



16 FREQUENTLY ASKED QUESTIONS ABOUT RECYCLING YOUR PACER DOCUMENTS



OPEN-SOURCING AMERICA'S OPERATING SYSTEM

Q01: What is the PACER System?

A01: PACER—pacer.psc.uscourts.gov—is a system maintained by the U.S. Government for the publication of federal court documents, such as opinions, briefs, orders, and forms. According to the [PACER FAQ](#):

“Public Access to Court Electronic Records (PACER) is an electronic public access service that allows users to obtain case and docket information from Federal Appellate, District and Bankruptcy courts, and the U.S. Party/Case Index via the Internet.”

Q02: Is your site—pacer.resource.org—affiliated in any way with the PACER System?

A02: No. We are not affiliated in any way with the official **PACER System**. This system is run by public.resource.org, an independent 501(c)(3) nonprofit. We are working with our colleagues at [Creative Commons](#) to create the Legal Commons.

Q03: Why do the PACER People charge \$0.08/page?

A03: Fees for access to PACER are governed by the Judicial Conference's [Electronic Public Access Fee Schedule](#), which mandates recovery of costs. PACER is a classic old-fashioned “big iron” project with tons of big computers and loads of contractors. You've read about these systems in the papers for years: the FBI [database fiasco](#), the IRS [systems-update fiasco](#), or the FAA's “whoops, we forgot to talk to the users” [\\$500-million cost overrun](#).

The **PACER System** comes out of the same school of thought as these other failed systems.

The **PACER System** is such a soup-to-nuts, [NIH](#)-style big, big, big project that the fee schedule even includes a line item for \$0.60/minute if you dial in to the judiciary's

private Internet using a “modem” (a device you attach to a “telephone” to access direct-dial systems such as your Compuserve or Prodigy account).

Q04:What do the PACER People do with all the money they collect for the PACER System?

A04: The money is put in the Judiciary Information Technology Fund as mandated by [Title 28, Chapter 41, § 612](#) of the U.S. Code. The courts are required to report to Congress on the status of that fund, but neither the Congress nor the courts regularly publish that material.

There are some things that are not covered in this fund and are kept off the books, as it were. For example, while the **PACER System** covers current materials, the courts don't have copies of their own archives in a digital format, so the judges and their clerks pay significant sums to commercial vendors such as WestLaw and LexisNexis to access their own decisions.

Q05: Is there any free access to the PACER System?

A05: Yes, a [pilot project](#) has been recently started in 16 law libraries, strategically located around the country. The project is being administered by the Government Printing Office, which is, among other things, assessing whether or not this Internet phenomenon is here to stay:

“The project, which will last up to two years, is part of the judiciary's continuing effort to expand public access to court records by discovering if a segment of the public desires access to information contained in the **PACER System** but is unlikely to go to a courthouse or become a **PACER User**.”

Q06: Seriously? So, with 16 locations for the entire United States, doesn't that work out to approximately one location every 221,090 square miles? If I can't get to my “neighborhood” location, is there a more convenient alternative to obtain these public documents?

A06: You may petition individual judges, who are permitted to grant fee waivers on a case-by-case basis. However, judges' hands are tied by the official guidance contained in the fee schedule:

“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.”

Q07: Does “prohibition on transfer of information received” mean court decisions are confidential or proprietary? Can they do that?

A07: This is a bit of judicial FUD intended to preserve a revenue stream. If you apply for the fee waiver as the source of your documents, you are forced to give up your rights and renounce the public domain. This is a trick the **PACER People** learned from their commercial cousins, using contracts as a way of building a wall around public domain materials in a bid to “extract rents,” as the economists say.

But, everybody in the judiciary freely agrees that these documents are Works of the United States Government and are in the Public Domain. So, if you pay your \$0.08 per page for a PACER document, you are free to do whatever you want with it.

Q08: This money these PACER People collect, is it a lot?

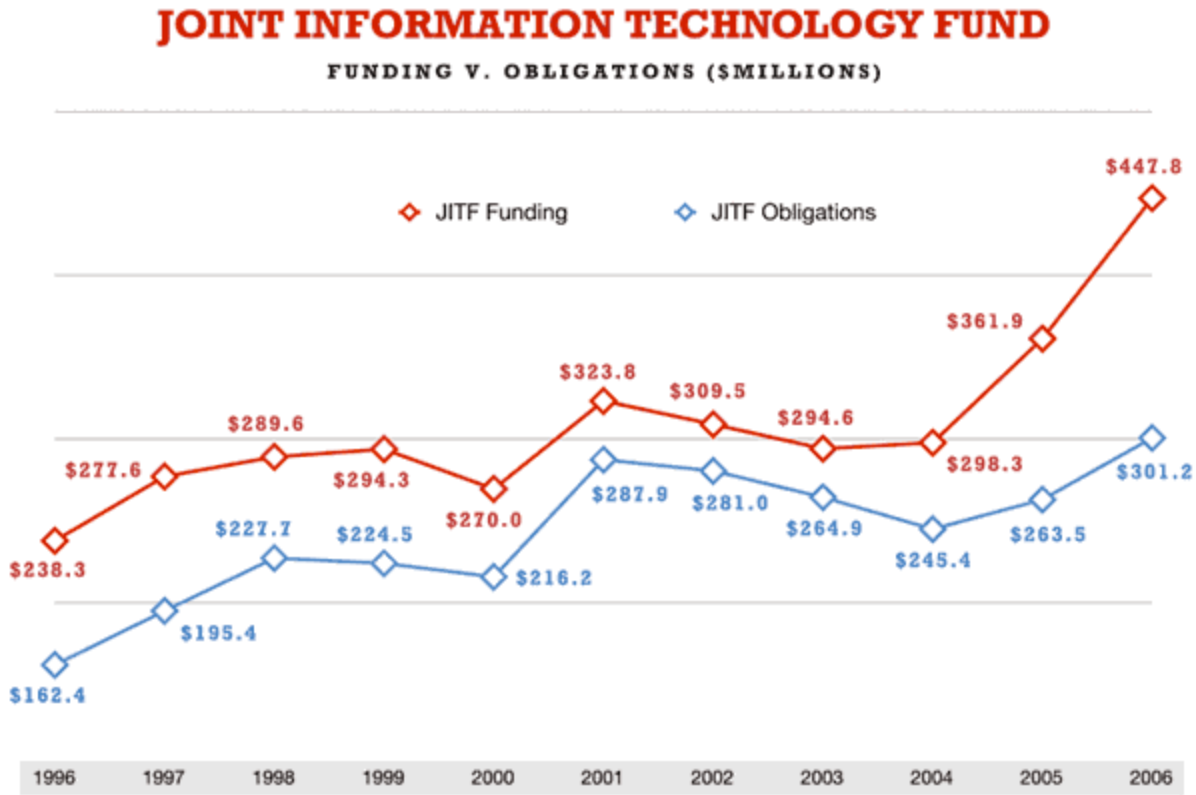
A08: The judiciary is kind of opaque on this subject, but in the Report of the Proceedings of the Judicial Conference of the United States on March 13, 2007, the Committee on Information Technology could be seen blushing throughout its report:

“The Committee on Information Technology reported that it reviewed the Judiciary Information Technology Fund Annual Report, which describes sources of funds, obligations, and unobligated balances. The Committee focused on the significant accumulation of unobligated balances, which in large measure reflects the cumulative results of cost-containment initiatives and the success of the CM/ECF system in the district and bankruptcy courts. It adopted a multi-part strategy to reduce future unobligated balances, including expanding the use of Electronic Public Access funds.”

Q09: So, is it fair to presume that “significant accumulation of unobligated balances” means a lot of money?

A09: Yes. They're rolling in dough. Even after paying for all that big iron and the hordes of contractors, they still can't figure out how to spend their money. Indeed, if you call the Administrative Office of the Courts and ask them politely, they'll send you a copy of the Joint Information Technology Fund Annual Report that they are

mandated to send to Congress. This report contains an interesting graph:



In 2006, the fund received \$447.8 million, but they could only figure out what to do with \$301.2 million, the so-called “obligated balance.” In other words, they had a “significant unobligated balance” of \$146.6 million. At 8 cents per page for a **PACER Document**, they could give away 1.8 **billion** pages of documents to the public and still have all the money they need to pay for their computers.

Q10: Why are you offering a way of recycling PACER Documents?

A10: We think that the “segment of the public” that ought to have access to the law of the land is “everybody.” Making people register and pay \$0.08/page is a huge obstacle to access, and the alternatives of petitioning a judge or going to one of 16 specialized libraries in obscure locations are certainly not adequate public access safety valves.

The law contains the rules that govern our society. We just want to be able to read our own user manual.

Q11: Won't this recycling scheme cost the PACER People money?

A11: Maybe, but we don't think so. Big law firms and other conservative users are the only folks who can afford the system now, and they're notoriously cost-insensitive and slow to change.

But, even if this does cost the **PACER People** money, that is no reason not to make the law available to the public. The courts have always been “unanimously of opinion that no reporter has or can have any copyright in the written opinions.” Wheaton v. Peters, 33 U.S. (8 Pet.) 591, 668 (1834)

Q12: How does recycling work?

A12: Just upload all your **PACER Documents** to our recycling bin. Click on the recycle bin and you'll be presented with a dialogue to choose files to upload. Then, just hit the “Start Upload” button and you'll hear the sounds of progress as your documents get reinjected into the public domain.

We'll take the documents, look at them, and then put them onto bulk.resource.org/courts.gov/pacer for future distribution. This is a manual process and you won't see your documents show up right away. But, over time, we hope to accumulate a significant database of **PACER Documents**.

Q13: What is the Thumb Drive Corps?

A13: Most recyclers will use the Internet interface to drop a few documents into the recycling bin at the close of a workday.

A few people, however, are signing up to make a more substantial contribution to our public domain by uploading large numbers of documents. One way these committed citizens are accomplishing this task is going into one of the 16 designated free access facilities with a USB-based portable thumb drive, filling it up with free **PACER Documents**, and uploading them here for recycling.

Q14: Is this legal?

A14: You betcha! These are public documents.

Q15: What are “digital offsets” and why will they help save the judiciary?

A15: Recycling may be the right thing to do, but it isn't always convenient to your lifestyle at the present moment. With digital offsets, you can make a tax-deductible donation to Public.Resource.Org which we will use to buy an equivalent amount of **PACER Documents** on your behalf. Go Purple and become a net-neutral contributor to the public domain!

Q16: Besides recycling PACER Documents, are you doing anything else to make federal law more accessible?

A16: The **PACER System** contains current documents, but a study of the law requires a historical archive as well. We are working with [Creative Commons](#) to release all federal case law on the Internet, and have recently announced a [transaction with Fastcase](#) that will result in 1.8 million pages of Courts of Appeals and Supreme Court cases becoming available.

Federal law spans all three branches of government, from congressional hearings and laws to executive branch publications such as the Federal Register and the Presidential Papers. We work with [the Internet Archive](#) to make these government documents more broadly available, and we're also [actively mirroring](#) current Government Printing Office systems.

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