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Facebook Used by Courts to Find Those Who Are 'Only Online'

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By Heather Smith

(Adds Facebook accountholder statistics in fourth, 14th paragraphs.)

June 7 (Bloomberg) -- Two years after an Australian lawyer caused a stir by sending a foreclosure notice via Facebook, the practice of online legal service is spreading as a means for courts to keep their dockets moving.

Courts in New Zealand, Canada and the U.K. have adopted the Australian example to avoid having cases stall when people can't be located and served in person. Lawyers said the U.S. may not be far behind in using the world's most popular social- networking service.

"There are people who exist only online," said Joseph DeMarco, co-chair of the American Bar Association's criminal justice cyber crime committee, and a lawyer at New York-based DeVore & DeMarco LLP. Being able to serve documents by social- media networks would be a useful tool, he said.

While Facebook Inc. is under regulatory and legal scrutiny in countries including the U.S., South Korea and Germany for failing to protect its 694 million users' data, privacy advocates said that serving court notices by mail or in person often already provokes privacy complaints. Therefore using Facebook doesn't raise any new issues.

"There are going to be privacy concerns, but in some respects they're almost inescapable," said Mark Rotenberg, president of the Electronic Privacy Information Center in Washington. Someone "is going to be subject to legal service, even though they may not be happy about it. But if they are properly notified the law's primary concern is addressed," whether the notice arrived via Facebook or not.

Reliable, Secure

The Palo Alto, California-based company may find legal papers served via its system a welcome recognition of the security of its internal messaging function.

Following the 2008 foreclosure case, spokesman Barry Schnitt said the company was pleased to see the Australian court validate Facebook as a reliable, secure and private communication medium, the Associated Press reported. Andrew Noyes, a Facebook spokesman, declined to comment on its recent use as an alternative means of delivering court documents.

“It seems only logical now that tools like Facebook or Twitter be used” to contact people who can’t be traced using traditional means, said Daniel Hamilton, director of Big Brother Watch in London, noting such efforts don’t violate personal privacy. “Now is it desirable? No.”

The judge in the Canberra case required lawyers to serve a foreclosure notice on the couple at their home address and a secondary address, as well as via Facebook, said Archie Tsirimokos, a managing partner at Meyer Vandenberg Lawyers who represented creditor MKM Capital.

Calls, Faxes

Since then, courts have grown more lenient in approving the use of Facebook. In March, Hilary Thorpe, a lawyer in East Sussex, England, persuaded a British court to allow her to serve a woman solely through her Facebook account, after showing that calls, faxes and visits had failed to track her down.

The people in both the U.K. and Australian cases were successfully notified in the eyes of the court, the lawyers said. Tsirimokos said that “within a day” of sending the notice, the recipient’s privacy settings in the Australian case were tightened, showing the debtors got the notice. MKM won a court order and then seized and sold the house.

Thorpe, who sent the notice via Facebook’s private message system, said “it was a matter of minutes for the debtor to respond to the e-mail,” allowing the case to move ahead.

U.S. lawyers say it would be helpful if their courts allowed the practice, and privacy experts don’t see it as a concern because U.S. court documents are already public.

Unethical Friending

The challenge would be to collect enough proof to convince a court the accountholder is the right person and the page is checked often enough to ensure it’s a fair path of notification, DeMarco said. This would need to be done without violating ethics codes that would prevent lawyers from “friending” the target under false pretenses to get past security settings.

Not everyone with a Facebook page visits the site regularly, as seen with statistics comparing the number of users, tracked by the website Socialbakers.com, with the number of visits, tracked by ComScore Inc. Of the 150 million U.S. users, there were just over 145 million unique visitors there. In the U.K., Facebook’s third-largest market with 29.5 million users, there were 27.8 million visits, according to ComScore.

“Nothing on its face in New York state or federal law precludes it,” DeMarco said.

There are countries, like France and Germany, where electronic delivery isn’t allowed in any form. French law requires delivery in person.

“It wouldn’t be admissible procedurally to send a message by Facebook,” said Matthieu Bonduelle, head of France’s Magistrates’ Union.

English court rules permit electronic document service, said Danvers Baillieu, a technology-law specialist in London.

“As far as the law is concerned, it’s just a method of delivery,” he said. “The precise form of technology is neither here nor there.”

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