This study evaluates the Public Access to Court Electronic Records system, otherwise known as PACER. PACER is a computerized database of federal court documents, administered by the Administrative Office of the United States Courts. This paper will cover the history of public access to electronic court records and the issues and controversies surrounding PACER. Controversies include the US Courts charging the public fees for accessing information that belongs to the public, the privacy concerns with making court documents available on the internet, the difficulty in citing court records, the authentication challenge with PACER documents and the difficulty of using PACER as a legal research tool. In addition to the controversies, PACER’s page layout, navigation and search capability will be evaluated using government guidelines for evaluation.
AN EVALUATION OF PACER

by
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I. INTRODUCTION

Before 1988 the only way to view court documents was to travel to the courthouse and retrieve the documents personally. ("Electronic Public Access at 10", 2000). The advent of the computer, however, dramatically changed the way court documents could be accessed. Access to court documents today is faster and easier than ever before. With the creation of the Public Access to Court Electronic Records database, otherwise known as PACER, travelling and waiting in lines is no longer necessary. The public can easily access federal court documents from the comfort of their own home or office.

PACER, a computerized database of federal court documents, run by the Administrative Office of the United States Courts, is a combination of over 200 federal court databases. (Martin, 2008, p. 865). Over 98 bankruptcy courts, 96 district courts and 13 appellate courts participate in PACER at this time. Courts are able to provide for electronic filing and management of all federal court documents through a case management system, referred to as the Case Management/Electronic Case Files (CM/ECF). The documents filed can then be viewed through the PACER system which is run by user fees. Information found in PACER include the names of the parties and participants to a case, cause of action, history of the case, appellate opinions, motions and briefs, nature of the suit, and docket entries.
Despite the unprecedented level of access to court records offered by PACER, it was not really designed to be a legal research system on the level of Westlaw or LexisNexis, the two top premiere legal databases used by researchers across the country. Rather it is an extension of the court clerk’s office, whose purpose is to facilitate the administration of the court. (Martin, 2008, p. 864) Notwithstanding PACER’s initial purpose as an administrative tool of the courts, the public including libraries and the government, have realized PACER’s usefulness as a way to carry on the public’s right to free access to court proceedings and records. However in this regard, one researcher went as far as to call PACER a “dismal failure” as a public information source. (Gallacher, 2006-2007, p. 516).

This paper will cover the history of public access to electronic court records and the issues and controversies surrounding PACER. There are several issues surrounding PACER. For one there is a potentially hefty price to searching for court records, especially if the user does not know what they are looking for. Secondly, there are privacy issues with having court documents accessible to the public at large. Also, even if the researcher finds the right court record there is no standard citation format for them to use. There are also issues with authentication of PACER documents. Lastly, PACER is rather cumbersome to use. There is no full text search function, making legal research difficult. In addition to the issues and controversies, PACER’s search capability will be evaluated.

Recently, the difficulties presented with conducting legal research on PACER have led to the General Printing Office (GPO) and the Federal Depository Library (FDL) to reach out to the American Association of Law Libraries (AALL) to help reinvent the
PACER system and make it a “…part of a legal research and training program for librarians and the users.” ("Pilot for PACER access," 2009, para 3).
II. HISTORY OF ELECTRONIC ACCESS TO COURT RECORDS

Electronic access to court records began with the Electronic Public Access (EPA) program in September 1988 as “…an experimental program of electronic access for the public to court information in one or more district, bankruptcy, or appellate courts in which the experiment can be conducted at nominal costs.” ("PACER coming into its own at 20," 2008, para. 2). In 1989 a half a dozen bankruptcy and district courts participated in the pilot program and in 1991 the Judicial Appropriations Act of 1991 was enacted, which expanded the program across the country by setting reasonable fees to provide electronic access to court documents. (Public Law 101-515 § 404(a);"Electronic Public Access at 10", 2000).

Court records were initially accessed through a dial-in bulletin board service. ("Chronology", n.d.) The charge for access was one dollar per minute. ("Chronology," n.d.). Overtime, more and more courts began providing access to court records. By 1993 the House Appropriations Committee requested “…that the Judiciary equip all courts, as rapidly as is feasible, with the capability for making such records available electronically and for collecting fees for doing so.” ("Electronic Public Access at 10", 2000, para 5). As a result, the half a dozen courts that participated in 1989 increased to about 180 by the mid 1990s. (Martin, 2008, p. 860).
As more courts were added, PACER was expanded. In 1996 a new Case Management/Electronic Case Files (CM/ECF) system was developed. ("CM/ECF FAQs," n.d.). This new system allowed the courts to maintain court files and permit case documents to be filed over the internet. Shortly after, the program became completely self-funded, when Congress authorized the Judiciary to use the fees collected to enhance services. ("Electronic Public Access at 10", 2000).

In 1997 the U.S. Party/Case Index (USPCI) was added to PACER. (Martin, 2008, p. 861). Before the index was created, in order to access court documents the user needed to know the jurisdiction in which the court proceedings occurred, making searching difficult. The USPCI allowed for nationwide searching instead of jurisdictional searching. Until this year, it served as a nationwide locator for Bankruptcy, District and Appellate Court cases which could be searched by party name, case number or nature of suit code.

The biggest event in PACER history occurred in 1998 when PACER went on the web and a fee of seven cents was proscribed. ("Chronology", n.d.). User accounts quickly grew: from approximately 9,000 in 1994 to over 30,000 in 1999. ("Electronic Public Access at 10", 2000). As of 2008 there were over 900,000 user accounts. ("PACER coming into its own at 20," 2008) The greatest increase in users came when the system changed from dial up to a web based system. ("PACER coming into its own at 20," 2008). The web system made it easier than ever before for the public to access case documents. No special knowledge was needed; just access to the internet.

The late 1990s saw an increase in users and an effort by the government to respond to user complaints regarding fees. In 2001 the judiciary approved two new
provisions to help users. ("Chronology", n.d.). First, attorneys and parties to a case could receive one free electronic copy. ("Chronology", n.d.). Second, users would not be charged any fee until they accrue more than ten dollars in a calendar year. ("Chronology", n.d.). Over the next two years the Judicial Conference added another benefit to the user by putting a thirty page cap on all case documents including docket sheets and case-specific reports but excluding transcripts, name searches, and non case-specific reports. ("Chronology," n.d.; “PACER FAQs,” n.d.). The cap was a result of user objections to paying seven cents a page for a hundred page document when they only wanted to see a few pages of that document. With the cap in place, at seven cents per page, the user would only be charged $2.10 for any document over 30 pages. ("PACER FAQs," n.d.) This only applied to one document at a time. ("PACER FAQs," n.d.) New charges accrued when the user accessed a new document. ("PACER FAQs," n.d.)

During the last decade there has been increasing efforts from the public and the government to improve the public’s access to government documents; to take advantage of the benefits offered by the internet and to disseminate government documents to a wider audience. In 2002 Congress, in an effort to improve access to government information, develop electronic government services, promote the internet, promote interagency collaboration, reduce costs and burdens, and to make the government “more transparent and accountable” enacted the E-Government Act of 2002. (2002, p. 2900). The E-Government Act required courts to ensure that documents filed electronically would be available to the public. The E-Government Act of 2002 states:

“Except as provided under paragraph (2) or in the rules prescribed under paragraph (3), each court shall make any document that is filed electronically publicly available online. A court may convert any
document that is filed in paper form to electronic form. To the extent such conversions are made, all such electronic versions of the document shall be made available online.” (2002, p. 2914).

The next step by the Judicial Conference was to issue fee exemptions in 2003. The exemption applied to “…indigents, bankruptcy case trustees, individual researchers associated with educational institutions, courts, section 501 (c)(3) not-for-profit organizations and pro bono ADR neutrals…” and only for accessing a specific case. ("Chronology", n.d., “2003 The Judicial Conference made several changes”, para 2). Excluded from the exemption were “local, state or federal government agencies, members of the media, attorneys or others who are not members of the groups specified above…” ("Chronology", n.d., “2003 The Judicial Conference made several changes”, para 3). Because of these fee exemptions approximately fifty percent of PACER users were exempt in 2008. ("Electronic public access program," 2009).

In 2004 the fees for PACER access increased from seven cents to eight cents per page. ("Chronology", n.d.). As a result, the thirty page cap increased from $2.10 to $2.40. Another boost to public access occurred when transcripts of court proceedings were made available on PACER. ("PACER coming into its own at 20," 2008). This marked the first time transcripts were made available for viewing, downloading or printing on the internet. ("Transcripts of federal court proceedings," 2007).

The latest change to PACER occurred this year. On March 16, 2010 the Judiciary approved four key changes to improve access to PACER. ("Judiciary approves PACER innovations," 2010). First, digital audio recordings of court proceedings will be made available for a charge of $2.40 per file. Second, users will not be billed unless charges of more than $10 are accrued in a quarterly billing cycle as opposed to a one year period.
Third, the Judiciary approved a plan to allow up to 12 courts to publish bankruptcy and district opinions free of charge through the GPO’s Federal Digital System (FDsys).

Fourth, PACER will change the name of the US Party/Case Index to the Case Locator and update its searching abilities. Also, in an effort to improve services, the Judiciary’s Electronic Public Access Program has been conducting interviews, surveys and focus groups; results will be available July 2010. ("Judiciary approves PACER innovations," 2010).
III. ISSUES AND CONTROVERSIES WITH PACER

There are five main issues and controversies surrounding PACER. The first involves the fees the public is charged for accessing public documents. Second, are the privacy concerns with offering documents on the web for all to see. Third, are the difficulty legal researchers have citing the information found in PACER. Fourth, involves authenticating PACER documents. The last issues surround the usability of PACER. The following sections will go into detail about each issue.

A. PACER FEES

Access to court documents largely depends on how much users are willing to pay. Despite a mandate that the public should have access to public documents, public documents are not free and have never been free. In 1853 the thirty-second Congress regulated the cost for a copy of a court document at ten cents per folio paid to the court clerk. (10 Stat. 161, 1849-1862). Taking into account inflation the equivalent cost for a court document per page today would be approximately $2.00. ("PACER brochure," 2005). Over time, however, the price for a copy of a court document has actually decreased.

The fee for obtaining a court document today, through PACER, has been set at eight cents per page. According to PACER’s FAQs page “[t]he per page charge applies to the number of pages that results from any search, including a search that yields no matches (one page for no matches.) The charge applies whether or not pages are
printed, viewed, or downloaded.” (PACER FAQs, n.d., “How much does PACER cost?, para. 1.) There is the cap of $2.40 but this cap does not include searches for transcripts, non-case specific reports and name searches. ("PACER FAQs," n.d.).

Despite the relative low cost of copies, one of the most contentious debates revolves around the fees imposed for accessing court documents on PACER. Opponents of fees argue federal court documents are part of the public domain and should be freely and easily available to the public. (Lee, 2009; Lieberman, 2009). Placing a fee on access in effect acts as a deterrent to the general public and prevents the public from truly having access to documents that should be in the public domain. (Lee, 2009). Proponents on the other hand argue that the fees collected for PACER are used for its maintenance. (Rosenthal & Duff, 2009). Instead of the general public paying through taxes, the burden should be on the people who actually use the system. (Moyer, 2009).

Still the push to make eliminate the fees for using PACER has increased in the last few years. According to the Center for Democracy & Technology and OpenTheGovernment.org (2009), as of March 2009 free access to PACER ranked third on a list of the most wanted federal documents. In fact “…the PACER System, received the highest number of votes of any document not included in the previous surveys.” (Center for Democracy & Technology and OpenTheGovernment.org, 2009, p. 11).

In the letter, Senator Lieberman pointed out that Section 205(e) of the Act changed the provision mandating the Judiciary to charge fees for accessing information. According to the Senator, the purpose of the change was to encourage the Judiciary to move from a system of collecting fees for accessing court information, to a system that, “…to the greatest extent possible” provides free access to the information. Senator Lieberman argued that over the last seven years PACER has increased the fee charged for access, yet the Judiciary Information Technology Fund has showed a surplus of approximately $150 million. According to the Senator, the fees for PACER maintenance are actually higher than what it costs to run the system.

James C. Duff, Secretary of the Judiciary Conference responded to Senator Lieberman’s concerns regarding the fees charged. (Rosenthal & Duff, 2009). Director Duff insisted that the fees charged are necessary to cover the high costs associated with running the PACER service and that there are many services that are provided for free. According to the Director, free services included: PACER access at federal courthouses, all judicial opinions, a free copy of case filings to each party to the case, and no money due if user’s account is under $10 in a calendar year. Although, as of March 2010 the Judiciary approved decreasing the $10 fee waiver from one year to a quarter year, thereby increasing the amount of data available without charge. ("Judiciary approves PACER innovations," 2010).

The Director argued that while the Act did provide that the Judiciary may collect fees to the greatest extent possible, it did not change the policy of allowing the EPA program to collect fees to recover costs and enhance services. (Rosenthal & Duff, 2009). The Director also clarified that the $150 million surplus, reference by Senator Lieberman,
is part of the Judiciary Information Technology Fund which covers the IT needs of entire Judiciary and is not a surplus of PACER user fees. According to Director Duff, without the user fees the Judiciary will not be able to provide PACER services.

Some members of the public, who have tired of waiting for the U.S. Courts to provide free access, have taken it upon their selves to make court records freely available to the public. Public.Resource.org, a non-profit organization founded by Carl Malamud and dedicated to making government documents more accessible, has sought to make all federal court documents freely available to the public. (Lyons, 2009, p. 32). This website seeks to make federal records more accessible by recycling PACER documents. When a user accesses a PACER document they can then upload the document to the website’s recycling bin. ("Recycle your PACER documents," n.d.). The organization will then add the documents to their database for distribution. According to the website over $9,280.16 has been saved by recycling. (Pacer.resource.org, n.d.). Millions of federal court pages have been installed and are accessible through Public.Resource.org. (Moyer, 2009).

In addition to recycling PACER documents, Malamud, in combination with AALL and Roberta Shaffer from the Law Library of Congress, have been working on creating an online repository of all primary U.S. legal materials, which would include court briefs and opinions. (Law.gov, n.d.). According to the law.gov website this new venture is still in the initial development stage and a report to Washington policy makers is planned for mid-2010.

Public.Resource.org is not the only group pushing for free access to court documents. Recently, Princeton University’s Center for Information Technology Policy created a plug-in extension for the Firefox browser called RECAP. ("About recap," n.d.).
When a user logs into PACER and runs a query, RECAP will check the Princeton archive to see if they already have the document. ("About recap," n.d.). If they do, RECAP provides the document for free, if not the user continues to access the document from PACER. ("About recap," n.d.). RECAP then takes the document the user purchased, and places it in the Princeton archive for future use. ("About recap," n.d.). Unfortunately, due to privacy concerns, with attorneys failing to redact personal information from court documents, Princeton University will not allow users to browse their archive. ("About recap," n.d.).

Libraries have also joined in the fight to eliminate PACER fees. In 2006, the American Association of Law Libraries (AALL) endorsed a “Resolution on No-Fee FDLP Access to PACER” calling for the U.S. Government Printing Office to “…negotiate with the Administrative Office of the U.S. Courts to make the PACER system available at no cost to users of federal depository libraries…”. (AALL, 2006, para. 9). AALL argued that 44 U.S.C. § 1902 requires the Government Printing Office (GPO) to make government publications available through the Federal Depository Library Program (FDLP) and “[p]roviding PACER to users of depository libraries at no-fee will increase greatly access by the public to important federal court information and strengthen the collaboration between GPO, the federal courts, depository libraries and the public which is the very essence of the FDLP partnership…”. (AALL, 2006, para 7).

AALL’s resolution led to the Government Printing Office (GPO) and the Administrative Office of the U.S. Courts to begin a pilot program offering free access to PACER in select libraries across the nation. (AALL, 2009). The pilot program began in
November of 2007 with seventeen depository libraries participating. (AALL, 2009). The two year pilot program ended abruptly in September of 2008 after only eleven months. (Lyons, 2009, p. 31). The program was suspended when it was discovered that Aaron Swartz, working in conjunction with Public.Resource.org, downloaded about 20% or close to 20 million PACER documents from participating libraries. (Lyons, 2009, pp. 31-32). Those documents have since been moved to Public.Resource.org and are now freely available to the public. (Lee, 2009). Unfortunately, the pilot program was suspended indefinitely.

Still AALL considers free access to PACER a top priority. (AALL, 2009). On December 23, 2008 AALL issued a “Statement to The Obama-Biden Transition Team: Public Policy Positions of The American Association of Law Libraries” once again urging free access to PACER. In order to provide free access AALL argues for adequate funding. (AALL, 2008). AALL also has urged Congress to support Senator Lieberman’s efforts to provide free access to PACER. (AALL, 2009). Recently, AALL has been contacted by the GPO and the FDL program to help reinvent PACER and to make it “…part of a legal research and training program for librarians and the users.” ("Pilot for PACER access," 2009, para. 3).

The debate over user fees is still ongoing. As of March 2010 the Judiciary insists that PACER is economical and “[t]he Electronic Public Access fee revenue is used exclusively to fund program expenses and enhancements that increase public access to the courts.” ("Judiciary approves PACER innovations," 2010, para. 7). Last year nearly half of active users were not charged. ("Judiciary approves PACER innovations," 2010). The Judiciary estimated that if its new quarterly waiver had been in effect, 75% of active
accounts would not have been charged. ("Judiciary approves PACER innovations,", 2010).

**B. THE PUBLIC’S RIGHT TO ACCESS VS. A LITIGANT’S RIGHT TO PRIVACY**

In *Nixon v. Warner Communications, Inc.*, the United States Supreme Court recognized the public’s right to inspect and copy judicial records and court documents. (1978, p. 597). Several reasons have been given for allowing the public to have access to court documents including: creating an informed citizenry; protecting the integrity of judicial proceedings; ensuring fairness in the judicial proceedings; saving lawyers and legal researchers time and energy accessing court records; supporting scientific research in the study of behavior; ensuring the media has accurate information to report, ensure government accountability; and discouraging perjury and educating the public about the legal process. (Bepko, 2004-2005; Blankley, 2004). So if federal court documents belong to the public and the Judiciary has a mandate to make these records freely available “to greatest extent possible”, why was the Judiciary so quick to pull the plug on the pilot program offering free access to PACER?

One of the reasons given, concerns the right to privacy and the necessity of protecting sensitive and personal information found in court documents. Despite the Court’s recognition in *Nixon* that the public has a right to access court records the Court added a caveat: that courts have “supervisory power” over their own files and can deny access when court files might “become a vehicle for improper purposes.” (1978, p. 598).
The government’s interest in providing access to these documents must be balanced by the necessity of protecting people’s privacy.

A good deal of personal information can be found in court cases: social security numbers, birthdates, addresses, medical records, bank accounts and criminal records to name a few. (Blankley, 2004, p. 414). Because of the threat of identity theft and potential invasion of privacy there is concern that court records should not be available on the internet. (Blankley, 2004, p. 417).

While court documents have always been considered open to the public they were not as easy to obtain as they are now. (Blankley, 2004, p. 417). Before the internet anyone wanting a copy had to either travel to the local courthouse, find the record and pay to copy it or order it by mail and wait for it to be copied and sent back. (Blankley, 2004, p.417; LoPuchi, 2008-2009). The internet has radically changed how we access court documents and has made quick and easy dissemination a reality. It has also greatly increased the ease at which someone’s privacy can be invaded.

“Privacy advocates urge that private information be prohibited from online disclosure for four reasons: (1) the dissemination of private information increases the risk of identity theft; (2) employers and renters may use this information in a discriminatory manner; (3) private family information could subject individuals to embarrassment; and (4) attorneys may employ tactics to protect client information rather than to win a case, resulting in less zealous representation.” (Blankley, 2004, p. 417).

Identity theft is quickly becoming one this nation’s fastest growing crimes. (Blankley, 2004, p. 418; Sabin & Black, 2005, p. 9). It is also one of the easiest crimes to commit. In many cases all that is needed is a person’s name, social security number and date of birth; information that is often contained in court documents. (Sabin & Black,
2005, p. 9). By placing this type of information in a searchable database there is a genuine risk that criminals will be able to mine personal information through a mass automated search. (Sabin & Black, 2005, p. 10).

Those in favor of electronic access argue that if the public can access public documents at the courthouse then they should be able to access them electronically as well. (Blankley, 2004, pp. 421-422). Anyone with initiative and bad motives could access the information a number of different ways: they could register for PACER and pay the fees, use the free PACER terminals located in any Federal Courthouse, subscribe to a commercial vendor such as Westlaw or LexisNexis or go to the courthouse and personally look at the court file. (Lyons, 2009, pp. 32-33).

There does appear to be agreement that private information in court documents should not be part of the public record. (Blankley, 2004, p. 422). However, proponents of more access argue that instead of limiting access to the complete record, the public’s interest in privacy can be protected by requiring lawyers to redact sensitive personal information. (Blankley, 2004, p. 422).

Redaction, however, is not 100% effective. The problem is that mistakes can happen and sensitive information can be found in PACER documents. (Lyons, 2009, p. 32). When sensitive information was only available in court documents kept in the courthouse, the likelihood of outsiders to the case accessing the file, while possible, was rare. (Lyons, 2009, p. 32). Moving PACER to a free access system, where information can be easily searched, would ensure a greater number of people, some with possible criminal intent, may get a hold of the information.
In addition to Senator Lieberman’s concerns over the failure of the Judiciary to make more federal court documents freely available, the Senator was also concerned that the Judiciary wasn’t doing enough to protect people’s privacy. (Lieberman, 2009) Specifically, the Senator cited an investigation by Carl Malamud, from Public.Resource.org that found many examples of personal information left in court records. (Lieberman, 2009). For example, Malamud found a 54 page list of the names, social security numbers and medical conditions of patients in one court document. (Lyons, 2009, p. 32).

In a joint letter with Director Duff, Judge Rosenthal responded to Senator Lieberman’s privacy concerns. In 2001 the Judiciary adopted a privacy policy requiring the filing party to redact personal identifiers such as financial account numbers, birth dates, the names of minors, home addresses in criminal cases and all but the last four digits of a social security number. (Rosenthal & Duff, 2009). The burden is placed on the filing party because that is the party who would know whether such information is in the document. (Rosenthal & Duff, 2009). Placing the burden on the court would be impractical and put into question the court’s neutrality. (Rosenthal & Duff, 2009). However, according to Judge Rosenthal (2009) the Judiciary recognizes there is a problem and is currently taking steps to increase compliance with the privacy policy, with court personnel training and review of the federal privacy rules and the Judicial Conference privacy policy. One particular problem is that these documents aren’t just filed by attorneys but also pro se litigants who may not realize the necessity of redacting certain information. (Lyons, 2009, p. 32).
There is some protection inherent in PACER’s registration. (Lyons, 2009, p. 31) All activities on PACER are logged and tracked thus providing some securities. (Lyons, 2009, p. 31) If an individual’s personal information is found on PACER and it is discovered that the information led to their identity being stolen, PACER can go back through their records to see who has viewed those pages. (Lyons, 2009, p. 31) The only problem is that there is no protection for documents that have been copied and placed on another website. (Lyons, 2009, p. 32) PACER can change or correct documents in the PACER database but not documents that were copied before the redaction. (Lyons, 2009, p. 32). By making these records freely available, they can be more easily moved to other databases and placed on the web, making control of the information impossible. (Lyons, 2009, p. 32). Once moved to another database expungements, redactments or any change to the information is lost. (Lyons, 2009, p. 32).

C. CITING COURT DOCUMENTS

Even though court documents are available, albeit for a price, there is another difficulty researchers face in regards to court documents. How do you cite court documents found on the internet? Rule 18 of The Bluebook: A Uniform System of Citation, “requires the use and citation of traditional printed sources unless (1) the information cited is unavailable in a traditional printed source; or (2) a copy of the source cannot be located because it is so obscure that it is practically unavailable.” (Columbia Law Review Association et al. (Eds.), 2005, p. 151)

The main problem with citing to PACER is that “…PACER does not deliver official case reports…” (Mills, 2008-2009, p. 930). Authentic versions of court opinions
are found in print sources and courts “…are generally unwilling to stand behind the accuracy of these opinions as rendered on the Internet, even on the websites that the courts themselves produce.” (Mills, 2008-2009, p. 934). For instance the Supreme Court has stated that Supreme Court Slip Opinions, found on the Supreme Court website, are not official; only the print version of the opinion is considered official. (Supreme Court of the United States, n.d.). In this case, since opinions are typically published and printed, an attorney would not be able to cite directly to an opinion found in PACER. According to the Bluebook the legal researcher would have to cite the official bound version of the same opinion. (Columbia Law Review Association et al. (Eds.), 2005). Instead of simplifying legal research it causes researchers to double their efforts.

One could argue that dockets and briefs cannot be found in a traditional printed source and that a printed copy of the document is obscure enough that the PACER website itself could be cited; however, there is no standard in the Bluebook for citing court records found on the web. (Gallacher, 2006-2007, p. 518).

With the increase in original legal briefs and opinions online there is a need for a new citation system. More and more researchers are accessing legal documents online as opposed to opening up a book. (Martin, 2007, pp. 362-363). Currently, proper legal citation requires the researcher to cite the document’s volume number, page number and date of publication. (AALL Task Force on Citation Formats, 1995, p. 593). All of these can be found in books but not necessarily in electronic publications, making application of legal citation format to electronic court documents difficult. (AALL Task Force on Citation Formats, 1995, p. 593).
A neutral or public domain citation system was proposed in 1991 by the Library Program Subcommittee of the United States Judicial Conference Committee on Automation and Technology and was endorsed a few years later by the American Bar Association and AALL and adopted by several states. (Gallacher, 2006-2007, p. 527; AALL, 2008). Under this citation system the courts would determine the form of the citation instead of private publishers. (Martin, 2007, p. 330).

The AALL Task Force (1995) proposed a citation format containing the case name, opinion number, court name, date and paragraph number. The purpose of this system was to make it easier for researchers to use electronic resources. (Martin, 2007, p. 330). “[U]niversals citation systems may free users from the need to consult any resource other than the appropriate government-hosted online legal source in preparing paperwork acceptable to the state court system.” (AALL, 2007, p. 26).

The federal judiciary system ultimately rejected the new system. (Gallacher, 2006-2007, p. 523). According to Martin (2007), despite AALL’s adoption of a Citation Formats Committee, interest among law librarians in adopting a new citation system has died off (p. 361). As a result, almost twenty years have gone by and we are no closer to an adoption of the public domain citation system. (Martin, 2007, p. 361). One reason is that for universal citation systems to work official online legal resources must be authenticated. (AALL, 2007, p. 26). Only then will courts lose their dependency on print sources. (AALL, 2007, p. 26).
D. AUTHENTICITY OF GOVERNMENT DOCUMENTS

“For almost 150 years, the U.S. Government Printing Office (GPO) has been the official disseminator of Government documents and has assured users of their authenticity.” ("Authentication," 2010, “The Challenge”, para. 1). Because of GPO’s status as the government’s official disseminator, GPO has been responsible for ensuring that the information disseminated is authentic and accurate. ("Authentication," 2010).

In response to the authentication challenge, GPO has added a Seal of Authenticity to certain PDF documents which have been digitally signed and certified. ("Authentication," 2010). These signatures verify the documents authenticity and ensure that the information contained in the document is correct and has not been tampered with thereby safeguarding government documents. ("Authentication," 2010). The Seal of Authenticity thereby safeguards government documents from tampering and certifies them as official and authentic.

For the purposes of the PACER system, however, simply entering a log-in name and a password is considered a signature of the document being filed. ("Federal courts sign on with e-signatures," 2000). “In short, an e-signature is as good as the old-fashioned pen and ink variety.” ("Federal courts sign on with e-signatures," 2000, para. 1).

However, according to AALL’s definition of an online authentic legal resource:

“An authentic text is one whose content has been verified by a government entity to be complete and unaltered when compared to the version approved or published by the content originator. Typically, an authentic text will bear a certificate or mark that conveys information as to its certification, the process associated with ensuring that the text
is complete and unaltered when compared with that of the content originator. An authentic text is able to be authenticated, which means that the particular text in question can be validated, ensuring that it is what it claims to be.” (AALL, 2007, p. 8).

Under this definition it does not appear that PACER documents are authenticated. A recent petition, begun by a group of law librarians, asked the Administrative Office of the U.S. Courts to enhance authenticity by digitally signing each document filed with PACER. (Calo, 2009). It is not very clear what standards are in place to ensure that the PDF files downloaded from PACER actually came from PACER and are authentic court documents. Once a PACER document has been downloaded it can be moved to another database or other internet sites. (Lyons, 2009, p. 32). Control of the document is lost. The current digital age presents special problems and challenges in assuring authenticity of government documents. ("Authentication," 2010). “[D]igital technology makes such documents easy to alter or copy, leading to multiple non-identical versions that can be used in unauthorized or illegitimate ways.” ("Authentication," 2010, “The Challenge”, para. 2.).

E. PACER’S USABILITY

There has been a lot written on PACER’s issues with pricing and privacy but very little on the usability of PACER. When researchers have mentioned PACER, it has at worst been called “clumsy and seriously incomplete”, “a dismal failure” and “labor intensive”. (Martin, 2008, p. 869; Gallacher, 2006-2007, p. 516; LoPucki, 2008-2009, p. 486).
If the case number is known, the search is relatively easy. Simply enter the case number in the appropriate search box and the all the documents filed in that case is returned in a matter of seconds. From there the researcher can simply view, download or print the documents.

The downside of PACER is that searching can be frustrating and time consuming if the researcher has little to no information about the case they wish to find. PACER does have an index, which allows researchers to search across courts for cases. The searches, however, are limited to party name, case number, date range and nature of suit. In order to effectively search PACER the researcher usually has to identify the cases through another source. (LoPucki, 2008-2009, p. 486).

Another troubling aspect for researchers is that because the court records are scanned into the system, there is no way to search PACER for a particular word or phrase. (LoPucki, 2008-2009, p. 486). In order to search the text of documents the data would have to be extracted from hand from the PDF and placed into spreadsheets. (LoPucki, 2008-2009, p. 486).

PACER does offer a way to search cases by “nature of suit codes” but the field for this code is very narrow and allows the researcher very little choice. Even if the “nature of suit code” includes a topic of interest to the researcher there is no way to further restrict the search. If the researcher wishes to search a particular type of case, it is easier to identify the cases the researcher wishes to search outside of PACER and then use the information found to locate the court documents within PACER. (LoPucki, 2008-2009, p. 486).
IV. METHODOLOGY

PACER is the official database of the U.S. Courts. While there is plenty of literature surrounding PACER fees, privacy concerns, citations and authentication, there is little evaluation of PACER’s usability according to peer-reviewed guidelines. In this section PACER’s website will be evaluated for general usability. Can users successfully navigate through PACER and find the information they are looking for? In addition to the evaluation three recent library cases will be located to determine how easily users can locate and access court records from PACER. The list of criteria used for this study, was selected from the U.S. Department of Health and Human Services’ (HHS) Research-Based Design and Usability Guidelines (2003).

The HHS developed over 209 guidelines to help government agencies improve and develop easy-to-use web sites that will “enable and empower citizens”. (U.S. Department of Health and Human Services (HHS), 2003, p. ii). These guidelines in particular were chosen because they have been peer-reviewed and can be used to evaluate government websites. (HHS, 2003, p. xv-xvii). There are 209 guidelines contained in 18 chapters, covering topics ranging from design process to usability testing.

Not every guideline will be used for evaluating PACER. As a result there are some limitations to this study. Only guidelines related to page layout, navigation and searching were chosen. The guidelines chosen for this study do not represent every guideline available. Since the purpose of this study is to evaluate whether PACER is a
good researching tool capable of providing the public with the best access to court records only a few guidelines relating to page layout, navigation and searching were chosen for this study. Thirteen guidelines were chosen, then compiled and placed under Page Layout, Navigation, and Searching headings. [See Figure 2 for a listing of the HHS Guidelines chosen for evaluation.]

In addition to the evaluation, three sample searches were also conducted to test the ease or difficulty of conducting a search. Three recent federal cases involving libraries were chosen for this study. One where limited information is known, one where the case name, date range were known, and one where the docket number is known.

A. Page Layout

“A web site’s design and functionality determine the efficiency with which a researcher can locate and use the site’s contents.” (Scott, 2002, p. 1197). A distracting web page can confuse and hinder the web site’s usability. A web page should have plenty of white space balanced with text, so as not to distract from the eye from the features offered by the site. (Scott, 2002, p. 1198). If there is too little white space the website will look busy. However, if there is too much then the user may have to spend too much time scrolling. (HHS, 2003, p. 44). Cluttered displays should be avoided and important information should be placed at the top. (HHS, 2003, p. 45,47).

The homepage should list all of the major options offered by the website, foster “a positive first impression”, communicate the site’s purpose, look like a homepage and be limited to one screen. (HHS, 2003, p. 36-41). The web page should also be divided into
sections with appropriate borders and lines to separate headings from the rest of the text. (Scott, 2002, p. 1198).

Graphics should be used sparingly (HHS, 2003, p. 143). When they are used they should be small and simple. (HHS, 2003, p. 143). Large graphics are distracting and can cause computers to slow, thereby wasting valuable research time. (Scott, 2002, p. 1199; HHS, 2003, p. 142). “The best government and academic legal research sites employ limited graphics.” (Scott, 2002, p. 1199).

Figure 1: PACER homepage (http://pacer.psc.uscourts.gov/)

The PACER website is designed well. It is not overwhelming or off-putting. The web site effectively uses white space and borders. The layout is clean with no distracting graphics or colors. The homepage offers all of the major options to using PACER. There are tabs at the top to help users locate information about registering, the U.S. Party/Case Index, CM/ECF, miscellaneous, and statistics. There also is a tab for PACER site search and help information. On the left hand side are more tabs, most of
which are a repeat of the tabs above such as information on registering, links to PACER web sites, and the PACER Case Locator. There is also a link for accessing account information and frequently asked questions. The most important tabs are located at the side.

PACER does not employ any unnecessary graphics. There are no advertising banners to distract from the content. In fact the only graphic found is an E-Mail link located at the bottom of almost every PACER web page that flashes “E-Mail”.

Considering the importance of researchers being able to contact the PACER Service Center if they encounter a problem or need help, the use of the “E-Mail” graphic is not overly distracting.

There is not an abundance of information. The site’s purpose is stated at the very top and the information is contained on one screen without the need of scrolling down. Overall PACER’s web site is very clean and demonstrates a clear arrangement of the features offered.

B. Navigation

A successful legal website should have a good navigation system, including descriptive tab labels, a site map, and links back to the homepage. (HHS, 2003; Scott, 2002). A site map is an overview or index of the site’s features, usually in bulleted form. (HHS, 2003, p. 68; Scott, 2002, p. 1199). Using a site map can help the researcher quickly locate pertinent sections or information. In order to navigate effectively from one web page to another, an internal connectivity feature allows the researcher to move from web page to web page within the site. (Scott, 2002, p. 1199).
PACER does have descriptive tab labels but it does not have a site map. Instead it relies on the bulleted list on the left hand side of the screen which lists the most important features of the website. At the bottom of every web page is a link to take the researcher back to the home page. The only exception is with the newly developed PACER Case Locator. The Case Locator replaces the US Party Case/Index. Under the old US Party Case/Index there was a link to take the researcher back to the homepage, however, that is missing from its replacement. Considering that Case Locator is so new, this may be a feature that they will add soon enough. There are also no connecting links when the researcher opens a case. In order to move around the site the researcher must hit the back button to return to the main search menu. Depending on how many links open the researcher may have to back up three to four times to get back to the PACER Case Locator search screen. A link to the bottom of the webpage directing the researcher back to the home page and other search menus would be helpful and keep the user from getting lost and logging out.

C. **Ease of Search/Effectiveness of Search**

An effective website will allow the user to search its contents. If they do so then the results of the user searches should provide the information sought. (HHS, 2003, p. 180). Confusing or inadequate search results can lead to user frustration. (HHS, 2003, p. 180). Keeping that in mind the website should therefore be designed to “…accommodate common misspellings, extra spaces, alternative punctuation, misused plurals, and other common user search errors.” (HHS, 2003, p. 183). Above all the search function should be simple to use and retrieve the information being sought. (HHS,
2003, p. 184). The best internal search engines allow for citation and keyword searches as well as the ability to refine the search. It is also important to provide guidance or tips on how to use the search engine. Doing so will result in better searches and more successful searches. (Scott, 2002, p. 1200).

PACER has several search engines. The first one is located on the home page under the top tool bar. This search does not yield cases but if the researcher is looking for information about PACER features they can use this search tool, which is rather effective.

In order to search for court documents, the researcher must use either each court’s query screen or search for cases within the Case Locator. The biggest drawback to using PACER is that there is no way to search within the document to locate specific key words, making PACER inadequate for researching. However, if the user has specific information about a particular case such as the court and case number of the file they wish to access, PACER is simple to use. To search, users click on the “Links to PACER Web Sites” and choose the court to search. Once linked to the court’s case management system users simply input the information into the query screen and PACER retrieves all the documents associated with the case. One thing to keep in mind is that searches performed under the Query Screen can result in multiple billable pages. With only general information it would be unwise to search this way since this option is not subject to the 30 page limit cap on PACER fees and users could be billed for the total number of pages that are returned for the search.

Another way to search is by using the PACER Case Locator, a national index that allows researchers to search all of the District, Bankruptcy and Appellate Courts. Search
all of them at once or narrow the search by type of court and then further by region. The types of searches allowed differ in each court type: Bankruptcy index researchers are allowed to search by case number, case title, chapter, party name, date range or social security number; appellate court and civil court indexes users can search by case number, case title, party name, and date range or nature of the suit; and criminal court users can search by case number, case title, date range or party name. There are several drawbacks to the search features provided. For instance the researcher cannot search for two names at once, such as defendant and plaintiff’s names.

Once the researcher enters search criteria the locator will display a list of results. Unfortunately, the results give very little information. Only the case title, court, case number, date filed and closed is displayed. To see more information on a particular case the researcher must click on the case number link. The researcher will then be taken to a menu screen where there is an option to look at the history of documents filed. Once the user has chosen to view a document a screen appears with a warning on how much it will cost to view, save or print. Once the user logs out, the next screen displays credit card charges for that session a screen that tells the user how much their credit card has been charged. The only problem with searching this way is that the researcher must click on every case that looks promising. If the researcher has limited information then the research can be rather time consuming.

Information on how to search is not very easily found. There is nothing on the homepage or any of the tabs below or on the left that indicated that there are instructions searching. The FAQs while helpful for learning general information on PACER do not give the user any idea about how to search on PACER. PACER does in fact have a very
helpful 60 page instruction booklet for using the PACER system which can be found under the PACER Documents link or on the registration information page. The manual, however, should be given a more prominent place on the homepage rather than buried under the PACER Documents link or placed on the page before and after registration. A more prominent place on the homepage would be more helpful and useful for the new user attempting to navigate through the PACER website.

The Case Locator has a question mark next to each query field that users can use to find further information on how to search that particular page. If the user needs further help PACER Service Center phone numbers and email addresses, along with hours, are located at the bottom of the home page. In virtually every web page there is a link to email the Service Center with any questions users may have. PACER does not offer 24 hour, seven days a week support. They are available during normal business hours but that is another resource that users can use if they have problems searching.

PACER does not allow for simple searches or design searches around user terms. The research must have specific information – case title, case number – to effectively retrieve the case. PACER is not designed to accommodate common misspelling or alternate punctuation. Without the exact information PACER will not retrieve the information sought. There is some guidance on how to search but the manual is hidden in the website.

**SAMPLE SEARCHES**

**Example 1: Virginia Beach Central Library**

A recent federal case involving the Virginia Beach Central Library was selected for purposes of this study. The full name of the case was unknown. The only known
facts were that the Virginia Beach Central Library was a party and the case was filed in
the Fourth Circuit within the last ten years. With only one party’s name to the suit, it was
decided that the most effective search would be made by using the PACER Case Locator.
The search was narrowed to “Civil Courts- Fourth Circuit”. Under “Party Name”
“Virginia Beach Central Library” was entered. The search returned zero records. A
search for “VA Beach Central Library” returned zero records as well. The search was
expanded to include “All Courts” with the same party search for “VA Beach Central
Library”. This broader search was not effective either. Typing out “Virginia Beach
Central Library” also resulted in zero records.

As a last resort, the Fourth Circuit Court’s website was searched. A search of
Fourth Circuit opinions was conducted by simply searching for a case name containing
the word “library”. Three opinions were returned and the author was able to find the case
number for the VA Beach Central Library case. The author returned to the PACER Case
Locator and entered the case number with the search narrowed to “All Courts-Fourth
Circuit”. Three cases were returned by PACER. The second case involved the “City of
Virginia Beach Central Library”; this study’s target case.

In order to find the case in the Case Locator, with only the party name to go on,
“City of Virginia Beach Central Library” would have had to been typed out. At the very
least typing in “City of Virginia” would return a list of parties that begin with the “City of
Virginia...”. The researcher would have to scroll through the list until they found the
library. Not the most effective way to search. Clearly, the more information the
researcher has, the more effective their research will be. Often times, however
researchers will have only basic information about a case.
Example 2: American Library Ass’n, Inc.

A little more information was known about the next case studied. The parties to the case included the United States government and the American Library Ass’n, Inc and it was filed between 2000 to 2005. The Case Locator was again chosen since the case number was unknown. Because the court was unknown “All Courts” were searched. “American Library Association” was entered under “Party Name” and the date filed was restricted to 2000 to 2005. Three civil cases and five appellate cases were returned. Only the Party Name, Court code, Case Number, NOS Code, Date Filed and Date Closed information was shown. The full name of the case was not visible until the mouse was positioned over the case number. The third civil case turned out to be this study’s target case. This search only took a few minutes and was very effective.

Example 3: Baltimore County Library Board

For the third study, a case was chosen where the party’s name, court location and case number were known. The case involved the Baltimore County Library Board which was filed in the Fourth Circuit. The case number is 09-1451. Since the case number and court location was known, the search was conducted by going directly to the Fourth Circuit PACER’s site. The target case was immediately returned. The search only took a few seconds and was easy and effective.
Figure 2: HHS Guidelines chosen for evaluation of PACER website

<table>
<thead>
<tr>
<th>HHS Guidelines</th>
<th>Page Layout</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>p. 36</td>
<td>5:02 Show All Major Options on the Homepage</td>
<td>yes</td>
</tr>
<tr>
<td>p. 37</td>
<td>5:03 Create a Positive First Impression of Your Site</td>
<td>yes</td>
</tr>
<tr>
<td>p. 38</td>
<td>5:04 Communicate the Web Site's Value and Purpose</td>
<td>yes</td>
</tr>
<tr>
<td>p. 40</td>
<td>5:06 Ensure the Homepage Looks Like a Homepage</td>
<td>yes</td>
</tr>
<tr>
<td>p. 41</td>
<td>5:07 Limit Homepage Length</td>
<td>yes</td>
</tr>
<tr>
<td>p. 45</td>
<td>6:01 Avoid Cluttered Displays</td>
<td>yes</td>
</tr>
<tr>
<td>p. 47</td>
<td>6:03 Place Important Items at Top Center</td>
<td>yes</td>
</tr>
<tr>
<td>p. 143</td>
<td>14:01 Use Simple Background Images</td>
<td>yes</td>
</tr>
<tr>
<td></td>
<td><strong>Navigation</strong></td>
<td></td>
</tr>
<tr>
<td>p. 64</td>
<td>7:06 Descriptive Tab Labels</td>
<td>yes</td>
</tr>
<tr>
<td>p. 68</td>
<td>7:10 Use Site Maps</td>
<td>no</td>
</tr>
<tr>
<td></td>
<td><strong>Searching</strong></td>
<td></td>
</tr>
<tr>
<td>p. 180</td>
<td>17:01 Ensure Usable Search Results</td>
<td>no</td>
</tr>
<tr>
<td>p. 183</td>
<td>17:05 Design Search Around Users' Terms</td>
<td>no</td>
</tr>
<tr>
<td>p. 184</td>
<td>17:06 Allow Simple Searches</td>
<td>no</td>
</tr>
</tbody>
</table>
V. CONCLUSION

PACER has dramatically improved the ease with which the public can access court documents. Before now the only way to view and copy court records was by travelling to the court house or ordering the records by mail. ("Electronic Public Access at 10", 2000) Today you can access any federal court case from the last ten years in the comfort of your own home for pennies.

The overall structure and design of PACER is pleasing. The home page is user-friendly. There is plenty of white space and the links to important information, such as PACER web sites, the Case Locator, FAQs and account information, are easily found on the left hand side of the website. Other than the flashing “E-Mail” link placed at the bottom of the page, there are no distracting graphics displayed.

PACER’s navigation and search feature, however, are poorly designed. PACER was designed to benefit lawyers, judges and the court system and this is reflected in the database’s overall structure and design. (Martin, 2008, p. 864). PACER is easy to use when researchers have either the case number or full name of the parties to the case. The more information that the researcher has, the easier the search process will be. The correct information is usually retrieved in a matter of moments. If the researcher only has partial information, like in Example 1, PACER can be rather frustrating to use. Instead of retrieving all cases with the words “Virginia Beach Central Library”, PACER focused only on cases that begun with those letters. In contrast simply typing in “library” in the
Fourth Circuit’s opinion search screen, on the other hand, returned all opinions with the word “library” somewhere in the case name.

PACER is simply not the most effective way to do scholarly research and needs to be reinvented. It is a good tool if the user knows what they are looking for. It is not a good tool for broad legal research. Scanning documents instead of making them text based and insisting on fees for viewing documents make searching the PACER database for certain words difficult and cost prohibited. (LoPucki, 2008-2009, pp. 486-487).

Since the release of court documents through PACER, commercial vendors have attempted to offer access to the same documents with their own unique features for a fee as well. As early as 1999 there were three private service providers acting as gateways to PACER: CourtLink, CourtExpress and CaseStream. (Bozell, 1999). Despite the extra cost the advantages to using commercial vendors over PACER was the ease of access and the user friendliness of the search engines offered. (Bozell, 1999). In order to make PACER truly accessible to the public PACER’s search engine must be improved. Keyword searches engines, like those employed by Westlaw and Lexis, would go a long way to improving PACER’s functionality.

Obstructions to access also need to be withdrawn. While increasing the $10 billing to quarterly from annually insures that more court records will be disseminated for free, having a fee at all can be rather daunting to users. While the fees for accessing PACER is much smaller than the cost of a Westlaw or Lexis subscription, they still have a chilling effect on the general public who may not be tech savvy or understand that what constitutes a page and is afraid to run up a bill. It is rather nerve wracking to use the
PACER service. At first it is not clear how charges are accrued and the FAQs do not really help. The FAQs state that a user is billed $.08 a page and that …

“…[a] formula is used to determine the number of pages for an HTML formatted report. Any information extracted from the CM/ECF database, such as the data used to create a docket sheet, is billed using a formula based on the number of bytes extracted (4320 Bytes). For a PDF document, the actual number of pages are counted to determine the number of billable pages.” (PACER FAQs, n.d.).

PACER is not exactly informative as to which pages will be billed. Basically, there is a charge for each document page accessed by the user and for each page returned from a query search from the court’s case management system. PACER does give a warning before the document is retrieved as to how much the user will be charged but it can still have an unsettling effect to the new user.

By charging a fee, PACER is ensuring that private companies and public activists will place the copies they download on their websites. That would not necessarily be a problem if PACER documents were properly authenticated. As such, once the documents are downloaded from PACER, the US Courts lose control of those copies. Removing the fee would also remove the need for multiple databases disseminating court records.

Despite the issues with PACER it is still an excellent tool for the public and legal researchers. It has dramatically improved the way we access court documents. Never before has the public had so much public information available at their fingertips. Correcting PACER’s search engine to make searches more effective and either completely removing the fee or at least reinstating the pilot program providing free PACER access to depository libraries will make a good system better.
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