



Proposal to Make PACER Free to the Public Deserves Support

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Court documents are, generally speaking, public information, and in Missouri the public has free access to a vast array of state litigation information [through its Case.net system](#) . Unfortunately, the same can't be said for federal judicial records currently nested behind the PACER ("Public Access to Court Electronic Records") paywall. However, if one U.S. representative has his way, that may change. [Ars Technica reports](#) :

The PACER system has been on the Web since the late 1990s. To avoid using taxpayer funds to develop the system, Congress authorized the courts to charge users for it instead. Given the plunging cost of bandwidth and storage, you might have expected these fees to decline over time. Instead, the judiciary has actually raised fees—from 7 cents per page in 1998 to 10 cents per page today. Even search results incur fees. The result has been a massive windfall for the judiciary—\$150 million in 2016 alone.

Critics like the legal scholar Stephen Schultze point out that this is not what Congress had in mind. In 2002, Congress required that the courts collect fees "only to the extent necessary" to fund the system. It obviously doesn't cost \$150 million per year to run a website with a bunch of PDFs on it. Despite that, federal courts have used PACER revenues as a slush fund to finance other court activities. For example, one judge bragged at a 2010 conference about using PACER funds to install flatscreen monitors and state-of-the-art sound systems in court rooms.

Legislation has now been introduced that would require courts to make PACER documents

available for download free. And this is a good thing.

I am sympathetic to the concern that the public writ large should not be on the hook for every undertaking by government, which is why I often support user fees for a wide array of government services, including for roads. But when it comes to good governance, there is a shared interest in transparency that government should bake into its standard operating procedure.

In slight contrast to our Show-Me Checkbook Project, the interest in transparency in our courts isn't necessarily about oversight; while cities themselves are often black boxes to the public in terms of their spending, most court records are easy to obtain. The question in both cases, however, is whether the public should essentially have to pay twice for these records: through our tax dollars first, and then again when we want to see what our tax dollars have paid for.

For purposes of good governance, I don't think paying twice—for checkbook records, or for court records—is appropriate, and I hope PACER becomes an open resource for the public very soon.

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Patrick Ishmael is the director of government accountability at the Show-Me Institute.

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[2] <https://www.courts.mo.gov/casenet/base/welcome.do>

[3] <https://arstechnica.com/tech-policy/2018/09/new-bill-would-finally-tear-down-federal-judiciarys-ridiculous-paywall/>

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