



March 31, 2015

Mr. Robert Lowney
Chief, Programs Division
Administrative Office of the U.S. Courts
Washington, D.C. 20544

RE: Systematic Billing Errors in the PACER System

Dear Mr. Lowney:

Thank you for your **March 24, 2015** letter, responding to my **March 2, 2015** letter to Mr. Duff. I appreciate your description of the current and future functionality of the PACER system, such as the features you list as “under consideration for future releases” such as “more focused push notifications to alert users of case activity and the ability to conduct keyword searches.” As you probably know, I believe those features are not nearly enough and, in any case, could easily be available to your users today. I look forward to discussing these issues when we meet on April 15 at 11am.

I am writing to you about an issue that has been bothering me for quite some time, which is systematic billing errors in the PACER system. As you know, documents in the PACER system are all delivered in the PDF format and are charged at \$0.10/page with a maximum of \$3.00/document. However, as stated in the PACER User Manual , “for an html-formatted report, a formula determines the number of pages.” That policy is spelled out precisely:

Dockets, Case Reports, and Search Results

Billable pages for docket reports, case reports, and search results are calculated using a formula based on the number of bytes extracted (4,320 bytes = 1 billable page).

PACER User Manual, Page 4

<https://www.pacer.gov/documents/pacermanual.pdf>

Because docket reports and search results are among the most common operations every PACER user does, it is also the subject of one of the frequently asked questions on the PACER billing page:

HOW IS A “PAGE” DETERMINED FOR BILLING PURPOSES?

A formula determines the number of pages for an HTML-formatted report. The information extracted, such as data used to create a docket sheet, is billed using a formula based on the number of bytes extracted.

<https://www.pacer.gov/billing/>

The policy thus seems very clear. However, in practice that is not how PACER bills users. Let me give you two simple examples, both based on my account 3282435.

First, on March 30, 2015, I executed the following search on Case 3:13-cv-02789-WHO in the U.S. District Court for the Northern District of California:

03/30/2015	14:09:20	1	PAWDL		image11-u	1:05-cv-00142-MBL Document 11-u	\$1.70
03/30/2015	15:17:06	2	CANDC		Docket Report	3:13-cv-02789-WHO Starting with document: 163	\$0.20
					Docket		

There are only 73 documents in this case, so the purpose was to generate a blank docket report. The result was a \$0.20 charge. The results returned a total of 2,084 bytes of data, including the billing receipt at the end. According to the PACER User Manual, this is only one page. I then took the resulting HTML file and saved it as a PDF file. It is two pages long. If you reexecute the same query and specify "PDF (Paginated)" as the output format, that is also a two-page report.

Second, on March 6, 2015, I executed a search on Case 1:13-cv-01215-TSC-DAR in the U.S. District Court for the District of Columbia:

03/06/2015	20:24:30	6	DCDC		Docket Report	1:13-cv-01215-TSC-DAR Starting with document: 86	\$0.60
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The search began on document 84, and returned documents 84 and 85. The resulting text had a total of 6,617 bytes of data. I was charged \$0.60, but according to the PACER User Manual, this should have been a charge for only two pages. If you count all the HTML markup in that file, it is 19,509 bytes of data, which would be 4.5 pages if measured at 4,320 bytes/page. However, the PACER User Manual is clear that the information is to be extracted before counting, so the 6,617 byte figure is the correct one. Once again, the paginated PDF document is 6 pages.

This practice has clearly been long-standing on the PACER system. For example, a Docket Report on the same case on January 2, 2014 returned a charge of \$0.70:

01/02/2014	11:49:43	7	DCDC		DOCKET REPORT	1:13-CV-01215-EGS	\$0.70
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On January 2, 2014, there were 30 documents filed on this report. I reran that query for documents 1-30 and that resulted in 15,211 bytes of data, or 3.5 pages by the pricing criteria set out in the PACER User Manual.

The Judicial Conference of the United States has issued an Electronic Public Access Fee Schedule in accordance with 28 U.S.C. §§ 1913, 1914, 1926, 1930, and 1932. The Judicial Conference Policy Notes accompanying the fee schedule state that fees are "directly related to the requirement that the judiciary charge user-based fees for the development and maintenance of electronic public access service."

The Judicial Conference, and by delegation the PACER Service Center is thus authorized to assess fees. However, it is a long-standing principle in the law that if a price is advertised for a service, that is the price that must be charged. For example, in *Lefkowitz v. Great Minneapolis Surplus Store Inc.* (251 Minn. 188 at 192, Minnesota Supreme Court, 1957), the court ruled:

“There are numerous authorities which hold that a particular advertisement in a newspaper or circular letter relating to a sale of articles may be construed by the court as constituting an offer, acceptance of which would complete a contract... The authorities above cited emphasize that, where the offer is clear, definite, and explicit, and leaves nothing open for negotiation, it constitutes an offer, acceptance of which will complete the contract.”

I wrote to the PACER Service Center on **March 12, 2015** on the subject of the \$0.40 overcharge on my March 6, 2015 access to the 1:13-cv-01215-TSC-DAR starting with document 84. On **March 25, 2015**, this request was answered by the PACER Service Center. It was unclear to me if they granted my credit request or will simply evaluate it after the end of the billing period. However, the response did not address my specific question as to the systematic nature of the billing errors, which is why I am bringing this to your attention today.

While I have presented evidence in this letter that the incorrect billing of users goes back to January 2014, I believe the billing errors started significantly earlier. I have talked to numerous PACER users who have all noted that this practice has increased their bills and many of them noted that they have reported the errors to the PACER Service Center.

I would thus submit that the PACER Service Center and the Administrative Office of the U.S. Courts is fully aware that the billing for unpaginated case reports and dockets is incorrect and has been aware of this for quite some time.

In addition, I would submit that the practice results in the collection of excessive revenues in a manner contrary to law by the Administrative Office in significant amounts. Because this practice affects all users for the most common operation on the PACER System, I believe the amounts are large, and the over-billing is always in favor of the Administrative Office. As such, it is imperative that the Administrative Office study the extent of the over-billing and disgorge any funds that were improperly collected.

Thank you for your attention to this matter.

Respectfully yours,



Digitally signed by Carl
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cc: Representative Darrell Issa, Chairman
Subcommittee on Courts, Intellectual Property, and the Internet
Committee on the Judiciary
U.S. House of Representatives