



The Problem of "Due Notice" as a Ground for Refusing Enforcement of Arbitral Awards in B2C E-Commerce

Rabbimova Farahbonu Alisherovna

Master of Laws (LL.M.), Tashkent, Uzbekistan

faraxbonu2004@gmail.com

Abstract

Digital commerce has changed the method by which contractual and procedural information reaches consumers, but the legal concept of proper notice remains largely connected with traditional procedural assumptions. Article V(1)(b) of the New York Convention allows refusal of recognition and enforcement where the party against whom an award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present its case. In B2C e-commerce, determining what constitutes proper notice is increasingly difficult. An email can be legally delivered but filtered as spam. A notification can appear inside a platform account that the consumer no longer uses. A push notification may technically reach a device without communicating that binding arbitration has begun. Requiring proof of actual subjective knowledge would make enforcement highly uncertain, but treating every electronically transmitted message as sufficient would reduce due process to a technical formality. This thesis proposes a standard of "digital due notice" based on reliable delivery, adequate prominence, understandable content and reasonable opportunity to respond. The proposed approach focuses not on whether a message was merely sent, but whether the communication system was reasonably designed to bring legally significant proceedings to the consumer's attention.

Keywords

due notice, New York Convention, consumer arbitration, e-commerce, digital communication, due process, enforcement.



Rabbimova Farahbonu Alisherovna
Huquq magistri (LL.M.), Toshkent, O'zbekiston
faraxbonu2004@gmail.com

Раббимова Фарахбону Алишеровна
Магистр права (LL.M.), Ташкент, Узбекистан
faraxbonu2004@gmail.com

Introduction

A paper letter sent to a physical address has never guaranteed that the recipient actually reads it. Nevertheless, traditional procedural law developed relatively stable rules for deciding when notice is sufficient. Registered mail, personal service and other formal methods created evidence that a legally significant communication had been transmitted through an accepted channel.

Digital communication makes the same question more difficult.

A consumer can receive hundreds of emails, application notifications and commercial messages every week. Some are automatically filtered. Others appear briefly on a mobile screen. Platforms frequently use the same communication channel for advertising, delivery information, discounts, changes in terms and legally significant notices.

Against this background, the statement that "an email was sent" gives surprisingly little information about whether a consumer had a realistic opportunity to defend a claim.

Article V(1)(b) of the New York Convention addresses this problem at the enforcement stage. Recognition and enforcement may be refused if the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or the arbitration proceedings, or was otherwise unable to present its case.

Unlike Article V(2)(b), the defence under Article V(1)(b) must normally be raised and proved by the party resisting enforcement. The provision reflects a basic procedural



“KELAJAK TEKNOLOGIYALARI VA SUN’IY INTELLEKT”
nomli respublika ilmiy-amaliy masofaviy konferensiyasi
VOLUME-1, ISSUE-6, 2026

principle: arbitral finality is legitimate only when the affected party had a meaningful opportunity to participate.

The UNCITRAL Model Law contains a closely related rule in Article 36(1)(a)(ii). Both instruments show that notice is not an administrative detail. It is connected with the right to be heard.

Digital B2C arbitration makes the standard uncertain because electronic delivery exists at several different levels. A message may reach a mail server but not the inbox. It may reach the inbox but remain unread. It may be opened but not understood as an arbitration notice. A platform notification may be available in the consumer's account while the consumer has stopped using the platform.

The research question is therefore not whether electronic notice should be accepted. It clearly can be. The more difficult issue is what conditions should make electronic notice legally sufficient for enforcement of a B2C arbitral award.

I argue that neither a strict actual-notice standard nor a purely technical constructive-notice standard provides a satisfactory answer. Digital due notice should instead depend on whether the communication method was reasonably capable of bringing the arbitration to the consumer's attention and whether the content gave a genuine opportunity to respond.

1. Article V(1)(b) and the Meaning of Proper Notice

Article V(1)(b) contains two connected protections. The first concerns proper notice of the appointment of the arbitrator or the arbitration proceedings. The second applies where a party was “otherwise unable to present his case.”

These protections are procedural rather than substantive. A court considering Article V(1)(b) should not decide whether the tribunal correctly interpreted the contract. Its concern is whether the procedure provided a fair opportunity to participate.



"KELAJAK TEKNOLOGIYALARI VA SUN'IY INTELLEKT"
nomli respublika ilmiy-amaliy masofaviy konferensiyasi
VOLUME-1, ISSUE-6, 2026

This distinction is important in e-commerce. A consumer who deliberately ignores properly communicated arbitration cannot later convert personal inactivity into an enforcement defence. At the same time, a business should not be able to obtain an enforceable default award merely by placing a notice somewhere in a digital system and treating technical transmission as sufficient.

Traditional arbitration scholarship connects Article V(1)(b) with basic due process and natural justice. Born emphasizes the importance of the opportunity to present one's case, while van den Berg treats the Convention's procedural safeguards as exceptions that must be applied without transforming enforcement into a reconsideration of the merits.

Digital communication changes the evidence but should not change the basic objective.

An instructive domestic example is *Laura S. v James B.* (New York, 2013). The court considered email notice of a continued arbitration hearing. It found the method appropriate in circumstances where the parties and arbitrator had regularly communicated through email and the relevant email had actually been received.

The significance of the case lies not in a general rule that email always constitutes proper notice. The surrounding practice mattered.

A different problem appeared in *Emerald Aero, LLC v Kaplan*, a California appellate decision. Notice of a punitive damages claim was included in a late-filed arbitration brief transmitted by email. The court concluded that the notice was not reasonably calculated to inform the unrepresented party of the claim, particularly when combined with other procedural irregularities.

The contrast is useful. Digital transmission is not itself the legal test. Context determines whether the communication gave the recipient a fair opportunity to understand and react.



"KELAJAK TEKNOLOGIYALARI VA SUN'IY INTELLEKT"
nomli respublika ilmiy-amaliy masofaviy konferensiyasi
VOLUME-1, ISSUE-6, 2026

Post-award cases concerning electronic service demonstrate the same point from another direction. In *Dalla-Longa v Magnetar Capital LLC*, the U.S. Court of Appeals for the Second Circuit held that consent to email communications during arbitration did not automatically constitute written consent to electronic service in later federal court proceedings concerning vacation of the award. The case concerns service in judicial proceedings rather than Article V(1)(b), but it shows why legal systems should not casually assume that consent to one form of electronic communication applies to every procedural stage.

For B2C arbitration, this problem is stronger because consumers may never consciously select the communication method in the first place.

2. Actual Notice, Constructive Notice and Digital Failure

Two broad approaches can be imagined.

Under an actual-notice standard, an arbitral award would be enforceable only if there were sufficient evidence that the consumer actually became aware of the proceedings.

This approach offers strong consumer protection but creates serious practical difficulties. A recipient can deny reading an email even where delivery records show that it reached the correct account. A platform cannot easily prove what a person mentally understood after opening a notification. Actual knowledge is therefore difficult to verify.

It can also reward deliberate avoidance. A consumer who receives repeated, clear arbitration notices should not be able to defeat enforcement simply by refusing to open them.

The opposite approach is constructive notice. Under a very broad version of this model, notice would be sufficient once it was transmitted according to the agreed procedure.





"KELAJAK TEKNOLOGIYALARI VA SUN'IY INTELLEKT"
nomli respublika ilmiy-amaliy masofaviy konferensiyasi
VOLUME-1, ISSUE-6, 2026

That solution is efficient but can become formalistic in digital commerce.

Consider a consumer who purchased an inexpensive electronic device through an online marketplace. Six months later a dispute develops. The merchant initiates arbitration and the arbitration institution sends one email to the address used when the consumer created the marketplace account. The message enters the spam folder. A default award follows.

It would be difficult to say that the consumer actually received meaningful notice merely because an email server accepted the message.

A second scenario involves an in-platform notification. The consumer deleted the marketplace application after the original transaction but did not formally close the account. Arbitration documents are uploaded to the account and an automated notification is generated inside the application. Technically, the documents were "available." Functionally, the consumer never knew that proceedings existed.

A third situation is more complicated. The arbitration institution sends an email with a clear subject line stating that arbitration proceedings have been commenced. Delivery is confirmed. The same notice is sent through the platform and by SMS. The consumer opens the email but takes no action.

Here, refusal of enforcement would be difficult to justify. The legal system should protect an opportunity to participate, not guarantee that every recipient uses that opportunity.

A fourth example concerns comprehension rather than delivery. An international platform sends a consumer a message stating only that a "case has been opened under Rule 14.3 of the dispute resolution protocol." The consumer receives the message but is not told that an arbitrator may issue a legally binding award or that failure to respond may lead to a default decision.

Technically there is notice. Substantively, its value is questionable.



"KELAJAK TEKNOLOGIYALARI VA SUN'IY INTELLEKT"
nomli respublika ilmiy-amaliy masofaviy konferensiyasi
VOLUME-1, ISSUE-6, 2026

This example demonstrates why digital due notice has at least two dimensions: transmission and intelligibility.

Katsh and Rabinovich-Einy have shown more broadly that digital justice cannot simply reproduce offline procedures on a screen. Technology changes the architecture through which disputes are created, communicated and resolved. UNCITRAL's Technical Notes on Online Dispute Resolution similarly emphasize fairness, transparency, due process and accountability.

A digital notice standard should reflect these characteristics.

3. A Proposed Standard of Digital Due Notice

In my view, Article V(1)(b) should not be interpreted as requiring proof of subjective actual knowledge in every consumer case. Such a rule would make default arbitration almost impossible. Yet simple technical dispatch should also be insufficient where the sender knows that digital communications can fail silently.

A better approach is a rebuttable standard based on reasonable digital communication.

Four elements are especially relevant.

The first is **reliable delivery**. The arbitration provider should use a communication channel previously used by the consumer or otherwise reasonably connected to the transaction. Where an email bounces, an account is inactive, or the system generates evidence of delivery failure, another channel should be attempted.

The second is **prominence**. An arbitration notice should not resemble routine marketing. Its subject line and presentation should indicate that legal proceedings have commenced and that failure to respond may have consequences.

The third is **intelligibility**. A consumer should be informed, in reasonably plain language, who has commenced the proceeding, what dispute is involved, what action is



"KELAJAK TEKNOLOGIYALARI VA SUN'IY INTELLEKT"
nomli respublika ilmiy-amaliy masofaviy konferensiyasi
VOLUME-1, ISSUE-6, 2026

required, the relevant deadline and the possible consequences of non-participation. Providing only a hyperlink to complex procedural rules should not normally be enough.

The fourth is **reasonable opportunity to respond**. Proper delivery has little value if the consumer receives the notice too late to obtain information, prepare a defence or communicate with the tribunal.

These factors should not operate as rigid formalities. Their purpose is functional.

For higher-risk situations, a layered notification system would be preferable. Initial notice could be sent through the contractual email address and the platform account. If no interaction is recorded, an additional message through SMS or another verified channel could follow. The objective is not to prove psychological awareness. It is to show that reasonable steps were taken to bring the proceedings to the consumer's attention.

Such an approach also provides better evidence at the enforcement stage. Instead of presenting a court with a single statement that "notice was emailed," an arbitration provider could produce a digital notice record showing the address used, time of dispatch, delivery status, follow-up communications and the version of the notice sent.

Privacy law must of course be respected. A notice system should not become a mechanism for excessive tracking of consumers. It is not necessary to record every action performed on a device. Evidence of transmission, delivery failure and limited interaction with the notice can usually provide sufficient procedural information.

The proposed standard therefore lies between actual and constructive notice.

Actual knowledge remains strong evidence of proper notice, but it is not indispensable. Constructive notice remains possible, but only where the method and content of communication were reasonably designed to provide a genuine opportunity to participate.



"KELAJAK TEKNOLOGIYALARI VA SUN'IY INTELLEKT"
nomli respublika ilmiy-amaliy masofaviy konferensiyasi
VOLUME-1, ISSUE-6, 2026

This interpretation is compatible with the purpose of Article V(1)(b). The Convention protects procedural fairness, not a particular technology.

Conclusion

The due-notice problem illustrates a wider difficulty in applying twentieth-century arbitration law to twenty-first-century digital transactions. Article V(1)(b) of the New York Convention remains sufficiently flexible to address electronic communication, but its application requires a more precise understanding of what digital communication actually means.

An email is not equivalent to knowledge. Neither is a push notification, a message inside an online account or the technical availability of a PDF document.

At the same time, enforcement cannot depend on proving the consumer's subjective state of mind. Such a requirement would create opportunities for strategic avoidance and would make default awards practically unenforceable.

The more appropriate question is whether the notification system was reasonably designed to make the consumer aware that binding legal proceedings had begun.

I therefore suggest a digital due-notice standard based on reliable delivery, prominence, intelligibility and a reasonable opportunity to respond. Where the first communication produces evidence of failure or inactivity, additional channels should be used when reasonably available.

Arbitration institutions and e-commerce platforms could support this approach by maintaining a limited procedural notification record. Such a record would give courts better evidence when Article V(1)(b) is later invoked.

This solution does not require amendment of the New York Convention. It requires adaptation of the way its existing standard is understood.

The issue also connects directly with the public-policy problem discussed in the first thesis. A consumer who never had a meaningful opportunity to participate may



"KELAJAK TEKNOLOGIYALARI VA SUN'IY INTELLEKT"
nomli respublika ilmiy-amaliy masofaviy konferensiyasi
VOLUME-1, ISSUE-6, 2026

invoke Article V(1)(b), while more fundamental procedural failures may also raise public-policy concerns. The distinction between these grounds should nevertheless remain clear.

Without such adaptation, digital arbitration creates a paradox. Proceedings can become faster and technically more efficient while the resulting award becomes more difficult to enforce. Technology then solves the dispute-processing problem but creates a new enforcement problem.

References

1. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958.
2. UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments adopted in 2006.
3. UNCITRAL, *Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (2016).
4. UNCITRAL, *Technical Notes on Online Dispute Resolution* (2016).
5. United Nations Convention on the Use of Electronic Communications in International Contracts, New York, 2005.
6. Born G.B. *International Commercial Arbitration*. 3rd ed. Kluwer Law International, 2021.
7. Blackaby N., Partasides C. et al. *Redfern and Hunter on International Arbitration*. 7th ed. Oxford University Press, 2022.
8. van den Berg A.J. *The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation*. Kluwer, 1981.
9. Moses M.L. *The Principles and Practice of International Commercial Arbitration*. Cambridge University Press.



"KELAJAK TEKNOLOGIYALARI VA SUN'IY INTELLEKT"
nomli respublika ilmiy-amaliy masofaviy konferensiyasi
VOLUME-1, ISSUE-6, 2026

10. Katsh E., Rifkin J. *Online Dispute Resolution: Resolving Conflicts in Cyberspace*. Jossey-Bass, 2001.
11. Katsh E., Rabinovich-Einy O. *Digital Justice: Technology and the Internet of Disputes*. Oxford University Press, 2017.
12. *Laura S. v James B.*, 2013 NY Slip Op 51437(U).
13. *Emerald Aero, LLC v Kaplan*, California Court of Appeal, 2017.
14. *Dalla-Longa v Magnetar Capital LLC*, 33 F.4th 693 (2d Cir. 2022).
15. *O'Neal Constructors, LLC v DRT America, LLC*, No. 20-11045 (11th Cir. 2021).
16. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.
17. OECD, *Recommendation on Consumer Dispute Resolution and Redress* (2007).