

ARE COURT RECORDS COMMODITIES?

by

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It is ironic that just as the computer age is beginning to offer lawyers free or low-cost access to electronic judicial dockets and filing systems, some courts view their public information monopoly as a quick way to generate profits and to obstruct access to the justice system.

For example, federal court policy is to charge 60 cents a minute to access electronic court docketing databases that are created during the normal course of business. Some states permit charges of up to \$2 per minute for the use of a court database.

This trend of charging for public information on a per-minute basis has resulted in millions of dollars in revenues, far outstripping the costs of providing Internet access to the electronic information.

Unprecedented Profiteering

This is not the first time that technology has changed the process of obtaining information. But it may be the first time it has been used to turn mandated responsibilities into profit centers.

Government agencies decades ago installed expensive phone systems and recently have added expensive voice messaging systems to help them conduct business.

However, when a citizen telephones a clerk's office to check on a child support payment or court case, the clerk does not charge a user fee because the request came through the phone system. And when a citizen or attorney walks into a clerk's office to ask a question or to see a file, the person is not charged a user fee. These services are provided through the agency's annual tax budget.

That is why Jim Price, a bankruptcy attorney in Oklahoma City, Okla., questions the logic in charging access fees for electronic information.

"Those records are public and they should be available for free," he says. "There is no cost for me to view the same information if I go down to the courthouse. Now I just arrange my schedule to view the records electronically or on paper at the courthouse. It would seem that they would prefer that I do not come down and use their office or clerk's time to wait on me. Besides, my clients, usually debtors, cannot afford the access fees."

Over nine years ago, the ABA House of Delegates, which is responsible for setting policies for the association, spotted the trend toward charging for public information just as it was developing and requested that the courts stop it.

Some courts have responded to the resolution for free public access to online information by deciding not to impose user fees.

The Maricopa County (Phoenix) Superior Court, for instance, is providing free Internet access to its 20-million-record court database docket. Anyone in the world with Internet access can use the database (at www.maricopa.gov/supcrt/supcrt.html). The cost to the court: about \$10,000 for programming and connecting a mainframe computer to the Internet.

The political trend nowadays is to ask that governments operate more like businesses. But should that mean making a profit on top of the taxes citizens and companies already pay? No, it means that governments should use technology to provide services to the public as efficiently and effectively as possible.

The legal profession needs to recognize that open and free access to court docketing data, statutes, case law and other court information is a very simple way to enhance access to our justice system for citizens who need it and pay taxes to support it.

Unfortunately, there now are constant reminders that justice is not accessible to all on an equal or timely basis. Charging for access to public information is just one more.

Justice for All

Technology offers a significant way to make revolutionary changes for access to our justice system. For this reason, we must embrace the technological tools that will support our national goal to protect and enhance the ability of all persons to use the justice system.

Lawyers must be vigilant in promoting open and free access. Whether it is through enactment of statutes or court rules, the goal should be to limit courts from imposing onerous charges on electronic access into the courthouse.

No one would ever think of charging an admission fee at the courthouse steps. There should not be one to the electronic courthouse, either.