

Electronic Public Access User Group Conference Call

February 16, 2021

Electronic Public Access (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, Institute of Criminology – University of Cambridge
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
Theresa Reiss	Law Librarian, Congressional Research Service, Library of Congress
Gabriella Sarnoff	Assistant Managing Attorney, Debevoise & Plimpton LLP
Warren Thomas	Principal, Meunier Carlan & Curfman
Eva Roeber	Clerk of Court, District of Nebraska

Administrative Office of the United States Courts (AO)

Aicha Campbell	Program Analyst, National Programs Branch, Court Services Office
Angela Jaffee	Chief, National Programs Branch, Court Services Office
Chris Vagner	Chief, Operations Branch, Court Services Office
Jane MacCracken	Group Chair and Deputy Chief, Court Services Office
Jason Edwards	Chief, Court Services Office
Julie Neville	Attorney Advisor, National Programs Branch, Court Services Office
Linda Melchor	Program Analyst, National Programs Branch, Court Services Office
Michelle Gardner	Attorney Advisor, National Programs Branch, Court Services Office

Conference Call Summary

Welcome from Jason Edwards, Chief, Court Services Office, and Jane MacCracken, Chief, Programs Division, Court Services Office, and Public User Group Chair.

Update on AO Activities

The EPA services assessment being conducted in partnership with Deloitte is officially underway. During the week of February 15, 2021, approximately 60 PACER users, including Public User Group members, participated in online bulletin board discussion groups designed to help refine the larger survey instrument that will be administered to a broader community of PACER users later this year.

In the wake of the January 6, 2021 attack on the U.S. Capitol, the AO has provided guidance to the courts on public access to high profile cases during the pandemic.

SolarWinds, Highly Sensitive Documents, and Sealed Warrants Briefing

In mid-December, the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency issued an emergency directive regarding "a known compromise involving SolarWinds Orion products that are currently being exploited by malicious actors." SolarWinds is an IT network monitoring tool for managing Local Area networks (LANs). The breach resulted in a compromise to documents stored in CM/ECF, and the AO is working with the Department of Homeland Security and law enforcement on an investigation.

The judiciary's response has been to institute new security procedures for Highly Sensitive Documents (HSDs), which must now be filed outside of CM/ECF, either on paper or an air-gapped computer. HSDs are sensitive, non-public documents that could cause harm if released. Each individual court determines which documents qualify and has an order or notice regarding the local procedures adopted for these documents. The AO noted that there should be no immediate public access impact based on these procedures, because the covered documents would have already been sealed, and therefore not available to non-parties via PACER.

Public User Group members expressed concerns that the new HSD procedures would be applied in an overly restrictive manner such that courts would over-designate documents as HSDs, and that courts would not revisit sealing HSDs after the reason for sealing no longer existed. Group members also were concerned that different interpretations would arise across the country around the definition and later release of HSDs.

Public User Group Members made several recommendations regarding handling of HSDs after the SolarWinds breach, and regarding sealed document/warrants more generally:

- Members recommend that the AO issue national guidance regarding which types of documents can appropriately be categorized as HSDs.
- Members recommend that there be a reporting requirement for courts on how many documents they have classified as HSDs and accepted for filing outside of CM/ECF.
- Members recommended that forward looking notices be sent to parties with HSDs reminding them of the status and asking them to reevaluate whether it is still necessary. Further, courts should reevaluate all HSDs and sealed documents periodically.
- Members recommend redaction of sensitive content from HSDs and making the remainder available on CM/ECF and PACER – similar to how the current privacy rules are implemented on transcripts and other filings.

Status of Public User Group Recommendations

The AO continues to analyze, and where feasible, pursue the Group's recommendations. In order to be feasible, recommendations must be achievable technically and legally and are subject to funding availability. The AO provided the following update on the status of the Group's original recommendations.¹

1. Last November, the AO released a dedicated page for Pro Se Users on the PACER website. This page provides information in plain language describing how to access PACER and request PACER fee exemptions from courts.
2. Last November, the AO released new features and functionality on the PACER Case Locator which included:
 - a. The addition of a coverage date of the case information available in a court's CM/ECF system on the court information page. The coverage date provides users with the first date of regular filings appearing in that court's system.
 - b. The ability to search using one character in combination with a wildcard character in the case title and party name. This is a sub-recommendation of the recommendation to improve PACER User Experience in CM/ECF.
3. Work continues on resolving problems with viewing PDFs on mobile devices. This issue has been included in release 1.7 for NextGen District CM/ECF (tentatively scheduled for Fall 2021).
4. The AO has begun raising awareness, and will provide courts with additional guidance on, implementing and more fully utilizing RSS feeds in CM/ECF.
5. Technical analysis continues of how to give users capability to download/view all (or selected) documents in a case in all three court-type applications. While users can turn on the functionality to select multiple documents while viewing the Docket Report, this is not available for other reports (such as the Document/History report in District and Bankruptcy CM/ECF). Users are not currently able to view/download all documents with a click of a button. This analysis will determine the level of effort for development and a timeline for implementation of these features across all three court types' NextGen applications.
6. The issues of search by judge functionality and full/free-text searching have been presented for consideration by the Judicial Conference. This review process is ongoing.

The remaining recommendations are under evaluation. Those recommendations requiring changes to CM/ECF will require additional time and will only be made available in the NextGen CM/ECF systems as these changes would need to be made in the applications for all three court types, and implementation could potentially differ between them. Additionally, the Group was updated on the progress made regarding the upcoming PACER Case Locator (PCL) Application

¹ The EPA Public User Group's recommendations can be found on pages 5 through 7 of the [February 27-28, 2020 Meeting Summary](#).

Programming Interface (API). Currently, it is undergoing beta testing. The beta testing consists of 3 rounds and is expected to conclude late Spring. Depending on the outcome of beta testing, the earliest the PCL API can be expected to be released is by the end of this Summer.

Open Discussion

Group members reiterated their concerns and suggestions relating to HSDs and sealed documents in CM/ECF generally.