

NCLC[®]

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June 15, 2015

Joseph Stanton, Clerk
Massachusetts Appeals Court, Room 1200
One Pemberton Square
Boston, MA 02108-1705

Re: Criminal Cases and Internet Access to Docket Entries and Court Files

To the Trial Court Public Access to Court Records Committee:

The following comments are submitted on behalf of the National Consumer Law Center's low-income clients. We write in response to your Notice of Public Hearing on the issue of providing access to court documents and records on the internet. We write to specifically oppose providing online access to criminal records and believe that doing so would undermine valuable state and federal protections and harm consumers.

The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys and their clients, as well as community groups and organizations that represent low-income and older individuals on consumer issues. NCLC is also the author of the Consumer Credit and Sales Legal Practice Series, consisting of twenty practice treatises with on-line supplements. One volume, *Fair Credit Reporting* (8th ed. 2013), is a standard resource on privacy and the FCRA.

In April 2012, we issued the report: *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses* (see attached). In that report, NCLC detailed how mistakes on criminal background checks by third party consumer reporting agencies cost workers' jobs and skirt federal law (the Fair Credit Reporting Act). The report describes a number of ways in which background screening companies make mistakes that greatly affect a consumer's ability to find employment. Attorneys and community organizations that work with consumers with faulty background reports state that they repeatedly see background reports that:

- Mismatch the subject of the report with another person;
- Reveal sealed or expunged information;
- Omit information about how the case was disposed or resolved;
- Contain misleading information; and
- Mischaracterize the seriousness of the offense reported.

Many of these errors can be attributed to common practices by background screening companies, such as:

- Obtaining information through purchase of bulk records, but then failing to routinely update the database;
- Failing to verify information obtained through subcontractors and other faulty sources;
- Utilizing unsophisticated and imprecise matching criteria;
- Failing to utilize all available information to prevent a false positive match; and
- Lack of understanding about state-specific criminal justice procedures.

Because federal courts and some state courts make their criminal records available online, a number of background screening companies are using computer programs to "scrape" court websites to populate their databases at little to no cost.¹ As a result, a number of companies are able to gather and sell this data while providing little to no protections to consumers, and skirt state and federal laws. Once companies gather this data, there is no guarantee that they will delete it if the records become sealed or expunged. There is also no assurance that these companies will timely (if ever) update their records to reflect the final disposition in a case, which can have a devastating effect for people whose charges have been reduced or dropped, or who have been exonerated.

The internet has a greater potential for misuse and, for criminal defendants, deprives them of benefits intended by the Legislature in sealing their cases. Once information is online, it has a life of its own. Massachusetts is unique in that it has strong protections for people with criminal records. Making criminal court records public will undermine the state's unique and powerful protections. Therefore, we urge the committee to ensure that the public is not able to view criminal court records on the internet.

Thank you for your consideration of these comments. Please feel free to contact Persis Yu if you have any questions or comments. (Ph: 617-542-8010; E-mail: pyu@nclc.org).

¹ Web scraping is a term for various methods used to collect information from across the Internet. Generally, this is done with software that simulates human Web surfing to collect specified bits of information from different websites. Source: *Techopedia: Web Scraping*, available at <http://www.techopedia.com/definition/5212/web-scraping>.