Electronic Public Access Public User Group Meeting
February 27-28, 2020

EPA Public User Group Members Present:

Christopher Allman, Assistant U.S. Attorney, Kansas, Department of Justice

Adam Angione, Midwest and Northeast Bureau Chief, Courthouse News Service

JoAnn DiSanti, Associate Director of Managing Clerks, White & Case LLP

Nicholas Goldrosen, Student, Williams College

Todd Higey, Representative, National Association of Professional Background Screeners

Seamus Hughes, Deputy Director, Program on Extremism, George Washington University

Margo Kirchner, General Counsel and Development Director, Wisconsin Justice Initiative

Tyler Mills, Team Lead, Bloomberg Law

Robert Patrick, Reporter, St. Louis Post-Dispatch (*not in attendance*)

Theresa Reiss, Law Librarian, Congressional Research Service, Library of Congress

Gabriella Sarnoff, Assistant Managing Attorney, Debevoise & Plimpton LLP

Warren Thomas, Principal, Meunier Carlin & Curfman, LLC

The twelve Group members work in various sectors that represent the majority of the Public Access to Court Electronic Records (PACER) user population (i.e., legal sector, non-profit, government, media, academia, data aggregators and other service providers to the legal sector, and the general public). The members are from seven states and the District of Columbia.

Administrative Office of the United States Courts

Robert Lowney	Chief, Court Services Office
Joann Swanson	Chief, Enterprise Operations Center
Jane MacCracken	Group Chair and Division Chief, Programs Division, Court Services Office
James Cartwright	Branch Chief, PACER Development Branch
Jole Awtrey	Branch Chief, Case Management Branch, Court Services Office
Eva Roeber	EPA Working Group Liaison and Chief Deputy, Nebraska Bankruptcy Court
Linda Melchor	Program Analyst, EPA section, Court Services Office
Aicha Campbell	Program Analyst, EPA section, Court Services Office
Beth Grabo	Manager, Web Communications & New Media, Office of Public Affairs
Emily Poland	Public Affairs Specialist, Office of Public Affairs, Office of Public Affairs

Meeting Summary

Robert Lowney, Chief, Court Services Office (the office responsible for oversight of the Judiciary's Electronic Public Access Program operations), and Jane MacCracken, Public User

Group chair and Division Chief within the Court Services Office, welcomed the Electronic Public Access (EPA) Public User Group members (Group) and called the inaugural meeting to order.

The Administrative Office of the U.S. Courts (AO) and Group members reviewed the Group's mission and scope – to give advice and feedback on enhancing electronic public access services (including the Case Management/ Electronic Case Files (CM/ECF) system, the PACER service, and the PACER Case Locator). The AO stated that the Judiciary is dedicated to seeking and implementing, where feasible, the Group's suggestions. In turn, the Group members are expected to seek the views of others in the user sectors that each member represents.

Judiciary Governance and Administrative Process

The AO described the Federal Judiciary's rule-making and policy-making processes, the role of the Judicial Conference and its committees, the Circuit Judicial Council and local court governance, and the AO's role. Federal cases are managed locally by the federal court in which the case is brought. The case is entered into CM/ECF, which operates in each court according to not only the Judiciary's national rules of procedure, but any applicable local rules that each court adopts to meet the needs of its local cases. The management of the cases are governed by the rules and procedures that Congress and the Judiciary adopt. Through the Rules Enabling Act (28 U.S.C. § 2071-2077) Congress authorizes the Supreme Court to prescribe general rules of practice and procedure and rules of evidence for the federal courts. Because the impact of rules on the practice of law in courts is so critical, any change requires meticulous analysis, at least seven stages of formal comment and review (including public commenting), and usually takes about three years to enact as a rule. United States District Courts and Courts of Appeals often prescribe local rules governing practice and procedure that are consistent with Public Law and the Federal Rules and after notice and an opportunity for public commenting has been allowed. Ultimately, the court's independence and the judges' need to use their discretion in managing the needs of each case will dictate the differences between court filings in various courts as well as the systems supporting case management.

Revenue and Costs

The electronic public access program relies exclusively on PACER fee revenue.[1] The AO explained to the Group that, in the Judiciary's most recent budget submission to Congress, expected PACER revenue will be just over $140 million, that due to waivers and exemptions only about 34 percent of the active users are billed in a given quarter, and only 2 percent of PACER users generate approximately 87 percent of PACER revenue. The top 2 percent of users comprise commercial data aggregators, government agencies, and legal sector entities.

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[1] Congress directed the Judiciary to fund electronic public access services through the collection of user fees (Judiciary Appropriations Act, 1991, Pub. L. No. 101-515, Title IV, § 404, 104 Stat. 2102 and Judiciary Appropriations Act, 1992, Pub. L. No. 102-140, Title III, § 303, 105 Stat. 782).

Systems and Services Overview

The AO then presented information to the Group about the Judiciary's CM/ECF system and the portal to CM/ECF – the PACER service. Finally, the AO described the various electronic public access services the Judiciary provides to the public as follows:

- CM/ECF system - the electronic docketing and case management system used by all federal courts for nearly 20 years
- PACER service – service providing access since 1988 to over 500 million documents filed in the Judiciary's 204 CM/ECF systems
- PACER Service Center – customer support center serving all PACER users by telephone and email with search questions, account help, and registration assistance at 800 676-6856 or pacer@psc.uscourts.gov
- PACER Case Locator – a national tool enabling case searches across all federal courts and provides hyperlinks to case records in the respective court's CM/ECF system
- Federal court websites – individual court websites providing information about local rules, court procedures, and other court-specific information
- Public Access Terminals in Federal Court clerks' offices – computer terminals providing access to court records free of charge
- Digital audio recordings of court proceedings (available via PACER service)
- PACER Training and Education Programs
     - PACER Training Application – a free mock website with actual court records that enables users to learn how to effectively use PACER service
     - Written PACER User Resources (e.g., manuals and learning aids)
- Real Simple Syndication (RSS) feeds – a feature in CM/ECF that provides notifications of newly docketed events (either of all public documents or specific types of documents) that many courts have made available
- Opinions on govinfo system – providing free judicial opinions from participating courts via the Government Publishing Office's govinfo system
- Federal Depository Library program - providing training and education about PACER at participating libraries
- Multi-Court Voice Case Information System (McVCIS) – a telephone interactive voice response system providing free bankruptcy case information in English and Spanish at (866) 222-8029
- Integrated Database – a free federal court cases Integrated Database (IDB), which has case data (not documents) for criminal, civil, appellate, and bankruptcy cases that can help researchers refine their search criteria, thereby reducing fees when retrieving needed documents using PACER service
- Multi-Court Exemption Request process – a service provided by the AO to researchers requesting fee-exempt access to multiple federal courts' data for non-commercial use

Upcoming Releases and Initiatives

The AO discussed upcoming releases and initiatives with the members. In addition, the members were given the opportunity to assist with testing and/or providing feedback on the efforts discussed. These efforts include:

PACER Case Locator Application Programming Interface (API)

The AO is planning to make a PACER Case Locator API available later this fall to facilitate communication with other applications used by public users, in particular the automated script users (e.g., data aggregators). Providing the API will make the PACER Case Locator more flexible; make automation easier and more efficient; and allow for user interface changes without impacting automated script users.

Quality Control in Docketing

Currently, CM/ECF is exploring integrating a quality control mechanism for docketing. This will help minimize common mistakes with filings. This is in the analysis phase, and a prototype of a possible solution will be evaluated in the near future.

EPA Services Assessments

Before establishing this group, the AO conducted two electronic public access user assessments in 2010 and 2012 to measure satisfaction with PACER services and to obtain recommendations for improvements. The 2010 assessment provided insight into who uses PACER, areas that provide the highest level of satisfaction for those users, and areas that could be improved. At that time, 86% of the users who completed the survey said they were satisfied with services. Based on the feedback received, the PACER Case Locator was created, the PACER website was redesigned, and RSS feeds were promoted amongst courts. In 2012, the assessment was refreshed and 90% of the users that completed the survey said they were satisfied. This year, the AO will undertake another user assessment, and seek input from this Group on the form of the assessment.

New PACER.gov Website

The AO will be releasing a new pacer.gov website. A soft launch of the website is expected sometime this spring with a hard launch later this summer. The website's design and information architecture have been completely redesigned making it accessible and mobile-friendly. In addition, the search engine has been optimized to improve findability.

PACER User Interface Feasibility Study

The AO is conducting a feasibility study to determine if it is possible to develop a new PACER user interface module with near real-time access to court data and documents that can handle all PACER requests. If feasible, this will make it easier to deliver updates and new features more

frequently. The expectation is that the study will determine it is feasible to develop a new PACER user interface module that will allow the AO to focus on the needs of the public users in a streamlined manner and without impacting development requirements or other stakeholders of CM/ECF.

Brainstorming Sessions – Eliciting and Prioritizing Recommendations

The Group participated in two brainstorming sessions: (1) to elicit recommendations, and (2) to prioritize recommendations based on level of impact. The AO explained that while the Judiciary might not adopt all of the proposed recommendations, such as those that conflict with statutes or policies, it is committed to focusing on the highest impact ideas that are feasible to accomplish financially, technically, and legally. Below are the recommendations grouped into categories with the highest priorities listed first.

Recommendations Prioritized by the Group

Ability to track/follow cases

The ability to track cases of interest for non-filers and non-parties. Some members suggested expanding the existing Notice of Electronic Filing (NEF) for Bankruptcy and District Courts, or Notice of Docket Activity (NDA) for Appellate Courts, functionality to public users. Others also suggested making changes to the RSS feed feature to allow for filtering by case number.

New Search Criteria

More granular and flexible search parameters based on all available case metadata, such as charges, search warrant, judge name, date terminated, and statutory code section in CM/ECF (PACER) and the PACER Case Locator.

Improve Existing Search Capabilities

The Group made several recommendations for improving existing search capabilities, which include:

- defining and improving taxonomy related to cases for each court type (e.g., nature of suit code and statutory code sections);
- providing glossary updates and definition lists of court codes;
- improving naming conventions (e.g., US, U.S., USA, etc.); and
- allowing users to search using one character with a wildcard character.

In addition, the group also pointed out that the drop-down lists on the PACER Case Locator need to be updated and cleaned up.

<u>Fully and Consistently Implement RSS Across Courts</u>

The Group requested that courts be strongly encouraged by the AO to turn on the RSS feature and provide full docket entry/activity feeds. Currently, not all courts provide RSS and the feed varies by courts. Additionally, the Group requested a multi-district RSS feed by case type/statue.

<u>Making it Easier for Pro Se Users</u>

The Group felt that improvements could be made to help pro se users better navigate the services and systems. Recommendations included making it easier for pro se users to get an account; providing targeted training regarding searching for cases and filing; encouraging courts to provide easy to find links to training or other informational materials; and ensuring pro se users understand the $30 fee waiver.

<u>Improve Timeliness of PACER Case Locator</u>

Update the data in the PACER Case Locator more often and closer to real-time. Currently, the PACER Case Locator is updated on a nightly basis and members felt that if the data were updated in a timelier manner it may encourage users to move their high-volume usage to it rather than go to each court system.

<u>Full Text Search</u>

Full text search across dockets and documents in each court's CM/ECF system.

<u>Improving PACER User Experience in CM/ECF</u>

The Group discussed and made several recommendations for improving the PACER user experience requiring changes to CM/ECF, which include:

- ability to download or view all or selected documents in a case (including any exhibits);
- ability to preview documents before paying;
- document number should be included in file and document name; and
- the docketing of exhibits in all courts, as applicable.

<u>Unsealing of Search Warrants – Best Practices</u>

The Group suggested that the AO provide courts with baseline rules for sealing and unsealing search warrants. It was also recommended that some mechanism be put in place that automatically unseals documents upon the issuance of an unsealing order.

Date Range of Case Information in Court's CM/ECF

Provide the date range of cases (docket and filings) that can be found in each court's CM/ECF system somewhere that is easily and centrally accessible, such as on the pacer.gov website.

Make Additional Data Available in CM/ECF to Identify Individuals

Provide additional information in CM/ECF that can help accurately identify individuals, such as date of birth. Currently, you can only search by name in appellate, civil, and criminal case, so it is difficult to determine if you found the correct individual. This is critical for background checking purposes.

Ability to Opt-out of NEF/NDA Upon Withdrawing from Case

Provide the ability for attorneys to opt-out of receiving NEF/NDA once the court has allowed them to withdraw from a case. This would depend on local court procedures as well as the Department of Justice.

Ability to Download Documents at the Public Terminals

Provide users with the option to download documents at the public terminal and emailing it to themselves. Currently, users can only view information, and print a hard copy (for a fee).

Making the EPA Public User Group a Standing Group

Given that technology and industry continuously evolve there is a need to make the EPA Public User Group a standing group.

Issue Identified by the Group

Viewing PDF on mobile devices

Currently, some users have experienced issues with accessing PDFs on mobile devices. The PDF files are not loading properly, so they are only able to view the first page and not scroll to the remaining pages.

This issue will be submitted to CM/ECF Division to be addressed in future release.

Other Recommendations Not Prioritized by the Group

Additionally, the Group discussed the following items that were not prioritized:

- Providing an API for filing for third party vendors.
- Providing information in additional languages, even if using auto-generated applications such as Google Translate.

- Making a corporate PACER account available. This account would be owned and managed by the corporation, with access assigned to employees.
- Include people who do not use PACER from certain user classes (e.g., news organizations, legal researchers) in the next user assessment. This may provide insight as to why people may not be using PACER.

Recommendations by the Group Outside the Scope of the Group's Mission

The Group made several recommendations that fell outside of the scope of the Group's Mission but will be sent to various offices within the AO and the EPA Working Group for evaluation. These recommendations primarily focused on making changes to the fee application, modifying exemption policy, and exploring different fee models. As directed by Congress, the Judiciary's electronic public access services are funded entirely through the collection of user fees. Recommendations made that could impact the only source of funding supporting the program requires careful analysis.

Next Steps

The Group will meet again by teleconference at the end of May/early June at which time the AO will report on the status of the Group's recommendations. The AO plans to conduct quarterly teleconferences and a second in-person meeting early in 2021.

This Summary has been reviewed and agreed to by all members of the Group and the AO who were present at the meeting on February 27-28, 2020.