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A Study on the Protection of Litigation Rights in Electronic Service of Process

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Abstract
Electronic service of process is a crucial foundation of digital rule of law. However, its development is significantly hindered by recipients' limited understanding, weak litigation capabilities, and malicious abuse of procedural rights. This paper analyzes issues such as the weakened protection of recipients' right to be informed, the difficulty of enforcing their right to defense, and the lack of effective channels for exercising their right to remedy. To address these challenges, the paper proposes enhancing the operability of electronic service, strengthening the notification and explanation of rights to recipients, and allowing unilateral application of electronic service to incentivize its selection. It also suggests tailoring electronic service according to litigation procedures, case types, and parties involved, to ensure recipients' reasonable exercise of procedural rights. Additionally, the paper advocates for granting recipients the right to challenge electronic service and establishing clear accountability and sanctions mechanisms to improve access to remedies. From the perspective of litigation rights protection, this study explores the balance between procedural justice and litigation efficiency, aiming to achieve digital justice in electronic service procedures.

Keywords
Electronic Service of Process, Litigation Rights, Digital Justice

1Introduction

Electronic service of process transcends spatial and temporal limitations, allowing for the real-time sharing of judicial documents, which enables litigation participants to efficiently receive, process, transmit, and store legal information. This contributes to reducing litigation costs and improving procedural efficiency. Academic perspectives widely regard electronic service as both a continuation and evolution of traditional service rules, with the protection of litigants' rights being central to the concept of digital justice. Digital justice reflects the judicial advancements in the information age and responds to the heightened demands for fairness and justice. Ensuring litigants' rights—such as the right to be informed, the right to defense, and the right to remedy—within electronic service processes is a crucial prerequisite for achieving digital justice.

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This paper analyzes the tension between judicial efficiency and the protection of litigation rights in electronic service. It proposes institutional incentives, procedural safeguards, and enhanced remedial measures to guide litigants in reasonably exercising their procedural rights, thereby fully realizing the principles of fairness and justice in the context of digital rule of law.

2 Background: Advancing Electronic Service through the Development of Smart Courts

2.1 Evolution of Service Methods in the Context of Judicial Modernization

The emergence of electronic service stems from the functional value of information technology in enhancing judicial efficiency. In 1996, Judge Newman of the Queen's Bench Division of the Royal Courts of Justice in London permitted the plaintiff's lawyer to serve a judicial order to the defendant via email, marking the world's first instance of electronic service. As society developed, electronic service reshaped the process of serving documents, transforming the rights and obligations of both courts and recipients. Digital justice requires equitable allocation of judicial resources, ensuring that the fairness of information accessed, transmitted, and stored by litigation participants through digital technologies is not compromised .[1]Under the "Smart Courts" initiative, the Supreme People's Court of China has issued several regulations, such as the Opinions on Further Strengthening Civil Service Work, the Provisions on the Trial of Internet Court Cases, and the Rules for Online Litigation in People's Courts, which detail the conditions, scope, and confirmation procedures for initiating electronic service. Various local courts have also formulated their own implementation guidelines based on these national directives. Electronic service has become an important tool for enhancing the judiciary's capacity and promoting judicial modernization, providing recipients with transparent, convenient, efficient, and low-cost legal services.

2.2 The Practical Need for Courts to Improve Litigation Efficiency

The difficulty of serving legal documents is one of the main factors affecting the efficiency of civil litigation in China. In a social environment characterized by frequent population movement and flexible employment systems, the actual residence of recipients often differs from their registered domicile. Furthermore, cases of defendants or third parties intentionally evading service, falsifying residential addresses, or discrepancies between a company's registered and actual office locations complicate the process. Serving legal documents to registered addresses can become extremely difficult, consuming significant time and effort, often resulting in invalid service and causing cases to be remanded for retrial. With the proliferation of the internet, smartphones, and advancements in information technology, the advantages of electronic service—its speed and convenience—are becoming increasingly evident. Serving documents via email, WeChat, and similar platforms bypasses geographic limitations and mitigates the difficulties caused by increasing population mobility. After a case is filed, both parties can instantly receive notices via the electronic litigation platform and access relevant materials such as complaints, defenses, and evidence. Information on hearing schedules and judgments is automatically sent through the platform, maximizing cost savings and ensuring

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transparent and efficient litigation procedures. Thus, electronic service has become a practical necessity for courts to improve litigation efficiency and reduce costs.

2.3 A Product of Information Technology Integration in Society

Electronic service in China originated in regions such as Beijing and Zhejiang and has since expanded nationwide. In e-commerce disputes handled by the Hangzhou Internet Court, the electronic service rate for plaintiffs reached 100%, with over 90% for defendants .[2] Electronic service has demonstrated its convenience and efficiency, gaining widespread use. However, while courts in more developed regions have established comprehensive electronic service systems, those in underdeveloped areas often lack the necessary resources to build effective systems. Information technology has profoundly altered communication modes, and as most people now communicate via mobile phones, WeChat, or email, courts cannot continue to rely solely on traditional methods such as postal or in-person service. Leveraging platforms like the China Trial Process Information Platform, China Mobile Micro Courts, the Litigation Service Network, and the 12368 Litigation Hotline, courts across the country have implemented electronic service to varying degrees. Yet, inconsistent communication technologies and the lack of interoperability among local court platforms present challenges to integrated management. To fully realize the potential of electronic service while upholding judicial fairness and authority, it is crucial to address these challenges through top-level design, establishing a unified and standardized electronic service system that ensures balanced development nationwide.

3 Current Operation: Constraints on Recipients' Right to Choose the Electronic Service Procedure

3.1 Low Acceptance of Electronic Service Limits Its Application

The "technical right" to access information resources determines whether parties' litigation rights can be equally protected .[3] Due to factors such as litigation habits, education levels, and personal preferences, some recipients of legal documents still perceive traditional methods of litigation as safer and are reluctant to adopt electronic methods. Additionally, many recipients have limited awareness of electronic service options and are unaware they can choose this method. Others refuse to accept electronic service, only to dispute judgments later after missing court proceedings. Some recipients lack the ability to download legal documents or use the internet. These challenges significantly hinder the promotion and application of electronic service. To address the lack of understanding, reluctance, and incapacity to use electronic service, efforts must be made to increase awareness and provide guidance on its use.

3.2 Disparities in Recipients' Litigation Abilities Restrict Digital Justice

The equal realization of the right to choose the procedure is contingent on recipients' litigation abilities, which are rooted in equal opportunity and means. However, in practice, recipients vary greatly in their litigation capabilities and access to resources, especially in their ability to use the internet or mobile devices, resulting in substantial differences in the effectiveness of electronic service. Many recipients are unclear about the nature and validity of electronic service, and after opting for it, they may not check judicial docu-

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ments promptly or lack the means to communicate with the court. Without proper guidance from court staff, it is difficult for them to access electronic documents smoothly. The transition from high-cost, low-efficiency to low-cost, high-efficiency electronic service requires a process of social acceptance and operational accumulation.

Although China's legal system emphasizes the procedural rights of recipients to choose electronic service from the perspective of procedural justice, there is insufficient guidance on how to help them make informed decisions. In cases where a pure recipient-driven approach is applied, achieving substantive justice in civil litigation may be difficult.

3.3 Abuse of Recipients' Procedural Choice Rights Impacts Service Efficiency

While electronic service offers greater efficiency, it does not provide direct benefits to defendants (or respondents). As a result, recipients may abuse their right to choose the procedure, leading to inefficiencies. China's courts and recipients have not yet established a clear and predictable system for allocating the responsibilities and risks associated with service. Instead, the two parties often engage in case-by-case negotiations rather than following established rules, preventing a legitimate balance of interests .[4]In an attempt to delay litigation or evade legal responsibility, defendants (or respondents) or third parties may refuse to cooperate with the court, provide invalid addresses, or frequently switch between online and offline service methods, causing delays and contributing to the backlog of cases. The relationship between litigation rights and judicial authority is interactive, and to improve litigation efficiency, judges often exercise discretionary control over the entire litigation process, including service. Balancing the respect for recipients' right to choose with the case's specifics, procedural characteristics, and legal priorities, courts can use their judicial authority to facilitate the process .Courts can help recipients familiarize themselves with the electronic service process, [5]and by requiring fixed electronic service addresses for recipients such as lawyers and corporations, the efficiency and scope of electronic service can be significantly enhanced.

4 Challenges in Development: Conflicts Between Electronic Service and the Protection of Recipients' Litigation Rights

4.1 Difficulty in Guaranteeing Recipients' Right to Be Informed

Civil service of legal documents plays a crucial role in notifying, ensuring procedural fairness, and achieving legal outcomes. It is a vital procedural safeguard for protecting recipients' right to be informed, directly affecting the stability and reliability of the litigation process. Serving legal documents is not merely a matter of transmitting materials; it also involves informing the recipients about key litigation details, including their rights, obligations, and other important considerations. However, there is a conflict between improving litigation efficiency and strengthening procedural safeguards, often requiring significant court resources. In practice, an overemphasis on efficiency can undermine the protection of recipients' litigation rights.

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In direct service, court staff have the obligation to explain and clarify legal matters to the recipients, ensuring two-way communication and maximizing procedural fairness. However, electronic service is more of a one-way notification, focused on informing the recipient about litigation timelines and other procedural matters, without addressing specific legal questions or providing explanations. As such, electronic service functions more as a "notification" rather than a platform for explanation or mediation, weakening its ability to ensure recipients are fully informed of their legal situation.

4.2 Difficulty in Ensuring Recipients' Right to Defend

China's civil procedure law does not clearly establish standards for confirming whether a recipient has actually received legal documents. Even if a legal document is sent to a recipient's email, technical issues such as system malfunctions can prevent the recipient from viewing or downloading the documents. In such cases, although the document may be technically delivered, the recipient may not be aware of its contents, and proceeding with a default judgment under these circumstances would harm the recipient's litigation interests.

Practical challenges remain in confirming whether a recipient has acknowledged receipt, including how they sign for it and through what means. From the perspective of efficiency, recipients have a responsibility to check their designated electronic channels promptly and thoroughly, and they bear the consequences if they fail to do so. However, from the standpoint of procedural fairness, if the effectiveness of service cannot be accurately confirmed, electronic service not only fails to achieve the goal of improving efficiency but may also undermine the principle of justice. This could lead to recipients being unable to exercise their litigation rights, ultimately jeopardizing their civil interests. Therefore, electronic service must balance fairness and efficiency by establishing clear standards for verifying receipt and ensuring the recipient's right to defend is effectively upheld.

4.3 Lack of Protection for Recipients' Right to Procedural Remedies

Electronic service impacts recipients' rights to information, debate, and ultimately affects the substantive outcome of cases. Invalid service is a serious violation of legal procedure, yet the current electronic service system lacks robust accountability and remedy mechanisms to ensure that all parties fulfill their obligations in accordance with the law. This gap weakens the protection of recipients' procedural rights. In the context of digital justice, issues such as control over data, algorithm-based recommendation systems, and direct control through automated systems have become central concerns.[6] When electronic service fails, questions arise about how to initiate a second service attempt or switch from electronic to traditional offline methods. These issues remain inadequately addressed under current regulations. Electronic service typically involves the responsibility of three parties: the courts, the recipients, and network operators. Granting broad and unrestricted authority over personal data can strip individuals of control over their information, raising concerns about whether their data is being used as expected.[7] Without clearly defining and assigning responsibility among the involved parties, it becomes difficult to address acts that obstruct or undermine the process of electronic service.

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5 Institutional Development: Incentivizing, Protecting, and Remedying Recipients' Litigation Rights

5.1 Incentivizing Recipients to Choose Electronic Service

The electronic service system emphasizes the recipients' autonomy in relation to the court, with the protection of their litigation rights serving as the justification. First, courts must respect the recipients' right to choose electronic service and cannot compel or restrict their choice. Only when a recipient explicitly consents to electronic service can the court proceed, ensuring the protection of the recipient's procedural rights. Courts should fully explain the various channels and methods of electronic service to the recipient, ensuring their right to be informed and to participate. For e-commerce platforms, which often handle electronic litigation, an agreement for electronic service can be signed in advance during e-commerce transactions, making it applicable in case of future litigation.

Second, courts must strengthen their efforts to inform and clarify the rights of recipients. Courts should provide necessary assistance and guidance to those who choose electronic service to ensure they can fully exercise their litigation rights. Electronic service should clearly specify the basic content of the delivery and the recipient's rights and obligations, creating special explanatory methods tailored to the nature of electronic service. Court personnel must ensure that recipients can receive and access legal documents via email, explain potential information security risks, verify the authenticity of email addresses and legal documents, and inform recipients of the legal validity and remedy options of electronic service, thereby fully fulfilling their procedural safeguard obligations.

Third, the option for unilateral electronic service should be allowed. Since defendants and third parties often reject litigation and may refuse electronic service, allowing one party to unilaterally opt for electronic service will help promote its wider adoption.

5.2 Ensuring Recipients Reasonably Exercise Procedural Rights Through Categorized Application

Litigation procedures should be tailored to the type and nature of the case to ensure a proper match between the trial process and the specific case. [8] Although electronic service offers the advantages of convenience and efficiency, it also presents challenges related to information security and the protection of litigation rights. The allocation of litigation resources requires courts to enhance their procedural guidance and apply electronic service reasonably based on case categories. From a litigation type perspective, the limitations of information technology can pose risks to information security and privacy protection. Therefore, electronic service is mainly suitable for property, administrative, and bankruptcy cases. Cases involving state secrets, trade secrets, or personal privacy demand higher levels of confidentiality and security, making electronic service unsuitable. Disputes arising from online shopping or lending, however, are better suited for electronic service. From the perspective of litigation participants, since lawyers generally possess higher professional skills and are more adept at using information technology, they should be encouraged to use electronic service by setting up "lawyer service portals" or signing electronic service agreements. Gov-

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ernment agencies, which already have better electronic service infrastructure, should also be a key force in promoting its adoption. On the other hand, in regions where electronic devices are less common, or where recipients lack the skills to use the internet, electronic service should not be used to avoid creating barriers for socially disadvantaged groups in exercising their litigation rights.

5.3 Improving Remedies for Electronic Service Rights

Improving the scope, operational procedures, and accountability mechanisms of electronic service is fundamental to ensuring digital justice. First, recipients should be granted the right to question the effectiveness of electronic service. According to the "right to question" theory in continental law systems, if a recipient knows or should have known that the court sent them electronic service documents but did not receive them, they should promptly file an objection with the court and request a second service attempt. If the court determines that the failed delivery was not the recipient's fault, a second electronic service should be conducted. If court personnel identify high risks associated with electronic service or if the recipient refuses to cooperate, the service should revert to traditional offline methods to prevent procedural delays. Second, there must be clear standards for confirming the effectiveness of electronic service. Some recipients may deliberately refuse to send back the receipt of service after receiving legal documents in an attempt to delay litigation or evade legal responsibility. In such cases, network service providers should enhance technical safeguards by automatically generating and returning a receipt to the court when a recipient views or downloads the legal document, thereby ensuring recipients' right to be informed and improving the efficiency of electronic service. Third, a mechanism for sanctioning those responsible for failed service must be established. If a court uses electronic service without the recipient's consent or if a court employee's negligence results in the recipient not receiving the legal documents in time, causing damages, the court staff should be held accountable. If a recipient allows another person to access their electronic litigation information, the recipient assumes the risk and consequences. Intentional actions by recipients, such as providing invalid electronic service addresses or deliberately avoiding electronic service, should be classified as acts obstructing civil litigation, warranting sanctions such as fines or warnings. In cases where network operators cause the loss, mishandling, or disclosure of electronic documents due to intentional or gross negligence, they should be held liable for compensation.

6 Conclusion

The goal of civil litigation is to resolve disputes fairly and efficiently. Judges should guide the behavior of recipients in litigation in accordance with society's fundamental need for order, encouraging cooperation in the litigation process. "Litigation procedures must not only protect the private rights of the recipients but also reflect the public nature of the litigation process."[9]Service in civil litigation is not merely a technical arrangement; it also carries important values related to notification, procedural protection, and legal effectiveness. With the advancement of technology, electronic service has become a key tool in modernizing judicial capabilities. While its foundation lies in improving the efficiency of litigation, electronic service must also prioritize institutional safeguards for the recipients' right to be informed, their right to defense, and their right to remedies. Ultimately, electronic service should strike a balance between procedural justice and litigation efficiency, promoting digital justice in judicial practice.

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