

Dec. 7, 2020

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Room #1236 Longworth House Office Building
United States House of Representatives
Washington, DC 20515

Re: H.R. 8235: The Open Courts Act of 2020

Dear Speaker Pelosi:

We write today on behalf of American legal technology companies and online information providers to offer background information regarding H.R. 8235, the Open Courts Act of 2020. The signatories of this letter represent American small businesses and nonprofits that use public PACER data to create new legal technologies. Our companies use federal court data to help companies understand their litigation risk, help lawyers serve clients better with data, and help to empower people to represent themselves in a more informed way.

Collectively, our organizations represent many of the most widely used legal information tools in the United States, with expertise delivering legal information, including PACER data, to the American public at scale. Our customers include government agencies and attorneys, law firms and in-house counsel, professors and students, non-profits and legal aid societies, as well as pro-se litigants. For our customers and consumers, access to PACER data means access to justice – but paywalled access often means navigating federal courts in the dark.

Among other provisions, the Open Courts Act would, for the first time, allow the American public to access federal court records for free. The Act would also help America's federal judiciary to modernize PACER, its court records management software. Free access to public court records would be of extraordinary benefit to the legal profession. Beyond lowering the cost of existing products, the OCA will allow new legal technology innovations to flourish, ultimately improving the quality and lowering the cost of legal services to lawyers and their clients.

The Open Courts Act would invigorate the legal technology ecosystem. By making federal court materials freely available, the OCA would eliminate a major barrier to entry faced by the numerous entrepreneurs who dream of improving the way Americans find justice. These innovators know how to make the judicial system more effective, but are hamstrung by the cost of purchasing the legal data they need to create their new website or service. This PACER tax for starting a small innovative business can easily run into the hundreds of thousands or millions of dollars. With these kinds of headwinds, many innovators never reach the starting blocks.

At its creation, PACER was an important innovation to help courts track the cases and documents that flow through their courthouses. As technologists, we acknowledge the important contributions PACER has made providing remote access to court records over the internet. However, today, its fee structure is stifling the public access and innovation it originally sought to promote.

According to data from the Administrative Office of the U.S. Courts, more than 99.99% of the hundreds of thousands of PACER users are individual litigants, journalists, or small law firms; only a few dozen of these users pay more than \$200,000 per year. Small businesses, small law firms, journalists, and self-represented litigants pay the majority of the fees that the Administrative Office of the Courts uses to subsidize not just PACER but the judiciary's entire case management and electronic filing systems. With the passage of the OCA, the maintenance costs for PACER would properly shift from these users to the parties who avail themselves of the federal courts. (Federal courts have long waived filing fees for indigent litigants, who file for free "*in forma pauperis*," so an increase in filing fees would not affect access to the courts.)

In addition to shifting fees, the OCA would minimize them. The current cost of running PACER is estimated in court documents to be approximately \$100 million per year, with fees of approximately \$140 million per year.¹ In 2001, when PACER was created, it was a pioneer in making government documents available on the internet, and an important innovation in helping courts track the cases and documents that flow through their courthouses. But today, PACER operates wastefully, with hundreds of different software services in courthouses across the nation. Without critical updates since the days of the early Internet, the system is straining badly to keep up with usage. In addition to lacking basic modern features like full text search, PACER is also extremely expensive and inefficient. When our federal courts modernize PACER, both maintenance costs, and the fees required to cover them, will become substantially less expensive.

As executives, founders, and technical managers of software companies that work with PACER data, we know from firsthand experience that modernizing PACER will require careful project management. But, thanks to modern software design and components, the task is simpler than ever. The engineering is well understood, and the cost of storing data at scale is a small fraction of what it was when PACER was created. Many of us are hosting large portions of the PACER database, with modern search functionality, at a tiny fraction of the cost to maintain hundreds of legacy PACER databases in each courthouse.

The AO now has the benefit of services such as 18F, the digital consulting arm of the General Services Administration, and the U.S. Digital Service, to assist with scope and project management. Our signatories are experienced at building these systems at scale, and we are confident that an upgrade of PACER need not be a major, multi-hundred-million dollar infrastructure project (much less a multi-billion dollar project). In short, it is a great time to make PACER once again a beacon of open government.

¹ The U.S. Court of Appeals for the Federal Circuit held in August of this year that PACER's \$40 million fee surplus may also be a violation of 28 U.S.C. §1913 and the E-Government Act of 2002. See *Nat'l Veterans Legal Servs. Program v. United States*, No. 2019-1081 (Fed. Cir. Aug. 6, 2020).

Based on our experience, we can say that the Open Courts Act will create American jobs, level the playing field for American entrepreneurs, and modernize the crown jewel of America's open government infrastructure. These improvements would enhance access to the our federal courts and would create second order access to justice improvements for all Americans. We would be happy to assist in Congress's efforts to modernize PACER. Thank you for your consideration.

Sincerely,

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Andrew Arruda, CEO, ROSS Intelligence, San Francisco, CA
Josh Blandi, CEO, Unicourt, Tustin, CA
Tom Bruce, Founder, Cornell Legal Information Institute, Ithaca, NY
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cc: The Honorable Doug Collins
The Honorable Henry C. "Hank" Johnson