

NOCALL Spring Institute: PACER to RECAP

March 27, 2010

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What is PACER?

Public Access to Court Electronic Records



- Online public access system to case information for the Federal Appellate, District and Bankruptcy courts.
- Run by the Administrative Office (AO) of the U.S. Courts.
- Over 1 million subscribers

PACER Privacy Concerns

Under the rules of the federal courts, each party to a case is responsible for redacting personally-identifiable information from its own documents, and courthouse personnel are responsible for redacting documents produced directly by the courts.

FRCP Rule 5.2.

Privacy Protection For Filings Made with the Court

(a) Redacted Filings.

Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

- (1) the last four digits of the social-security number and taxpayer-identification number;
- (2) the year of the individual's birth;
- (3) the minor's initials; and
- (4) the last four digits of the financial-account number.

HOWEVER

Court records are littered with private data.

- Social Security numbers
- Taxpayer identification numbers
- Financial account numbers
- Names of minor children
- All available for sale at 8¢/page.

Meet Aaron Swartz



During the PACER pilot program, he
downloaded 19,856,160 pages of court
documents

(= roughly 20 percent of PACER)

AND HE SENT THE DOCUMENTS TO.....

Carl Malamud



Malamud performed a privacy audit of this material and found thousands of privacy violations

And, he sent letters -- LOTS OF LETTERS -- around the country about these violations

public.resource.org

uscourts.gov



Administrative Office of the Courts The Judicial Conference

America's Operating System—It's the Law!



THE PRIVACY PAPERS

"We may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people; and is administered by persons holding their offices during pleasure, for a limited period, or during good behaviour."

James Madison, Federalist Number 39, 1788

06.19.09



05.21.09



05.21.09



05.20.09



05.19.09



05.08.09



And, Carl shared this audit with



<http://lieberman.senate.gov>

Joe Lieberman

UNITED STATES SENATOR



FOR IMMEDIATE RELEASE
February 27, 2009

Contact: Leslie Phillips

Lieberman Seeks Information on Federal Court Compliance with Transparency, Privacy Requirements

WASHINGTON - Homeland Security and Governmental Affairs Committee Chairman Joe Lieberman, ID-Conn., Friday sent the following letter to the policy-making body of the Federal Court system requesting proper compliance with the E-Government Act of 2002 on transparency and privacy issues as they relate to court documents:

Do the courts redact information
in existing case files?

“The policy is not retroactive, so the courts are not required to redact filings previous to the privacy policy's implementation. It is the attorneys' responsibility to inform their clients that case files may be obtained electronically and to ensure private information is not included in the case files. **The clerk's office does not review filings for compliance with the policy.**”

(<http://pacer.psc.uscourts.gov/faq.html>)

Warning on the PACER Login Page:

IMPORTANT NOTICE OF REDACTION

RESPONSIBILITY: All filers must redact: Social Security or taxpayer-identification numbers; dates of birth; names of minor children; financial account numbers; and, in criminal cases, home addresses, in compliance with [Fed. R. App. P. 25\(a\)\(5\)](#), [Fed. R. Civ. P. 5.2](#), [Fed. R. Crim. P. 49.1](#), or [Fed. R. Bankr. P. 9037](#). This requirement applies to all documents, including attachments.

However.....

Minneapolis attorney Vincent J. Moccio filed an affidavit in a lawsuit that included the names, dates of birth and full Social Security numbers of 179 individuals.

U.S. District Court Chief Judge Michael Davis ordered Moccio to:

- notify all injured individuals of the improper disclosure of their personal information
- provide each with individualized credit reports and credit monitoring
- make a payment of \$5,000 to the Second Harvest Heartland food bank.

[\(0:06-cv-02410-MJD-RLE\)](#)

What about privacy problems in court documents?

“It seems that placing a party's social security number of other private information on the public record, contrary to the spirit and purpose of the statutes, bankruptcy rules, and local rules...may constitute an abuse of process. This is especially true if this abuse is or may be repeated....The allegations stated in the Complaint may affect the integrity of the bankruptcy process and once brought to light, the Court has the power to respond”

In re Killian, 2009 Bankr. LEXIS 2030 (July 23, 2009)

Redaction Pitfalls

Changing the font to white does make it look like the words disappear, ***but they don't!***

Mrs. Lincoln said that **John Wilkes Booth** shot her husband.

Connecticut GE example: blacking out text didn't work: after downloading from PACER, copy/paste function in Word revealed the hidden text

<https://ecf.cand.uscourts.gov/cand/faq/tips/redacting.htm>

RECAP

A plug-in for the Firefox web browser that helps PACER users effortlessly share public court documents that they purchase.

Center for Information Technology Policy
Princeton University

<http://www.recapthelaw.org>



RECAP: Liberates Court Documents

Automatically uploads documents to the public archive.

- Case dockets reformatted in an open, structured format (XML).
- Document PDFs augmented with appropriate metadata.



Free Documents – Better Filenames – PDF Headers

RECAP: Shares Documents Publicly

Notifies other users when free documents are available.

Date Filed	#	Docket Text
08/26/2008	1	COMPLAINT filed as to Defendant Kevin Cogill in violation of 17:506(a)(1)(C). Approved by Magistrate Judge Stephen J. Hillman as to Kevin Cogill (1) (ja) (Entered: 08/28/2008)
08/27/2008	2 R	REPORT COM Cogill; defenda (Entered: 08/29
08/27/2008	3	MINUTES OF held before Ma Cogill. Defenda true name as ch present.Court o Bond, see attac the custody of t PM before Dut 9/27/2008 08:3



A notification dialog box with a grey background and a red 'X' close button in the top right corner. The word 'RECAP' is displayed in a large, blue, serif font with a reflection effect below it. Below the logo, the text reads: 'This document is available for free!' followed by 'RECAP cached this document on 08/30/09.' At the bottom center, there is a button labeled 'Download'.

RECAP: Numbers

- Beta release on August 14, 2009.
- Repository contains 2.1 million documents (3/2010)
- Partners also uploading previously purchased documents:



*No download statistics because all of the documents are hosted on Internet Archive

Privacy Questions & RECAP

“Prior to programs like RECAP mistakes in documents published on PACER could be corrected. “Now they can’t be taken back”
(from *Minnesota Lawyer*, 11/9/2009)

RECAP & PRIVACY: what they do to guard against privacy leaks

- The Internet Archive does NOT allow search engine indexing of the documents submitted via RECAP.
- RECAP servers automatically scan all submitted documents for Social Security numbers before they are uploaded to the Internet Archive. *Any document in which SS#s are detected is automatically suppressed.*
- RECAP is relying on users to report privacy problems. The feedback will not only allow RECAP to suppress the document -- it will also help improve the automated filters so that fewer problem documents slip through in the future.

August 20

Please be aware that RECAP is “open-source” software, which can be freely obtained by anyone with Internet access and modified for benign or malicious purposes, such as facilitating unauthorized access to restricted or sealed documents.

Administrative Office of the Courts

August 25

“I got a call this afternoon from Michel Ishakian, the Deputy Chief for IT Policy and Budget at the Administrative Office of the United States courts. She assured me that they have no problem with counsel using RECAP.”

Paul Levy, Public Citizen

Downloading & Using RECAP

<https://www.recapthelaw.org/install/>

Once installed:



(turns BLUE when logged in)

RECAP icon will appear on the docket once in
the archive

