

United States Senate
COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

March 25, 2010

The Honorable Richard Durbin
Chairman
Subcommittee on Financial Services and General Government
Committee on Appropriations
184 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Susan Collins
Ranking Member
Subcommittee on Financial Services and General Government
Committee on Appropriations
125 Hart Senate Office Building
Washington, DC 20510

[...]

Public Access to Court Electronic Records (PACER)

I have concerns about how the Administrative Office of the Courts is interpreting a key provision of the E-Government Act relating to public access to Court records. Given the transparency efforts that have been made a priority across the Federal Government - as well as the recent call in the FCC's Broadband plan for increased online access to court records - I believe more attention needs to be paid to make these records free and easily accessible.

As you know, Court documents are electronically disseminated through the PACER system, which charges \$.08-a-page for access. While charging for access was previously required, Section 205(e) of the E-Government Act changed a provision of the Judicial Appropriation Act of 2002 (28 U.S.C. 1913 note) so that courts "may, only to the extent necessary" (instead of "shall") charge fees "for access to information available through automatic data processing equipment." The Committee report stated: "[t]he Committee intends to encourage the Judicial Conference to move from a fee structure in which electronic docketing systems are supported primarily by user fees to a fee structure in which this information is freely available to the greatest extent possible... Pursuant to existing law, users of PACER are charged fees that are higher than the marginal cost of disseminating the information."

Since the passage of the E-Government Act, the vision of having information "freely available to the greatest extent possible" is far from being met, despite the technological innovations that should have led to reduced costs in the past eight years. In fact, cost for these documents has gone up, from \$.07 to \$.08-per-page. The Judiciary has attempted to mitigate the shortcomings of

the current fee approach in a variety of ways, including limiting charges to \$2.40-per-document and the recent announcement that any charges less than \$10-per-quarter will be waived. While these efforts should be commended, I continue to have concerns that these steps will not dramatically increase public access as long as the pay-per-access model continues.

To move closer to the mandate of the E-Government Act, the Administrative Office of the Courts should reevaluate the current PACER pay-per-access model. Even to retrieve free materials such as opinions, PACER currently requires the individual to establish a PACER account. One goal of this review should be to create a payment system that is used only to recover the direct cost of distributing documents via PACER. That review should also examine how a payment system could allow for free bulk access to raw data that would allow increased analytical and oversight capability by third parties.

Additionally, in 2007, the Judiciary asked for and received written consent from the Appropriations Committees to "expand use of Electronic Public Access (EPA) receipts to support courtroom technology allotments for installation, cyclical replacement of equipment, and infrastructure maintenance." As a result, funds collected by the \$.08-per-page charge have been used for initiatives that are unrelated to providing public access via PACER and against the requirement of the E-Government Act. The Appropriations Committee should review the Judiciary Information Technology Fund Report provided each year to ensure the funds generated from PACER are only going to pay for the direct costs of disseminating documents via PACER, and not for additional items which I believe should be funded through direct appropriations.

[...]

Sincerely,
Joseph I. Lieberman
Chairman