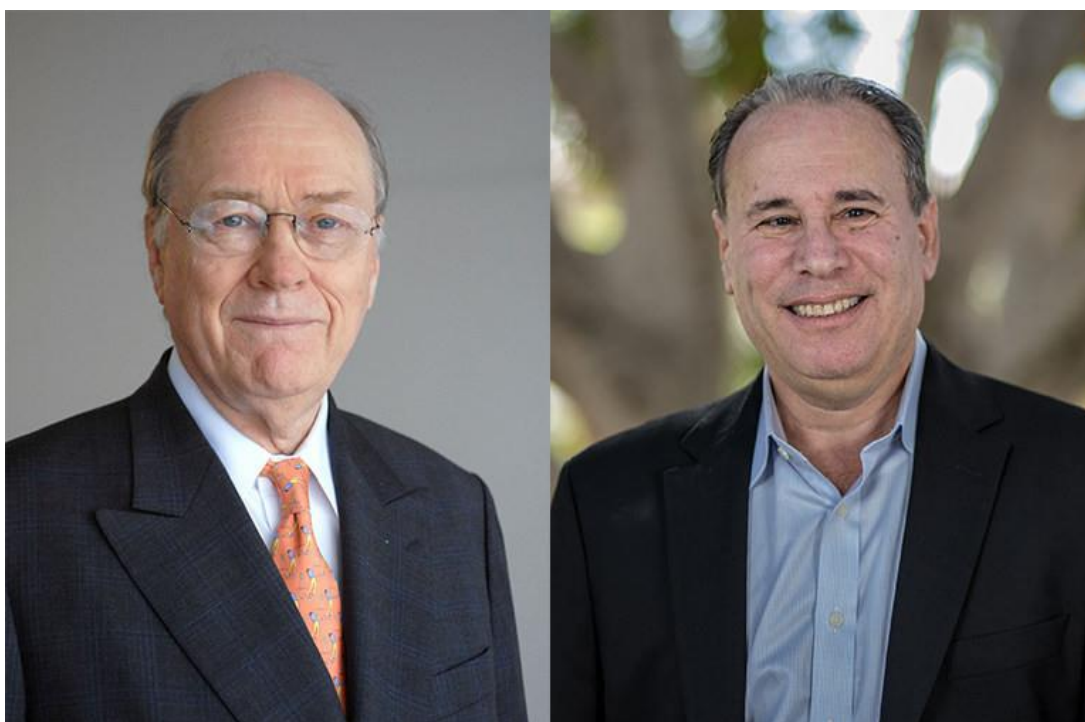


New York Law Journal

Second Circuit Limits Email Service Under the Hague Convention

Since 2023, courts have debated whether email is allowed for international service under the Hague Convention in countries that object to postal service. The Second Circuit ruled email isn't permitted in China, but some courts believe email is allowed based on recent guidance. As email replaces mail worldwide, courts are gradually clarifying when it can be used, but the legal situation remains uncertain.

By **Lawrence W. Newman** and **David Zaslow** | January 28, 2026



In September 2023, we wrote about the issue of serving process by electronic means under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the Hague Convention or Convention), focusing on whether email service is permitted in a country that has invoked its right under the Convention to object to service through “postal channels.” See *New York Law Journal*, Sept. 27, 2023. Since then, two significant developments have occurred. First, the Second Circuit addressed the issue just last month. Second, a Special Commission of the Hague Conference on Private International Law (HCCH) also considered the matter.

Background and Central Authorities

Before the Hague Service Convention entered into force in 1965, litigants commonly relied on letters rogatory and diplomatic or consular channels to serve process abroad. These mechanisms were often slow, cumbersome, and unpredictable, requiring multiple layers of governmental intermediation and frequently resulting in delays measured in months or years. The Convention was designed to replace that fragmented landscape with a standardized and cooperative framework.

The Convention's cornerstone is the Central Authority system. Each Contracting State designates a Central Authority to receive incoming requests for service, arrange service within its territory in accordance with domestic law or a requested method compatible with domestic law, and provide a certificate of service or non-service. The Supreme Court has emphasized the Convention's mandatory and preemptive character when it applies: compliance with the Convention is required, and inconsistent domestic methods of service are displaced. *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 698–700, 705 (1988).

Article 10(a) and Email

Though service through the Central Authority was a foundational element of the Convention, it also provided a mechanism for parties to effect service directly on their own, outside of central authorities. Article 10(a) of the Convention states: “Provided the State of destination does not object,” the Convention “shall not interfere with the freedom to send judicial documents, by postal channels, directly to persons abroad.” For many years, courts disagreed whether this provision permitted service by mail at all. The Supreme Court resolved that question in *Water Splash, Inc. v. Menon*, holding that Article 10(a) permits service by mail so long as (1) the destination state has not objected and (2) service by mail is authorized under otherwise-applicable law. 581 U.S. 271, 284 (2017). The Court did not address whether “postal channels” include electronic mail.

Since 1965, communication methods have changed fundamentally. Email has displaced traditional postal mail as a primary means of official, commercial, and legal correspondence. The shift is particularly pronounced in parts of Europe. Denmark provides a concrete illustration. Following years of sharply declining letter volumes and regulatory reform eliminating the universal service obligation, Denmark's state-owned postal operator, PostNord, announced that it would phase out and ultimately cease traditional letter delivery, reflecting a national communications environment dominated by digital platforms and electronic messaging.

Against that backdrop, Article 10(a)'s reference to “postal channels” has taken on renewed significance. The Convention's text does not mention electronic communication. For decades, that silence was treated by some courts as meaningful evidence that an objection to service under Article 10(a) was not intended to preclude service by email.

The 'Smart Study' Decision

Smart Study Co., Ltd. v. Shenzhenshixindajixieyouxiangongsi, No. 24-313,—F.4th—(2d Cir. Dec. 18, 2025), involved Smart Study Ltd., a global entertainment company that owns trademarks associated with the hit song “Baby Shark,” suing 58 China-based companies for allegedly manufacturing and selling counterfeit Baby Shark products in violation of federal trademark, copyright, and unfair competition laws.

As discussed in our earlier article, U.S. District Judge Gregory Woods conducted a detailed and thoughtful analysis of whether the Hague Convention permits service by email in China. *Smart Study v. Acuteye-US, et al.*, 620 F. Supp. 3d 1382, 1397 (S.D.N.Y. 2021). Numerous subsequent decisions in fact cited Judge Woods's decision for just that reason. Judge Woods dismissed two China-based defendants, finding that the Hague Convention did not allow email service in China. Smart Study appealed, and there was no opposition. On this issue of first impression, the Second Circuit agreed with the district court.

The Second Circuit rejected the view of numerous district courts—including some within its own circuit—that had held “postal channels” does not include email. The court explained that the Hague Convention “specifies certain approved methods of service and pre-empts inconsistent methods of service wherever it applies.” The court agreed with Judge Woods that it would not make sense for a nation to object to a method of service not identified or authorized by the Convention, since “there would be nothing affirmative to object to.”

The Second Circuit relied on the Convention's text, which aims “to create appropriate means” for serving documents abroad. The court reasoned that methods not “created” or specified by the Convention are not

“appropriate” for service. The Convention’s articles use the authoritative “shall” to set out the process for serving a party, creating a closed universe of “simple and certain means” for service in foreign countries. As the court said, were the Hague Convention to permit email service, it is difficult to see why any party would ever choose slower, more costly methods of service laid out in the Convention’s text.

The court further noted that Article 11 allows two or more contracting states to agree to permit channels of transmission other than those provided in the preceding articles. If the Convention already allowed unspecified methods like email, this provision would be superfluous.

For these reasons, the Second Circuit held that email service on the Chinese defendants is prohibited by the Hague Convention and thus improper under Rule 4(f)(3). It is likely that parties will argue that the same reasoning should apply to service by other digital means, such as X (formerly Twitter), Telegram, or Facebook. Notably, the Second Circuit did not address whether email service is permitted in a country that has not objected under Article 10(a).

The Special Commission’s View

The other important development was the July 2024 meeting of a Special Commission that addressed the practical operation of the Hague Convention, the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (Hague Evidence Convention), and the Convention on International Access to Justice (Hague Access to Justice Convention). The Special Commission, which included 260 delegates from around the world (including the U.S.), adopted 138 Conclusions & Recommendations (C&R). Number 105 stated: “The SC noted that Article 10(a) includes transmission and service by e-mail, insofar as such method is provided by the law of the State of origin and permitted under the law of the [State of destination](#).”

In light of the above discussion, the significance of this rather cryptic comment is apparent. According to the Special Commission, an Article 10(a) objection to service through postal channels “includes transmission and service by email.” A thoughtful discussion of this C&R in the lettersblogatory blog stated that this elaboration is consistent with comments by earlier Special Commissions which included telegrams, telexes and private couriers (e.g., FedEx) within “postal channels,” which was intended to be understood functionally, not formally. See [The Special Commission on Service by Email, Part 1](#) | Letters Blogatory (Jul. 18, 2024). If Article 10(a) is read in this way, one could argue that U.S. courts erred in holding that email service is not included in an Article 10(a) reservation.

Divergence Among Courts

Smart Study is now binding precedent in the Second Circuit. Even before this decision, numerous cases had followed Judge Woods’s analysis or reached similar conclusions. See, e.g., *Safavieh Intl v. Chengdu Junsen Fengrui Tech.*, 2023 U.S. Dist. LEXIS 102843 (S.D.N.Y. June 23, 2023). Other courts, however, have held that service of process by email is permissible even in countries that have objected to service under Article 10(a).

Some of those cases predate the district court's decision *Smart Study*. For example, in a case concerning service in Turkey (which also opted out of mail service under Article 10), the court allowed service by email and social networks, saying: “Although Turkey has objected to the means listed in Article 10, its objection is specifically limited to the enumerated means of service in Article 10. Where a signatory nation objects to the methods of service listed in Article 10, the court can order alternative methods of service not explicitly stated in Article 10.” *WhosHere v. Orun*, 2014 U.S. Dist. LEXIS 22084, at * 9 (E.D. Va. Feb. 20, 2014).

But even after the thoughtful analysis in Judge Wood's decision in *Smart Study*, courts have continued to allow service by email in countries with an Article 10(a) reservation. *Society Pass Inc. v. Xperx AI Pte Ltd.*, 2025 NY Slip Op. 32230(U) (Sup Ct. N.Y. Cty Jan. 15, 2025) is a New York state court decision concerning service in

Vietnam, which, like China, has objected to service through postal channels. Without any analysis of the Hague Convention, the court authorized service by email.

In *Peanuts Worldwide LLC v. Partnerships & Unincorporated Associations Identified on Schedule “A”*, 347 F.R.D. 316 (N.D. Ill. 2024), *appeal dismissed sub nom. Peanuts Worldwide LLC v. Electrician Guy*, No. 24-2170, 2024 WL 5297821 (7th Cir. Aug. 28, 2024), the district court acknowledged the split among courts and invited the Seventh Circuit to resolve this “relatively complex question.” But the court concluded that “absent controlling precedent on the issue, this court will follow the overwhelming majority of courts in this district in reaching the more straightforward conclusion that the Convention does not prohibit service by email” in China.

In *Xiamen Zhaozhao Trading Co., Ltd. v. The Individuals, Partnerships and Unincorporated Associations Identified on Schedule A*, No. 23-61347-CV, docket entry 21 (Sept. 27, 2024), the court held that service by electronic means was permissible, reasoning that a Hague Convention signatory that has objected to an alternate means of service is limited to the means objected to, and the Convention does not specifically preclude service by email or internet publication. Left unanswered is how a treaty enacted in 1965 could have possibly said anything about email.

Conclusion

The world that produced the Hague Service Convention is gone, but the Convention remains binding law. As email continues to displace traditional postal communication, institutional guidance and appellate doctrine are converging on a more disciplined analysis—one that rejects treaty silence as a general license, while leaving room for email service where the Convention permits it.

How courts in other circuits respond to the HCCH’s 2024 guidance and to *Smart Study*’s treaty-centered reasoning will shape the next phase of international service practice. The Second Circuit explained why email service should not be permitted in those countries that have objected to Article 10(a). For those countries that have not objected (e.g., the UK, Canada, France), the 2024 guidance supports email service if it is allowed under the law of the state of origin, and the law of the destination state.

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