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Public Works for a Better Government

August 27, 2014

Honorable Robert A. Katzmann, Chief Judge
United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

Dear Chief Judge Katzmann:

I am writing in regards to the **announcement** by the Administrative Office of the U.S. Courts that as of August 10, 2014, cases filed prior to January 1, 2010 are no longer available on the PACER system for the U.S. Court of Appeals for the Second Circuit. By this letter, I am requesting an Administrative Order to make the decommissioned data available to Public.Resource.Org, a 501(c)(3) nonprofit corporation based in California.

Our purpose in requesting this data is two-fold: we would like to analyze the data for privacy breaches and we would like to provide public access to these important court records which have permanent historical value.

In 2008, our nonprofit provided for the first time on the Internet free access to the public for historical opinions of the U.S. Court of Appeals. We were able to provide this access by working jointly with Professor Lawrence Lessig of Harvard University and with grants from numerous organizations, including the Omidyar Network and the firm of Boies, Schiller & Flexner.

As part of posting this data for public access, we discovered many Social Security Numbers in the opinions of the United States Court of Appeals. We notified Chief Judge Dennis Jacobs as well as the other Chief Judges on **May 3, 2008** of this privacy breach. On **July 16, 2008**, Chief Judge Lee H. Rosenthal, Chair of the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States wrote to us and called this work “enormously helpful.”

We subsequently analyzed 19.8 million pages of PACER documents for 32 U.S. District Courts and uncovered a large number of additional privacy breaches. Those results were communicated to Judge Rosenthal and to the Chief Judges of the courts on **October 24, 2008**. In response to a **February 27, 2009** inquiry from the U.S. Senate Committee on Homeland Security and Governmental Affairs, Judge Rosenthal, in a **March 26, 2009** joint response with the Secretary of the Judicial Conference, outlined a

number of steps that were being taken to strengthen enforcement of privacy rules on PACER as a direct result of our audits.

The redacted and audited PACER data we obtained formed the basis for a public access project hosted on the Internet Archive, a 501(c)(3) nonprofit corporation based in California. A group of researchers at Princeton University developed RECAP, a “plug-in” for web browsers that allows PACER users to make public documents available on the Internet Archive for subsequent readers of those documents at no charge. As part of this project, all incoming documents are scanned for Social Security Numbers. Even with heightened sensitivity to privacy concerns, we are still finding Social Security Numbers, including in documents filed with the Second Circuit.

The **RECAP Project** is now maintained by the Free Law Project, a nonprofit created by researchers at the University of California at Berkeley. The **Internet Archive** continues to provide free hosting for the data and users are free to use it at no charge and with no restrictions. Today, there are 1,066,171 individual cases represented on the Archive, with an average of 18.37 accesses per case. The most popular document has been accessed 76,514 times and 2,796 documents have been accessed over 100 times.

While the Administrative Office of the U.S. Courts will not be providing access to the Second Circuit data directly on the PACER system, these records are permanent records and are furnished to the National Archives and Records Administration under **Records Schedule NC1-276-80-1**, which was last revised on March 31, 1980.

Our purpose in requesting an Administrative Order for access to all historical electronic documents previously on the PACER system is two-fold. First, if we can access this data, we will provide a full analysis to the Court and to the Administrative Office of any Social Security Numbers we discover in the data. As this information will be part of the permanent records of the United States, this analysis will be useful to the National Archives and to the Administrative Office in properly protecting privacy breaches from improper dissemination. In addition, we believe the full analysis of the data for privacy violations will prove useful to the Court to evaluate the efficacy of privacy rules in force at the time and adherence to those rules by parties pleading before the Court today.

The second purpose in requesting access to this information is to make it part of the permanent collection at the Internet Archive and thus provide public access to historians, lawyers, journalists, and others that wish to examine the workings of the Second Circuit. We are also happy to offer an electronic version of this information on disk drives to the Court or the Administrative Office for your own archives.

We are collaborating on this request with the Free Law Project and the Internet Archive, who are copied on this letter. While I am writing to you myself on this initial request, we are working in consultation on this matter with two attorneys, Professor Mark Lemley and Thomas R. Burke, who are also copied on this letter. We would be happy to discuss this matter with you in more detail, and at your request, would be happy to furnish a formal proposal or request for an Administrative Order for consideration by the Court.

Thank you for your consideration of this request,



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