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Open Source America's Operating System

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

May 21, 2009

The Honorable Joseph I. Lieberman, Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Chairman Lieberman:

I am writing to request your assistance in obtaining information from the Legislative Branch of the United States Government about the true cost of accessing primary legal information. First, however, I must thank you for your letter of February 27, 2009 to the Judicial Conference on the issues of privacy and public access for access to the Administrative Office of the Court's PACER system. Your continued inquiries and attention to the issues of privacy and public access have been instrumental in the recent policy changes by the U.S. Courts to better protect the privacy of the people who appear before them. I am pleased to report that all 30 of the U.S. District Courts for which we have conducted partial audits have now changed their privacy policies to better protect citizens and I am hopeful that in the future a full audit of the PACER will remove the rest of the "toxic" documents that Judge Rosenthal found so "deeply disturbing."

My request today is for your assistance on a study I am conducting to determine how much money U.S. lawyers are spending with outside vendors to access primary legal materials produced by the U.S., such as court documents, legislative documents, and executive regulations and memoranda. It appears that there are several entities that work within the framework of the U.S. Congress that are heavy users of such primary legal materials:

- Congressional Research Service
- U.S. Copyright Office
- Government Accountability Office
- Law Library of Congress
- The personal and committee professional staff of the U.S. Congress

Your assistance is requested in obtaining 4 specific pieces of information:

- How much does the Congress spend to access the PACER system run by the Administrative Office of the Courts?
- How much does the Congress spend to access commercial legal information services such as Thomson's WestLaw or Reed Elsevier's LexisNexis services?

- Are there contracts in place between these commercial legal information services and the Congress that can be disclosed? In particular, are there any restrictions on access or use which would shed light on the “true cost” of these services?
- Are there any memoranda or documents from management to staff asking them to curtail their use of either PACER or the commercial services because of cost considerations?

These cost figures, and any parallel restrictions on use or other encumbrances on public domain data, are important to disclose to the Congress and the public. In particular, it is important to understand if government lawyers ration or otherwise curtail their use of primary legal materials for cost considerations to the detriment of justice and the practice of good government. It is also important to understand the true cost of access to public domain materials by the government so we can understand if there are alternative delivery mechanisms that would be more cost-effective, not only for government employees but for the public at large.

I am also enclosing two sets of documents for your information. First, I have sent FOIA requests to 34 executive branch agencies asking for the cost of access to PACER and commercial sources. A sample of such a request is enclosed. Second, I have sent a request to the Honorable Mr. Duff at the Administrative Office of the U.S. Courts asking for his assistance in these inquiries. As I have yet to receive any direct communication from the Administrative Office, any assistance you or your staff might have in bringing this to the attention of relevant officials would be greatly appreciated.

Again, I would like to thank you for your leadership and support in protecting the privacy of citizens and providing public access to public documents.

Sincerely yours,

Carl Malamud
President & CEO
Public.Resource.Org

enc: Letter to the Honorable James C. Duff, Director
Administrative Office of the U.S. Courts

Letter to Ms. Carmen L. Mallon, Chief of Staff
Office of Information Policy, Department of Justice