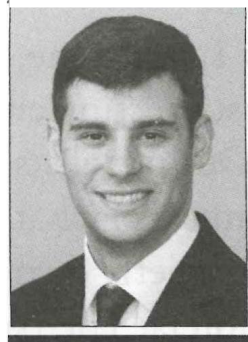


New York State Courts Permitted to Take Judicial Notice of Google Maps

On December 28, 2018, Governor Cuomo signed Senate Bill S9061 into law, amending CPLR § 4511 to allow New York State courts in criminal or civil cases to take judicial notice,¹ subject to a rebuttable presumption, of “an image, map, location, distance, calculation,



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or other information taken from a web mapping service, a global satellite imaging site, or an internet mapping tool” (collectively, “internet map information”).² Of note, it only took the Legislature five days for S9061 to be introduced and pass both houses.³

Prior to S9061, for internet map information to be admitted

into evidence, the moving party had to lay a foundation by proving to the court that the map is relevant, complies with New York’s rules of evidence, and could be admitted into evidence.⁴ Laying a foundation, however, is time consuming and costly. Assuming the moving party demonstrates the internet map information’s relevance, the moving party then needs to hire an expert and ensure the expert was in court to testify as to the accuracy of the information. This is especially difficult if the internet map information is older or historic.⁵ In many instances, validating the location of an event detracts and prolongs the overall case. As State Senator Michael Gianaris, S9061’s sponsor, wrote in his Sponsor Memorandum, “[t]his change [allowing New York State courts to take judicial notice of internet map information] to the CPLR will further the interests of justice by allowing litigation to proceed in a timelier manner and will help both plaintiff and defendant resolve litigation as soon as possible.”⁶

In federal practice, courts already take judicial notice of reputable internet map information from a web mapping service, global satellite imaging site, and an internet mapping tool (collectively, “Internet Mapping Sites” or “IMs”).⁷ Under Federal Rules of Evidence Rule 201(b)(2), courts can take judicial notice of a fact that “can be accurately and readily determined from sources whose accuracy can-

not be reasonably questioned.”⁸ Federal courts across the United States have held that internet map information from IMs meets Rule 201(b)(2)’s requirements and, as such, judicial notice applies to “basic map features, physical contours of an area, and nearby landmarks.”⁹ Federal courts have also held that internet map information from IMs is not hearsay because internet map information makes no “assertion,” thereby preventing its authenticity from being questioned.¹⁰

It is worth noting how far courts have come in accepting reputable internet map information. Twenty years ago, on a broad level, courts were skeptical of internet evidence because “[a] nyone can put anything on the Internet. No web-site is monitored for accuracy and nothing contained therein is under oath or even subject to independent verification absent underlying documentation.”¹¹ Today, however, internet map information is frequently used in a wide variety of areas, ranging from Uber drivers to attorneys. Accordingly, introduction of internet map information into evidence is a necessity especially in premise liability cases, traffic cases, and determining proper venue.¹² In custom and practice, businesses, government agencies, and individuals rely on IMs and their creators to provide us with correct and accurate information.

Still, the Legislature was mindful not to require courts to automatically accept internet map information by judicial notice. CPLR § 4511(c) provides that judicial notice of internet map information from IMs is a rebuttable presumption. The burden, therefore, falls to the opposing party to challenge the admission through “credible and reliable evidence that the image, map, location, distance, calculation, or other information” does not “fairly and accurately portray that which it is being offered to prove.”¹³ This is an important and necessary element to the law because in some instances the internet map information may not be accurate. After all, IMs and their creators are not always perfect.

From a practitioner’s standpoint, courts are now required to presume internet map information from IMs is accurate and, if the presumption is not overcome, take judicial notice.¹⁴ An attorney who wants to submit internet map information from IMs must give notice to the opposing side at least 30 days before the trial

and hearing and provide the opposing side with either a copy of the map or the internet address where the map can be inspected.¹⁵ The opposing side must, no later than 10 days before the trial or hearing, object to the map being judicially noticed and state the grounds for the objection.¹⁶ Similar to any other judicially noticed fact, it is a question of law for the court to decide.¹⁷ Perhaps Supreme Court Justice Robert H. Jackson said it best when he remarked, “[w]e may, of course, take judicial notice of geography.”¹⁸

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1. Judicial notice is a “court’s acceptance, for purposes of convenience and without requiring a party’s proof, of a well-known and indisputable fact.” *Judicial Notice*, Black’s Law Dictionary (10th ed. 2014).

2. CPLR § 4511(c).

3. See Governor Andrew Cuomo Approval Memorandum – No. 19 Chapter 516 (“While I agree with the objectives of this bill, there are a number of necessary technical amendments that must be made.”). The amendments were filed under S1264, passed both the Assembly and Senate, and is waiting to be sent to the Governor.

4. See 1 New York Evidentiary Foundations §B(1) (“[T]he most important procedural rule is that the proponent of an item must ordinarily lay the foundation before formally offering the item into evidence.”).

5. Michael Giusto, *New York Eases Rules on Using Google Maps and Google Earth Images at Trial*, Neufeld O’Leary & Giusto (July 26, 2018), <https://www.noglaw.com/using-digital-map-images-at-trial/>.

6. The New York State Senate, Senate Bill S9061, Sponsor Memo (June 15, 2018), <https://www.nysenate.gov/legislation/bills/2017/s9061>.

7. See *United States v. Perea-Rey*, 680 F.3d 1179, 1190 n.1 (9th Cir. 2012) (“We take judicial notice of a Google map

and satellite image as a ‘source[] whose accuracy cannot reasonably be questioned,’ at least for the purpose of determining the general location of the home.”); *Pahls v. Thomas*, 718 F.3d 1210, 1243 n.1 (10th Cir. 2013); *United States v. Harris*, 884 F.Supp.2d 383, 399 n.7 (W.D.P.A. 2012) (“Moreover, it is well-settled that courts (including a detached, neutral magistrate judge) may take judicial notice of the map of a general area and consider the location of events in rendering a decision.”); *Rindfleisch v. Gentiva Health Sys.*, 752 F.Supp.2d 246, 262 n.13 (E.D.N.Y. 2010); *Maynard v. Harrah’s Entmt, Inc.*, 2010 U.S. Dist. Lexis 45888, *1, *15 – *16 n.6 (E.D.N.Y. 2010).

8. Fed. R. Evid. 201(b)(2).

9. See Endnote 7; Jeffrey Bellin & Andrew Guthrie Ferguson, *Trial by Google: Judicial Notice in the Information Age*, 108 Nw. U. L. Rev. 1137, 1163 (2014).

10. *United States v. Lizarraga-Tirado*, 789 F.3d 1107, 1109 (9th Cir. 2015); *United States v. Ballesteros*, 751 Fed. Appx. 579, 580 (5th Cir. 2019); *United States v. Sanon*, 738 Fed. Appx. 655, 661 n.4 (11th Cir. 2018).

11. *St. Clair v. Johnny’s Oyster & Shrimp, Inc.*, 76 F.Supp.2d 773, 774 – 75 (S.D. Tex. 1999).

12. See *Meza-Hernandez v. Rain Props. Inc.*, 2017 N.Y. Misc. Lexis 5287, *1, *9 (N.Y. Sup. Ct. Bronx Cnty. 2017); *Lau v. Margaret E. Pescatore Parking, Inc.* 2014 N.Y. Misc. Lexis 6053, *1, *5 (N.Y. Sup. Ct. N.Y. Cnty. 2014), *rev’d in part*, 30 N.Y.3d 1025 (2017) (“Plaintiff has failed to raise any genuine issues of material fact as it pertains to Defendant Tai Ming’s liability where providing Google maps to show that a year prior, there were barrels in a similar spot to where the accident occurred, is not sufficient to create an issue of fact regarding Defendant Tai Ming’s liability as an arguably out of possession landowner.”); *Rindfleisch*, 752 F.Supp.2d 246 at 262 n.13.

13. CPLR § 4511(c).

14. *Id.*

15. *Id.*

16. *Id.*

17. CPLR § 4511(d).

18. *Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337, 344 (1952) (Jackson, J., dissenting).