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Are public court records too public in cyberspace?

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SAN FRANCISCO - Courthouses have long been considered stodgy institutions, foreign to the public they serve. The Internet has made them a little less detached, offering the ability to pay tickets, attend traffic school, even monitor dockets online.

But most of the documents that are freely available at the courthouse are not online, either for lack of funding and technology or due to concerns that not all public records should be so easily available.

As state court officials across the nation ponder whether and how to make courthouses Internet-friendly, policymakers from California to New York are shielding many otherwise readily available records from cyberspace.

"If I'm in San Luis Obispo, I should be able to get that information without driving five hours to Los Angeles to get to that courthouse," said Kelli Fager, a First Amendment attorney in California who sat on a nationwide committee that recommended to the states to put the bulk of their records online.

"The reality is, it's very difficult for some individuals to travel to courthouses to find records in cases they are interested in," she said.

California was one of the first states to adopt an online courthouse policy, and now offers a variety of features on its Web site, including opinions by the state Supreme Court and its six appellate courts. An online self-help center even offers advice for litigants without lawyers, including how to obtain restraining orders.

But the state still prohibits its trial courts from posting criminal case files, divorce cases, guardianship cases and mental health files -- many of which are publicly available at the courthouse -- online.

California Chief Justice Ronald M. George said the main reason is the fear that names of victims, including rape victims, could be widely disseminated.

And as courts begin using more computer images, First Amendment advocates also worry that citizens won't have access to many documents that by law are public records because there may not be paper versions of those documents in courthouse files.

George promised that there will still be paper records of all open records available at the courthouse -- at least in California. "For essential documents, there will be a parallel paper process," George said. "I say that, because as a dinosaur, I push paper."

Some individual counties across the nation are trying to offer on the Internet the same types of court records that are available for review at the courthouse. The trial court in Maricopa County, Arizona, is one, but clerks there must abide by Arizona rules forbidding Internet postings of restraining orders, Social Security numbers and pre-sentencing reports, some of which are available in the paper records.

Jennifer Greene, a policy analyst for the Arizona Administrative Office of the Courts, said people seeking online court records must also obtain a password to access them, as a protection against identity theft and harassment of witnesses.

"Anything you looked at would be recorded in the event that something was misused," Greene said.

The federal judiciary allows the Internet posting of bankruptcy and civil lawsuits, but only a few federal districts do so.

The New York legal community is in the thick of the online records debate, which is now before the New York State Commission on Public Access to Court Records.

"Protecting our Social Security numbers, bank information, credit card numbers and related information will make us more secure from identity thieves and other scam artists," Kenneth Dreifach, chief of the New York Attorney General's Internet Bureau, told the commission in May.

In an interview, Dreifach said other sensitive information may also merit keeping off the Internet, including sensitive medical, personal or family information found in class actions and other litigation.

At the same hearing, Charlotte A. Watson, executive director of the New York State Office for the Prevention of Domestic Violence, said Internet access to domestic violence cases could make it easier for offenders to track down their fleeing spouses.

"What did the framers of the Constitution mean when they said public records?" she asked in an interview. "Traveling from a neighboring state to a local courthouse would have been an impossible burden back then. Who is going to be the next domestic abuse victim tomorrow?"

Bob Port, a New York Daily News investigative reporter who also testified at the hearing, reduced those concerns to "paranoia, paranoia, paranoia."

While Port and others are concerned that courts are sealing paper versions of records that should be publicly available, "You would think every ex-boyfriend is going to hunt down every ex-girlfriend if they put this online," he said.

Much of the debate over online court records is just that -- debate. States are grappling with some of their biggest budget shortfalls and don't have the resources to address the issue.

Karen Salaz, a spokeswoman for the Colorado Judicial Department, said that state's court system is laying off staff, so putting court records online is a low priority.

Instead, Colorado's courts have focused on merging its databases with law enforcement's, so that officers can be notified immediately about newly issued restraining orders and arrest warrants.

"That is where our focus has been," Salaz said.