■ 논 단

Judicial Assistance and Technology: A Match Made in Cyberspace

An Overview of the U.S. Central Authority's Use of Technology in its Operations

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Ⅰ. Introduction

Impacting almost every facet of our lives, the evolution of technology is an ever-present force for change. This is particularly true for the 1965 Service and the 1970 Evidence Conventions. Over the last 10 years, the ability to leverage the speed and efficiency of technology has had an immeasurable impact on the use of both Conventions.

The United States and the U.S. Department of Justice have a long history with both the 1965 Service Convention and the 1970 Evidence Convention, pre-dating many of the technological tools that we rely on so heavily today. The 1965 Service Convention entered into force in the United States on February 10, 1969 (HCCH, 2024b). The following year, the 1970 Evidence Convention entered into force on October 7, 1970 (HCCH, 2025b).

Within the Civil Division of the U.S. Department of Justice, the Office of International Judicial Assistance ("OIJA") serves as the U.S. Central Authority[1] for the 1965 Service Convention and the 1970 Evidence Convention (28 CFR § 0.49(a)-(b)).[2] OIJA is a small office with an important mandate to receive and process all incoming evidence requests, *i.e.*, requests for evidence located in the United States from foreign courts pursuant to the 1970 Evidence Convention. Given the volume of service requests received by United States and the capacity of the U.S. Central Authority, the United States has delegated the ministerial function of executing service requests upon private individuals and companies to a private process server – currently, ABC Legal Services ("ABC Legal"). The U.S. Central Authority plays a limited role in out-going service and evidence requests, *i.e.*, requests sent in connection to litigation in the United States.

Before turning to the operations of OIJA and how technology is utilized, it is important to

1) Both the 1965 Service and 1970 Evidence Conventions require that Contracting Parties designate a "Central Authority" that is responsible for receiving and processing requests (Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, 1970, art. 2) (Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 1965, art. 2).

2) OIJA also serves as the U.S. Central Authority for the Inter-American Convention on Letters Rogatory and Additional Protocol for the purpose of service of legal documents, and for requests for service and evidence received through diplomatic channels received from non-Convention States.

lay the foundation of for the U.S. perspective on service of judicial documents and evidence gathering. In the United States, service of judicial documents and evidence gathering are not solely sovereign functions. As a result, there may be mechanisms available by which one can effect service and obtain evidence in the United States outside the Central Authority procedures. For example, individuals are free to voluntarily accept service or "waive" formal service (Fed. R. Civ. P. 4(d)),[3] and they can choose to provide evidence directly to foreign courts without permission of the United States (28 U.S.C. § 1782(b)).

Much of this article may seem a bit silly if looking through the lens of everyday life – we literally walk around with minicomputers in our pockets and have the ability to be connected to the world through countless electronic means. But as legal practitioners know, the law does not progress at the same speed as the "regular" world. The COVID-19 pandemic certainly facilitated the use of more electronic tools; however, many legal systems have not yet fully incorporated the use of technology in their procedures.

While technology may bring its own issues (*e.g.*, privacy, security, etc.) and is by no means an answer to every problem, technology can assist Central Authorities with overcoming a myriad of challenges. Over the past 10 years, the U.S. Central Authority has tried to leverage technology in its endeavors to more expeditiously process judicial assistance requests and has learned how to harness its benefits to streamline almost all office procedures.

This article will provide an overview of how one Central Authority has successfully implemented procedures using technology to benefit its operations. First, I will provide some background terms of art and terms of "the trade" so to speak. Then I will address considerations relating to the 1970 Evidence Convention and the 1965 Service Convention. Lastly, I will raise a few potential problems that may impede the use of technology with respect to the these Conventions and propose solutions that may mitigate those issues.

3) In learning that waiver of service is an unknown concept in most, if not all, legal systems outside the United States, the U.S. Central Authority submitted a reference document for the 2024 Special Commission on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions (an explanation of the Special Commission can be found in the next section) (United States of America, 2024).

Ⅱ. The "Foreign" Language of Judicial Assistance

If there is anything that I have learned in my time as a lawyer, specifically as a government lawyer, it is that we love our terms of art, acronyms, and abbreviations. For those outside the "inner circle," participating in a legal conversation may feel like listening to others speak a foreign language. For those who may just be getting an introduction to all things judicial assistance, or as a refresher for the rest of you, welcome to the crash course: Judicial Assistance Linguistics 101.

1. HCCH – Resources & Terminology

The Hague Conference on Private International Law or the "HCCH" is "an intergovernmental organisation the mandate of which is 'the progressive unification of the rules of private international law' (Art. 1 of the Statute)" (HCCH, n.d.-a). Both the 1965 Service Convention and 1970 Evidence Conventions were negotiated under the auspices of the HCCH (HCCH, n.d.-a).

The Permanent Bureau or the "PB", within the HCCH, is the office "responsible for the organisation of Plenary Sessions and other meetings, the conduct of preparatory research, and for supporting the proper operation of the HCCH Conventions" (HCCH, n.d.-a). HCCH and the Permanent Bureau organizes a variety of meetings with respect to HCCH's work and the Conventions, but most relevant here are the Special Commission meetings. "Special Commissions, composed by of governmental experts, meet in between Plenary Sessions to … review the practical operation of existing Conventions and recommend improvements in their implementation" (HCCH, n.d.-a). Most recently, the Special Commission on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions was held from July 2-5, 2024 (HCCH, n.d.-e). It is important to note that per the HCCH Rules, Special Commissions do not make decisions, but rather "develop outcomes in the form of Conclusions and Recommendations for the approval by [the Council on General Affairs and Policy (CGAP)]" (HCCH, 2020). While the Conclusions and Recommendations are not binding, they "play an important role in ensuring the uniform interpretation and practical operation" of the Conventions (*Service Handbook*, 2025, p.30) (*Evidence Handbook*, 2025, p.30).

One of the most valuable resources provided by HCCH is the Service and Evidence Handbooks, which provide practical guidance on the implementation and operation of the Conventions (HCCH, n.d.-b) (HCCH, n.d.-c). The newest editions of both Handbooks were recently released and have proven to be an invaluable resource to both Central Authorities and Convention-users.

2. 1970 Evidence Convention - Structure & Terminology

The 1970 Evidence Convention can be used to obtain evidence abroad for use in civil or commercial matters (Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, 1970). The Convention is comprised of comprises two systems for the taking of evidence abroad: Chapter I ("Letters of Request") and Chapter II ("Taking of Evidence by Diplomatic Officers, Consular Agents and Commissioners") (Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, 1970) (*Evidence Handbook*, 2025, p.65-66, ¶¶ 26-30). Chapter I requires that a judicial authority in the Requesting State[4] issue a Letter of Request for transmission to the Central Authority of the Requested State:[5]

Under Chapter I, a judicial authority of one Contracting Party may request another Contracting Party to obtain evidence, or perform some other judicial act, using a Letter of Request that is sent to the Central Authority of the other Contracting Party. The Central Authority may then transmit the request to the competent authority for execution (*Evidence Handbook*, 2025, p.109, ¶ 132).

Chapter II allows for the taking of evidence directly by consuls and commissioners on a voluntary basis from witnesses in the Requested State without the issuance of a Letter of Request

4) "Requesting State: For the purposes of Chapter I, the Contracting Party from which a Letter of Request is, or will be, issued" (*Evidence Handbook*, 2025, p.35).

5) "Requested State: For the purposes of Chapter I, the Contracting Party to which a Letter of Request is, or will be, addressed (as the case may be)" (*Evidence Handbook*, 2025, p.35).

(Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, 1970). "Under Chapter II, a Consul, or a person duly appointed as a Commissioner for this purpose, may, *subject to the consent of the State of execution,* take evidence in the State of execution, *i.e.*, 'direct' taking of evidence" (*Evidence Handbook*, 2025, p.209, ¶ 475). Whether permission is required will depend on the declarations made by the relevant Contracting Party, *i.e.*, the State where the evidence will be taken (*Evidence Handbook*, 2025, p.215-16, ¶¶ 497-98). Pursuant to Article 33, Contracting Parties can exclude in whole or part of the application of Chapter II (Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, 1970, art. 33(3)) (*Evidence Handbook*, 2025, p.66, ¶ 31).

3. 1965 Service Convention - Structure & Terminology

The 1965 Service Convention was negotiated to "to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time" (Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 1965, preamble). "The 1965 Service Convention provides one main channel of transmission between Contracting Parties, while preserving the flexibility to use alternative channels," (*Service Handbook*, 2025, p.76, ¶ 42) (Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 1965, arts. 5, 8, 9, and 10) as well as derogatory channels such as those provided in other agreements or by the domestic law of the State of destination (*Service Handbook*, 2025, p.76, ¶ 45) (Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 1965, arts. 11, 19, 24, and 25).

Under the main channel of transmission, the Forwarding Authority[6] of the Requesting State prepares a service request, which is comprised of the mandatory Model Form and the docu-

6) "Forwarding Authority: The authority or judicial officer competent under the law of the Requesting State to forward Requests for service to the Central Authority of the Requested State…. [T]he term forwarding authority encapsulates the terms applicant and requesting authority" (*Service Handbook*, 2025, p.33).

ments to be served, and any necessary translations (*Service Handbook*, 2025, p.76, ¶ 45) (Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 1965, art. 3). The request is then transmitted to the Central Authority of the Requested State for execution by one of the methods provided for under Article 5 of the Convention (Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 1965, art. 5). The Central Authority will issue a certificate that either indicates "the method, the place and the date of service and the person to whom the document was delivered" or the reasons that prevented service (Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 1965, art. 6).

The alternative channels of transmission provided for by the Convention are as follows: (1) diplomatic or consular channels (Articles 8 & 9); (2) postal channels (Article 10(a)); (3) direct communication between judicial officers, officials, and other competent persons (Article 10(b)); and (4) direct communication between an interested party and judicial officers, officials or other competent persons (Article 10(c)) (*Service Handbook*, 2025, p.124, ¶ 189).[7]

Ⅲ. 1970 Evidence Convention

As noted in the Introduction, evidence gathering is not viewed as a solely sovereign function in the United States. Moreover, the 1970 Evidence Convention is not mandatory nor the exclusive means of obtaining evidence for use in U.S. proceedings (Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Ct. for S. Dist. of Iowa, 1987, p.539-40).[8] Thus, to the extent that

7) "The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either - (a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or (b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed. Subject to sub-paragraph *(b)* of the first paragraph of this Article, the document may always be served by delivery to an addressee who accepts it voluntarily" (Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 1965, arts. 8, 9, 10).

8) "We conclude accordingly that the Hague Convention did not deprive the District Court of the jurisdiction it otherwise possessed to order a foreign national party before it to produce evidence physically located within

a U.S. court has jurisdiction over a witness, such evidence gathering may be governed by the applicable domestic rules, such as the Federal Rules of Civil Procedure (Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Ct. for S. Dist. of Iowa, 1987, p.539-40). Likewise, foreign litigants are not obliged to utilize Convention procedures to obtain evidence from the United States. Under § 1782(a), any "interested person" may file an application in district court to compel evidence for use in a foreign proceeding (28 U.S.C. § 1782(a)). Under § 1782(b), any person in the United States can voluntarily produce evidence to a foreign court (28 U.S.C. § 1782(b)). As a result, use of Chapter II of the 1970 Evidence Convention is available in the United States, without prior permission from the U.S. government.

As the U.S. Central Authority, OIJA receives around 500 evidence requests from foreign judicial authorities per year.[9] Unlike in other legal systems, the collection of evidence is not a judicial function, but a function performed by attorneys. Consequently, OIJA directly executes most evidence requests. Over the past 10 years, OIJA has instituted processes and procedures that have resulted in OIJA's handling approximately 80% of all requests received internally.[10] The remaining 20% of requests are executed with the assistance of U.S. Attorney's Offices throughout the United States.

1. Use of Technology in Processing Procedures

As with many offices, during the COVID-19 pandemic, OIJA had to restructure its procedures to allow for as much of an electronic process as possible. To a degree, this was no easy feat when most of the requests were still received by hard copy. In less than two months, OIJA developed a new system of processes and procedures that leveraged technology to transition the Office from predominantly paper-based to almost entirely electronic, while not negatively impacting the processing times of requests.

a signatory nation" (Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Ct. for S. Dist. of Iowa, 1987, p.539).

9) This includes evidence requests received through diplomatic channels from non-Convention States.

10) This includes requests that are returned without execution for deficiencies or an inability to execute, as well as requests where OIJA obtains the evidence directly.

Upon receipt of all new evidence requests, the requests are logged into a proprietary database that tracks key details of the case and the request, including but not limited to, the following: (1) case name; (2) requesting authority; (3) Department of Justice reference number; (4) foreign reference number; (5) witness and type of evidence; (6) the specific DOJ office handling the matter; (7) important dates related to receipt and processing; (8) whether the request was received by email; and (9) notes relating to the matter or its execution. The database also directly links to a shared drive, allowing every document associated with a particular matter to be accessed directly through the database.

Through this central database for all evidence requests, OIJA can track the current status of every request and evaluate when follow up is needed, with the goal of expeditious execution. Courts or the requesting party routinely request status updates, which the database allows us to efficiently provide. Further, when a new request is received, OIJA is able to easily identify if the same or a similar request has been submitted before or if there are other related evidence requests.

After a request's information is entered into the database, the documents are scanned and saved for access from within the database. While the original documents are kept temporarily in a hard file until the matter is closed out, they are almost never used again once an electronic copy has been created. This is a dramatic shift from OIJA's historical practice, with shelves and shelves of piles paper request organized by year and country of receipt.

2. Use of Technology in the Execution of Evidence Requests

OIJA receives a variety of evidence requests each year that can be executed. Most of these requests seek testimony or financial records. When possible, OIJA uses electronic means to streamline the execution process, primarily in transmitting the initial request and receiving the evidence. The use of email or electronic file sharing platforms to transmit requests and receive the collected evidence reduces the time for execution and limits the potential for lost postal mail. As an example, OIJA sends requests to U.S. Attorney's Offices and potential witnesses electronically, such as via email, and encourages electronic transmission of the evidence, *e.g.*, email, file sharing platforms, and cloud-based platforms.

For testimony requests, OIJA generally obtains testimony in the form of written affidavits because taking and transcribing oral testimony, called “depositions” in the U.S. legal system, incurs significant costs that would have to be paid by the Requesting Authority or foreign litigants as transcripts are produced by court reporters employed by private companies. Setting aside the costs of oral testimony, OIJA does not have the capacity to execute all the testimony requests received per year through depositions (for example, the United States received and executed 167 requests for testimony in 2024, and the majority of those were handled directly by OIJA). However, in rare circumstances, OIJA has obtained testimony on a limited basis through depositions. Since 2021, all depositions handled by OIJA directly have been conducted virtually, via Zoom and Microsoft Teams, which allows OIJA attorneys in Washington, DC to take a deposition from witnesses located anywhere in the United States. Previously, an OIJA attorney would have been required to travel to take the testimony in-person or would have required the assistance of a local U.S. Attorney’s Office, both of which caused significant delays in obtaining the evidence. In our experience, it is simply faster, cheaper, and more efficient to take a deposition virtually than via a traditional in-person deposition.

However, financial requests are different. Most financial institutions still require the transmission of a subpoena and court order by mail and will not accept them via electronic means. Despite their resistance to receiving evidence requests electronically, almost every financial institution is more than willing to provide the requested evidence electronically, usually through their own online platforms. Meaning the delay caused by hard-copy mailing the evidence request to the financial institution is somewhat mitigated by more quickly receiving the evidence electronically. This allows for a faster turnaround time overall to return the evidence to the foreign court.

For all the positives, the use of technology does not come without its own challenges. When the evidence obtained is particularly voluminous, we have had issues with the use of email, and even other electronic media. In one instance, the electronic files were so large that it would have taken four CDs[11] to return the records.

3. Obtaining Evidence by Video-link

It is not uncommon for OIJA to receive requests seeking the remote testimony of witnesses in the United States by videoconference or "video-link." Most often, the requests seek assistance in facilitating the testimony whereby the foreign judge will conduct the questioning.

The United States takes the view that Chapter I of the Convention is for the indirect taking of evidence. In other words, the U.S. Central Authority obtains the evidence on behalf of the Requesting Authority. Requests seeking the direct taking of evidence under Chapter I are returned without execution. This is in large part due to the permissive environment in the United States, specifically that under U.S. law, any person may voluntarily provide evidence (28 U.S.C. § 1782(b)), and the capacity limitations of the U.S. Central Authority. Thus, OIJA generally cannot execute requests for testimony by video-link.

As noted previously, the United States has not objected to Chapter II; therefore, foreign parties are free to take evidence from voluntary witnesses through consuls or commissioners. While OIJA does not play any role in obtaining evidence from witnesses in the United States pursuant to Chapter II, it seems evident that technology plays a huge role in gathering evidence in the post-pandemic world. Foreign courts and litigants are free to arrange for testimony from willing witnesses by video-link directly without the involvement of U.S. authorities (28 U.S.C. § 1782(b)).

What happens if a witness does not want to provide evidence by video-link voluntarily? In these circumstances, requesting authorities have a few options. First, an interested person can make a direct application to a U.S. district court requesting that it compel testimony by video-link. There may be a limitation to the availability of this option, however. At least two U.S. courts have held that § 1782(a) cannot be used to authorize remote trial testimony, but rather only for remote deposition testimony in advance of trial (In re Attorney General of Quebec, 2021, p.*7) (In re Ex parte Petition by AG, 2021, p.*5-6). Second, as an alternative, the foreign

11) Four CDs are obviously preferable to thousands of pages of documents to send by postal mail. I envision this as the situation for which online platforms, such as Google Drive or WeTransfer, would be particularly useful.

court can issue a Letter of Request under Chapter I of the 1970 Evidence Convention to request that OIJA obtain the evidence. However, as noted above, the evidence would not be obtained by the foreign court or parties directly, but rather by a U.S. Department of Justice attorney (Office of International Judicial Assistance, 2023, p.8-9). If the Requesting Authority or the parties' attorneys ask to participate in the deposition, anyone present at the deposition would only be permitted to ask follow-up or clarifying questions based on the interrogatories submitted in the request (Office of International Judicial Assistance, 2023, p.8-9).

4. Conclusion

Over the past five years, OIJA has expanded its use of electronic tools to improve the office's overall efficiency and responsiveness to status requests and other inquiries. While OIJA has made extensive efforts to implement technology in its daily operations, there is always room for improvement and further use of these resources. The use of more electronic means in the transmission of evidence requests to the United States will increase the opportunities to use these technological resources to everyone's benefit.

Ⅳ. 1965 Service Convention

Unlike the 1970 Evidence Convention, use of the 1965 Service Convention is mandatory in all cases in which it applies (Volkswagen Aktiengesellschaft v. Schlunk, 1988, p.705). Article 1 states: "The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad. This Convention shall not apply where the address of the person to be served with the document is not known" (Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 1965, art. 1). The *Service Handbook* confirms that "[i]t is now generally well established that it is the law of the forum that determines whether a document is required to be transmitted for service abroad" (*Service Handbook*, 2025, p. 79 ¶ 57). Thus, for U.S. litigation, it is U.S. law that determines whether a document must be transmitted abroad for service or whether service can be completed domestically, in which case the 1965 Service Convention would not apply (*Service Handbook*, 2025, p. 79 ¶ 57).

For incoming requests for service, it is important to note that the United States has not objected to the alternative methods of service provided for under the Convention in Articles 8 and 9 (Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 1965, arts. 8-9)[12] and 10 (Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 1965, art. 10(a)-(c)).[13] However, as the effectiveness of service under these provisions is dependent on the law of the Requesting State and the applicable U.S. state law, these methods are beyond the scope of what will be addressed in this article.

1. Use of Technology in Processing Procedures

Since 2003, the United States has assigned the ministerial act of serving documents on private individuals and companies pursuant to the 1965 Service Convention to a private contractor. As a practical matter, this means that OIJA does not play a direct role in executing these service requests on private individuals and companies.[14] Instead, OIJA plays the role of overseeing the contract for the private contractor, assisting when difficulties may arise, and communicating with other Central Authorities, as appropriate.

The United States receives a high volume of incoming Article 5 service requests (on average 7,400) through the so-called "Main Channel of Transmission" per year. Litigants in the United

12) Articles 8 and 9 allow for service through a State's diplomatic or consular agents, provided no compulsion is used.

13) Article 10 allows for service by postal channels or through judicial officers, officials or other competent persons of the State of destination.

14) This is distinct from service requests on the United States government. OIJA receives and processes service requests directed to the United States of America. The United States cannot accept service requests on the United States electronically, so these requests must be received by OIJA in hard copy (Office of International Judicial Assistance, 2018).

States also send countless requests abroad per year.[15] To submit a service request through Article 5 for service in the United States, the documents to be served must be accompanied by the mandatory Model Form (HCCH, n.d.-d) completed in English or French, an English translation of the underlying documents (even if the Model Form is completed in French), and the requisite fee[16] for the cost of service.

As noted previously, OIJA does not play a direct role in executing service requests directed to private individuals and companies; thus, we will now look to ABC Legal's use of electronic systems in the processing of service requests (HCCH, 2025a). ABC Legal uses its own proprietary online platform for accepting service requests. The platform allows Forwarding Authorities to upload their requests for service online, make the necessary payment, receive status and progress updates, communicate with ABC Legal staff, and obtain the certificate of service. ABC Legal also has the capacity to receive requests by email. As a result, the entire process of transmission of requests and the return of the certificate of service can be done electronically. However, ABC Legal still receives most requests in paper form, most likely due to legal restrictions in the Requesting State or other practical impediments, such as the file size of the requests.

Use of ABC Legal's platform benefits users in a myriad of ways. First, it alleviates the time spent transmitting requests by postal mail to ABC Legal.[17] Second, many common issues, such as missing mandatory Model Forms or translations, can be addressed in real time where ABC Legal contacts the Forwarding Authority through an online chat function and requests that the deficiencies be rectified. Conversely, for requests received by postal mail, ABC Legal has no option other than to reject non-compliant requests and ask that they be resubmitted. Third, a

15) As the 1965 Service Convention does not require outbound service requests to be sent by the Requesting State's Central Authority, OIJA plays no role with regard to service requests involving persons or parties located abroad in private litigation matters. Consequently, OIJA has very little insight into the use of technology in the transmission of requests abroad.

16) Currently, $95.00 at the time of publication of this article.

17) Even more so, it eliminates the possibility that the requests will be misdirected to OIJA's office in Washington, DC. Although these requests have been exclusively processed a contractor, currently ABC Legal, since 2003, OIJA still receives countless misdirected service requests in the DC office per year.

request cannot be submitted without completing the payment. This removes the possibility of the request being rejected for lack of payment, which is a common reason for rejection of service requests received by mail.

To the extent that a Forwarding Authority is unable to use the platform, it still can submit the request by email. Email transmission reaps many of the same benefits as submission through the platform.

2. Electronic Transmission v. Electronic Service

Electronic transmission of service requests is separate and distinct from electronic service of the court documents. Unlike with evidence requests, the United States is unable to execute service requests electronically. Under the Federal Rules of Civil Procedure, when serving an individual within a judicial district of the United States, electronic service is only possible if the applicable U.S. state law would provide for such service (Fed. R. Civ. P. 4(e)(1)). Each U.S. state has its own service requirements that may or may not allow for electronic service; however, personal service is the “gold” standard. Thus, in the United States, unless requested otherwise, incoming service requests are executed by personal service. In other words, a process server hand delivers the documents to the person to be served. (Fed. R. Civ. P. 4(e)(2)(B)).[18]

3. Conclusion

As described above, in the United States, use of technology with respect to the 1965 Service Convention is limited to the processing of requests as opposed to the execution of requests. I anticipate as electronic service becomes more prevalent, there may be opportunities to utilize technology in new ways with respect to the 1965 Service Convention.

18) Depending on the applicable law, service may also be effected through substituted service, which generally means leaving a copy of the documents to be served at “the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there” (Fed. R. Civ. P. 4(e)(2)(B)).

V. The Dark Sides of Technology: What are the Struggles and What Can We Improve?

1. Voluminous Requests: A Tale of Too Many Pages

1) The Problem

Neither the 1965 Service Convention nor the 1970 Evidence Convention have has requirements that dictate the specific documents required for inclusion with a request, aside from the mandatory Model Form for service requests. For the 1965 Service Convention, the internal domestic law of the Requesting State prescribes which documents are required to be served. Including extraneous documents not only increases the burden on the Requested State's Central Authority, but also can increase the burden on the Forwarding Authority, particularly when translations are required.

It is not uncommon for both service and evidence requests to be accompanied by extensive, unnecessary documentation. The issues with voluminous requests are ubiquitous, impacting both requests received in hard copy and electronically. Looking at evidence requests – voluminous requests received by postal mail are challenging[19] as they require use of additional resources, such as the extra time required to organize and scan the requests to convert the request into an electronic record, and limit our ability to process the request electronically. For requests received electronically, large file sizes may not be able to be transmitted due to caps imposed by email server hosts or file transfer systems.[20] Regardless of whether the request is received in hard copy or electronically, voluminous requests run the risk of critical information necessary for the execution of the request being overlooked.

Anecdotally, through conversations with other Central Authorities, it does appear that the lack

19) This is not to say that large electronic requests are not also challenging. However, in most circumstances, we have found that limitations of file sizes have reduced the number of truly voluminous requests received electronically.

20) While OIJA can, in some circumstances, download requests from online sharing platforms, such as Google Drive, One Drive, and WeTransfer, this might not be the case for all Central Authorities.

of resources to print requests seems to be a major impediment to shifting to an electronic system. If Central Authorities do not have the capacity to print requests received electronically and hard copy documents are needed for the execution of the requests, then this will be a major hurdle to overcome.

2) The Solution: What Can You Do?

OIJA consistently stresses the importance of limiting the size of the requests for judicial assistance.

For service requests – ask yourself – “What documents are required to be served?” If the answer to this question is the summons and complaint (as is true for most U.S. litigation), limit your service request to these documents and refrain from including extraneous additions. This will prove to be beneficial in more than one way. First, it will save time and money in translating documents when translations are required. Second, it will increase the possibility that the service request can be transmitted electronically, reducing the time needed for transmission and eliminating the risk that the request will be lost in the postal mail or otherwise delayed.

For evidence requests – ask yourself – “What documents are needed to provide the information required by the 1970 Evidence Convention and what are the documents that are necessary for the witness to respond?” It is not uncommon for OIJA to receive executable evidence requests that are two to five pages in length. That may seem exceedingly short, but to the extent that the documents provide all the information required by the Convention, and the request is signed by a judicial authority, OIJA needs nothing further to proceed. If the foreign court requires the witness to review or opine on attachments, then the request will obviously need to include the relevant documents. It does not, however, need to include a copy of the entire case file. In fact, the addition of these documents often delays execution and may cause confusion as various iterations of the request may be included in a party’s pleadings that may not directly align with the Court’s ultimate Letter of Request.

Unfortunately, I do not have a solution for the lack of resources to print requests received electronically. However, to the extent that the burden is kept to a minimum by limiting the size of the files and the number of pages, it is more likely that resources may be found to allow for electronic transmission to proceed.

In any case, it is the best practice to be judicious in the documents included in a request for judicial assistance to benefit both the Requesting Authority and the Requested State's Central Authority.

2. Unresponsive Authorities: Is Anyone There?

1) The Problem

OIJA and ABC Legal strive for expeditious execution of evidence and service requests, respectively. At times, however, the ability to execute a request is solely dependent on receipt of additional or clarifying information. When requests are received in hard copy without email addresses, the only option for a deficient request is to return it by postal mail without execution.

If a request is received electronically, then OIJA and ABC Legal can attempt to remedy the issues without the immediate need for rejection. Frequently, however, requests for additional information, clarification, etc. go unanswered, and there is no choice but to reject the request.

Some common issues with service requests include but are not limited to: (1) missing payment; (2) incomplete, incorrect, or missing Model Forms; or (3) missing translations. Many of these issues would take very little effort to remedy, but even when ABC Legal has a direct point of contact through the online platform, Forwarding Authorities oftentimes fail to respond in a reasonable amount of time.

Some easily reparable deficiencies for evidence requests are: (1) missing information necessary for execution; (2) missing or incomplete translations; or (3) missing attachments (if the request explicitly refers to them). When OIJA anticipates that the Requesting Authority will respond in a timely manner, we will seek clarification or ask for the missing information by email. However, when past experiences suggest that inquiries will go unanswered for months on end, then OIJA has no choice but to return the request unexecuted with instructions to resubmit the request, thereby delaying execution of the request.

At the end of the day, this lack of communication hurts only the foreign litigants and delays foreign court proceedings.

2) The Solution: It May Seem Obvious

The solution here is simple – include valid email addresses for the Requesting Authority or party who can provide additional or clarifying information, and for those individuals to respond to inquiries in a timely manner.

3. Data Security: The Ever-Present Cloud of Uncertainty

1) The Problem?

I would be remiss not to address the valid concerns of data security with respect to electronic submission of requests.[21] During the 2024 Special Commission, numerous Contracting Parties expressed concerns relating to data security when discussing the operations of both Conventions. As a result, when discussing the use of IT, the Conclusions and Recommendations stressed the importance of "taking into account data security and privacy considerations" (HCCH, 2024a, p.2-4, ¶¶ 10, 25, and 28). As we now live in the digital age, it seems that every day there is a new story of a computer system being hacked. While this is such a possibility, the risk seems relatively low when compared to the benefits that electronic transmission can bring.

2) The Solution: Be Reasonable and Realistic

Generally, OIJA has not had any issues with using regular email, but we also recognize that sometimes use of regular email is not possible or appropriate. In such cases, there are several straightforward solutions that can alleviate, or at minimum, lessen concerns with respect to

21) I recognize that data security is a complicated and nuanced issue. This article is only meant to highlight some surface level issues from a practical, rather than technical, perspective.

electronic transmission of requests. Using secure platforms, like ABC Legal, or secure email can reduce risks. Sixty-four 64% percent of the respondents to the 2022 Service Questionnaire and 59% of the respondents to 2022 Evidence Questionnaire indicated that they were in favor of a common electronic platform in the operation of the Conventions (PB, 2024, p.5, ¶ 7). While the Hague Conference has had success with this type of platform in the operation of the 2007 Child Support Convention (HCCH, n.d.-f),[22] it is unlikely such a common platform would be tenable for the 1965 Service and 1970 Evidence Conventions. The main point of distinction when considering the methods of transmission among the Conventions is that the 2007 Child Support Convention requires that all requests be transmitted from Central Authority to Central Authority. As such, "iSupport is a tool for Central Authorities that cannot be used by individuals or the legal professions" (HCCH, n.d.-f). There are a number of reasons for which a common platform is not a viable option at this time, including, but not limited, to cost, complications relating to the need for widespread access, and general security concerns. While a common platform is unlikely to be developed, Contracting Parties are free to create their own proprietary platforms where Requesting Authorities may submit requests. For example, China created an online platform where judicial assistance requests can be submitted and the progress tracked (HCCH, 2025c).

If these types of secured mechanisms are unavailable, the requests can be placed in a password-protected zip file or the files themselves can be password protected. To the extent that external media (e.g., CDs or flash drives) are used to transmit voluminous records received in response to an evidence request, these can also be encrypted or password protected.[23]

It appears that these relatively simple steps may even safeguard information better than requests sent by postal mail. It is not unusual for OIJA to receive requests by postal mail that

22) "iSupport, co-ordinated by the Permanent Bureau of the HCCH, was born out of the ambition to develop an electronic case management and secure communication system for the cross-border recovery of maintenance obligations under the EU 2009 Maintenance Regulation and the 2007 HCCH Child Support Convention" (HCCH, n.d.-f).

23) Transmission of encrypted emails or electronic media devices may raise their own issues when the recipient is unable to access the files, but overall, it seems to be a compromise that should assuage fears of illegitimate access to the data.

have been misdelivered or significantly delayed before the office's receipt. OIJA has no way of controlling or even knowing who has seen the contents of a request before it is received in the office. It may also be worth noting that while there may be risks with the transmission of the requests, even requests received by postal mail become an electronic record upon receipt by the U.S. Central Authority as they are scanned into our internal database.

At the end of the day, it seems prudent to take the "functional-equivalent approach" which has been promulgated by other instruments, including the UNCITRAL Model Law on Electronic Commerce (UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996 with additional article 5 *bis* as adopted in 1998, 1998). The "functional-equivalent approach" is "based the on an analysis of the purposes and functions of the traditional paper-based requirement with a view to determining how those purposes or functions could be fulfilled through electronic-commerce techniques" (UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996 with additional article 5 *bis* as adopted in 1998, 1998, p.20-1, ¶ 16). Interestingly, the Model Law's Guide to Enactment continues to say:

> It should be noted that in respect of all of the above-mentioned functions of paper, electronic records can provide the same level of security as paper and, in most cases, a much higher degree of reliability and speed, especially with respect to the identification of the source and content of the data, provided that a number of technical and legal requirements are met. However, the adoption of the functional-equivalent approach should not result in imposing on users of electronic commerce more stringent standards of security (and the related costs) than in a paper-based environment (UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996 with additional article 5 bis as adopted in 1998, 1998, p.20-1, ¶ 16).

These observations are fully transferable to considerations relating to the transmission of service and evidence requests. It would behoove us all to keep this approach in mind when considering what additional requirements, if any, should apply to electronically transmitted requests.

Ⅵ. Looking to the Future

It is a foregone conclusion that technology is not going anywhere, and if it is even possible, more ubiquitous and perhaps with some improvements. For most people in the world, technology touches their lives in innumerable ways daily. We have seen the benefits that technology can bring in all areas of life. It seems that there is a general consensus, at least among Contracting Parties to the Conventions, that we should be paying attention to how information technology can positively benefit the arena of judicial assistance:

> The [Special Commission] emphasized that the Conventions operate in an environment which is subject to important technological developments, which have been further stimulated by the COVID-19 pandemic. Although the evolutionary use of IT could not be foreseen at the time of the adoption of the Conventions, the [Special Commission] reiterated that IT is an integral part of today's society and its usage is a matter of fact. In this respect, the [Special Commission] recalled that the spirit and letter of the Conventions do not constitute an obstacle to the usage of IT, and that the application and operation of the Conventions can be further improved by relying on such technology (HCCH, 2024b, p.2, ¶ 13).

Is it practical to expect that everything will transition to an electronic system overnight? No. But, are there areas in which we can incrementally utilize more technology to encourage more efficient and expeditious processing of requests, without sacrificing security? Most certainly, yes.

An easy first step to reaping the benefits of technology is to use one of the most readily available tools – email – a fast and simple means of connecting Central Authorities and all relevant parties to a request. One of the most frustrating parts of my time in the U.S. Central Authority has truly been the lack of communication from Requesting Authorities, or more generally, from Central Authorities. Obviously, there are a variety of external factors that may impact how quickly a Requesting Authority or Central Authority may be able to respond. However, a failure to respond to countless emailed inquiries over the span of several months should be deemed unacceptable. Whilst it might seem best to ignore inquiries if no substantive update can be provided, this simply is not the case. A lack of a substantive update – *e.g.*, the request has been received but has not been reviewed yet – can often be just as helpful as a specific update on the matter. Removing the notion of the "black hole" from both service and evidence requests will add legitimacy to these instruments and build faith in the systems. Increasing communication by electronic means requires only the action by the specific parties involved – it does not require a change in legal systems or additional rulemaking. Thus, it can easily be the first step in incorporating technology into the judicial assistance process.

The next step will be increasing the use of electronic transmission for requests. It feels like much of this article is an ongoing advertisement for the benefits of electronic transmission. Although I do understand that there are still numerous obstacles that must be overcome and a fully electronic transmission system is not possible for various reasons, we should strive to utilize means of electronic transmission as much as possible. To the extent that there may be legal impediments to the use of technology, it would be beneficial to look at these closely and work to find solutions.

We should be asking:

- What are the concerns with electronic transmission?
- Is there a legal impediment to proceeding using electronic means?
- Does the legal impediment fully ban the use of technology in transmission of requests?
- If not, can we find practical solutions to ensure compliance with applicable law, but also encourage the use of technology?
- What other IT advancements would be helpful?
- Will there be improvements if there is increased acceptance and use of technology by treaty partners?

While electronic transmission also has its disadvantages, the benefits far outweigh them. I am eager to see how technology continues to evolve and can be used to benefit the judicial assistance process and litigants worldwide.

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[국문초록]

주요 국가들의 온라인 플랫폼 등 빅테크 대상 규제동향과 시사점

크리스타 스탠포드

본 논문은 미국 중앙당국이 1965년 송달협약 및 1970년 증거협약을 이행하는 과정에서 기술을 활용하여 업무를 개선한 사례를 개관한다. 사법공조 분야 실무자들이 사용하는 주요 용어를 소개하고, 두 협약의 운용에 있어 기술이 활용된 방식을 검토한다. 나아가 기술 활용에 따른 잠재적 문제점을 분석하고 이에 대한 해결방안을 제시한다.

주제어: 헤이그 국제사법회의, 1965년 송달협약: 「민사 또는 상사문서의 해외송달에 관한 협약」, 1970년 증거협약: 「민사 또는 상사사건에 있어서 해외에서의 증거조사에 관한 협약」, 사법공조, 중앙당국, 국제사법공조

[Abstract]

Judicial Assistance and Technology: A Match Made in Cyberspace

An Overview of the U.S. Central Authority's Use of Technology in its Operations

Krysta M. Stanford

This article provides a brief overview of how one Central Authority has utilized technology to benefit its operations in the implementation of the 1965 Service Convention and the 1970 Evidence Convention. The article begins with an introduction to the lexicon used by practitioners in the judicial assistance legal field. It then looks at how technology has been used in connection with both Conventions. Lastly, it identifies potential issues arising from the use of technology and proposes solutions.

Keywords: The Hague Conference on Private International Law; 1965 Service Convention; 1970 Evidence Convention; judicial assistance; U.S. Central Authority; Office of International Judicial Assistance.