

The Federal Lawyer In Cyberia

MICHAEL J. TONSING

Federal Court Hearings on Your MP3 Player? Dude!

So, you're jogging on your favorite trail in suburban Omaha, the sun's coming up, the fields are a dewy emerald green, and you are listening on your headphones—for the 12th time—to your new favorite judge explaining to your high-density opposing counsel why your brilliant argument about pseudo-causality blew his socks off.

Dude! Forget music. This is why the iPod™ and the MP3 player were invented! Pseudo-causality rules! Fantasy? Nope.

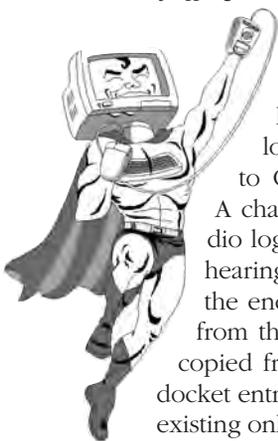
Digital Audio in Trial Courts

Two federal trial courts have already instituted a pilot project that makes digital audio recordings of courtroom proceedings publicly available in Cyberia. They can be downloaded from the court's official site, forwarded to clients, and archived in your hard drive's Hall of Fame library of personal best arguments.

Nebraska's district court and the Bankruptcy Court for the Eastern District of North Carolina are making selected digital audio files available in the same way that written files have already been available on the Internet.

All kidding aside, this new form of transcripts may prove to be very attractive to both lawyers and their clients. We'll soon see. By the time you read this column, Nebraska and North Carolina's Eastern District will have been joined by three other courts (the U.S. District Court for the Eastern District of Pennsylvania, the U.S. Bankruptcy Court for the District of Maine, and the U.S. Bankruptcy Court for the Northern District of Alabama).

Selected audio files from these five trial-level courts are can be accessed and downloaded as MP3s through the Public Access to Court Electronic Records (PACER) system. A chambers module interfaces with a digital audio log sheet that permits a judge to select which hearings he or she would like to make available at the end of each court day. The digital audio files from the selected hearings are then automatically copied from the court's digital audio system and a docket entry with a speaker icon is made in the court's existing online docketing system. The audio file is then attached. The Administrative Office of the U.S. Courts is providing model procedures that presiding judges in districts in the pilot program may voluntarily use to inform lawyers and parties to the litigation of the potential of having the audio recording of their hearing



CM / ECF
Case Management / Electronic Case Files

Clerk's Office at your Desktop

CM/ECF is a new case management system being implemented in the Federal Judiciary for all bankruptcy, district and appellate courts. CM/ECF allows courts to accept filings and provide access to filed documents over the Internet.

Features

- 24-hour access to case file documents over the Internet
- Ability to file pleadings electronically with the court
- Automatic email notice of case activity
- Ability to download and print documents directly from the court system
- Concurrent access to case files by multiple parties
- Savings in time and expenditures for attorneys
- Expanded search and reporting capabilities
- Easy to use -- based on Standard Internet browser
- No waiting in line or unavailable files at the courthouse

Benefits

- Replaces aging electronic docketing and case management systems in all federal courts by 2003
- Is being used enthusiastically by attorneys in pilot courts nationwide
- No delays or added expenses associated with mail or courier services
- Speeds delivery and allows easier tracking of case activity
- Reduces physical storage space needs and document processing times
- Low start-up costs -- uses Internet standard software and established "PDF" format
- Secure and reliable
- Court dockets are immediately updated and available

More

- PACER & CM/ECF Brochure...
- Press Release...
- Local Court Information...

made available via PACER.

As you probably already know, PACER is the judiciary's central processing unit for electronic access to U.S. district, bankruptcy, and appellate court records. More than 700,000 Cyberian cognoscenti already use PACER to access electronic docket and case information from these federal courts across the country.

PACER, in turn, now ties to the federal courts' Case Management and Electronic Case Files system (CM/ECF). Dubbed the "Clerk's Office at Your Desktop," CM/ECF already allows federal courts to maintain case documents in electronic form. And, it gives each court the option of permitting case documents—pleadings, motions, petitions—to be filed with that court over the Internet. (If you need to learn more about CM/ECF itself, go to pacer.psc.uscourts.gov/cmecf/index.html.)

The next leap was tying CM/ECF to actual digital audio recordings of hearings. Mission accomplished!

Digital audio recording is already used in most bankruptcy courts and in many district courts (where magistrate judges account for most of the usage), replacing certified shorthand reporters. At last count, 37 of the nation's 642 active district court judges now use digital recording in their proceedings. In those trial courts using this technology, computer disks of hearings have been available for a fee of \$26 for some time now, but prospective purchasers have had to trek to the local clerk of court's office to pay up.

During the five-court pilot project under way, access to audio files is available over the Internet at a bargain price: eight cents for accessing the docket sheet and another eight cents for the audio file itself. (At this price, it is almost as good as the old Napster!)

At its June 2008 meeting, the Judicial Conference Committee on Court Administration and Case Management, headed by Judge John R. Tunheim of the U.S. District Court for the District of Minnesota, will be provided with an evaluation of the pilot project and will decide its fate. If this noble experiment in gaining access to digital audio recordings becomes permanent, the Administrative Office will determine the appropriate fee later.

In the meantime, more information about obtaining trial court audio files through the pilot project can be found at a number of individual federal court Web sites. You may want to start with the official press release that recently announced the launch and was issued by the Administrative Office of the U.S. Courts, at www.uscourts.gov/Press_Releases/digialaudio080607.html.

More hands-on information for those who want to see how the process actually works is provided in a short video that is viewable through the Web sites of courts participating in the pilot project. This video, though a trifle sterile, methodically and expertly walks you through the rather magical process of downloading an audio file from a court's electronic docket. Try www.nceb.uscourts.gov and www.ned.uscourts.gov, and you'll get all the help you need to make you a true maestro of audio transcript downloading.

Appellate Audio, Too!

Meanwhile, the Seventh Circuit is the first federal court of appeals to make "RSS feeds" of audio recordings of oral arguments available "in bulk" from its Web site—www.ca7.uscourts.gov/ca7_rss.htm. (RSS stands for really simple syndication.) Using the system is about as simple as clicking on a button. A user simply "subscribes" to a particular topic (called an RSS feed), and an RSS reader periodically checks to see if there are any new items that fit the subscription's profile. If there are new items, the RSS reader automatically notifies the user.

An RSS reader can be a stand-alone program or an extension of a standard browser. Some browsers—such as the current versions of Firefox™ and Safari™—have built-in RSS readers. If you're using a browser that doesn't currently support RSS, there are readers available on the Web. Some are free to download, others are available for purchase.

As the Seventh Circuit's Web site proudly announces, "Now the content you want can be delivered directly to you without cluttering your inbox with e-mail messages." In this instance, the uncluttered content can include the audio files for the circuit's latest oral arguments.

The ability to hear other arguments before mak-

ing one's own cannot help but improve the quality of oral advocacy. The ability to hear the voice and the questioning technique of the panelists set for one's own case cannot help but improve one's preparation. And the ability to hear one's own argument after the fact and to share it with the client should also help improve advocacy for those of us who learn from experience.

What could be easier? The RSS approach results in audio files being made available and allowing the end user (that's you, dude) to remain fairly passive. The RSS reader does the heavy lifting. Even though most RSS feeds seek out text, the technology can also seek out podcasts (recordings of audio or video files that can be downloaded to an iPod or other portable MP3 player). That is the capability that the Seventh Circuit is utilizing so effectively and innovatively. The Seventh Circuit's Web site makes available an RSS feed of arguments as a standard audio MP3 podcast and as an iTunes optimized audio podcast. Just choose and click.

Innovation such as this is not new in the Seventh Circuit. Over a decade ago, it was the first federal circuit with an electronic bulletin board (a type of pre-Internet system that allowed users to exchange messages and read news over a telephone line). The Seventh Circuit also was the first to require attorneys to submit electronic briefs on disks as well as the first to make audio of arguments available online. With the addition of an RSS feed, audio recordings of Seventh Circuit oral arguments are now available the same day that they occur.

The Seventh Circuit appears to be in the lead once again, when it comes to the accessibility of oral arguments; but the circuit is not alone by any means. Most federal courts of appeals now make audio files of oral arguments publicly available. The Eighth Circuit and the Federal Circuit, for example, make audio files of oral arguments available in MP3 format. The Ninth Circuit posts audio files of arguments on its Web site. And the D.C., First, Second, Fourth, and Sixth Circuits will all provide audio files on a CD upon request.

Conclusion

OK. I've put you on your personal path to fame and glory. Now, it's time for you to shape up your dewy emerald green argument about pseudo-causality, dude. It'll be a million seller. See you next month in Cyberia. **TFL**

Michael J. Tonsing practices law in San Francisco. He is a member of the FBA editorial board and has served on the Executive Committee of the Law Practice Management and Technology Section of the State Bar of California. He also mentors less experienced litigators by serving as a "second chair" to their trials. See www.YourSecondChair.com. He can be reached at mtonsing@lawyer.com.