

BACKGROUND

The Public Access to Court Electronic Records System, commonly known as PACER, is an online database of U.S. federal court documents managed by the federal judiciary. Created in 1988 and made available on the internet in 2001, PACER is the only publicly accessible electronic collection of case and docket information from federal appellate, district and bankruptcy courts. Although the documents that PACER houses are free to access in person at each respective court, PACER operates as a subscription service, generally charging users 10 cents per downloaded page. In recent years, PACER has collected over \$145 million annually in non-appropriated revenue for the judicial branch.

CURRENT DEBATE

The federal judiciary created PACER as a tool to ensure that lower courts' documents, records and filings were publicly accessible—a core principle of America's judicial system. [This access](#) increases transparency and helps researchers, journalists, students and individuals (such as pro se litigants) navigate our complex federal court system. However, by placing public records behind a paywall, PACER has [undermined](#) its promise of true public accessibility. Although the E-Government Act of 2002 grants PACER the authority to charge fees to cover operational costs, the fees collected have outpaced those costs. In 2016, for example, PACER [collected \\$146 million](#) in revenue, far exceeding its approximately \$3 million in operational costs.

SUMMARY

- PACER was created to increase public access to the United States' full catalogue of federal court documents in the form of a one-stop shop.
- The system's paywall and lack of responsible management has stymied its usefulness as a public tool.
- PACER's fee system results in revenues that far exceed [its mandated authority](#) to collect money "only to the extent necessary [...] to reimburse expenses incurred in providing [its] services."
- To bring PACER in line with its revenue mandate and provide truly public electronic access, its per-page download fees should be significantly reduced or eliminated.

Also in 2016, three nonprofit groups sued the federal government, arguing that PACER's current fee model violates the E-Government Act. [They highlight](#) that "Instead of complying with the law, the [federal judiciary] has used excess PACER fees to cover the costs of unrelated projects—ranging from audio systems to flat screens for jurors—at the expense of public access." Last year, [a district court found](#) that the government properly used PACER revenues to pay for some services but not others. The government appealed the ruling, and the dispute is now before the United States Court of Appeals for the Federal Circuit.

ACTION ITEMS

In addition to modernizing its aging interface, PACER must make its public documents freely available to improve the accountability and legitimacy of the federal judiciary.

In the House of Representatives, House Judiciary Committee Ranking Member Doug Collins (R-GA) and Rep. Mike Quigley (D-IL) have introduced bipartisan legislation—the [Electronic Court Records Reform Act](#)—that would make PACER freely available to internet users and modernize the quality of online data to ensure that documents are machine-readable and text-searchable. Senators Rob Portman (R-OH), Ron Wyden (D-OR), Ted Cruz (R-TX) and Mazie Hirono (D-HI) recently introduced similar legislation in the Senate.

Judiciary committees in both the House and Senate should soon consider these bipartisan bills and seek input from experts about the current limitations and barriers imposed by PACER. These committees should also have an opportunity to hear publicly from the Administrative Office of the U.S. Courts in order to learn more about how PACER fees are currently used and how the federal judiciary can increase access to public court records.

CONTACT US

For more information on this subject, contact the R Street Institute, 1212 New York Ave. N.W., Washington, D.C. 20005, 202-525-5717.



Anthony Marcum
Governance Fellow
amarcum@rstreet.org
202-900-9731



Aubrey Neal
Federal Affairs Manager
aneal@rstreet.org
202-900-9728