



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

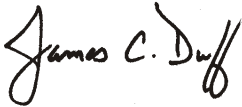
THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

May 22, 2009

MEMORANDUM

To: Chief Judges, United States Courts

From: James C. Duff 

RE: INTERNET MATERIALS IN JUDICIAL OPINIONS AND ORDERS
(ACTION REQUIRED)

At its March 2009 session, the Judicial Conference approved a policy that “all Internet materials cited in final opinions be considered for preservation” and that “[e]ach judge . . . should retain the discretion to decide whether the specific cited resource should be captured and preserved.” The Conference directed Administrative Office (AO) staff to work with the Court Administration and Case Management Committee to develop guidelines to assist judges in determining whether and how to use citations to Internet sites, preserve cited materials, and use hyperlinks in their opinions and orders. That guidance is attached.¹

Judges are citing to and using Internet-based information in their opinions with increasing frequency. Unlike printed authority, Internet information is often not maintained at a permanent location, and a cited web page can be changed or deleted at any time. Obviously, this has significant implications for the reliability of citations in court opinions. To address this issue, the attached guidelines suggest practices for judges and their staffs regarding the use and preservation of cited Internet data. The guidelines suggest that if a web page is cited, chambers staff could preserve the citation by downloading a copy of the site’s page and filing it as an attachment to the judicial opinion in the CM/ECF system. The attachment, like the opinion, would be retrievable on a non-fee basis through PACER.

¹ These guidelines were based on recommendations made to the Committee on Court Administration and Case Management by an ad hoc working group of circuit librarians who had experimented with capturing and preserving Internet resources cited in circuit judges’ opinions. The group made its recommendations with the input of other AO advisory groups.

Another concern is the use of hyperlinks to commercial databases (such as Westlaw or LexisNexis) in court opinions. Use of these links in opinions could create an inappropriate appearance that a judge endorses a particular vendor or service provider. The Judicial Conference recommends that judges either eliminate such hyperlinks or include a disclaimer in their opinions. A sample disclaimer is included in the attached guidelines.

We encourage your court to consider these guidelines in developing any local policies. Also, one year from the date of this memorandum, you will be asked to inform the Court Administration and Case Management Committee of your court's progress so that we may reexamine the process and ensure that these concerns are being addressed appropriately. We will provide you with a reminder when the reporting time is near.

If you have any questions, please contact Mark Miskovsky or Jane MacCracken of the Court Administration Policy Staff at (202) 502-1560.

Attachment

GUIDELINES ON CITING TO, CAPTURING, AND MAINTAINING INTERNET RESOURCES IN JUDICIAL OPINIONS/ USING HYPERLINKS IN JUDICIAL OPINIONS

1. Reviewing Whether to Cite to Internet Resources in Judicial Opinions: In determining whether to cite to Internet resources in their opinions, judges should consider the following:

- Especially in situations where the cited material cannot be found in an authoritative print resource or the Internet site or information itself is the subject of the opinion, citation to an Internet address or URL¹ in a footnote or in a textual citation may be necessary.
- Some litigants, particularly those who are *pro se*, may not have access to electronic resources. Judges should be mindful of this when considering whether to cite Internet sources.
- The material should be stable and likely to remain accessible using the citation the judge employed when originally visiting the site.
- Judges should apply the same evaluation criteria to the Internet sources they cite in their opinions as they would apply to more traditional media:
 - (1) Accuracy -- the factual correctness and completeness of the information.
 - Is there a second reliable source that gives the same information?
 - Is it a peer-reviewed source?
 - Does the publisher use editors and fact checkers?
 - Is the citation made to original and official source documents?
 - (2) Scope of coverage -- the extent to which the source examines a topic.
 - Does the source cover a particular period of time, geographic region, or other aspects of a topic?
 - Does the source provide information about its scope?
 - (3) Objectivity -- the absence of bias with respect to interpretation or analysis of facts.
 - Is the source trying to persuade you?
 - Who sponsors or publishes the information?
 - What can you discover about their intentions?

¹ The URL or “Uniform Resource Locator” is a format for the address of an Internet document; this address is used by a browser in locating the relevant document on the Internet.

- (4) Timeliness -- the information is current at the time of publication.
 - Does the source provide a date for this specific webpage or entry, as opposed to a general site revision date?
 - (5) Authority -- the reliability of the source of information.
 - Can you determine the name of the author and publisher?
 - Is the author a recognized expert on the topic?
 - What is the publisher's reputation?
 - (6) Verifiability -- the ability to confirm the facts or information.
 - Is there a second reliable source (especially when using resources such as administrative regulations or statutes)?
 - Does the material cite to its sources of information?
- Judges are encouraged to seek assistance from their librarians in finding the best resource to cite to, including finding the most authoritative and stable Internet-based source to rely upon and/or alternatives to Internet versions of resources, if they exist. Where there is a readily accessible and reliable print version of the cited resource, it may not be necessary to cite to the Internet version.
 - As with citation to any other resource, applicable rules of citation, for instance, Rule 18.2 of *The Bluebook: A Uniform System of Citation* (18th ed. 2005), should be followed.
 - URLs should be carefully reproduced and then confirmed. Cutting and pasting the citations from a browser's address window will help to ensure accuracy. Be aware, however, that some links are automatically inserted when you cut and paste. One way to avoid this is to use the "paste special" option in your word processing software; in addition, you may need to change the automatic formatting so that a live hyperlink is not created when a URL is pasted into the document.

2. Evaluating Whether to Capture Cited Internet Resources: When determining whether to capture and preserve Internet resources cited in opinions, judges should consider the following:

- **If a cited Internet resource is fundamental to the reasoning of the opinion and refers to a legal authority or precedent that cannot be obtained in any other format (such as a published print resource), it is recommended that it be captured and preserved and attached as part of the opinion.**

- If there is particular reason to expect that the cited Internet resource will be removed from the website or altered, it is recommended that it be captured and preserved.
- Where there is a readily accessible and reliable print version of the cited Internet resource, it may not be necessary to capture the Internet version.
- If an Internet resource is cited simply for the purposes of background or illustration, it may not be necessary to capture the cited resource.
- Where the court chooses not to capture or preserve a cited Internet resource, it may want to provide a disclaimer alerting readers that, by citing to an Internet resource, the judiciary does not exercise any responsibility over the content of the Internet resource or the current viability of the URL provided.

3. Capturing Cited Internet Resources: When capturing and preserving Internet resources cited in opinions, judges should consider the following:

- If it is determined that an Internet resource to be cited in an opinion is to be captured, it should be downloaded and preserved as closely as possible to the time it is viewed by chambers, to ensure that the exact version of the Internet resource that was relied upon by the judge will be preserved.
- It is recommended that the downloaded webpage or document be converted into PDF format. (See instructions on page 5 describing the process for [capturing a webpage and converting it to a PDF document](#).)
- It is suggested that the captured resource include some notation of the date it was viewed and the case to which it relates. One method to accomplish this is to insert a “watermark” indicating the case in which the resource is to be cited and the date the resource was viewed. (See instructions on page 5 describing the process for [inserting a watermark into a PDF document](#).)
- **It is recommended that courts utilize CM/ECF to maintain the captured Internet materials together with the opinion.** The specifics of the actual process by which the Internet resources are integrated into CM/ECF are to be determined by local court policy and operational procedures.

- Public access to the captured materials may need to be limited to the extent cited materials are protected by copyright law; if necessary, prior to publication on PACER, appropriate measures, such as delay in posting, obtaining permission or license, or other special treatment may be taken. If copyrighted materials are cited and captured, any copyright notice appearing on the materials should also be captured.
- Courts also may want to require counsel to capture and attach Internet resources cited in motions or briefs filed with the court, to ensure that the information relied upon by counsel is readily available to the judge.

4. Inserting Working Hyperlinks in Opinions: When considering whether to include working hyperlinks in opinions, judges should consider the following:

- Generally, judges should avoid including working hyperlinks that lead directly to a commercial vendor's fee-based version of a cited resource.
- If the court or judge determines, as a matter of policy, to include working hyperlinks leading directly to a commercial fee-based Internet service, appropriate disclaimer language should be provided. The disclaimer should alert readers that, by including working commercial hyperlinks in the opinion, the judiciary does not endorse the product or organization at the destination, exercise any responsibility over the content at the destination, guarantee that the hyperlink is currently working or that the hyperlink is to the same content as that relied upon by the court, or receive any remuneration or special consideration when a reader pays the commercial vendor to access the information. Sample disclaimer language reads as follows:

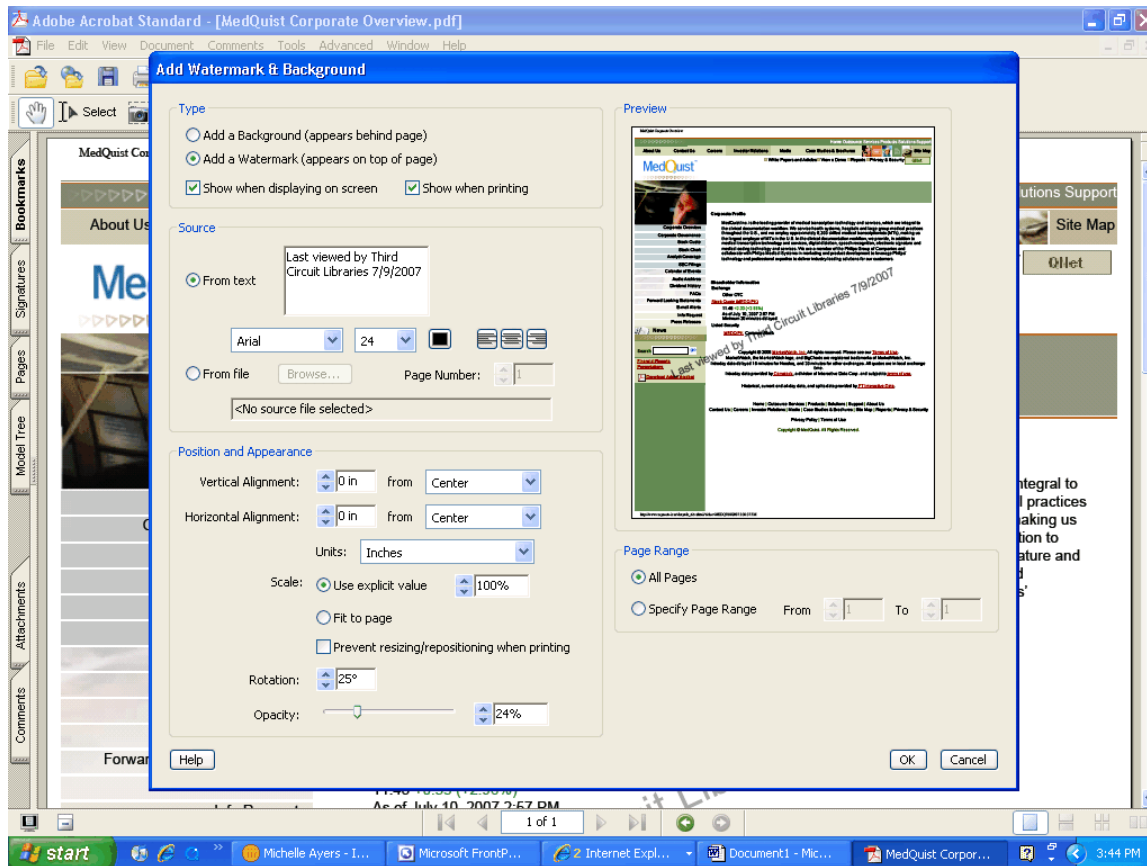
The court accepts no responsibility for, and does not endorse, any product, organization, or content at any hyperlinked site, or at any site to which that site might be linked. The court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the court.

- Where an opinion cites to another federal court opinion, courts can include a working hyperlink to the CM/ECF or PACER version, if currently available within CM/ECF or PACER.

5. Instructions for Converting a Webpage to PDF and Creating a Watermark²

- (1) When at the page you want to archive, right click and select “Convert to Adobe PDF.”
- (2) When the conversion is complete, the webpage will open in Adobe Acrobat as a PDF.
- (3) Select “Document” then select “Add Watermark and Background.”

This page will open:



Working from this page, you will do the following:

1. Under “Type” select “Add a Watermark.”
2. Under “Source,” type in the box what you want the watermark to say. We recommend: “Last viewed by [Judge/Law clerk] on [DATE].”
3. Under “Position” and “Appearance,” change “rotation” to 25% and “opacity” to 25%.
4. Click OK. You should then see your watermark.
5. Save the PDF to the appropriate file.

² Created by Michelle Ayers, Third Circuit Library, 2008.