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Open Source America's Operating System

"It's Not Just A Good Idea—It's The Law!"

February 20, 2009

The Honorable Chief Judge Royce C. Lamberth
United States District Court for the District of Columbia
333 Constitution Avenue, N.W.
Washington, D.C. 20001

PETITION FOR ACCESS TO PACER

Dear Chief Judge Lamberth:

Thank you for your letter of January 28, 2009. I am sorry the Administrative Office of the Courts did not contact you about this matter and am I am grateful for your prompt action once it was called to your attention.

As you know from the February 13, 2009 [article on the subject](#) in the New York Times, our access to PACER was abruptly terminated, and we were unable to complete our audit of the United States District Court for the District District of Columbia. There are almost certainly a number of additional documents present in the data we were unable to access.

I am writing to you today to request access to the rest of your Court's PACER files at no charge under the authority granted to you under the [Electronic Public Access Fee Schedule](#) which states that "courts may, upon a showing of cause, exempt ... section 501(c)(3) not-for-profit organizations ... from payment of these fees." Public.Resource.Org is a qualified nonprofit under section 501(c)(3) if the IRS Rules.

The schedule further states "any transfer of data obtained as the result of a fee exemption is prohibited unless expressly authorized by the court." In addition to waiving the fees, I am requesting that you authorize release of this data so that we may continue to distribute a "cleaner PACER" on our bulk access site. We do not charge for access to any of this public domain data.

Access to data is in the public interest because we will complete the audit of Social Security numbers and other rule violations. As you have seen, none of the commercial providers that resell PACER have an incentive nor a duty to alert the Courts of these issues, and the Court's Clerks do not have the capabilities to conduct these audits themselves. Our 501(c)(3) nonprofit is thus providing a public service to the Court and qualifies for the fee exemption.

We are asking you to expressly authorize release of this data because a prohibition against release of court files is directly contrary to well-established precedent from the Supreme Court as well as very specific statutory language from the U.S. Congress in the E-Government Act.

Public access to court records is at the very heart of our judicial system, and any prohibition against such access, particularly a prohibition enforced by the courts themselves, must be weighed very carefully against these fundamental principles.

In [Wheaton v. Peters](#), 33 U.S. 8 Pet. 591 591 (1834), the Supreme Court stated “it may be proper to remark that the Court is unanimously of opinion that no reporter has or can have any copyright in the written opinions delivered by this Court, and that the judges thereof cannot confer on any reporter any such right.” The Supreme Court clearly stated a policy of public access to the law, a policy repeatedly reaffirmed. It is because “every citizen is presumed to know the law thus declared, and it needs no argument to show that justice requires that all should have free access.” [Nash v. Lathrop](#) 29, 6 N.E. 559 (1886) quoted in [Banks v. Manchester](#), 128 U.S. 244 (1888).

Likewise, the Congress has been clear that there is a strong policy to promote public access. The [E-Government Act of 2002](#), § 205(c)(1) on the Federal Courts, Electronic Filings, states: “Except as provided under paragraph (2) or in the rules prescribed under paragraph (3), each court shall make any document that is filed electronically publicly available online. A court may convert any document that is filed in paper form to electronic form. To the extent such conversions are made, all such electronic versions of the document shall be made available online.” The exception to this policy are narrowly stated: “EXCEPTIONS– Documents that are filed that are not otherwise available to the public, such as documents filed under seal, shall not be made available online.”

Public access to PACER documents clearly meets the policies set out by the Courts and the Congress, and a prohibition against redistribution runs directly contraries to those policies with no counterbalancing benefit to justify the restriction. The E-Government Act of 2002, §205(e) states a clear policy that charges for access to Electronic Docketing Information shall be “only to the extent necessary” and in our case neither charges for access nor restrictions on distribution are necessary.

Respectfully yours,

Carl Malamud
President & CEO
Public.Resource.Org