to serve process on Iranian defendants as a result of the diplomatic breakdown between the United States and Iran.²⁵ The district court allowed service of process via telex, a form of electronic communication now obsolete.²⁶ Yet in another international service of process case, the court approved the use of television as an alternative method of process.²⁷ More recently in 2000, the United States Bankruptcy Court expanded the use of electronic service by authorizing *international* service of process via mail, *email* and *facsimile* in the case of *In re International Telemedia Associates, Inc.*²⁸

The Constitutional Standard that Governs Service of Process

The constitutional standard which continues to control today for adjudging the adequacy of alternative means of service was outlined by the court in *Mullane*. The court stated:

“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. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance.”²⁹

The *Mullane* court went one step further, providing that “where conditions do not reasonably permit such notice... the form chosen is not substantially less likely to bring home notice than other...feasible and customary substitutes.”³⁰ Typically, personal service has been the preferred method of choice because it easily satisfies both procedural and constitutional standards.³¹ However, where personal service is impractical, substitute service is allowed to bring finality to the action.³² The court in *Rio Properties, Inc. v. Rio International Interlink* reaffirmed this same idea when it stated that, “this broad constitutional principle unshackles the federal courts from anachronistic methods of service and permits them entry into the technological renaissance.”³³

II. The Benefits of Using Facebook Over Other Acceptable Service of Process Methods

Between case law and Fed. R. Civ. P. 4, effective service

of process has been primarily allowed in the following ways: personal service, service by U.S. mail, service by publication, substitute service,³⁴ and more recently service of process via email.³⁵ While service of process via Facebook is not included in this list, it provides multiple benefits over these acceptable methods.

General Benefits of Using Facebook Over Other Methods of Process

Service of process via the Facebook interface can conceivably be achieved two ways: (1) private message; or (2) wall post. Facebook's private message communication feature is basically an internal email system for *private communications* between Facebook users. Alternatively, Facebook's wall post feature is essentially a communication on a virtual bulletin board (known as a Facebook "wall") that may be public, semi-public, or viewable only by "Facebook friends" depending upon a user's privacy settings. Each Facebook user profile has his or her own Facebook wall separate and distinct from other Facebook users. In the simplest of terms, the difference between a private message and a wall post is that the latter is typically accessible to a broader audience. While these Facebook communication features may have different benefits as compared to each individual service of process method, generally service of process via Facebook has the following benefits over all traditional methods of process:³⁶ (1) transmission and receipt is instantaneous; and (2) cost savings.

Transmission and Receipt is Instantaneous

With a click of the button service of process via Facebook can be completed. Service of process via Facebook is instantaneous. "Instantaneous" is not an overstatement in the least bit. Because more than 200 million active users currently access Facebook through their mobile devices, notice to a defendant is instantaneous wherever he or she may be.

Cost Savings

Service of process via Facebook is virtually costless. A user need not pay to obtain or open an account on Facebook.³⁷ In fact, all that is necessary is an internet connection which may require a monthly charge for its service, but its use is not solely for Facebook access. Nonetheless, service of process via Facebook is cheaper than first class mail, certified mail, registered mail,³⁸ notice by publication, or using a process server. Costs and resources associated with locating a defendant's physical location are avoided as well.³⁹ Gone are the days of a process server searching to physically locate a

defendant or his residence. A simple search on the Facebook interface or a third party search engine⁴⁰ from the convenience of a computer chair may uncover the defendant.⁴¹ These cost savings become even greater when examining service of process in other contexts. For example, service of process typically involves handing printed documents to the defendant(s). While these printing and process server service costs are in most cases minimal in the individual sense, such costs become more onerous when numerous defendants are involved. Because electronic documents are used in conjunction with service of process via Facebook, the cost savings become apparent. Thus, service of process via Facebook is a viable means of promoting the intent of the Federal Rules of Civil Procedures to limit the overall costs of service.⁴²

The Benefits of Using Facebook Over Personal Service of Process

"Personal service of written notice within the jurisdiction is the classic form of notice [that is] always adequate in any type of proceeding."⁴³ In general, courts prefer personal service, whereby the defendant is handed a copy of the summons and the complaint,⁴⁴ because it "guarantees actual notice of the pendency of a legal action."⁴⁵ However, paper-based service of process is conducive to a defendant wishing to evade a process server. This is not the case when performing service of process via Facebook. A Facebook account is static, in the sense that it does not move. In fact, because Facebook has launch applications enabling users to access their accounts from portable devices such as iPhones, Androids, BlackBerrys, and other smartphones, figuratively speaking a defendant is provided with an electronic copy of the complaint and summons in hand.⁴⁶ Furthermore, the only chance of evasion that a defendant might have is adjusting his or her privacy settings in such a way to prevent communications⁴⁷ or deactivation of the Facebook account itself.⁴⁸ While such action is plausible, there is a disincentive since such actions will limit a Facebook user from fully enjoying the benefits of having an account.

The Benefits of Using Facebook Over Service of Process by U.S. Mail

The United States Supreme Court has deemed service of process by *registered* or *certified mail* to be constitutionally sufficient in providing notice to a defendant under certain circumstances,⁴⁹ and it is widely permitted under both federal and state court rules of civil procedure. In addition, Fed. R. Civ. P. 4(d)(1)(G) allows a plaintiff to serve a defendant via *first-class* mail if the defendant agrees to *waiver* of formal

service of process. Collectively, this dependence on U.S. mail for service of process is being threatened. Most recently, post offices across the nation have been closing and proposals for a 5-day delivery schedule have been on the table for a while now.⁵⁰ While no changes have been made as of the date of this paper, a scaled-back U.S. Postal Service is imminent. When such reduced delivery schedule becomes active, plaintiffs will need to find other service of process methods to meet time constraints and possible statute of limitation issues. Facebook is one such option since it is effectively open for use 24 hours a day, 7 days a week, and 365 days a year.

Service of process by U.S. Mail has other major drawbacks as well. Primarily, the plaintiff must find a physical address that is “reasonably calculated” to provide notice to the defendant. Given the mobility of our current society, arguably people have a more consistent online presence (e.g., email address, blog account, Facebook account, etc.) than they do a physical address. Secondly, even assuming this can be accomplished, a defendant may easily avoid service of process at a physical address by moving or claiming ignorance. Thirdly, in the context of first class mail, a mailbox or mailroom may serve a number of individuals aside from the defendant thus increasing the risk that the notice is lost or misplaced through post arrival physical movement. None of these issues are inherent with Facebook. Unlike a physical address, a Facebook account typically serves and is accessed by only one individual—the defendant. Thus, a plaintiff can be reasonably assured that only the owner of the account will receive the service of process.

The Benefits of Using Facebook Over Service of Process by Publication Notice

The *Mullane* court articulates the tension between protecting notions of due process and the allowance of service by publication: “Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper’s normal circulation the odds that the information will never reach him are large indeed.”⁵¹ The Court seems to recognize that a defendant is likely to be unaware of a pending action that involves his interests when implementing the use of notice by publication. Moreover, service by publication is detrimentally flawed because it is limited by a newspaper’s circulation area. This problem is further compounded in cases where the defendant might not even subscribe to the publication used for notice. Thus, *Mullane* ruled that service by publication is sufficient when it is the only method of notice available to plaintiff.⁵²

Service of process via Facebook avoids these problems. Facebook wall postings and private messages offer far more direct methods of providing notice to a defendant. Assuming a wall posting on user’s Facebook page was ordered, the defendant would become aware of it as would others with access to his or her page. In fact, in the proposed example describing the use a wall post, it is likely that “Facebook friends”⁵³ of the defendant might alert him or her to the wall post containing the notice. Arguably, a notice on the defendant’s main Facebook page is more likely to put a defendant on notice than some small type buried in the back of a classified section.⁵⁴ Alternatively, if service of process is completed via Facebook’s private message⁵⁵ feature, a defendant would be directly and solely notified without others knowing. Both Facebook messages and wall posts would trigger a notification upon login that the user-defendant would see. Thus, the forgoing provides stronger assurance that the defendant will receive and become aware of notice as compared to service by publication.

The Benefits of Using Facebook Over Substituted Service of Process

The Supreme Court in *McDonald v. Mabee* ruled that “a summons left at [the defendant’s] last and usual place of abode would have been enough” to satisfy constitutional due process requirements in that circumstance.⁵⁶ This continues to be the commonly used method of substituted service. Specifically, the federal rules require that the summons be left at the defendant’s “dwelling or usual place of abode with someone of suitable age and discretion then residing therein.”⁵⁷ In addition to the cost savings already mention, service of process via Facebook provides greater assurance that the defendant will actually receive notice in comparison to substituted service. Unlike documents delivered by substituted service of process to someone other than the defendant, notice sent to a defendant’s Facebook account has no potential for post arrival physical movement and will remain in the defendant’s Facebook account until deletion, thereby eliminating the risk of misplacement.

The Benefits of Using Facebook Over Service of Process by Email

Much like email, service of process via Facebook can be achieved for little or no cost and can reach a defendant instantaneous. Secondly, Facebook and email are similar in the sense that both continue to be accessed remotely⁵⁸ by their respective users. Thirdly, both Facebook messaging and email allow for attachments of electronic documents (i.e.,

the summons, complaint, etc.) and the use of hyperlinks. Lastly, Facebook's user-to-user interface much like email, allows messages to be sent to a single recipient or several recipients. Email and Facebook's private messaging feature are virtually synonymous system types. In fact, Facebook's private message feature is merely an internal email system for Facebook users. This is further supported by the fact that Facebook users now have an option of creating a _____@Facebook.com email address.⁵⁹ For example, defendant John Doe, would be able to claim the email address John_Doe@Facebook.com or another similar name. Thus, *anyone* rather than a registered Facebook account holder could effectively email John_Doe@Facebook.com, and this message would be routed to the defendant's private message inbox feature within his or her Facebook.

So what are the benefits of performing service of process via Facebook over email? For an elusive defendant with an unknown e-mail address, Facebook might prove useful. Not only could it be the *only means* by which to notify the defendant of an action who has an unknown email address, but it might be the best form of process to satisfy the constitutional due process threshold. Secondly, service of process via Facebook is more likely to provide notice to the *right* defendant. The world is an imperfect place and attempts at serving the right defendant often fail for numerous reasons (e.g., bad information, change of residence, etc.). Facebook account users provide copious amounts of personal information on their profiles.⁶⁰ Depending on the Facebook user's privacy settings, some if not all of this personal information may be accessible to others on the outside or a potential plaintiff.⁶¹ Even with the strictest privacy settings on Facebook, a plaintiff at a minimum will be provided with a name and photo of the potential defendant attempting to be served.⁶² Thus, a potential plaintiff with knowledge of certain attributes of the defendant could conceivably match known information with information contained on the user-defendant's Facebook profile to verify that the correct defendant is being served notice.

Another strong argument for use of Facebook over traditional email for service of process is that a defendant is more likely to receive notice via Facebook. Defendants may have or maintain multiple email addresses. Some of these email addresses may or may not be checked or used more than others. The use of email is also compounded by spam problems. Conversely, a Facebook user has *one* account,⁶³ and the Facebook messaging system does not currently suffer from junk mail issues closely related to traditional email. Thus, a defendant is more likely to receive notice and less likely to claim non-receipt.

III. Addressing Concerns and Resistance of Using Facebook Over Other Traditional Means of Service of Process

Although service of process via Facebook is not a perfect, airtight method, it does not have to be.

[T]he Due Process Clause has never been construed to require that the procedures used to guard against an erroneous deprivation of a protectable [sic] "property" or "liberty" interest be so comprehensive as to *preclude any possibility of error*. The Due Process Clause simply *does not mandate* that all governmental decisionmaking [sic] comply with standards that assure perfect, error-free determinations.⁶⁴

Nonetheless, it is worth noting that flaws and limitations are not unique to Facebook. Other more traditional means of service certainly have their flaws as well. The United States Postal Service is vulnerable to human error, resulting in lost mail and misdeliveries to wrong addresses.⁶⁵ Notice by publication can be misprinted, and courts have consistently noted the slim chances that modern day defendants will ever actually receive notice by publication.⁶⁶

Addressing Specific Concern #1 – Verifying the Defendant Received Noticed

There is some concern that service of process via Facebook is an unreliable form of serving a defendant because there is no way to verify that the defendant received and read the notice. This argument is misguided. Due process requires only that notice is delivered in a form that it is "reasonably calculated" to appraise him of the action against him so that he may defend it.⁶⁷ Due Process does not require confirmation that the defendant read the notice served upon him. Moreover, other constitutionally accepted methods such as service by publication and methods allowed under substitute service⁶⁸ provide no confirmation that the defendant himself actually received notice, or even read it for that matter.

Even putting aside this constitutional argument, proof of receipt can be indirectly confirmed through a multitude of ways by showing evidence of a defendant-user's Facebook account activity. The Facebook user interface provides various ways for people to interact and communicate. For example, a Facebook user might post a link, comment, or status on *his* own Facebook wall for others to see. Alternatively, a Facebook user might post a link, comment, or provide a response on a *friend's* Facebook wall for others see. Yet, another Facebook user might prefer to use Facebook's private message feature when communicating with a friend. All

these methods of communication provide an ancillary benefit for evidence purposes. This benefit is a visible electronic timestamp. A defendant's argument that he never or rarely uses his Facebook account, and thus was not served properly, would have no weight. A plaintiff could merely provide the court with a record of the defendant's frequent postings, comments, responses, etc. with their respective timestamps showing Facebook account activity to the contrary.

There are other ways to verify receipt of notice. If a plaintiff completes service of process via "wall posting" on the defendant's Facebook profile, it is unlikely that defendant could claim ignorance. Most users have their accounts set up to provide notifications to their handheld devices. Thus, Facebook would notify the user of the posting and include a portion of the posted text. Even assuming this is not the case, the defendant would likely become aware of the notice through other "Facebook friends" who might alert the defendant or inquire through Facebook or other communication means as to the subject matter of the legal action. This is a likely scenario since wall postings are traditionally visible for all Facebook friends to see and because human nature has shown us that people (especially those on Facebook!) tend to pry in the lives of others. Furthermore, it is likely that user-defendant would delete such notice to avoid comments from other Facebook Friends, embarrassment, and clutter on his or her Facebook page. The act of deletion would verify that the defendant received notice.

In the event that a wall posting of notice is not feasible due to restrictive privacy settings, service of process via Facebook could still be achieved through a private message.⁶⁹ Facebook messages allow a user to send messages with *attachments* and *hyperlinks*. A plaintiff could send a defendant a message with the complaint and summons as an attachment or a plaintiff could send a private message containing a password with a link to a secured web site hosting the complaint and summons documents. If a plaintiff chose the latter method, this password-protected website could be set-up in such a way to provide a plaintiff with an access log for evidence purposes.

Plaintiffs dealing with an evasive, adversarial type defendant possibly have another tool in their arsenal for proving receipt. Facebook maintains in its privacy policy that it "may disclose information pursuant to *subpoenas*, *court orders*, or other requests (including *criminal and civil matters*) if...the response is *required by law*."⁷⁰ Assuming a court order can be had, it is plausible that Facebook might provide an access log⁷¹ to a court detailing when a served defendant accessed his or her account through Facebook computer servers.

Addressing Specific Concern #2 – Verifying the Authenticity of the Defendant's Facebook Account

Another point of concern is that there is no way of verifying the authenticity of defendant when performing service of process via Facebook. Arguably service of process via U.S. mail, service by publication, substitute service, and service by email lack similar control features in some sense. Nonetheless, a Facebook profile should, in theory, actually be that of the registrant because the Terms of Use require users to:

"(1) You will not provide any false personal information on Facebook, or create an account for anyone other than yourself without permission; (2) You will not create more than one personal profile...(7) You will keep your contact information accurate and up-to-date; (8) You will not share your password...let anyone else access your account, or do anything else that might jeopardize the security of your account..."⁷²

In addition, there are ways to ensure authenticity of the defendant's Facebook account. A fully filled-out Facebook profile contains a treasure trove of personal information, including: a user's name; birthday; profile photo; gender; sexual preference; relationship status; list of friends; current city; hometown; languages; employment history; education (e.g., college/university and high school); contact information (e.g., phone number, address, city, zip, etc.); religion; political views; website; email; activities; interests; people who inspire you; favorite quotations; music; books; movies; television; games; sports you play; favorite sports teams; favorite athletes. Depending on a Facebook user's privacy settings, all or some of this information may be available for a plaintiff to see. A plaintiff could conceivably cross reference known information with accessible information contained on a Facebook profile. For example, a plaintiff might know the identity of the defendant's significant other or friends of the defendant. These two pieces of information would be contained in the Defendant's relationship status category and friend lists on Facebook. Both pieces of information coupled with matching birthday, profile picture, etc. would make it unlikely that the Facebook account lacks authenticity.

IV. Reasons to Support the Use of Facebook as a Traditional Means of Service of Process

The due process concerns for service of process via Facebook mirror those of other service of process methods. The central issue is whether a court finds that a Facebook message or wall posting is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to pres-

ent their objections. In many cases, a Facebook message or wall posting would pass muster.⁷³ Nevertheless, there are other multiple reasons that provide support for the use of Facebook as service of process method.

Federal Law Currently Allows It in the Context of International Service of Process

Pursuant to Fed. R. Civ. P. 4(f)(3), a plaintiff may serve an individual in a foreign country “by other means not prohibited by international agreement, as the court orders.”⁷⁴ Arguably this catchall provision effectively provides a court with the flexibility to allow service of process via Facebook or other electronic means in the context of serving an individual in a *foreign* country.⁷⁵ However, in order for courts to allow electronic service on a *domestic* defendant, there would need to be a statutory extension of the rule designating its allowance.

Other Countries Have Allowed Social Media Networks for Service of Process

While no reported decision has been found from a court in the United States allowing service of process using Facebook, a growing number of jurisdictions outside the United States are allowing parties to be served via popular social networking sites. These countries include: Australia⁷⁶, New Zealand⁷⁷, Canada⁷⁸, and the United Kingdom⁷⁹.

Electronic Means are Used in Other Areas of the Legal Framework

Service of process via Facebook should be allowed since it would create conformity with other sections of the Federal Rules of Civil Procedure that allow electronic means to be used in various contexts. In 2006 *electronically stored information*, or ESI, became a distinct category of discoverable information under Rule 34.⁸⁰ ESI has included content contained on Facebook profiles and other social media networks. Furthermore, electronic filing systems are currently “in use in 99% of the federal courts. Millions of cases and tens of millions of documents are on [these]... systems and more than 320,000 attorneys across the country are filing documents electronically.”⁸¹ Thus, the allowance of Facebook or any other method of electronic service of process would likely continue to foster goals of judicial efficiency and stay current with trends in technology.⁸²

Waiver of service of process can “be sent by first-class mail or *other reliable means*.”⁸³ A court would likely determine “other reliable means” to include Facebook. This is further supported by the fact that someone replying to a waiver of

process via Facebook, could respond *without incurring costs*. Therefore, the waiver request would also comply with the requirement of providing a defendant with a “*prepaid means of compliance in writing*.”⁸⁴ While the means to achieve waiver of service of process are not technically service of process methods since the defendant is waiving his right to formal service of process in exchange for an extended time to answer the complaint,⁸⁵ the end result is the same—the defendant is put on notice.

Conclusion

As the forgoing analysis and rationales included herein show, service of process via Facebook is superior to many forms of traditional service. The strongest criticism against electronic service of process is that it lacks the ritual function that only paper-based, in-hand service can provide⁸⁶—which is not a valid reason to prohibit the use of Facebook as a service of process method. The pervasive impact of social media networks such as Facebook on modern society has indisputably changed how people interact and communicate. In many cases traditional methods for providing notice do not conform to actual behavior. Due process has become a loophole, rather than a safeguard, for defendants to evade service.⁸⁷ Professional process servers soon may no longer be required to play cat-and-mouse games in the physical world to personally serve individuals. The customary means for communication has shifted from face-to-face interactions to electronically-mediated interactions that involve private messages, comments, wall posts, etc. Yet, the legal community in particular is sluggish in responding to this changing world. It is stubbornly attached to the antiquated and ritualistic service of process methods of physically handing a defendant a printed piece of paper. This requirement of a physical connection is arbitrary and unnecessary. Service of process via Facebook avoids the inherent physical limitations of the present scheme. A United States District Court summarized it best when it foreshadowed the incorporation of modern technology into service of process, stating that:

[Courts] 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... 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.⁸⁸

The constitutional standard outlined in *Mullane* is a catalyst for change when rules become outdated and anti-

quoted. When the methods available are no longer reasonably calculated to reach the defendant, the courts must, in turn, make the changes necessary to comply with the standard.⁸⁹ Notions of due process demand that the courts authorize the means necessary for a plaintiff to best afford notice reasonably calculated to reach the defendant. There are many instances in which service of process via Facebook is constitutionally sufficient, other instances in which service of process via Facebook is superior to traditional forms of service, and even some instances in which service of process via Facebook is constitutionally required.

It is worth noting, that when the Federal Rules of Civil Procedure were first drafted, the typewriter and telephone were on the cutting edge of communications technology.⁹⁰ Personal computers, email, smartphones, and social networks such as Facebook did not exist. The trend toward using social media networks such as Facebook for electronic service of process⁹¹ is “a logical step forward in the evolution of civil procedure and reflects the popular use of new technologies in common communication.”⁹² ■

Endnotes

- 1 *Snyder v. Alternate Energy Inc.*, 857 N.Y.S.2d 442, 447 (N.Y. Civ. Ct. 2008) (Judge Cooper commenting on a service of process issue facing a wife trying to divorce husband in *Hollow v. Hollow*, 193 Misc.2d 691, 747 N.Y.S.2d 704 (S.Ct., Oswego County 2002)).
- 2 Press Room, Facebook.com, <http://www.Facebook.com/?ref=logo#!/press/info.php?statistics> (accessed April 24, 2011).
- 3 *Id.*
- 4 *Id.*
- 5 *Id.*
- 6 *Id.*
- 7 Courtney Rubin, Inc.com, *Internet Users Over Age 50 Flocking to Social Media*, <http://www.inc.com/news/articles/2010/08/users-over-50-are-fastest-growing-social-media-demographic.html> (citing survey from Pew Research Center’s Internet & American Life Project) (accessed April 24, 2011).
- 8 Press Room, Facebook.com, <http://www.Facebook.com/?ref=logo#!/press/info.php?statistics> (“Every month, more than 250 million people engage with Facebook on external websites”) (accessed April 24, 2011).
- 9 The term “agent” use in the context of Fed. R. Civ. P. 4(h)(1) (B) refers to an actual person authorized to accept service of process. The rule states: “[Service must be completed] by delivering a copy of the summons and of the complaint to an officer, a managing or *general agent*, or any *other agent authorized* by appointment or by law to receive service of process and--if the agent is one authorized by statute and the statute so requires--by also mailing a copy of each to the defendant.”*Id.*
- 10 The author believes that any amendments to the Federal Rules of Civil Procedures can be best drafted by the Advisory Committee for the Federal Rules of Civil Procedure.
- 11 *See generally*, Twitter, www.twitter.com (accessed April 24, 2011).
- 12 *See generally*, LinkedIn, www.linkedin.com (accessed April 24, 2011).
- 13 *See generally*, MySpace, www.myspace.com (accessed April 24, 2011).
- 14 U.S Const. amend. V, XIV
- 15 *Grannis v. Ordean*, 234 U.S. 385, 394 (1914).
- 16 *Henderson v. U.S.*, 517 U.S. 654, 672 (1996).
- 17 Fed. R. Civ. P. 4
- 18 *Pennoyer v. Neff*, 95 U.S. 714, 720 (1877).
- 19 *Id.* at 724.
- 20 *Intl. Shoe Co. v. State of Wash., Off. of Unempl. Compen. and Placement*, 326 U.S. 310, 316 (1945).
- 21 *Id.* at 320.
- 22 *Mullane v. C. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).
- 23 *Id.* at 314.
- 24 *Id.*
- 25 *New Eng. Merchants Nat. Bank v. Iran Power Generation and Transmission Co.*, 495 F. Supp. 73, 76 (S.D.N.Y. 1980).
- 26 *Id.* at 80.
- 27 *Smith v. Islamic Emirate of Afghanistan*, 2001 WL 1658211 (S.D.N.Y. Dec. 26, 2001).
- 28 *In re Intl. Telemedia Associates, Inc.*, 245 B.R. 713, 721 (Bankr. N.D. Ga. 2000); see also *Rio Properties, Inc., v. Rio Intl. Interlink*, 284 F.3d 1007, 1018 (9th Cir. 2002) (noting that the court upheld the validity of service of process via email where a casino brought a trademark infringement action against a foreign internet business that was without a physical address).
- 29 *Mullane*, 339 U.S. 306, 314 (1950).
- 30 *Id.* at 315.
- 31 *Mullane v. C. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950) (“Personal service of written notice within the jurisdiction is the classic form of notice always adequate in any type of proceeding.”).
- 32 *Id.*
- 33 *Rio Properties, Inc. v. Rio Intern. Interlink*, 284 F.3d 1007, 1017 (9th Cir. 2002).
- 34 *See* Fed. R. Civ. P. 4(e)(1), 4(f) (stating that other permitted service of process methods include: any means allowed under state law and any means allowed by the law of the country where the summons is to be served or any internationally agreed means of service.).
- 35 *See In re Intl. Telemedia Associates, Inc.*, 245 B.R. 713 (Bankr. N.D. Ga. 2000); see also *Rio Properties, Inc., v. Rio Intl. Interlink*, 284 F.3d 1007 (9th Cir. 2002).
- 36 An argument can be made that service of process via email provides the same benefits, but its use as domestic service

- of process method has yet to become widespread as a traditional means of providing notice as of the date of this paper.
- 37 Help Center, Facebook.com, <http://www.Facebook.com/help/?topic=signup> (“Facebook is a free site and will never require that you pay to continue using the site...”)(accessed April 24, 2011).
 - 38 See Extra Services Prices, USPS.com, <http://www.usps.com/prices/extra-services-prices.htm> (accessed April 24, 2011).
 - 39 Locating an elusive defendant sometime requires the use of private investigator and/or expensive databases.
 - 40 See Facebook’s Privacy Policy, Facebook.com, “How we share information,” <http://www.Facebook.com/policy.php>, (“We generally limit search engines’ access to our site. We may allow them to access information set to the “every-one” setting (along with your name and profile picture) and your profile information that is visible to everyone. You can change the visibility of some of your profile information using the customize section of your privacy settings. You can also prevent search engines from indexing your profile using the Applications and Websites privacy setting.”) (accessed April 24, 2011).
 - 41 The search results are dependent on the user-defendant’s privacy settings.
 - 42 See Fed. R. Civ. P. 4 cmt. C4-17, (allocating costs of service by “permit[ing] the court to impose on the defendant who refuses to waive service the costs of the formal service that must afterwards be undertaken...”)(emphasis added).
 - 43 *Mullane*, 339 U.S. 306, 313 (1950).
 - 44 See *Greene v Lindsey*, 456 US 444, 449 (1982) (noting that personal service presents the “ideal circumstance under which to commence legal proceedings”).
 - 45 *Id.*
 - 46 In many cases a Facebook user will have his or her account linked to their mobile device and adjust such settings to provide some type of notification alert (e.g., sound, blinking led, etc.) when receiving a Facebook message, post, event invite, etc.
 - 47 See Evan E. North, *Facebook Isn’t Your Space Anymore: Discovery of Social Networking Websites*, 58 U. Kan. L. Rev. 1279, 1298 (2010) (“Facebook’s customizable privacy settings allow users to restrict access to any component of their profile, and users can do so selectively for certain groups or individuals”).
 - 48 See Facebook’s Privacy Policy, Facebook.com, “Deactivating or deleting your account,” <http://www.Facebook.com/policy.php> (“If you want to stop using your account you may deactivate it or delete it. When you deactivate an account, no user will be able to see it, but it will not be deleted. We save your profile information (connections, photos, etc.) in case you later decide to reactivate your account. Many users deactivate their accounts for temporary reasons and in doing so are asking us to maintain their information until they return to Facebook. You will still have the ability to reactivate your account and restore your profile in its entirety. When you delete an account, it is permanently deleted from Facebook. You should only delete your account if you are certain you never want to reactivate it. You may deactivate your account on your account settings page or delete your account on this help page.”) (accessed April 24, 2011).
 - 49 See *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800 (1983) (stating notice by mail to party whose name and address is reasonably ascertainable and which ensures actual notice is “a minimum constitutional precondition” in a legal proceeding); *Hess v. Pawloski*, 274 U.S. 352, 354 (1927) (stating service on a nonresident motorist is sufficient when a copy of the complaint is mailed to the defendant by registered mail and is also left with registrar).
 - 50 Donna Leinwand, USA Today.com, *Postal Service seeks 5-day delivery*, http://www.usatoday.com/news/washington/2010-03-01-postalservice_N.htm (accessed April 24, 2011).
 - 51 *Mullane*, 339 U.S. 306, 315 (1950).
 - 52 *Id.* at 317.
 - 53 On Facebook when a user wants to connect or interact directly with another individual user, the user may request to be added to the other user’s group of “friends.” “Facebook friends” typically have greater access to content on one another’s profile.
 - 54 *Mullane*, 339 U.S. 306, 320 (1950), the Supreme Court stated: “Publication may theoretically be available for all the world to see, but it is too much in our day to suppose that each or any individual beneficiary does or could examine all that is published to see if something may be tucked away in it that affects his property interests.”
 - 55 Help Center, Facebook.com, <http://www.Facebook.com/help/?page=18845> (“Messages has always been the place for private exchanges on Facebook.”) (accessed April 24, 2011).
 - 56 *McDonald v. Mabee*, 243 U.S. 90 (1917).
 - 57 Fed. R. Civ. P. 4(e)(2)(B).
 - 58 This is in reference to society’s ability to access Facebook from other computers, smartphones, tablets, etc.
 - 59 Help Center, Facebook.com, http://www.Facebook.com/about/messages/#!/help/?topic=new_messages (accessed April 24, 2011).
 - 60 For a more detailed discussion see *Infra* pt. IV(B) .
 - 61 Facebook users can manage the level of privacy on their profiles by either letting anyone view the information or limiting access to specific people, like “friends” or “friends of friends.”
 - 62 See Facebook’s Privacy Policy, Facebook.com, “Name and Profile Picture”, <http://www.Facebook.com/policy.php> (“Facebook is designed to make it easy for you to find and connect with others. For this reason, your name and profile picture do not have privacy settings. If you are uncomfortable with sharing your profile picture, you should delete it (or not add one). You can also control who can find you when searching on Facebook or on public search engines using the Applications and Websites privacy setting.”) (accessed April 24, 2011).
 - 63 Facebook Terms of Use, Facebook.com, “Registration and Account Security”, <http://www.Facebook.com/terms.php> (“You will not create more than one personal profile...”)(accessed April 24, 2011).

- 64 *Mackey v. Montrym*, 443 U.S. 1, 13 (1979).
- 65 Andriana L. Shultz, *Superpoked and Served: Service of Process Via Social Networking Sites*, 43 U. Rich. L. Rev. 1497, 1527-28 (2009).
- 66 See *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 320 (1950) (“Publication may theoretically be available for all the world to see, but it is too much in our day to suppose that each or any individual beneficiary does or could examine all that is published to see if something may be tucked away in it that affects his property interests.”).
- 67 *Id.*
- 68 Methods currently allowed under the Federal Rules involve leaving a copy of the summons and complaint with someone at the defendant’s dwelling house.
- 69 If Facebook is used for service of process, it will be completed via Facebook’s private message feature in almost all cases because privacy settings do not typically restrict one Facebook user from contacting another Facebook user irrespective of whether they share a connection as formal “Facebook friends.”
- 70 Facebook’s Privacy Policy, Facebook.com, “To respond to legal requests and prevent harm”, <http://www.Facebook.com/policy.php>. (accessed April 24, 2011).
- 71 See Facebook’s Privacy Policy, Facebook.com, “Site activity information”, <http://www.Facebook.com/policy.php>. (“We keep track of some of the actions you take on Facebook, such as adding connections (including joining a group or adding a friend), creating a photo album, sending a gift, poking another user, indicating you “like” a post, attending an event, or connecting with an application. In some cases you are also taking an action when you provide information or content to us. For example, if you share a video, in addition to storing the actual content you uploaded, we might log the fact that you shared it.”) (accessed April 24, 2011).
- 72 Facebook Terms of Use, Facebook.com, “Registration and Account Security”, <http://www.Facebook.com/terms.php> (accessed April 24, 2011).
- 73 See Ronald J. Hedges, Kenneth N. Rashbaum & Adam C. Losey, *Electronic Service of Process at Home and Abroad: Allowing Domestic Electronic Service of Process in the Federal Courts*, 4 Fed. Cts. L. Rev. 55, 69 (2010).
- 74 Fed. R. Civ. P. 4(f)(3).
- 75 Ronald J. Hedges, Kenneth N. Rashbaum & Adam C. Losey, *Electronic Service of Process at Home and Abroad: Allowing Domestic Electronic Service of Process in the Federal Courts*, 4 Fed. Cts. L. Rev. 55, 56 (2010).
- 76 Lisa McManus, LexisNexis Technology Blog, *Service of Process through Facebook*, <http://www.lexisnexis.com/community/ideas/blogs/lexisnexis/archive/2011/02/18/service-of-process-through-Facebook.aspx> (“[F]oreclosure notice served on couple who could not be found through traditional means. Attorneys were able to match up personally identifiable information on the defendants’ Facebook profiles (birth dates, friends, and email addresses) with information disclosed in the defendants’ loan applications. Court ordered that *service could be perfected by sending a private electronic message, with the legal documents attached, to each defendant’s Facebook page* alerting the defendants to the entry of the default judgment and disclosing its terms.”
- MKM Capital Property Limited v Corbo and Poyser*, No. SC 608 of 2008.) (accessed April 24, 2011).
- 77 *Id.* (“High Court allowed an individual to be served with process via Facebook in commercial litigation over failed business transactions. Based on the failure of conventional efforts at service because the defendant’s whereabouts were unknown, the court *consented to service through Facebook.*” *Axe Market Gardens v Craig Axe* CIV: 2008-485-2676.) (accessed April 24, 2011).
- 78 *Id.* (“Judge entered an order for “substitutional service,” ruling that the plaintiff could serve one defendant by publication by forwarding a copy of the statement of claim to the HR department where the defendant had formerly worked and by *sending notice to the defendant’s Facebook page.*” *Knott v. Sutherland* (Feb. 5, 2009) Edmonton 0803 002267 (Alta.Q.B.M.)) (accessed April 24, 2011).
- 79 *Id.* (“In September 2009, the High Court allowed an injunction against an anonymous blogger *to be served via Twitter.* British lawyer and conservative blogger Donal Blaney obtained the injunction after an unknown blogger began impersonating him on the Internet.”) (accessed April 24, 2011).
- 80 Fed. R. Civ. P. 34.
- 81 UScourts.gov, “Case Management / Electronic Case Files FAQs”, <http://www.uscourts.gov/FederalCourts/CMECF/FAQs.aspx> (accessed April 24, 2011).
- 82 See Fed. R. Civ. P. 5(d)(3) (“A court may by local rule permit papers to be filed, signed, or verified by electronic means that are consistent with technical standards by the Judicial Conference of the United State. A local rule may require electronic filing only if reasonable exceptions are allowed. A paper filed electronically in compliance with a local rule is a written paper for the purpose of these rules.”).
- 83 Fed. R. Civ. P. 4(d)(1)(G).
- 84 Fed. R. Civ. P. 4 cmt. C4-17 (“A self-addressed and adequately stamped envelope will ordinarily do for that.”)
- 85 Fed. R. Civ. P. 4(d)(3).
- 86 Ronald J. Hedges, Kenneth N. Rashbaum & Adam C. Losey, *Electronic Service of Process at Home and Abroad: Allowing Domestic Electronic Service of Process in the Federal Courts*, 4 Fed. Cts. L. Rev. 55, 72 (2010).
- 87 See, e.g., *Aries Ventures Ltd. v. AXA Finance S.A.*, 1990 WL 37814, 1-2 (S.D.N.Y. Mar. 30, 1990) (granting motion to dismiss for insufficient service of process after defendant thwarted request for waiver of service by not returning acknowledgement and defendant could not be served by any other method under applicable rule).
- 88 *New Eng. Merchants Nat. Bank v. Iran Power Generation and Transmission Co.*, 495 F. Supp. 73, 81 (S.D.N.Y. 1980).
- 89 16D C.J.S. Constitutional Law § 1764 (2011).
- 90 The Federal Rules of Civil Procedure were adopted in 1938.
- 91 Linguistically speaking, “electronic service of process” would essentially allow a future amended rule to be flexible in its application to other social media networks (Facebook, MySpace, Twitter, LinkedIn, etc.).
- 92 Andriana L. Shultz, *Superpoked and Served: Service of Process Via Social Networking Sites*, 43 U. Rich. L. Rev. 1497, 1528 (2009).

Publicly Available Websites for IT Lawyers

Following are some publicly available websites relating to varying aspects of information technology law practice. Some of these websites may require payment for certain services. Neither the State Bar of Michigan nor the IT Law Section endorses these websites, the providers of the website, or the goods or services offered in connection therewith. Rather these websites are provided for information purposes only and as possible useful tools for your law practice.

Please provide any feedback or recommendations for additional websites to michael@gallo.us.com.

Legal Blogs

- <http://taxprof.typepad.com> – Entertaining tax law blog.
- <http://feministlawprofessors.com> – Promotes zero tolerance for discrimination at work, at school or in pop culture.
- <http://abnormaluse.com> - Informal products liability posts and occasional 'Abnormal Interviews' featuring Q&As with law professors.
- <http://www.marlerblog.com> – Commentary on Food poisoning outbreaks and litigation.
- <http://www.consumerclassactionsmasstorts.com> - Comedy and tragedy in appellate products-liability litigation.
- http://www.texaslawyer.typepad.com/work_matters - Employment and labor law. ■

Save the Date!!!

Information Technology Law Section Events!

An **Information Technology Law Section Meeting** will begin at 6:30 pm on *Thursday, January 26, 2012*, at **Sweet Lorraine's Cafe and Bar** in Southfield. Local attorney **Steven Hanson** will discuss "**Determining the Scope of Software Copyright Protection.**" A buffet of heavy appetizers and drinks will be provided by the Section. There is no charge to attend, but an estimate number of attendees is needed, so please RSVP to *Charlie Bieneman* at cab@raderfishman.com.

Please set aside the evening of *Thursday, March 29, 2012*, for a presentation by **Ward Classen**, Deputy General Council of **Computer Sciences Corporation**. Ward gave a great presentation at the annual IT Law Seminar a few years ago, and is coming back to share practical tips on "**Responding to Vendor Strategies in IT Contracts.**" The location for this event will be announced soon.

The Section's **Spring Networking Event** is scheduled for the evening of *Thursday, May 17, 2012*. The Section plans to once again hold this event in conjunction with *Detroitnet.org*, the local IT networking organization. The venue will be the **Black Finn Saloon** in Royal Oak. This is a great opportunity for Section members to mingle with the Detroit area IT community. Watch for further announcements about this event! ■

Mission Statement Information Technology Law Section, State Bar of Michigan

The purposes of the Section are to review, comment upon, and appraise members of the State Bar of Michigan and others of developments in the law relating to information technology, including:

- (a) the protection of intellectual and other proprietary rights;
- (b) sale, leasing, distribution, provision, and use of, hardware, software, services, and technology, including computer and data processing equipment, computer software and services, games and gaming, information processing, programming, and computer networks;
- (c) electronic commerce
- (d) electronic implementation of governmental and other non-commercial functions;
- (e) the Internet and other networks; and
- (f) associated contract and tort liabilities, and related civil and criminal legal consequences.