

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CAMBRIDGE UNIVERSITY PRESS,
OXFORD UNIVERSITY PRESS, INC.,
and SAGE PUBLICATIONS, INC.,

Plaintiffs,

v.

CARL V. PATTON, in his official capacity
as Georgia State University President, et al,

Defendants.

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CIVIL ACTION
FILE NO. 1:08-1425-ODE

DUPLICATE

PLAINTIFFS' INITIAL DISCLOSURES

(1) State precisely the classification of the cause of action being filed, a brief factual outline of the case including plaintiff's contentions as to what defendant did or failed to do, and a succinct statement of the legal issues in the case.

This is an action under the United States Copyright Act, 17 U.S.C. § 101 *et seq.* Plaintiffs allege that Georgia State University's ("GSU") unauthorized copying, display, and distribution of Plaintiffs' written works to GSU students in electronic format over campus computer systems (as effectuated by Defendants or GSU employees in their control) violates Plaintiffs' exclusive copyright rights in those works. Plaintiffs also allege that Defendants' activities constitute

contributory and vicarious copyright infringement. Plaintiffs seek declaratory and injunctive relief against Defendants to prevent such copying and distribution in the future without permission from the copyright owner and payment of proper license fees.

Georgia State University provides several mechanisms/forums on its campus computer system and University website that allow Georgia State professors and staff to provide students in their courses with electronic copies of course reading material. These include "ERes," or "Electronic Course Reserves," an area of the University Library's internet website where professors and staff can (using the ERes software) upload course reading materials to University servers in digital format, and where each student can download, view and print copies of the posted reading material. These mechanisms also include WebCT Vista, an online "course management system" that similarly allows professors to distribute course reading materials to students through centralized course-specific websites hosted on University servers and accessible through the University website.

Using these mechanisms, as well as faculty and departmental websites (likewise hosted on University servers), Georgia State faculty and other staff have provided, and continue to provide, Georgia State students with electronic copies of course reading materials. They have done so in excess of any privilege provided

by law, without obtaining permission from the copyright holders, and without paying license fees. The unlicensed electronic excerpts include entire articles, multiple chapters of books, and excerpts totaling dozens or even hundreds of pages. The same reading excerpts are sometimes delivered to students in multiple semesters, and are often bundled with other excerpts to create an electronic anthology or coursepack; certain professors have provided students in their courses with as many as 80 course readings in electronic format for a single course. During the Spring 2008 semester, the ERes system at Georgia State listed approximately 6700 works for over 600 courses.

The legal issues to be tried are as follows:

- a) Whether the Defendants or individuals in their employ or control or in the employ or control of GSU directly infringe Plaintiffs' copyrights in the copyrighted works named in Plaintiffs' Complaint, in violation of 17 U.S.C. § 106;
- b) Whether the Defendants or individuals in their employ or control, or in the employ or control of GSU, contributorily or vicariously infringe Plaintiffs' copyrights in the copyrighted works named in Plaintiffs' Complaint, in violation of 17 U.S.C. §§ 106, 501-503, and 505;

- c) Whether the complained of use of the excerpts from Plaintiffs' copyrighted materials by the Defendants or individuals in their employ or control, some of which excerpts are described in detail in Plaintiffs' Complaint, is protected by the statutory doctrine of fair use;
- d) Whether Plaintiffs are entitled to recover their attorneys' fees and costs pursuant to 17 U.S.C. § 505; and
- e) Whether the Defendants are entitled to recover their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

(2) Describe in detail all statutes, codes, regulations, legal principles, standards and customs or usages, and illustrative case law which plaintiff contends are applicable to this case.

Legal authority that the plaintiffs contend to be applicable to this case includes the following:

- A) The United States Copyright Act, 17 U.S.C. § 101 *et seq.* (specifically including §§ 106, 501-503, 505).
- B) *Princeton Univ. Press v. Michigan Document Servs., Inc.*, 99 F.3d 1381 (6th Cir. 1996).

C) *Basic Books, Inc. v. Kinko's Graphics Corp.*, 758 F. Supp. 1522 (S.D.N.Y. 1991).

D) *American Geophysical Union v. Texaco Inc.*, 60 F.3d 913 (2d Cir. 1994).

E) *Peter Letterese & Assocs., Inc. v. World Institute of Scientology Enters.*, No. 05-15129 (11th Cir., July 8, 2008) (slip. op.).

F) *Harper & Row, Publishers, Inc. v. Nation Enters.*, 471 U.S. 539 (1985).

(3) Provide the name and, if known, the address and telephone number of each individual likely to have discoverable information that you may use to support your claims or defenses, unless solely for impeachment, identifying the subjects of the information.

In addition to the named Defendants, Plaintiffs identify the following people as likely to have discoverable information that may be used to support Plaintiffs' claims. Plaintiffs reserve the right to supplement this list should additional individuals be identified in the course of discovery:

The following may be contacted through Plaintiffs' counsel:

Name	Last Known Address and Telephone Number	Subjects
Marc Anderson, Rights and Permissions Manager	Cambridge University Press 32 Avenue of the Americas New York, N.Y. 10013 (212) 924-3900	Ownership and registration of works; direct licensing of works

Richard Ziemacki, President	Cambridge University Press 32 Avenue of the Americas New York, N.Y. 10013 (212) 924-3900	Harm to business caused by defendant activities
Frank Smith, Editorial Director, Academic Books	Cambridge University Press 32 Avenue of the Americas New York, N.Y. 10013 (212) 924-3900	Harm to business caused by defendant activities
Liza Murphy, Director of Sales & Marketing	Cambridge University Press 32 Avenue of the Americas New York, N.Y. 10013 (212) 924-3900	Harm to business caused by defendant activities
Mike Robinson, Rights Operations Manager	Oxford University Press, Inc. 198 Madison Ave. New York, NY 10016 (212) 726-6200	Ownership and registration of works
Fiona Bennett, Director, UK Business Development and Rights	Oxford University Press Great Clarendon St. Oxford OX2 6DP United Kingdom (011) 44 1865 556767	Direct licensing of works
John Challice, Vice President & Publisher, Higher Education	Oxford University Press, Inc. 198 Madison Ave. New York, NY 10016 (212) 726-6200	Harm to business caused by defendant activities; finances of business
Niko Pfund, Vice President & Publisher, Academic & Trade	Oxford University Press, Inc. 198 Madison Ave. New York, NY 10016 (212) 726-6200	Harm to business caused by defendant activities; finances of business
Carol Richman, Director of Licensing	SAGE Publications, Inc. 2128 E. Baltimore St. Baltimore, MD 21231 (410) 327-6808	Direct licensing of works; harm to business caused by defendant activities
Sara Van Valkenburg, Contracts Manager	SAGE Publications, Inc. 2455 Teller Road Thousand Oaks, CA 91320 (805) 499-0721	Ownership and registration of works

David Horowitz, Vice President, Sales	SAGE Publications, Inc. 2455 Teller Road Thousand Oaks, CA 91320 (805) 499-0721	Harm to business caused by defendant activities
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(4) Provide the name of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence.

Plaintiffs will provide the name of any expert they may use at trial at the time such expert is identified.

(5) Provide a copy of, or a description by category and location of, electronically stored information, and tangible things in your possession, custody, or control that you may use to support your claims or defenses unless solely for impeachment, identifying the subjects of the information.

- a) Contracts and related documents evidencing plaintiff ownership/control of works subject to suit.
- b) Copyright registration certificates for works subject to suit.
- c) Documents sufficient to demonstrate Plaintiffs' licensing and permissions practices.
- d) Documents sufficient to show Plaintiffs' sales and licensing activities in relation to the higher education/academic market.

All such documents are located in hard-copy files or on computer servers in (or accessible from) the Plaintiffs' offices.

Plaintiffs reserve the right to identify additional documents related to its claims as discovery continues. Disclosures will be supplemented as required by Rule 26(e).

(6) In the space provided below, provide a computation of any category of damages claimed by you.

Plaintiffs seek only injunctive relief in this action. Plaintiffs do, however, seek an award of attorneys' fees.


(7) Attach for inspection and copying as under Fed. R. Civ. P. 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

N/A

(8) Disclose the full name, address, and telephone number of all persons or legal entities who have a subrogation interest in the cause of action set forth in plaintiff's cause of action and state the basis and extent of such interest.

N/A

Respectfully submitted this 28th day of July, 2008.



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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing **PLAINTIFFS'**
INITIAL DISCLOSURES on counsel of record via hand delivery addressed as
follows:

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Atlanta, Georgia 30309

And via United States Mail to:

Mary Jo Volkert, Esq.
Assistant S. Attorney General
40 Capitol Square
Atlanta, Georgia 30334

This 28th day of July, 2008.



Edward B. Krugman