

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

JAMES C. DUFF Director

WASHINGTON, D.C. 20544

June 19, 2009

Mr. Carl Malamud President & CEO Public.Resource.Org, Inc. 1005 Gravenstein Highway North Sebsastopol, CA 95472

Dear Mr. Malamud:

I am writing in response to your request under the Freedom of Information Act, dated May 21, 2009. The Judiciary welcomes the opportunity to address your request.

Users of the Public Access to Court Electronic Records (PACER) system are charged fees in accordance with the Electronic Public Access (EPA) Fee Schedule. The schedule is available on www.uscourts.gov and included as Enclosure 1 for your convenience. The key components of the schedule include the following:

- Users are charged \$0.08 per page, with the total for any individual document or case-specific report capped at \$2.40;
- Users incurring less than \$10.00 in charges during a year do not owe a fee. In 2008, more than 145,000 PACER customers did not receive bills because they had less than \$10.00 in charges; and
- Attorneys of record and parties in a case receive one free electronic copy of each document filed electronically in that case.

As you noted, the Freedom of Information Act (FOIA), and the Administrative Procedure Act (APA) of which it is a part, do not apply to "the courts of the United States." This term embraces not only individual courts but the entire Judiciary, including the Administrative Office and the Judicial Conference and its committees. *In re Fidelity Investors*, 690 F.2d 35, 38 (2d Cir. 1982) ("If the legislative history has any significance at all, it is clear that Congress intended the entire judicial branch of the Government to be excluded from the provisions of the [APA]"); and *Wacker v. Bisson*, 348 F.2d 602, 608, n.18 (5th Cir. 1965) ("[The] legislative history indicates that the APA excludes the entire judicial branch of the government").

The Judicial Conference Policy Notes that accompany the schedule set forth important items with respect to the fee, including:

- Courts should not exempt government agencies from the fee;
- Documents may be viewed free of charge at public terminals in the courthouse; and
- Some information, such as judicial opinions, is provided free of charge.

Government Agencies

In 1992, the House Appropriations Committee report stated that charging fees for access by non-judiciary governmental agencies was desirable.² Effective October 1, 1993, the Judicial Conference eliminated the federal agencies' exemption from the fee for electronic access to court data. *Enclosure 2* is a listing of the total fee revenue received from the Executive and Legislative Branches of the United States Government for fiscal year 2000 through fiscal year 2008. The Judiciary prepares fee revenue forecasts based on overall usage trends, not by user category, and does not prepare reports, or other documentation, which delineate federal government usage by branch.

The Department of Justice (DOJ) is the only federal agency with which the Administrative Office of the U.S. Courts has entered into an interagency agreement regarding PACER usage. That agreement (*Enclosure 3*) provides for a single annual PACER invoice and payment for the use of PACER by DOJ and its employees. It does not alter the nature of the PACER service in any other way. All other federal government agencies use PACER in accordance with the PACER account policies and procedures published on the PACER Service Center's website. A copy of this publication is included (*Enclosure 4*) for your convenience.

Commercial Legal Information Providers

With respect to your request for any agreements between the Judiciary and companies, such as Thomson WestLaw (West) or Reed Elsevier LexisNexis (Lexis), all commercial vendors use PACER in accordance with the PACER account policies and procedures published on the PACER Service Center's website and are charged \$0.08 per page in accordance with the aforementioned fee schedule. There are no special agreements with or "in-kind" contributions by any commercial vendors.

The Judiciary values the privacy of customer information as set forth in the enclosed "Privacy and Security Notice" (*Enclosure 5*). The Judiciary will not give, sell or transfer any personal information to third parties, except in the following cases:

- To secure payment of delinquent fees, identifying information may be transmitted to a collection agency;
- If compelled by law;
- If the customer directs us to do so; or in other legally limited circumstances (e.g., to protect an account from fraud).

² See H.R. Rep. No. 102-709.

As none of these circumstances applies to your request, we cannot provide you with the yearly amounts billed to any PACER customers.

The Judiciary has contracts with Lexis and West for Computer Assisted Legal Research (CALR) services. These contracts may be released under our policy but that requires consultation with the companies, a process involving significant effort which would delay this response. I assure you that neither contract includes any in-kind provisions for PACER content. Meanwhile, some of the information you seek with respect to the value of these contracts may be obtained from the enclosed press releases from the respective companies, which are also available on the Internet. West's press release (*Enclosure 6*) states that its ten-year, \$106 million contract began on October 1, 2004, and extended West's 22-year history of providing information and research services to the Federal Judiciary. Lexis' press release (*Enclosure 7*) states that its multi-million-dollar, ten-year contract began October 1 of 2004. Lexis' contract is for \$50 million over ten years.

If you have additional questions, please do not hesitate to contact the Public Access and Records Management Division in the Administrative Office at 202-502-1500.

Sincerely.

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Director

Enclosures

- 1) Electronic Public Access Fee Schedule
- 2) Fee Revenue from Federal Government Agencies
- 3) Interagency Agreement with the Department of Justice
- 4) PACER Account Policies and Procedures
- 5) PACER Account Privacy and Security Policy
- 6) Press release from West regarding Computer Assisted Legal Research Contract
- 7) Press releases from Lexis regarding Computer Assisted Legal Research Contract

cc: Honorable Joseph I. Lieberman Chairman, U.S. Senate Committee on Homeland Security and Governmental Affairs

> Honorable Edolphus Towns Chairman, U.S. House Committee on Oversight and Government Reform

³ See press releases at www.lexisnexis.com/about/releases/0741.asp and at www.thomsonreuters.com/content/press room/tlr/tlr legal/lg 20040910 AdminUSCourts

(Eff. 3/11/2008)

ELECTRONIC PUBLIC ACCESS FEE SCHEDULE

(Issued in accordance with 28 U.S.C. § 1913, 1914, 1926, 1930, 1932)

As directed by Congress, the Judicial Conference has determined that the following fees are necessary to reimburse expenses incurred by the judiciary in providing electronic public access to court records. These fees shall apply to the United States unless otherwise stated. No fees under this schedule shall be charged to federal agencies or programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and bankruptcy administrator programs.

- For electronic access to court data via a federal judiciary Internet site: eight cents per I. page, with the total for any document, docket sheet, or case-specific report not to exceed the fee for thirty pages—provided however that transcripts of federal court proceedings shall not be subject to the thirty-page fee limit. Attorneys of record and parties in a case (including pro se litigants) receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. No fee is owed under this provision until an account holder accrues charges of more than \$10 in a calendar year. Consistent with Judicial Conference policy, courts may, upon a showing of cause, exempt indigents, bankruptcy case trustees, individual researchers associated with educational institutions, courts, section 501(c)(3) not-for-profit organizations, court appointed pro bono attorneys, and pro bono ADR neutrals from payment of these fees. Courts must find that parties from the classes of persons or entities listed above seeking exemption have demonstrated that an exemption is necessary in order to avoid unreasonable burdens and to promote public access to information. Any user granted an exemption agrees not to sell for profit the data obtained as a result. Any transfer of data obtained as the result of a fee exemption is prohibited unless expressly authorized by the court. Exemptions may be granted for a definite period of time and may be revoked at the discretion of the court granting the exemption.
- II. For printing copies of any record or document accessed electronically at a public terminal in the courthouse: ten cents per page. This fee shall apply to services rendered on behalf of the United States if the record requested is remotely available through electronic access.
- III. For every search of court records conducted by the PACER Service Center, \$26 per name or item searched.
- IV. For the PACER Service Center to reproduce on paper any record pertaining to a PACER account, if this information is remotely available through electronic access, 50 cents per page.
- V. For a check paid to the PACER Service Center which is returned for lack of funds, \$45.

JUDICIAL CONFERENCE POLICY NOTES

Courts should not exempt local, state or federal government agencies, members of the media, attorneys or others not members of one of the groups listed above. Exemptions should be granted as the exception, not the rule. A court may not use this exemption language to exempt all users. An exemption applies only to access related to the case or purpose for which it was given. The prohibition on transfer of information received without fee is not intended to bar a quote or reference to information received as a result of a fee exemption in a scholarly or other similar work.

The electronic public access fee applies to electronic court data viewed remotely from the public records of individual cases in the court, including filed documents and the docket sheet. Electronic court data may be viewed free at public terminals at the courthouse and courts may provide other local court information at no cost. Examples of information that can be provided at no cost include: local rules, court forms, news items, court calendars, opinions, and other information – such as court hours, court location, telephone listings – determined locally to benefit the public and the court.

Total EPA Fee Revenue from Federal Government Agencies

Fiscal Year	\$ in Millions
2000	1.24
2001	1.02
2002	1.19
2003	3.20
2004	3.12
2005	4.21
2006	5.12
2007	5.36
2008	5.92
	20.27
Total:	30.37

INTERAGENCY AGREEMENT BETWEEN THE DEPARTMENT OF JUSTICE (DOJ) AND THE

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS (AOUSC)

REGARDING

PUBLIC ACCESS TO COURT ELECTRONIC RECORDS (PACER) USE

I. PURPOSE

This agreement provides for a single annual PACER invoice and payment for use of the judiciary's electronic public access systems by the DOJ and its employees acting in their official capacities, in lieu of the unit charges otherwise applicable. It does not alter the nature of the PACER service, to which DOJ has been a subscriber since 1991, in any other way.

II. MISSION

This agreement covers all access to the PACER system of the United States judiciary by the DOJ and its employees during Fiscal Year 2003. This access includes all case file data filed from the judiciary's Case Management/Electronic Case Files (CM/ECF) system, unless such access is restricted by the court (e.g. sealed documents).

III. PERIOD OF AGREEMENT

This agreement is effective from October 1, 2002 until September 30, 2003. The agreement will be automatically renewed annually. The agreement will terminate automatically in case of failure by DOJ to make payment in a timely manner or by the agreement of the parties.

IV. INVOICING AND PAYMENT

At the beginning of the fourth quarter of fiscal year 2002, in conjunction with the regular PACER billing cycle, the PACER Service Center will issue an invoice for \$800,000, an amount representing the actual per unit use of PACER services by DOJ employees for the 12 month period from July 1, 2001, through June 30, 2002, and agreed upon between the AOUSC and DOJ as payment in full for the use of PACER by DOJ employees for fiscal year 2003. DOJ will pay this amount in accordance with the standard payment procedure applicable to PACER customers.

For each subsequent fiscal year, an invoice will be prepared reflecting actual per unit use of PACER by DOJ employees covered by this agreement from July 1 through June 30 of the preceding the fiscal year, at the charges set forth in the *EPA Fee Schedule* current at the beginning of the fiscal year for which payment will be made. In order to track this figure, the PACER Service Center will make quarterly usage reports available to DOJ on its Internet site (http://pacer.psc.uscourts.gov).

V. CONTACT PERSONNEL

AOUSC
Mary Stickney
Chief
EPA Program
1 Columbus Circle, NE
Washington, DC 20544,
Telephone (202) 502-1500

DOJ

Jeanette Plante Special Assistant United States Attorney Electronic Litigation Files Program Office 600 E Street, NW, Room 7600 Washington, DC 20530 Telephone (202) 616-6459

VI. AMENDMENTS

This agreement may be amended at any time by written agreement by the undersigned, their successors or other authorized officials.

ACCEPTANCE

Administrative Office of the United States Courts

By: Aller of our

Title: Assistant Director

Finance and Budget

Robert L. Diegelman

W.S. Department of Justice

Title: Acting Assistant Attorney
General for Administration

Fee Information

There is no registration fee. However, the Judicial Conference of the United States has established a fee for access to information in PACER. All registered customers will be charged as follows:

* Use of web-based PACER systems will generate an \$.08 per page charge.

Acknowledgement of Policies and Procedures

I understand that:

- There is a charge for accessing information in PACER See Fee Information section, above. PACER provides electronic access to case information in U.S. federal courts. By registering for a PACER account, I assume responsibility for all fees incurred through the usage of this account.
- Certain accounts may be designated, under <u>Judicial Conference policy</u>, as exempt from fees. If my account is exempt from the fee, it is my responsibility to use the account only within the scope of the fee exemption.
- I must alert the PACER Service Center to any errors in billing within 90 days of the date of the bill.
- The per-page charge applies to the number of pages that results from any search, regardless of the number of pages viewed, printed, or downloaded. Searches that result in no matches incur a charge for one page of data
- Customers who provide a valid credit card or debit card number at the time of registration will receive access instructions shortly thereafter (usually in a matter of minutes). Customers who do not provide a card number at the time of registration will receive access instructions via U.S. mail.
- Usage is billed on a quarterly basis. Pursuant to Judicial Conference policy, no account is billed for usage of less than \$10 in a calendar year. As a result, the quarterly billing of accounts that have a balance of less than \$10 is deferred until the balance owed surpasses this threshold.
- Statements, which contain a summary of the charges the account has incurred, are sent in January, April, July, and October. Detailed transaction information is available at the Account Information section of this website.
- Each quarter accounts with a balance due less than \$10 will be deferred to the following quarter. Accounts with a deferred balance will not be sent a statement either via email or U.S. Mail. The transactions will be available from the PACER Service Center website for review even though the balance due is deferred.
- All new accounts automatically default to email billing.
- If a credit card or debit card number is provided at the time of registration, usage is automatically billed on a quarterly basis to the card number submitted with this registration request. These charges will be billed to the card up to 7 days before the 'Due Date' listed on your quarterly statement. Electronic statements will be generated and sent via email. Paper statements will not be mailed to accounts with automatic billing.

Last Updated: 06/24/2008

- If a credit card or debit card number is not provided at the time of registration, quarterly statements will be emailed to the email address submitted with this registration request. Customers must remit payment through the mail or on-line via the PACER Service Center website.
- PACER bills that are not paid on time are subject to federal debt collection measures. These measures include, but are not limited to, referral to a private collection agency or the U.S. Department of Justice for collection. Accounts that are referred to a private collection agency will be assessed substantial collection fees in addition to the outstanding debt owed to the PACER Service Center.

I must provide accurate and complete information in registering for this account. I will promptly inform the PACER Service Center of any changes to that information.

The PACER account being registered is for my use only, unless specifically designated otherwise on the registration form. I am responsible for preventing unauthorized use of the account. If I believe there has been unauthorized use, I must notify the PACER Service Center immediately by emailing psc.uscourts.gov or telephoning (800) 676-6856.

The PACER Service Center and/or a U.S. federal court reserve(s) the right to:

- Suspend service to any account in which the amount due is not paid by the due date.
- Demand immediate payment, outside of the regularly scheduled billing cycles, of an account at any time that the PACER Service Center determines the action is necessary.
- Notify and seek payment from the firm listed on my account registration if my account balance is not paid by the due date.
- Reject an account registration request that the PACER Service Center determines to be related to an existing PACER account with a past due balance.
- Suspend service to an account if any part of the information provided to the PACER Service Center as part of this account registration process is fraudulent. Information about the account and any accounts determined to be related to it may be turned over to law enforcement authorities.
- Deny accounts to requesters who have delinquent debts to any federal government agency, in accordance with 31 U.S.C. § 3720B(a).
- Suspend or reduce service to, or otherwise restrict access to PACER by, any account that causes an unacceptable level of congestion or a disruption to the operations of the PACER Service Center, a U.S. federal court, or another PACER customer.
- Suspend service to an account at any time that the PACER Service Center or a U.S. federal court determines the action is necessary to prevent fraud or to maintain the security of its computer systems and networks.
- Require prepayment as a condition to the resumption of service for any account that has
 - had service suspended or restricted for any reason,
 - had multiple instances of late payments, or
 - been requested to make immediate payment of fees incurred.

Last Updated: 06/24/2008

Public Access to Court Electronic Records is supported by user fees. Any attempt to collect data from PACER in a manner which avoids billing is strictly prohibited and may result in criminal prosecution or civil action. PACER privileges will be terminated if, in the judgment of judiciary personnel, they are being misused. Misuse includes, but is not limited to, using an automated process to repeatedly access those portions of the PACER application that do not assess a fee (i.e. calendar events report or case header information) for purposes of collecting case information.

An account determined by the PACER Service Center to be related to an account that has been subject to an action outlined above may also be subject to the same action.

Accounts may be determined to be related based on information obtained by the PACER Service Center during registration or other contact with CM/ECF, PACER, or the PACER Service Center.

If these Policies and Procedures change in a significant way, information regarding the changes will be posted on the PACER Service Center web site (<u>pacer.psc.uscourts.gov</u>). It is the account holder's responsibility to check these Policies and Procedures regularly for changes. Continued use of PACER following the posting of changes will mean that the account holder accepts and agrees to the changes.



Privacy and Security Notice

Thank you for visiting the PACER Service Center Web Site and reviewing our Privacy and Security Notice.

PRIVACY

The PACER Service Center values your privacy. If you visit our site to read or download information, we collect and store only the following information:

- The name of the domain from which you access the Internet.
- The date and time you access our site.

PACER staff will not give, sell or transfer any personal information to third parties, except in the following cases:

- To secure payment of delinquent fees, identifying information may be transmitted to a collection agency.
- If compelled by law.
- If you direct us to do so.
- In other legally limited circumstances (for example, to protect your account from fraud).

For billing purposes, when you access court documents, we keep track of basic information about each transaction, such as the account, court, document type, search criteria, case number, time, date and number of pages. We also use session cookies to identify users. We will not provide this information to anyone, except for the situations set out above.

You also may decide to send us personal identifying information--your mailing address, for example--in a request for information. Information collected in this manner is used solely for responding to requests for information. You should **NEVER** send your PACER password to us in an electronic mail message.

For site management, information is collected for statistical purposes, such as assessing the number of visitors to the different sections of our site, identifying what information is of most and least interest, determining technical design specifications, and identifying system performance or problem areas. This information will be kept confidential.

Any attempt to collect data from PACER in a manner which avoids billing is strictly prohibited and may result in criminal prosecution or civil action. PACER privileges will be terminated if, in the judgment of judiciary personnel, they are being misused. Misuse includes, but is not limited to, using an automated process to repeatedly access those portions of the PACER application that do not assess a fee (i.e. calendar events report or case header information) for purposes of collecting case information). PACER account usage will be monitored for inappropriate use.

SECURITY

To identify unauthorized attempts to upload or change information, or otherwise cause damage, this Official United States Government System employs software programs to monitor network traffic. Unauthorized attempts to upload or change information stored on this system may result in criminal prosecution.

To avoid unauthorized use of the PACER system, the PACER Service Center recommends that you do not leave your terminal unattended after logging into the PACER system. If you must leave your terminal unattended, close your open browsers. The PACER Service Center also recommends not bookmarking pages past the login screen of all Web PACER applications, and using a password protected screen saver.

> | Top of Page | | CM/ECF Home Page | PACER Service Center Home Page |

For information or comments, please contact:

The PACER Service Center



Press Releases

10 Sep 2004

Administrative Office of the U.S. Courts Selects Westlaw Online Research Service

EAGAN, Minn.

West, a Thomson business (NYSE: TOC; TSX: TOC), today announced that the Administrative Office of the U.S. Courts (AO) has selected Westlaw® as a primary source of online legal, business, news and public records information for the federal judiciary. The 10-year, \$106 million contract, which begins Oct. 1, 2004, gives legal professionals – judges, law clerks, librarians and staff – in the federal judiciary powerful technologies for researching all aspects of issues represented before the bench.

West's most recent nine-year agreement with the AO will expire on Sept. 30, 2004. This new contract is an expansion of information services and extends West's 22-year history of providing information and research services to the federal judiciary. As a primary information services provider, Westlaw will give federal courts nationwide fast, easy access to comprehensive and authoritative collections of legal resources, public records, business information and news.

"We're pleased to extend our long-standing relationship with the AO and the federal judiciary as the premier provider of information services, and to continue West's leadership in supporting the finest justice system in the world," said Mike Wilens, president and CEO of West. "Our business is built on helping legal professionals provide better counsel faster and with unquestioned confidence. This is of particular importance to the federal judiciary, which continues to experience mounting caseloads and the challenges of a rapidly changing legal landscape. Supporting this essential work is why each of the 8,000 colleagues at West do what we do, and with such urgency."

West has a long history of delivering superior value to legal professionals by providing world-class information resources and research technologies. West's highly experienced attorney editors work with courts and legislative and regulatory bodies nationwide to publish the profession's most comprehensive, authoritative and editorially-enhanced collections of case law, statutes and legal analysis. West's unique editorial enhancements, which include case law summaries, headnotes, annotations and classification to the West Key Number System®, enable legal professionals to find on-point information resources faster and develop a more thorough understanding of the application and implication of the materials to their legal issue.

The AO contract reconfirms West's decades-long leadership as a primary provider of research technologies to the federal government. West believes this relationship also underscores a trend for government and private law firms selecting Westlaw and West technologies for research, as well as to manage information and their practice.

Westlaw is the legal profession's leading online research service, and according to independent surveys by the American Bar Association and Law Office Computing magazine, the service is preferred 2-to-1 over the nearest competitor.

About West

Headquartered in Eagan, Minn., West is the foremost provider of integrated information solutions to the U.S. legal market. West is a business within The Thomson Corporation (NYSE: TOC; TSX: TOC) and was formed when West Publishing and Thomson Legal Publishing merged in June 1996. For more information, please visit the West Web site at west.thomson.com.

About The Thomson Corporation

The Thomson Corporation (www.thomson.com), with 2003 revenues from continuing operations of \$7.44 billion, is a global leader in providing integrated information solutions to business and professional customers. Thomson provides value-added information, software tools and applications to more than 20 million users in the fields of law, tax, accounting, financial services, higher education, reference information, corporate training and assessment, scientific research and healthcare. With operational headquarters in Stamford, Conn., Thomson has approximately 38,000 employees and provides services in approximately 130 countries. The Corporation's common shares are listed on the New York and Toronto stock exchanges (NYSE: TOC; TSX: TOC).

Next Steps

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United States



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or send a message using our LexisNexis online inquiries form

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Oct

Nov

LexisNexis U.S. Awarded 10-Year U.S. Courts Contract

LexisNexis U.S. Awarded 10-Year U.S. Courts Contract

DAYTON, OH, September 13, 2004 - LexisNexis U.S., a leader in legal, news and business information services, today announced the Administrative Office of the United States Courts has awarded the company a multi-million-dollar, 10-year contract to provide LexisNexis⊚ information services to all federal judiciary personnel.

The contract provides federal court judges, librarians, law clerks, legal staffs, federal defenders, probation and pretrial officers and federal court administrative staff with comprehensive, authoritative legal, news and public records content and leading editorial content in all areas required for the practice of law. LexisNexis also will provide exclusive information to the courts, including primary legal content exclusively published under the LexisNexis and Michier names, more than 640 analytical treatises from Matthew Bender*, Shepard's Citations Service and the Martindale-Hubbell Law Directory and an exclusive offering of CCH INCORPORATED tax and legal information.

In addition, the U.S. Courts will have access to all of the news, corporate, financial and public records information that establishes LexisNexis as the industry standard in breadth and depth of content coverage.

"LexisNexis has been committed to the rule of law and a supporter of the U.S. Courts since the company's inception 31 years ago," said Lou Andreozzi, president and CEO of North American Legal Markets. "We are most gratified that the Administrative Office of the U.S. Courts has awarded this contract so that the Courts will continue to have access to the well-recognized and authoritative information services of LexisNexis.

The LexisNexis services will be available through a new web portal customized for federal judiciary users with access to training materials and schedules, newsletters, customer contacts and appropriate documentation. LexisNexis also will provide dedicated telephonic helpline.

In addition to legal research services, LexisNexis will provide report-based products, such as LexisNexis CourtLink federal and state docket information, docket alerting and tracking, and Strategic Profiles; business information via LexisNexis« Company Dossier and Company Analyzer; and LexisNexis® SmartLinx® report products for people and business analysis of public records.

About LexisNexis

LexisNexis (www.lexisnexis.com) is a leader in comprehensive and authoritative legal, news and business information and tailored applications. A member of Reed Elsevier Group plc [NYSE: ENL; NYSE: RUK] (www.reedelsevier.com), the company does business in

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100 countries with 13,000 employees worldwide. In addition to its flagship Web-based Lexis® and Nexis® research services, the company includes some of the world's most respected legal publishers such as Martindale-Hubbell, Matthew Bender, Butterworths, JurisClasseur, Abeledo-Perrot and Orac.

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