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New Technologies
— New Justice

NEW TECHNOLOGIES = NEW LAW

National regulations

United States of America





HELŚIŃSKA FUNDACJA
PRAW CZŁOWIEKA

A QUESTIONNAIRE FOR LAWYERS FROM

DIFFERENT JURISDICTIONS

The Helsinki Foundation for Human Rights and the Clifford Chance Foundation are implementing the project *New technologies = new law. The rules of procedure of our time or a threat to human rights?*. The project aims to identify the main opportunities and threats associated with the increasing impact of new technologies and Artificial Intelligence on the justice system. This questionnaire is designed to explore the solutions existing in different countries and will provide a foundation for further research within the project.

Country	United States
Date	December 15, 2020
Submitted by (name of the contact person)	Celeste Koeleveld

PRE-TRIAL PHASE

<p>1.</p>	<p>Is it required to use any alternative forms of dispute resolution in the country where the Office operates, before a case is brought to court? Can such alternative forms (e.g. mediation, negotiations) be conducted online?</p>	<p>Federal Civil: Alternative forms of dispute resolution are not required for federal civil cases; rather, they are encouraged. "The courts encourage the use of mediation, arbitration, and other forms of alternative dispute resolution, designed to produce a resolution of a dispute without the need for trial or other court proceedings."¹</p> <p>The Federal Rules of Civil Procedure do not restrict the means of conducting alternative dispute resolutions. Therefore, such alternative forms can be conducted online.</p> <p>Federal Criminal: No. Requiring alternative forms of dispute resolution does not apply in the US Federal criminal context.</p> <p>New York Supreme Court²: No. For both civil and criminal cases, the litigants can opt in to negotiate a resolution or an individual judge can order mediation while a case is</p>
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¹ United States Courts, Civil Cases, <https://www.uscourts.gov/about-federal-courts/types-cases/civil-cases>.

² The New York Supreme Court is a trial court of unlimited jurisdiction, but it generally hears cases outside of the authority of the lower courts, such as civil matters with \$25,000 or more at stake; divorce, separation and annulment proceedings; and, in New York City, also criminal prosecution of felonies. Hence, there are Civil and Criminal Branches in the Supreme Court in New York County. The court structure and procedures are particular to each and are distinguished in the answers. Cases with civil matters are decided in the first instance in the Supreme Court, Civil Branch, and felonies, or crimes punishable by imprisonment for more than one year or by death, are decided in the Supreme Court, Criminal Branch. Appeals from the Supreme Court are heard by the intermediate appellate courts, and appeals from the intermediate appellate courts are heard by the Court of Appeals, the highest court in New York State. Initial Report on the Goals and Recommendations for New York State's Online Court System, N.Y. State Unified Ct. Sys. (2020), <http://www.nycourts.gov/whatsnew/pdf/OCWG-Report.pdf>; 1st JD – Supreme Court, Civil Branch, NY County, *Courtroom 2000*, NY Courts, http://ww2.nycourts.gov/courts/1jd/supctmanh/courtroom_2000.shtml.

		<p>pending.³ There is an online Statewide Mediator Directory to help locate mediators but there is no online platform to conduct alternative forms of dispute resolution.^{4 5}</p> <p>On May 14, 2019, the New York State Unified Court System announced that it will begin implementing a presumptive alternative dispute resolution (“Presumptive ADR”) program.⁶ Under this program, parties in civil cases will be referred to some form of ADR as an initial step for particular lawsuits filed in New York State courts.⁷ The details of which types of cases in which jurisdictions or courts will be subject to the Presumptive ADR program are yet to be determined by the Office of Court Administration.⁸</p> <p>New York City ("NYC") Criminal Court⁹: No. The New York City Criminal Court may refer certain disputes to Community Dispute Resolution Centers for mediation services.¹⁰ There are no alternative forms of dispute resolution conducted online.¹¹</p>
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³ New York State Unified Court System, *Alternative Dispute Resolution: Court-Connected ADR Programs*, NY Courts, http://ww2.nycourts.gov/ip/adr/Info_for_parties.shtml.

⁴ New York State Unified Court System, *Alternative Dispute Resolution: Overview*, NY Courts, <http://ww2.nycourts.gov/ip/adr/index.shtml>.

⁵ As a result of COVID, mediation and alternative dispute resolution will be conducted virtually temporarily. Press Release, New York State Unified Court System, Courts in Fifth, Sixth and Seventh Judicial Districts to Begin Phase Four of Return to In-Person Operations (June 30, 2020), https://www.nycourts.gov/LegacyPDFS/press/pdfs/PR20_32.pdf.

⁶ Press Release, New York State Unified Court System, Court System to Implement Presumptive, Early Alternative Dispute Resolution for Civil Cases (May 14, 2020), https://www.pbwt.com/content/uploads/2019/05/PR19_09.pdf.

⁷ *Id.*

⁸ *Id.*

⁹ The Criminal Court of the City of New York is the lowest level criminal court in New York City that handles misdemeanors, which are crimes punishable by fine or imprisonment of up to one year, and lesser offenses. The court also conducts arraignments and preliminary hearings for felonies, which are crimes punishable by imprisonment of more than one year. New York City Criminal Court, *Overview: Jurisdiction*, NY Courts, <http://ww2.nycourts.gov/courts/nyc/criminal/index.shtml>.

¹⁰ New York State Unified Court System, *ADR Programs in Criminal Court (New York City)*, NY Courts, <http://ww2.nycourts.gov/ip/adr/NYCCriminal.shtml>.

¹¹ As a result of COVID, mediation and alternative dispute resolution will be conducted virtually temporarily. Press Release, New York State Unified Court System, Courts in Fifth, Sixth and Seventh Judicial Districts to Begin Phase Four of Return to In-Person Operations (June 30, 2020), https://www.nycourts.gov/LegacyPDFS/press/pdfs/PR20_32.pdf.

ACCESS TO COURTS AND NEW TECHNOLOGIES	
<p>2. Is it possible to remotely participate in a court hearing in the country where the Office operates? If so, please indicate in what types of cases remote participation is possible, or what requirements entities must meet to be able to do so. Please also indicate which participants in the trial (parties, witnesses, experts, etc.) have the opportunity to participate remotely in a court hearing. Please specify if remote participation is mandatory or optional (at the request of the parties).</p>	<p>Federal Civil: Yes, it is possible and optional to remotely participate in a court hearing.</p> <p>In federal district courts, pursuant to Rule 43(a) of the Federal Rules of Civil Procedure, "[a]t trial, the witnesses' testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location."¹² Remote participation is only permitted upon the proponent's request and showing of the above circumstances.</p> <p>In federal appellate courts, video conference is used for conducting oral arguments by the parties or their attorneys in the Second, Third, Eighth, Ninth, and Tenth Circuits.¹³</p> <p>Federal bankruptcy courts follow Rule 43(a) of the Federal Rules of Civil Procedure as described above, pursuant to Rule 9017 of the Federal Rules of Bankruptcy Procedure.¹⁴</p> <p>Federal Criminal:</p>

¹² United States, Fed. R. Civ. P. 43(a), https://www.law.cornell.edu/rules/frcp/rule_43.

¹³ Meghan Dunn & Rebecca Norwick, Report of a Survey of Videoconferencing in the Courts of Appeals (2006), <https://www.fjc.gov/sites/default/files/2012/VidConCA.pdf> (hereinafter Dunn & Norwick).

¹⁴ United States, Fed. R. Bankr. P. 9017, https://www.law.cornell.edu/rules/frbp/rule_9017.

		<p>Yes. As to defendants, Federal Rule of Criminal Procedure ("Rule") 43 applies.¹⁵ Rule 43 covers "Defendant's Presence." Subject to exceptions contained in Rule 43 and Rules 5 and 10, defendant must be physically present at (1) the initial appearance, the initial arraignment, and the plea; (2) every trial stage, including jury empanelment and the return of the verdict; and (3) sentencing.</p> <p>Under Rule 5, with the court's permission, video teleconferencing may be used to conduct a defendant's initial appearance if the defendant consents.¹⁶</p> <p>Under Rule 10, with the court's permission, video teleconferencing may be used to arraign a defendant if the defendant consents.¹⁷</p> <p>With the defendant's written consent, and with the court's permission, Rule 43(b)(2) allows remote participation for all proceedings (arraignment, plea, trial, and sentencing) related to misdemeanor offenses (an offense punishable by fine or by imprisonment for not more than one year) by video teleconferencing (or even defendant's absence).^{18 19}</p> <p>As to witnesses, according to Rule 26, "In every trial the testimony of witnesses must be taken in open court, unless otherwise provided by a</p>
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¹⁵ United States, Fed. R. Crim. P. 43, https://www.law.cornell.edu/rules/frcrmp/rule_43. Rule 43: "(a) When Required. Unless this rule, Rule 5, or Rule 10 provides otherwise, the defendant must be present at: (1) the initial appearance, the initial arraignment, and the plea; (2) every trial stage, including jury impanelment and the return of the verdict; and (3) sentencing." *Id.*

¹⁶ United States, Fed. R. Crim. P. 5(f), https://www.law.cornell.edu/rules/frcrmp/rule_5.

¹⁷ United States, Fed. R. Crim. P. 10(c), https://www.law.cornell.edu/rules/frcrmp/rule_10.

¹⁸ United States, Fed. R. Crim. P. 43(b)(2), https://www.law.cornell.edu/rules/frcrmp/rule_43.

¹⁹ As a result of COVID-19, Section 15002 of the CARES Act permits the court to conduct certain proceedings via video-conference with the defendant's consent, including detention hearings; initial appearances; preliminary hearings; waivers of indictment; arraignments; probation and supervised release revocation proceedings; pretrial release revocation proceedings; pleadings; and sentencing. United States, CARES Act, Section 15002, <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>.

		<p>statute or by rules adopted under Federal Rules of Procedure or Evidence."²⁰</p> <p>The US Constitution's Sixth Amendment Confrontation Clause,²¹ as interpreted by the US Supreme Court, also affects a witnesses ability to participate remotely. The Confrontation Clause guarantees a criminal defendant “a face-to-face meeting with witnesses appearing before the trier of fact.” <i>Coy v. Iowa</i>, 487 U.S. 1012, 1016 (1988). But that right may be compromised when “considerations of public policy and necessities of the case” warrant. <i>Maryland v. Craig</i>, 497 U.S. 836, 848 (1990) (finding that the government's interest “in ‘the protection of minor victims of sex crimes from further trauma and embarrassment’ is a ‘compelling’ one”).²²</p> <p>Note that the Federal Constitution, i.e., the Confrontation Clause as interpreted by the US Supreme Court, applies to state law proceedings as well.</p> <p>New York Supreme Court:</p> <p>Yes. In the Civil Branch of the Supreme Court of the State of New York, there are several technologically advanced courtrooms. Courtroom 2000 for the New Millennium is one of these courtrooms that allows following services²³:</p> <ul style="list-style-type: none"> • Real-time Streaming: Real-time streaming is the output of real-time transcription to a server that is protected by layers of encryption software and anti-hacking software. It can transmit to others out of state.
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²⁰ United States, Fed. R. Crim. P. 26, https://www.law.cornell.edu/rules/frcrmp/rule_26.

²¹ United States, U.S. Const. amend. VI, https://www.law.cornell.edu/constitution/sixth_amendment.

²² Courts generally consider whether sufficiently exceptional cases meet the required compelling public policy considerations on a case-by-case basis. But exceptions to the Confrontation Clause are rare.

²³ 1st JD – Supreme Court, Civil Branch, NY County, *Courtroom 2000*, NY Courts, http://ww2.nycourts.gov/courts/1jd/supctmanh/courtroom_2000.shtml.

		<ul style="list-style-type: none"> • Streaming of Witness Testimony: Video of a witness as he/she testifies can be streamed to and viewed on a password-secure internet site. In addition, the evidence that is shown using the evidence presentation equipment can be streamed along with real-time transcription so as to provide a complete picture of what the jury, the Judge, and the attorneys are seeing in the courtroom as it happens. • Video Conferencing: Video conferences can be conducted using equipment available in the courtroom. <p>In the Criminal Branch, electronic court appearances are authorized by Article 182 of the Criminal Procedure Law and Part 106 of the Rules of the Chief Administrator only for incarcerated defendants who waived their right to personally appear.²⁴ An electronic court appearance is where all participants, including the defendant, can be seen and heard simultaneously through the use of an independent audio-visual system.</p> <p>In the courtroom, cameras are focused on the Judge, Defense Attorney, Assistant District Attorney and Part Clerk. Split-screen monitors and microphones are similarly located. Members of the public view the proceedings from monitors mounted on the walls of the courtroom. A fifth camera is focused on the defendant who sits in a private enclosed soundproof booth at Riker's Island. The defendant is also provided with a split-screen monitor and microphone so that all parties can see and hear each other simultaneously. A full-screen image of any single view can also be displayed when appropriate.²⁵</p> <p>Like in NYC Criminal Court, in sex offense prosecutions, if a judge determines that a child is a vulnerable witness, court has allowed the</p>
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²⁴ United States, N.Y. C.L.S. C.P.L. § 182 (LexisNexis 2020); Rules of Chief Admin of Cts [22 NYCRR] § 106.

²⁵ Supreme Court, Criminal Term, New York County, *Video Conference Unit: Electronic Court Appearances*, NY Courts, <http://ww2.nycourts.gov/courts/1jd/criminal/videoconferencing.shtml>.

		<p>witness to participate remotely while the judge, attorneys, defendant, and jury are physically present in a courtroom.^{26 27}</p> <p>NYC Criminal Court: Yes. Remote participation has been allowed in arraignments for hospitalized defendants and in certain post-conviction proceedings for some incarcerated defendants.²⁸ Also, witnesses at criminal trials have appeared via video conference in limited circumstances where the witness would otherwise be unavailable.²⁹ In sex offense prosecutions, if a judge determines that a child is a vulnerable witness, court has allowed the witness to participate remotely while the judge, attorneys, defendant, and jury are physically present in a courtroom.³⁰ The remote participation is optional.³¹ Criminal courts are, however, prohibited by Criminal Procedure Law Article 182.20 from conducting felony pleas, hearings and trials via video conference.³²</p>
3.	If you have answered question 2 in the affirmative, please indicate whether the location of a person remotely attending a court hearing is legally	<p>Federal Civil: The location of a person remotely attending a court hearing is not legally regulated.</p>

²⁶ United States, N.Y. C.L.S. C.P.L. § 182.20.

²⁷ Matters that will continue to be held virtually and heard by the assigned judge include: nonessential matters, some criminal proceedings (including arraignments, felony, bail applications, and orders of protection), juvenile delinquency proceedings, adoptions, eviction matters in which all parties are represented by counsel, and mental hygiene law proceedings pertaining to a hospitalized adult. Practical Law Litigation, *Impact of COVID-19 on New York Practice: Overview*, Thomson Reuters, [https://ca.practicallaw.thomsonreuters.com/w-026-6759?transitionType=Default&contextData=\(sc.Default\)&firstPage=true#co_anchor_a204556](https://ca.practicallaw.thomsonreuters.com/w-026-6759?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a204556). As a result of COVID, New York courts have been conducting matters virtually. Press Release, New York State Unified Court System, Virtual Courts Expanded Beyond the Limited Category of Essential and Emergency Matters: Courts Begin Hearing Pending Matters; Ban on New Filings Still in Effect, (Apr. 13, 2020), https://www.nycourts.gov/LegacyPDFS/press/PDFs/PR20_15virtualcourtstortsetc.pdf.

²⁸ *Technology in the Courts: Perspectives From the New York City Judiciary*, NY City Bar (2016) <https://www2.nycbar.org/pdf/report/uploads/20073126-TechnologyintheCourtsPerspectivesFromtheNewYorkCityJudiciaryCRIMJUSOPS6.3.16.pdf>.

²⁹ United States, N.Y. C.L.S. C.P.L. § 182.20.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

	<p>regulated. If so, please indicate specific requirements.</p>	<p>Federal Criminal: As to both defendants' and witnesses' ability to participate in proceedings remotely (when possible), the court retains inherent authority, in its discretion, to require that specific standards and procedures be met related to location.³³ However, location is not federally regulated.</p> <p>New York Supreme Court: Yes. As mentioned in the response question 2, for felony cases in the Criminal Branch, electronic appearance is only allowed for incarcerated defendants.</p> <p>NYC Criminal Court: The answer is not clear as to this court.</p>
<p>4.</p>	<p>If you have answered question 2 in the affirmative, please indicate whether the remote participation takes the form of a video conference.</p>	<p>Federal Civil: Remote participation can take many forms in federal courts.</p> <p>For federal district courts, according to the Advisory Committee on Rules – 1996 Amendment, "No attempt is made to specify the means of transmission that may be used. Audio transmission without video images may be sufficient in some circumstances, particularly as to less important testimony. Video transmission ordinarily should be preferred when the cost is reasonable in relation to the matters in dispute, the means of the parties, and the circumstances that justify transmission. Transmission that merely produces the equivalent of a written statement ordinarily should not be used."³⁴</p>

³³ United States, Committee Notes to Fed. R. Crim. P. 43, https://www.law.cornell.edu/rules/frcmp/rule_43 ("In deciding whether to use such procedures, a court may wish to consider establishing clearly articulated standards and procedures. For example, the court would normally want to insure that the location used for televising the video teleconferencing is conducive to the solemnity of a federal criminal proceeding.")

³⁴ United States, Adv. Comm. Notes to Fed. R. Civ. P. 43, https://www.law.cornell.edu/rules/frcp/rule_43.

		<p>For federal appellate courts, as mentioned above, remote participation takes the form of video conference in the Second, Third, Eighth, Ninth, and Tenth Circuits.³⁵</p> <p>For federal bankruptcy courts, since they follow Rule 43(a) of the Federal Rules of Civil Procedure, pursuant to Rule 9017 of the Federal Rules of Bankruptcy Procedure, remote participation could take different forms just like the federal district courts.³⁶</p> <p>Federal Criminal: Rule 5, 10, and 43 discussed in the response to question 2 each specific video conference as the appropriate medium.³⁷</p> <p>New York Supreme Court and NYC Criminal Court: Yes.³⁸ See response to question 2.</p>
<p>5.</p>	<p>If you have answered question 4 in the affirmative, please indicate what video conferencing platform is used. Is it a commonly available platform (such as Skype, Zoom, MS Teams), or is it a platform specifically developed for the courts?</p>	<p>Federal Civil: There appears to be no guidance on this as to federal civil cases, however, the preferred platform likely varies from district to district.³⁹ (There are 94 U.S. District Courts.) The United States Court of Federal Claims, which has nationwide jurisdiction and primarily hears money claims founded upon the Constitution, federal statutes, executive regulations, and contracts (express or implied in fact) with the United States, uses enterprise-level videoconferencing, such as Polycom, Cisco, and Lifesize. This court does</p>

³⁵ Dunn & Norwick, *supra* note 13.

³⁶ United States, Fed. R. Bankr. P. 9017, https://www.law.cornell.edu/rules/frbp/rule_9017.

³⁷ Note, that Section 15002, *supra* note 19, permits telephonic conferencing when video teleconference is not reasonably available for the specified proceedings.

³⁸ New York State Unified Court System, *Virtual Court Appearances for the Public*, N.Y. State Unified Ct. Sys., <https://portal.nycourts.gov/knowledgebase/article/KA-01070>.

³⁹ During COVID-19, many federal courts use commonly available platforms for video conferencing. Zoom or Skype is used only at certain stages of federal civil lawsuits by certain federal courts. For a list of courts and the platform they use during the pandemic. See Perkins Coie, *Courts Using Videoconference Software* (Jun. 25, 2020), <https://www.perkinscoie.com/en/news-insights/courts-using-videoconference-software.html>.

		<p>not support consumer-level videoconferencing, such as Skype or FaceTime.⁴⁰</p> <p>Federal Criminal: <i>See</i> Federal Civil response, <i>supra</i>. Video conferencing platform likely varies in each district. For example, the Northern District of California utilizes Zoom.⁴¹</p> <p>New York Supreme Court: Pre-COVID, Civil Branch courtrooms used Skype for video conferencing.⁴² Criminal Branch courtrooms used an internal platform as mentioned in question 2. As a result of COVID, video appearances are conducted using Skype for Business or Microsoft Teams.⁴³</p> <p>NYC Criminal Court: Unclear what platform was used pre-COVID. As a result of COVID, video appearances are conducted using Skype for Business or Microsoft Teams.⁴⁴</p>
<p>6.</p>	<p>If it is possible to participate remotely in a court hearing in a form other than a video conference (e.g. via an audio link or a telephone call), please indicate the form(s) available.</p>	<p>Federal Civil: As stated in the response to question 4, for federal district courts, audio transmission without video images may be sufficient in some</p>

⁴⁰ United States Court of Federal Claims, Guidance on Use of Videoconferencing in the Court, <https://www.uscfc.uscourts.gov/video-conferencing-guidance>.

⁴¹ <https://www.cand.uscourts.gov/zoom/>

⁴² Saliann Scarpulla, *Supreme Court, New York County: The Technology-Outfitted Place to Be*, NYSBA.ORG – LATEST NEWS, Sept. 1, 2019, <https://nysba.org/supreme-court-new-york-county-the-technology-outfitted-place-to-be/>.

⁴³ New York State Unified Court System, *Virtual Court Appearances for the Public*, N.Y. State Unified Ct. Sys., <https://portal.nycourts.gov/knowledgebase/article/KA-01070> (last visited Nov. 18, 2020).

⁴⁴ *Id.*

		<p>circumstances.⁴⁵ ⁴⁶ The circumstances are not specified in the Federal Rules of Civil Procedure or by the Advisory Committee on Rules – 1996 Amendment.</p> <p>Many bankruptcy courts hold hearings via the telephone.⁴⁷</p> <p>Federal Criminal: Probably not. Rules 5, 10, and 43 specify <i>video</i> teleconference.⁴⁸</p> <p>New York Supreme Court and NYC Criminal Court: As a result of COVID, the virtual court appearances can be conducted by telephone.⁴⁹</p>
7.	When remote participation is possible, please indicate if all remote participants can be watched during the entire duration of a court hearing.	<p>Federal Civil: The Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and Federal Rules of Appellate Procedure (together, "Federal Rules") do not specify whether all remote participants can be watched during the entire duration of a court hearing.</p> <p>Federal Criminal: Because fully remote participation is rare in criminal cases, there is no guidance as to the extent that remote participants can be watched during the court hearing. It is likely that a criminal defendant participating remotely would be viewable for the duration of proceedings.</p> <p>New York Supreme Court:</p>

⁴⁵ United States, Fed. R. Civ. P. 43, https://www.law.cornell.edu/rules/frcp/rule_43.

⁴⁶ In addition, during COVID-19, the Supreme Court of the United States is holding phone hearings. *See* Dan Mangan, *Supreme Court To Hold Phone Hearings Through At Least End Of Year Due To Covid-19, Including Obamacare Case* (Oct. 9, 2020), <https://www.cnbc.com/2020/10/09/coronavirus-supreme-court-to-continue-phone-hearings-due-to-covid-19.html>.

⁴⁷ Federal Judicial Center, Remote Participation in Bankruptcy Court Proceedings, 2019, https://www.fjc.gov/sites/default/files/materials/42/Remote%20Participation%20in%20Bankruptcy%20Court%20Proceedings_First%20Edition_Second%20Printing_2019.pdf.

⁴⁸ *See supra* note 37.

⁴⁹ *Id.*

		<p>There is no guidance as to Civil Branch court hearings. For Criminal Branch hearings, as discussed in greater detail in the response to question 2, felony hearings allow all parties to be watched during the trial.</p> <p>NYC Criminal Court: There is no guidance as to this court.⁵⁰</p>
8.	When remote participation is possible, please indicate how confidential discussions between the attorneys and the parties can be carried out.	<p>Federal Civil: There is no information on how confidential discussions between the attorneys and the parties can be carried out. In federal district courts, Rule 43(a) of the Federal Rules of Civil Procedure requires sufficient procedural safeguards, but does not specify who has the burden of providing the safeguards and what types of safeguards are required.⁵¹ According to the Advisory Committee on Rules – 1996 Amendment, "Safeguards must be adopted that ensure accurate identification of the witness and that protect against influence by persons present with the witness. Accurate transmission likewise must be assured."⁵²</p> <p>No information is available regarding how confidential discussions between the attorneys and the parties can be carried out in federal appellate courts.</p>

⁵⁰ In response to COVID, courts are using Microsoft Teams and Skype for Business. In Skype for Business, there is no information on whether remote participants can watch one another during a virtual hearing. In Microsoft Teams, there is a "lobby" feature that require participants to wait until the judge is ready to hear the participant's case. Whether this means the participants in a hearing that utilizes a "lobby" feature cannot see other parties during the hearing is unclear. *Microsoft Teams Q&A*, N.Y. STATE UNIFIED CT. SYS. (2020) <https://portal.nycourts.gov/knowledgebase/UCS-MicrosoftTeamsJoiningaTeamsMeetingQandA.pdf>.

⁵¹ Fed. R. Civ. P. 43(a), https://www.law.cornell.edu/rules/frcp/rule_43.

⁵² Adv. Comm. Notes to Fed. R. Civ. P. 43(a), https://www.law.cornell.edu/rules/frcp/rule_43.

		<p>Federal bankruptcy courts follow Rule 43(a) of the Federal Rules of Civil Procedures mentioned above, pursuant to Federal Rule of Bankruptcy Procedure 9017.⁵³</p> <p>Federal Criminal: Because this is rare in criminal cases, there is no guidance as to how confidential discussions between the attorneys and parties are carried out. However, such confidential conversations must be provided in accordance with defendant's due process rights.</p> <p>New York Supreme Court: There is no guidance as to Civil Branch court hearings. For Criminal Branch hearings, a dedicated private audio telephone line linking the defendant and the courtroom permits confidential conversations between the defendant and counsel.⁵⁴</p> <p>NYC Criminal Court: There is no guidance as to this court.⁵⁵</p>
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⁵³ Fed. R. Bankr. P. 9017, https://www.law.cornell.edu/rules/frbp/rule_9017.

⁵⁴ Supreme Court, Criminal Term, New York County, *Video Conference Unit: Electronic Court Appearances*, NY Courts, <http://ww2.nycourts.gov/courts/1jd/criminal/videoconferencing.shtml>.

⁵⁵ Out of the two platforms used for virtual hearing during COVID, Microsoft Teams has a separate private conversation during a virtual hearing is possible if the judge permits. The parties in the confidential discussion may break away from the main meeting using "Breakout Room" feature. This feature provides two ways of communication: 1) The parties will mute their microphones on the Teams meeting, then use their phones for their private call. When it is over, the parties will rejoin the main meeting by unmuting themselves, and 2) The court might create a separate Teams call for the parties who wish to have a private conversation. The parties will join the new call via an URL created by the court (which will put the original Teams call on hold). Again, when the private call is over, the parties can rejoin the main meeting. *Microsoft Teams Q&A*, N.Y. STATE UNIFIED CT. SYS. (2020) <https://portal.nycourts.gov/knowledgebase/UCS-MicrosoftTeamsJoiningaTeamsMeetingQandA.pdf>. However, in Skype for Business, there is no information on how to conduct private conversations. The official reason for moving away from Skype and towards Microsoft is that the latter has "Breakout Rooms" to allow "private communications while the main proceeding continues". Press Release, New York State Unified Court System, Message from Chief Judge Janet DiFiore, (Sept. 21, 2020), <https://www.nycourts.gov/whatsnew/pdf/September21-CJ-Message.pdf>. This suggests Skype does not have such capacity.

<p>9.</p>	<p>Please indicate how it is possible to submit documents while remotely attending a court hearing.</p>	<p>Federal Civil: The Federal Rules do not specify how it is possible to submit documents while remotely attending a court hearing. Parties may submit documents that they intend to use before the court hearing according to typical procedures, e.g., filing documents with the Clerk of the Court.</p> <p>Federal Criminal: <i>See</i> Federal Civil response, <i>supra</i>.</p> <p>New York Supreme Court and NYC Criminal Court: The court will determine the proper way to submit or share documents with attendees in a virtual court appearance. There is no uniform rule.⁵⁶</p>
<p>10.</p>	<p>Is it possible to submit pleadings electronically in the country where the Office operates? If so, please indicate in what types of cases pleadings can be submitted electronically.</p>	<p>Federal Civil: Yes, it is possible to submit pleadings electronically. For cases in federal courts, attorneys and other filers can submit case documents, such as pleadings, motions, and petitions, to the court electronically using the federal courts' Case Management/Electronic Case Files (CM/ECF) system.⁵⁷</p> <p>Federal Criminal:</p>

⁵⁶ The two platforms used during COVID for virtual hearing have different ways of submitting documents. In Microsoft Teams, once the judge grants permission, a party may present a document by using Share content feature. *Microsoft Teams Q&A*, N.Y. STATE UNIFIED CT. SYS. (2020) <https://portal.nycourts.gov/knowledgebase/UCS-MicrosoftTeamsJoiningaTeamsMeetingQandA.pdf>. This allows the participant to share desktop, window, PowerPoint, or whiteboard with the parties of the virtual hearing. Microsoft, *Share Content in a Meeting in Teams*, N.Y. State Unified Ct. Sys., <https://support.microsoft.com/en-us/office/share-content-in-a-meeting-in-teams-fcc2bf59-aecd-4481-8f99-ce55dd836ce8>. In Skype for Business, It is best to contact the clerk handling a party's case about the best approach for sharing documents. Skype for Business does allow either to open the document and share the desktop for the parties to view, or share the document as an attachment for the parties to download, view and print. *Joining Skype for Business Meeting*, N.Y. STATE UNIFIED CT. SYS. (2020) <https://www.nycourts.gov/LegacyPDFS/courts/5jd/Joining-Skype-ForBusiness-QA.pdf>. For suggestions on best practices in managing evidence for state virtual hearings, see https://www.ncsc.org/_data/assets/pdf_file/0014/41171/2020-06-24-Managing-Evidence-for-Virtual-Hearings.pdf.

⁵⁷ United States Courts, Electronic Filing (CM/ECF), <https://www.uscourts.gov/court-records/electronic-filing-cmecf>.

		<p>The court asks defendant(s) to plead to the indictment or information at arraignment. Rule 43 requires defendant's presence at the initial appearance, the initial arraignment, and the plea. But under Rule 10, with the court's permission, a defendant may waive appearance when charged by indictment or misdemeanor information, and use video teleconference to carry out the arraignment.⁵⁸</p> <p>New York Supreme Court: Yes. Although electronic filing (e-filing) is not available for criminal cases, e-filing is available for the following types of civil cases:⁵⁹ (Mandatory E-filing is marked with an asterisk.)</p> <ul style="list-style-type: none"> * Commercial - 1199 SEIU * Commercial - Business Entity * Commercial - Contract * Commercial - Insurance * Commercial - International Arbitration * Commercial - Other * Commercial - UCC * Commercial Division Matrimonial - Contested Matrimonial - Uncontested Other Matters - Certificate of Incorporation/Dissolution * Other Matters - Civil Forfeiture * Other Matters - Consumer Credit (Card) Debt Buyer Plaintiff * Other Matters - Consumer Credit (Card) Original Creditor Plaintiff * Other Matters - Consumer Credit (Card) Secondary Debt Buyer Plaintiff * Other Matters - Consumer Credit (Non-Card) Transaction * Other Matters - Contract - Other
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⁵⁸ United States, Fed. R. Crim. P. 10(c), https://www.law.cornell.edu/rules/frcmp/rule_10.

⁵⁹ New York State Courts Electronic Filing, *Authorized for E-Filing: New York County Supreme Court*, N.Y. State Unified Ct. Sys., <https://iapps.courts.state.ny.us/nyscef/AuthorizeCaseType>.

		<ul style="list-style-type: none"> * Other Matters - Contract Non-Commercial * Other Matters - CPLR 3102(e) application for disclosure * Other Matters - Dept of Health Violation App for Judgment * Other Matters - Dept of Labor App for Judgment * Other Matters - Emergency Medical Treatment Other Matters - Habeas Corpus Other Matters - Habeas Corpus Movant Institutionalized Other Matters - Local Court Appeal * Other Matters - Name Change Other Matters - Pistol Permit Revocation Hearing * Other Matters - Sale or Finance of Religious/Not for Profit Property * Other Matters - Workers Comp App for Judgment * Other Real Property - Eminent Domain * Other Real Property - SCAR Other Real Property - Unsafe Buildings * Real Property - Condemnation * Real Property - Mortgage Foreclosure - Commercial * Real Property - Mortgage Foreclosure - Residential * Real Property - Other * Real Property - Tax Certiorari * Real Property - Tax Foreclosure * Special Proceedings - CPLR Article 75 Special Proceedings - CPLR Article 78 * Special Proceedings - Election Law * Special Proceedings - Extreme Risk Protection Order * Special Proceedings - Mechanic's Lien Special Proceedings - MHL Article 10 Initial Special Proceedings - MHL Article 10 Review Special Proceedings - MHL Article 81 Special Proceedings - MHL Article 9.6 * Special Proceedings - Other Special Proceedings - Other Mental Hygiene
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		<p>Special Proceedings - Other Mental Hygiene - MHL Article 9</p> <ul style="list-style-type: none"> * Torts - Asbestos * Torts - Breast Implant * Torts - Child Victims Act * Torts - Environmental * Torts - Medical, Dental, or Podiatrist Malpractice * Torts - Motor Vehicle * Torts - Other * Torts - Other Negligence * Torts - Other Negligence - Mass Tort - Gas Explosion * Torts - Other Negligence - Mass Tort - Steampipe Explosion * Torts - Other Professional Malpractice * Torts - Product Liability * Torts - Product Liability - Mass Tort - Bextra Celebrix * Torts - Product Liability - Mass Tort - Chantix * Torts - Product Liability - Mass Tort - Neurontin * Torts - Product Liability - Mass Tort – RENU <p>E-Filing is never mandatory for unrepresented parties because they are exempt from e-filing by statute.⁶⁰</p> <p>NYC Criminal Court: No. The NYC Criminal Court does not allow a party to commence a case through online filing.⁶¹</p>
<p>11.</p>	<p>If you have answered question 10 in the affirmative, please indicate how the pleadings are submitted (e.g. by e-mail or via a special platform), what additional formal requirements are imposed on the pleadings and how the identity of the person</p>	<p>Federal Civil: The pleadings are submitted online, via the federal courts’ Case Management/Electronic Case Files (CM/ECF) system. "Filing a document in CM/ECF requires a Public Access to Court Electronic Records</p>

⁶⁰ Supreme Court, Civil Branch, NY County, *E. Electronic Case Filing*, NY Courts, <http://ww2.nycourts.gov/courts/1jd/supctmanh/Technology.shtml>.

⁶¹ Due to COVID-19, the court has implemented online system, Electronic Document Delivery System (EDDS), for submitting documents for pending cases. *Electronic Document Delivery System*, N.Y. STATE UNIFIED CT. SYS. (2020) <https://www.nycourts.gov/LegacyPDFS/COURTS/nyc/criminal/EDDS-instructions.pdf>.

	submitting a pleading is verified to prevent impersonation of a party to the proceedings.	<p>(PACER) account and special access issued by an individual court."⁶² To prevent impersonation, before a filer can electronically file a case, he or she must either apply for attorney admissions or register to file electronically with the court.⁶³</p> <p>Federal Criminal: See Federal Civil response, <i>supra</i>.</p> <p>New York Supreme Court: In the Civil Branch, pleadings and other legal documents in civil cases are submitted using a special platform, New York State Courts Electronic Filing System (NYSCEF). In order to utilize NYSCEF, a party must obtain a User ID and Password. To obtain these, a party must submit a Filing User Registration form and once the form is accepted and verified, the party will receive the User ID and Password.⁶⁴ Only a member of the New York Bar, an attorney admitted pro hac vice, an unrepresented litigant, or an Agent Filing User in the business of filing on behalf of attorneys can register.⁶⁵</p> <p>NYC Criminal Court: Not Applicable.</p>
12.	Please indicate if the parties (or their attorneys) have remote access to the case file in the country where the Office operates? If so, please indicate the type of remote access.	<p>Federal Civil: Yes. Parties or their attorneys registered with PACER may electronically access any appellate, district, and bankruptcy case files and docket information via PACER.⁶⁶</p>

⁶² *Id.*

⁶³ PACER, How to File a Case, <https://pacer.uscourts.gov/file-case/how-file-case>.

⁶⁴ NYSCEF, *Frequently Asked Questions*, N.Y. State Unified Ct. Sys., <https://iappscontent.courts.state.ny.us/NYSCEF/live/faq.htm#MandatoryCases>.

⁶⁵ *Id.*

⁶⁶ United States Courts, Electronic Filing (CM/ECF), <https://www.uscourts.gov/court-records/electronic-filing-cmecf>; PACER, Find a Case, <https://pacer.uscourts.gov/find-case>.

		<p>Federal Criminal: <i>See</i> Federal Civil response, <i>supra</i>. A criminal defendant must have the opportunity to participate in her case.</p> <p>New York Supreme Court: In the Civil Branch, e-filed documents in civil cases can be searched and viewed at no cost. Both the filers and the public can search all NYSCEF case documents and view any document that has not been sealed, otherwise restricted, or marked secure prior to April 15, 2013.⁶⁷</p> <p>NYC Criminal Court: No. There was no e-filing system pre-COVID and the parties could not access the case file remotely. The parties also cannot access documents submitted by other parties in the same case via EDDS.</p> <p>However, eCourts website has a WebCriminal page that allows public to access the following information about a pending criminal case⁶⁸:</p> <ul style="list-style-type: none"> • Basic Case Information • Defendant Name • Case Number / Summons Number (for summons cases in NYC) • Next Appearance information: court, date, part and judge (Supreme and County cases only) • Detailed Case Information (click the Case # link on the Search Results page) • Defendant's birth year • Incident date • Arrest date/time • Case related numbers • Arresting officer information
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⁶⁷ *User Manual for Supreme Court and Court of Claims Cases*, NYSCEF Sys. (2020) <https://iappscontent.courts.state.ny.us/NYSCEF/live/training/userManual.pdf>.

⁶⁸ WebCriminal, *Frequently Asked Questions*, N.Y. State Unified Ct. Sys., https://iapps.courts.state.ny.us/webcrim_attorney/AttorneyHelp#OtherInformation.

		<ul style="list-style-type: none"> • Defense Attorney / District Attorney (if available) • Appearance Information • Charge Information • Motion Information
ARTIFICIAL INTELLIGENCE AND COURTS		
13.	Do the courts in the country where the Office operates use any tools that incorporate Artificial Intelligence? If so, please indicate whether such tools are used exclusively for back-office purposes or (also) in external contacts (e.g. chatbots)?	<p>Federal Civil: No court is currently relying in any way, even on a "human-in-the-loop" basis, on machine-learning algorithms for <i>judicial</i> decisions.⁶⁹ Other than broadening access of digital data via CM/ECF System as described above, courts have not incorporated artificial intelligence in the handling of civil cases by federal courts, not even chatbots.</p> <p>Federal Criminal: No. <i>See</i> Federal Civil response, <i>supra</i>.</p> <p>New York Supreme Court and NYC Criminal Court: No. However, the Commission to Reimagine the Future of New York's Courts, created by Chief Judge Janet DiFiore on June 17, 2020, made a recommendation to implement "Online Chat Bot" that can help users find information.⁷⁰</p>
14.	Does the justice system in the country where the Office operates use Artificial Intelligence tools to identify groups of individuals who are more likely to commit a given type of crime (e.g. tax offences)?	<p>Federal Civil: Not applicable for civil cases.</p> <p>Federal Criminal:</p>

⁶⁹ Cary Coglianese and Lavi M. Ben Dor, *AI in Adjudication and Administration*, Faculty Scholarship at Penn Law 2118 (Nov. 3, 2020), https://scholarship.law.upenn.edu/faculty_scholarship/2118.

⁷⁰ *Initial Report on the Goals and Recommendations for New York State's Online Court System*, N.Y. STATE UNIFIED CT. SYS. (2020) <http://www.nycourts.gov/whatsnew/pdf/OCWG-Report.pdf>.

		<p>The Department of Justice (DOJ) utilizes AI-based transcription and translation services to assist their agencies with audio and video based discovery. The DOJ and Federal Bureau of Investigation (FBI) also utilize AI-based tools to investigate crimes, e.g., using biometric identification tools to detect and prevent crimes, or using big data to detect financial crimes.</p> <p>New York Supreme Court and NYC Criminal Court: No.</p>
<p>15.</p>	<p>Please indicate if in the country where the Office operates the parties have general access to tools facilitating the submission of a pleading in simple cases (e.g. by completing an online form available on the court's website)?</p>	<p>Federal Civil: Yes. National federal court forms for certain types of cases are available on the US Courts website.⁷¹ However, the submission of the forms must be done in accordance with the Federal Rules and may vary from district to district. Attorneys or other filers should use CM/ECF System if they wish to submit court documents online.</p> <p>Federal Criminal: <i>See</i> Federal Civil response, <i>supra</i>.</p> <p>New York Supreme Court and NYC Criminal Court: No.</p>
<p>16.</p>	<p>Has the justice system in the country where the Office operates automated a certain range of its functions (e.g. certain administrative activities)? If so, please indicate what technologies are used for automation purposes?</p>	<p>Federal Civil: No.</p> <p>Federal Criminal: No.</p> <p>New York Supreme Court and NYC Criminal Court:</p>

⁷¹ United States Courts, Forms, <https://www.uscourts.gov/services-forms/forms>.

		No.
ONLINE COURTS		
17.	Are there any court proceedings in the country where the Office operates that are entirely conducted online? If so, please indicate which types of proceedings are conducted online (e.g. small claims cases, family cases, etc.) and specify if the online mode of such proceedings is mandatory or optional (at the request of the parties).	<p>Federal Civil: No court proceeding in federal courts is conducted solely online. Online mode of proceedings is generally optional.</p> <p>In federal courts, generally, electronic filing and electronic service are available as an alternative to in-person filing and service.⁷²</p> <p>In federal appellate courts, a party represented by an attorney must make electronic filing, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.⁷³ Video conference can be used for conducting oral arguments by the parties or their attorneys in the Second, Third, Eighth, Ninth, and Tenth Circuits.⁷⁴</p> <p>In addition, for civil cases in the federal district courts, oral depositions can be conducted online, but they are optional.⁷⁵ Oral depositions for cases in federal bankruptcy courts can be conducted online, following Rule 30 of the Federal Rules of Civil Procedure, pursuant to Rule 7030 of the Federal Rules of Bankruptcy Procedure.⁷⁶</p> <p>Federal Criminal:</p>

⁷² United States, Fed. R. Civ. P. 5, https://www.law.cornell.edu/rules/frcp/rule_5; United States, Fed. R. App. P. 25, https://www.law.cornell.edu/rules/frap/rule_25.

⁷³ United States, Fed. R. App. P. 25(a)(2)(B)(i), https://www.law.cornell.edu/rules/frap/rule_25.

⁷⁴ Dunn & Norwick, *supra* note 13.

⁷⁵ United States, Fed. R. Civ. P. 30(b)(4), https://www.law.cornell.edu/rules/frcp/rule_30.

⁷⁶ United States, Fed. R. Bankr. P. 7030, https://www.law.cornell.edu/rules/frbp/rule_7030.

		<p>No, not as related to federal criminal proceedings. As discussed, however, Rule 43(b)(2) allows for arraignment, plea, trial, and sentencing to occur by video teleconferencing with the defendant's written consent and with the court's permission for misdemeanor offenses.⁷⁷</p> <p>New York Supreme Court and NYC Criminal Court: No.</p>
18.	Are there any online courts (courts accessible only via the Internet, whose proceedings are conducted exclusively and entirely online) in the country where the Office operates? If so, please indicate the scope of jurisdiction of such courts.	<p>Federal Civil: No.</p> <p>Federal Criminal: No, not as related to federal criminal proceedings.</p> <p>New York Supreme Court and NYC Criminal Court: No.</p>
19.	If you have answered question 17 or 18 in the affirmative, please indicate if appellate proceedings are also conducted online.	<p>Federal Civil: In federal appellate courts, electronic filing and electronic service are available as an alternative to in-person filing and service.⁷⁸ A party represented by an attorney must make electronic filing, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.⁷⁹ And video conference can be used for conducting oral arguments by the parties or their attorneys in the Second, Third, Eighth, Ninth, and Tenth Circuits.⁸⁰</p> <p>Federal Criminal: No.</p>

⁷⁷ United States, Fed. R. Crim. P. 43(b)(2), https://www.law.cornell.edu/rules/frcmp/rule_43.

⁷⁸ Fed. R. App. P. 25, https://www.law.cornell.edu/rules/frap/rule_25.

⁷⁹ *Id.* 25(a)(2)(B)(i).

⁸⁰ Dunn & Norwick, *supra* note 13.

		New York Supreme Court and NYC Criminal Court: Not Applicable.
PROCEDURAL GUARNATEES AND NEW TECHNOLOGIES		
20.	If you have answered question 17 or 18 in the affirmative, please indicate whether the country where the Office operates has implemented any mechanisms aimed to grant legally required levels of the access to court to digitally excluded persons. Please indicate specified mechanisms (e.g. possibility of conducting the proceedings, otherwise held online, in traditional form due to justified request of the party).	<p>Federal Civil: Generally no, because such proceedings are optional. For federal appellate courts, a party represented by an attorney must make electronic filing, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.⁸¹ Thus, digitally excluded persons who are represented by a counsel may make nonelectronic filing upon a showing of good cause or permission by the court or local rules.</p> <p>Federal Criminal: Not applicable to questions 17 or 18. Note, however, the First Amendment of the U.S. Constitution guarantees the public a right of access to judicial proceedings held in open court; and the Sixth Amendment guarantees a criminal defendant the right to a public trial.⁸²</p> <p>New York Supreme Court and NYC Criminal Court: Not Applicable.</p>
21.	If you have answered question 17 or 18 in the affirmative, please indicate how the principle of open proceedings is ensured.	<p>Federal Civil: Anyone registered with PACER is able to search and locate appellate, district, and bankruptcy court case and docket information, including</p>

⁸¹ United States, Fed. R. App. P. 25(a)(2)(B)(i), https://www.law.cornell.edu/rules/frap/rule_25.

⁸² United States, U.S. Const. amend. I, https://www.law.cornell.edu/constitution/first_amendment; United States, U.S. Const. amend. VI, https://www.law.cornell.edu/constitution/sixth_amendment.

		<p>transcripts.⁸³ For remote proceedings that would otherwise be held in open court, courts will often provide a public dial-in for the public to listen to proceedings. Federal appellate courts post audio recordings of oral arguments on their respective websites.</p> <p>Federal Criminal: Not applicable to question 17 or 18. See Federal Civil response, <i>supra</i>. Note, for remote proceedings that would otherwise be held in open court, courts will often provide a public dial-in for the public to listen to proceedings.</p> <p>New York Supreme Court and NYC Criminal Court: Not Applicable.</p>
22.	If you have answered question 17 or 18 in the affirmative, please indicate how is the sensitive data from those proceedings being archived.	<p>Federal Civil: Parties or nonparties making the filing are responsible for redacting personal identifier information for electronic case files.⁸⁴ In terms of electronic transcript of court proceedings, Parties or nonparties making the filing are responsible for reviewing it for the personal data identifiers required by the federal rules to be redacted, and providing the court reporter or transcriber with a statement of the redactions to be made to comply with the rules.⁸⁵</p> <p>Federal Criminal:</p>

⁸³ PACER, File a Case, <https://www.uscourts.gov/court-records/find-case-pacer#:~:text=Federal%20case%20files%20are%20maintained,court%20case%20and%20docket%20information.>

⁸⁴ United States Courts, Electronic Filing (CM/ECF), <https://www.uscourts.gov/court-records/electronic-filing-cmecf>. See also United States, Fed. R. Bankr. P. 9037, https://www.law.cornell.edu/rules/frbp/rule_9037; Fed. R. App. P. 25(a)(5), https://www.law.cornell.edu/rules/frap/rule_25; Fed. R. Civ. P. 5.2, https://www.law.cornell.edu/rules/frcp/rule_5.2.

⁸⁵ United States Courts, Privacy Policy for Electronic Case File, <https://www.uscourts.gov/rules-policies/judiciary-policies/privacy-policy-electronic-case-files>.

		<p>Not applicable to question 17 or 18. See Federal Civil response, <i>supra</i>. Parties may request the court to seal particular records or redact specific information.⁸⁶</p> <p>New York Supreme Court and NYC Criminal Court: Not Applicable.</p>
23.	Has the Court of the highest instance in the country where the Office operates produced any rulings on the standards of procedural fairness of the online proceedings?	<p>Federal Civil: No.</p> <p>Federal Criminal: The Supreme Court of the United States has ruled only on the procedural fairness as related to remote witnesses in extraordinary circumstances and the Confrontation Clause, as discussed in response 2. Otherwise, the procedural fairness requirements in the U.S. Constitution and Federal Rules of Criminal Procedure apply equally to in-person and remote proceedings.</p> <p>New York Supreme Court and NYC Criminal Court: Not Applicable.</p>
24.	Are there any legal regulations in the country where the Office operates in place concerning the participation of persons deprived of liberty in online proceedings? In particular, are there any legal requirements concerning the surroundings and the conditions of the participation of the accused in online proceedings in order to avoid indirect infringements on the presumption of innocence rule?	<p>Federal Civil: Not applicable for civil cases.</p> <p>Federal Criminal: Based on a defendant's constitutional due process right to a fair trial, a state may not compel a defendant to appear in front of a jury in identifiable jail or prison clothes.⁸⁷ As discussed, however, federal criminal trials must occur in-person for felony crimes. Therefore, there is no official guidance on this; any applicable rules are likely established district to district.</p>

⁸⁶ United States, Fed. R. Crim. P. 49.1, https://www.law.cornell.edu/rules/frcrmp/rule_49.1.

⁸⁷ United States, *Estelle v. Williams*, 425 U.S. 501 (1976)

		<p>New York Supreme Court: For the Criminal Branch, a defendant may participate in an electronic court appearance upon consent, on the record and after consultation with counsel. A defendant has the right to withdraw his or her request to appear electronically and would be produced in Court for the next court appearance.⁸⁸ Prior to the video court appearance, the defense attorney will have an opportunity to speak with his client electronically. This conversation will be held in a separate room, and if possible, in close proximity to the courtroom. These separate rooms will also permit defense attorneys and probation officers to have electronic conferences or interviews with defendants on non-calendar days.⁸⁹ There are no other legal requirements regarding the conditions of the participation of the accused. See also response to question 2.</p> <p>NYC Criminal Court: There is no information on regulations concerning the surroundings and the conditions of the participation of the accused.</p>
<p>25.</p>	<p>Is there any particular category of cases in country where the Office operates, that requires party to be physically present in the courtroom during the proceedings (e.g. pre-trial detention proceedings), despite basic admissibility of the online proceedings and online participation of the parties in those proceedings?</p>	<p>Federal Civil: In federal courts, physical presence in the courtroom during the proceedings is the default. Remote witness testimony (Fed. R. Civ. P. 43) is an alternative option, permitted only if the proponents meet the requirements established in the Rule.⁹⁰ Remote oral arguments in federal appellate courts are also optional.⁹¹</p> <p>Federal Criminal:</p>

⁸⁸ Supreme Court, Criminal Term, New York County, *Video Conference Unit: Electronic Court Appearances*, NY Courts, <http://ww2.nycourts.gov/courts/1jd/criminal/videoconferencing.shtml>.

⁸⁹ *Id.*

⁹⁰ United States, Fed. R. Civ. P. 43(a), https://www.law.cornell.edu/rules/frcp/rule_43.

⁹¹ Dunn & Norwick, *supra* note 13.

		<p>See response to question 2.</p> <p>New York Supreme Court and NYC Criminal Court: No, there are no types of cases that require a party to be physically present. However, as mentioned in question 2, Criminal Procedure Law Article 182 prohibits courts from conducting felony pleas, hearings and trials via video conference.</p>
<p>26.</p>	<p>Is the AI based software being used during the evidence proceedings in the country where the Office operates?</p>	<p>Federal Civil: No.</p> <p>Federal Criminal: No.</p> <p>New York Supreme Court: Yes. As mentioned in question 2, Civil Branch has Courtroom 2000, which is equipped with automated transcription service.</p> <p>NYC Criminal Court: No.</p>
<p>27.</p>	<p>Has the country where the Office operates implemented any specific legislation concerning the access to assigned counsel (legal aid counsel/public defender) in online proceedings?</p>	<p>Federal Civil: No.</p> <p>Federal Criminal: No. The same access to counsel under the U.S. Constitution and federal rules and statutes apply equally to remote proceedings. The Office of the Federal Public Defender operates under authority of the Criminal Justice Act of 1964 (CJA), 18 U.S.C. § 3006A. It provides defense services in federal criminal cases to individuals who are financially unable to obtain adequate representation.</p>

		New York Supreme Court and NYC Criminal Court: No.
28.	Are there any trainings dedicated to technical aspects of the participation in online proceedings being organized for judges, prosecutors and other legal professionals in the country where the Office operates?	<p>Federal Civil: No.</p> <p>Federal Criminal: No.</p> <p>New York Supreme Court and NYC Criminal Court: There are OnDemand training videos on how to utilize Skype for Business and Microsoft Teams available for the public.⁹² Also, there is a tip sheet suggesting participants to mute while listening to others speak, press hand-raise icon for questions, wear clothes appropriate for courtroom appearance and blur the background of the video to lessen distractions.⁹³</p>
29.	Are new technologies used to alleviate the stress associated with participating in court proceedings that may potentially be experienced by vulnerable persons (e.g. victims of violent crimes, children) in the country where the Office operates? If so, please indicate how such technologies are used.	<p>Federal Civil: No.</p> <p>Federal Criminal: Yes. As discussed in response 2, a court may allow an exception to the Confrontation Clause when “considerations of public policy and necessities of the case” warrant. <i>Maryland v. Craig</i>, 497 U.S. 836, 848 (1990) (finding that the government's interest “in ‘the protection of minor victims of sex crimes from further trauma and embarrassment’ is a ‘compelling’ one”). In such instances, the court will implement processes to ensure direct and cross-examination by other means, or outside the presence of defendant. Because this procedure creates an exception to an important constitutional right, however, it is used infrequently.</p>

⁹² New York State Unified Court System, *Virtual Court Appearances for the Public*, NY Courts, <https://portal.nycourts.gov/knowledgebase/article/KA-01070>.

⁹³ New York State Unified Court System, *Skype for Business – Best Practices and Tips*, NY Courts, <https://portal.nycourts.gov/knowledgebase/article/KA-01021/en-us>.

		<p>New York Supreme Court and NYC Criminal Court: Yes. As mentioned in question 2, remote participation is available for a child who is a vulnerable witness in a sex offense.</p>
30.	Please indicate if any solutions are used in the country where the Office operates to adjust the digital tools for accessing courts to the needs of persons with disabilities, the elderly or those with difficulties in operating a computer. If yes, please specify these solutions.	<p>Federal Civil: No. Evaluations of the homepages and websites of the federal judiciary revealed that there were images and/or scripts with no accompanying identifying text and fillable online forms that were difficult to navigate with a keyboard/screen reader.⁹⁴ However, no solution was identified to address the accessibility issues.</p> <p>Federal Criminal: While there is no specific guidance on this point, courts must provide adequate access to individuals with disabilities under the Americans with Disabilities Act of 1990 (ADA) and the ADA Amendments Act of 2008 (ADAAA).</p> <p>New York Supreme Court and NYC Criminal Court: No.</p>
31.	Please indicate if in the country where the Office operates the parties have general access to guidebooks covering the technical and legal aspects of the participation in online proceedings.	<p>Federal Civil: No, because online proceedings are generally not available in federal courts. In terms of electronic filing and electronic records, PACER offers a user manual covering the technicalities.⁹⁵ The US Courts website provides privacy rules covering certain legal aspects.⁹⁶</p> <p>Federal Criminal:</p>

⁹⁴ Federal Judicial Center, Disability and the Federal Courts-A Study of Web Accessibility (Dec. 2019), <https://www.fjc.gov/sites/default/files/materials/24/Disability%20and%20the%20Federal%20Courts.pdf>.

⁹⁵ PACER, PACER User Manual, <https://pacer.uscourts.gov/help/pacer/pacer-user-manual>.

⁹⁶ United States Courts, Privacy Policy for Electronic Case File, <https://www.uscourts.gov/rules-policies/judiciary-policies/privacy-policy-electronic-case-files>.

		<p>No. To the extent such procedures exist for federal criminal proceedings, those procedures would be determined by the clerk's office in each district.</p> <p>New York Supreme Court and NYC Criminal Court: There are technical manuals available online along with training videos as mentioned in question 28. However, there is no manual on legal aspects of the participation in online proceedings.</p>
<p>32.</p>	<p>Has the country where the Office operates implemented any separate legal procedures concerning the proceedings in case of the computer or the Internet malfunction on either the parties or the Court behalf?</p>	<p>Federal Civil: No legal procedures are implemented in case of computer or the Internet malfunction. However, different federal courts issue different guidance to ensure video conferencing is conducted without technical issues. For example, the US Court of Appeals for the Fourth Circuit suggests that counsels attending videoconferences should keep the conference manager's cell phone number at hand so they can call or text promptly if their connection fails. The conference manager will notify the court so that proceedings can be paused while the counsels rejoin the conference.⁹⁷ The United States Court of Federal Claims requires at least one-month advance notice for remote proceedings. A system test must be conducted once a videoconference is approved. The court will connect the videoconference at least 15 minutes before the start of the scheduled proceeding to allow time to work through any unexpected connection problems. The court will also test all microphones and camera angles. Technical staff at the remote conference site must be present when the videoconference is connected. While the proceeding is in progress, technical staff at the remote</p>

⁹⁷ U.S. Court of Appeals for the Fourth Circuit, Videoconferencing Tips for Counsel, https://www.ca4.uscourts.gov/docs/pdfs/videoconferencingtipsforcounsel.pdf?sfvrsn=488fb909_6.

		<p>conference site must remain available by telephone in case of a problem.⁹⁸ 99</p> <p>Federal Criminal: No. To the extent such procedures exist for federal criminal proceedings, those procedures would be determined by the clerk's office in each district.</p> <p>New York Supreme Court and NYC Criminal Court: No.</p>
33.	<p>If you have answered question 32 in the affirmative, please indicate what are the actions taken to limit the possibility of parties deliberately obstructing the court proceedings (e.g. by intentionally disconnecting the Internet) without infringing on the parties rights in the case of genuine technical difficulties.</p>	<p>Federal Civil: No specific actions are available. But the court retains its inherent power to sanction attorneys for their misbehavior.</p> <p>Federal Criminal: Not Applicable.</p> <p>New York Supreme Court and NYC Criminal Court: Not Applicable.</p>
ADDITIONAL INFORMATION		
34.	<p>If in the country in which the Office operates, the judiciary uses new technologies in a form that has not yet been included in any of the above questions or answers, please indicate it.</p>	<p>Federal Civil: Not Applicable.</p> <p>Federal Criminal: Not Applicable.</p>

⁹⁸ United States Court of Federal Claims, Guidance on Use of Videoconferencing in the Court, <https://www.uscfc.uscourts.gov/video-conferencing-guidance>.

⁹⁹ On the other hand, during COVID-19, the United States District Court of Northern District of California announced that the court would not provide any technical assistance in videoconferencing, and referred to the Zoom Help Center, local IT support, or other online guidance for technical support. *See* United States District Court of Northern District of California, Preparing to Participate in a Zoom Video Conference, <https://www.cand.uscourts.gov/zoom/>.

		New York Supreme Court and NYC Criminal Court: Not Applicable.
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New Technologies — New Justice is a joint project of the Helsinki Foundation for Human Rights and Clifford Chance.

In today's world, new technologies are present in virtually all spheres of life – and they are also becoming increasingly important for the modern justice system. The project seeks to examine the actual presence of new technologies in the justice system of Poland and around the world, as well as to identify the main risks associated with modern legal technologies and the most promising solutions to these risks. The advancing digitalisation of the justice system and the digital modernisation of the legal system is an inevitable consequence of the need to ensure that the legal system keeps up with the times. That is why the Helsinki Foundation for Human Rights and Clifford Chance work to identify solutions for improving the justice system to ensure that the rights and freedoms of individuals are not only respected but also exercised more easily.

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