



20 June 2016

Clerk of Court
40 Foley Square
New York, NY 10007

Re: Changes to Oral Argument Policies

To Whom it May Concern:

As the Executive Director of Free Law Project, a federal non-profit dedicated to providing free access to primary legal materials, I was pleased to learn of the Second Circuit's plan to place its oral argument recordings online. At Free Law Project, as part of our CourtListener initiative, we collect oral argument audio from the circuit courts that provide it, and we make it available on our website so that people can easily search for recordings, download them in bulk, or listen to them as podcasts or on our website. We currently have more than half a million minutes of audio going back to 1969.¹

The Second Circuit's absence from our collection was a conspicuous problem we often lamented, and we are glad that the Court has decided to remedy this situation, finally placing its recordings online for the public. As a stakeholder in this process, we write with a few concrete suggestions that we hope the Court will consider.

The most important suggestion we make is that the Court place its entire collection of recordings online. This will provide important historical recordings to the public while creating efficiencies for the Court. Historical events can be categorized in two ways: those that are obviously important when they happen, like the election of a President, and those whose importance is recognized much later – like a President's early career as a clerk or judge. Oral argument recordings of the Second Circuit fall into both of these categories, making it important to place both old and new recordings online. Some of the cases heard by the the Court had important and immediate consequences for the American public – these cases should be available for download. Other cases may not appear to be important yet, but may later become part of a larger narrative – these cases should also be available for download.

We also believe that placing the entirety of the Court's collection of recordings online will provide efficiencies for the Court itself. It will undoubtedly be an onerous process to place the entire collection online, but in doing so, the Court's staff would be freed from legacy data formats and systems. With the content properly placed online, your staff would no longer need to fulfill requests for oral argument recordings, and would no longer need to concern itself with the hundreds of CDs it undoubtedly maintains. A task would permanently be removed from the Court's list of duties.

¹ <https://www.courtlistener.com/?q=&type=oa>



If it is not possible to place everything online, we suggest that the Court create a simple process that citizens and organizations can use to obtain the complete collection without having to pay the current fee of \$30 per recording.² Such a process could charge a reasonable fee to receive the complete collection, with metadata, on a USB stick or portable hard drive. While few organizations would need this data in this format, the creation of such a process would at least enable them to obtain it if they desired. At present, it is simply impossible to get these recordings in bulk. As a result, the only place they exist is in the records office of the Court. This is unfortunate, and should be remedied if possible.

A third suggestion that we hope the Court will adopt is to provide a machine-readable website where this data is available. Organizations like Free Law Project rely on computer programs to download content from court websites, and it is important that we are able to create reliable systems for that purpose. If the Court places these recordings online in a machine-readable website, it will be possible to download the recordings efficiently and correctly.³

The final suggestion we make to the Court is a technical one relating to the audio files themselves. Having gathered thousands of oral argument audio files, we at Free Law Project have encountered many different audio formats, ranging from Real Media files (a proprietary format popular in the 1990's), to Waveform Audio Format files (so-called "wav files", which are needlessly large downloads). We suggest that if the Court is able, it should place the files online in MP3 format, with 128kbps constant bit rate and 22050Hz sample rate. MP3 is a ubiquitous format, and these specifications provide an excellent compromise between file size and audio quality. We expressly suggest that the Court *not* place the files online in other formats unless these MP3s are also provided.

Oral argument recordings are a product of the courts that have seen incredible demand and which play an important role in history and society. We are delighted that the Court has chosen to place its recordings online, and we hope that the suggestions above aid the Court in this process.

If anybody at the Court wishes to discuss these suggestions further, we are happy to do so at their convenience.

Thank you for your consideration,

Michael Lissner
Executive Director

² We recently spoke with the records office at the Court. Based on that conversation, we estimate that the Court has about 10,000 recordings. At the cost of \$30/case, that would cost around \$300,000 to purchase – an impossible sum. (32 cases/week, 46 weeks/year, with records starting in about 2009. $32 \times 46 \times 7$ years = 10,304 cases.)

³ The *easiest* way to do this is to provide an RSS or Podcast feed with XML containing the metadata for the cases. The *best* way is to provide an API that people and organizations can query. The metadata that we seek at Free Law Project is the date of the oral argument, name of the case, docket number, and the judges that were empaneled for the case.