

A businesswoman sued a website owner in federal court for violating federal copyright law. The businesswoman sent a copy of the complaint and a form requesting waiver of service of process to the website owner's residence via first-class mail. The request named the court where the complaint was filed and the date when the request was sent.

The businesswoman did not receive anything back from the website owner, so 31 days after mailing the request, she had a process server hand-deliver a copy of the summons and complaint to the website owner.

Is the website owner liable for the expenses associated with the process server?

- A. No, because the businesswoman did not include all that was necessary for a waiver request.
- B. No, because the businesswoman did not wait 60 days before hiring the process server.
- C. Yes, because a court must impose the cost of service upon a defendant who fails to waive service.
- D. Yes, because a defendant has a duty to avoid unnecessary service-of-process expenses.

Explanation:

Waiving service of process

(FRCP 4(d))

Request for waiver	<ul style="list-style-type: none">• In writing• Addressed to defendant (or authorized agent)• Names court where complaint filed• Provides copy of complaint, two waiver forms & prepaid means to return form• Informs defendant about consequences of waiving & not waiving• Lists date request is sent• Sent via first-class mail or other reliable means• Allows 30 days (or 60 days for defendant abroad) from date sent for defendant to return waiver
Benefits of waiver	<ul style="list-style-type: none">• Defendant's time to file answer extended to 60 days (or 90 days if abroad) from date sent
Consequences of failing to waive	<ul style="list-style-type: none">• Defendant pays expenses of future service of process• Defendant pays reasonable expenses of any motion required to collect service expenses (eg, attorney's fees)

FRCP = Federal Rule of Civil Procedure.

A plaintiff must provide the defendant with adequate notice of a lawsuit through [service of process](#)—ie, by delivering a copy of the [summons and complaint](#). Since this can be expensive and burdensome, defendants are encouraged to **waive service of process** upon the **plaintiff's written request**. That request must:

- be sent to the defendant via **first-class mail** or other reliable means
- **name the court** where the complaint was filed and the **date the request** was sent *and*
- contain one copy of the **complaint**, **two copies** of the [waiver form](#), and a **prepaid means** for returning the signed waiver form (eg, a self-addressed and stamped envelope).

If the defendant waives service of process, the defendant receives extra time to respond to the complaint—60 days from the date the request was sent instead of 21 days from the date of service (the carrot). But if the defendant (1) **fails to waive service** and (2) **lacks good cause** for doing so, the defendant must pay the **expenses of future service** and of any motion required to collect those expenses (the stick).

Here, the businesswoman's waiver request only contained *one* copy of the waiver form and did not include a prepaid means to return the signed form. Therefore, the website owner is not liable for the process-server expenses **(Choices C & D)**.

(Choice B) A plaintiff must give a defendant reasonable time to return the waiver—ie, at least 30 days when the defendant is in the U.S. (as seen here) or at least 60 days if the defendant is abroad.

Educational objective:

A plaintiff must send a written waiver-of-service request to the defendant via first-class mail or other reliable means. The waiver must state the name of the court and the date the request was sent. It also must contain a copy of the complaint, two copies of the waiver form, and a prepaid means to return the signed form.

References

- Fed. R. Civ. P. 4(d) (waiving service of process).