

# EXHIBIT A

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

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

Plaintiffs,

- vs. -

MARK P. BECKER, in his official  
capacity as Georgia State University  
President, et. al.

Defendants.

Civil Action No. 1:08-CV-1425-ODE

**STIPULATIONS OF FACT REGARDING ERES AND ULEARN USAGE**  
**AT GEORGIA STATE UNIVERSITY**

Plaintiffs Cambridge University Press, Oxford University Press, Inc., and Sage Publications, Inc. (collectively “Plaintiffs”) and Defendants Mark P. Becker, Ron Henry, Nancy Seamans, J.L. Albert, Kenneth R. Bernard, Jr., James A. Bishop, Hugh A. Carter, Jr., William H. Cleveland, Robert F. Hatcher, Felton Jenkins, W. Mansfield Jennings, Jr., James R. Jolly, Donald M. Leebern, Jr., Elridge McMillan, William NeSmith, Jr., Doreen Stiles Poitevint, Willis J. Potts, Jr., Wanda Yancey Rodwell, Kessel Stelling, Jr., Benjamin J. Tarbutton, III, Richard L. Tucker, and Allan Vigil, in their official capacities and only in said capacities (collectively “Defendants”), hereby stipulate, for purposes of this litigation only, to the facts set forth below.

### **DEFINITIONS**

For the purposes of these Stipulations of Fact, the following definitions shall apply:

1. “Course Material” shall mean any reading material, notes, exam questions, homework assignment, handouts, or any other document provided to GSU students in conjunction with University courses, whether distributed or accessed by students in electronic or hard-copy form, and whether identified as required, supplemental, or otherwise. Course Material shall include documents offered or otherwise available to students even if not distributed to or accessed by all (or any) students.

2. “Electronic Course Material” shall mean Course Material made available to GSU students in an electronic or digital format, *e.g.*, portable document format (pdf).

3. “ERes Reports” shall mean those reports generated by the electronic course reserves system at GSU and produced by Defendants to Plaintiffs in this action, including but not limited to those documents bearing the Bates ranges GSU007945.001.xls-000001 through GSU007945.014.xls-000442, GSU008247.001.xls-000001 through GSU008247.001-000365, , GSU008687 through GSU008744, GaState0050426 through GaState0050485, and GaState0061932 through GaState0061967 and the native Microsoft Excel versions of the same documents produced on compact discs bearing the Bates number GaState0038908, GaState0050486, and GaState006196.

4. “ERes Software” shall mean the computer software which has been licensed by GSU for the purposes of operating and managing the GSU Library electronic course reserves system.

5. “ERes User” shall mean, in the context of ERes Reports, GSU instructors, GSU ERes staff members, GSU students enrolled in the specified courses, and other authorized users.

6. “uLearn Audit Reports” shall mean those documents generated by Defendants using the reporting capabilities of the uLearn system at the Board of

Regents of the University System of Georgia and produced electronically by agreement of the parties in discovery in this action with the Bates numbers GSU008043 and GSU8249.

7. “uLearn User” shall mean GSU instructors, the University System of Georgia Board Of Regents IT staff members, GSU students enrolled in the specified courses, and other authorized users, and shall also mean, when referring to a column in the uLearn Audit Reports, the column identified by that name in the sample uLearn Audit Report produced by Defendants bearing the Bates number GSU008043 and shall describe the first column (column A) in each of the uLearn Audit Reports produced electronically in the folder bearing the Bates number GSU8249.

8. “Action” shall mean, in the context of uLearn Audit Reports, the column identified by that name in the sample uLearn Audit Report produced by Defendants bearing the Bates number GSU008043 and shall describe the second column (column B) in each of the uLearn Audit Reports produced electronically in the folder bearing the Bates number GSU8249.

9. “Time” shall mean, in the context of uLearn Audit Reports, the column identified by that name in the sample uLearn Audit Report produced by Defendants bearing the Bates number GSU008043 and shall describe the third

column (column C) in each of the uLearn Audit Reports produced electronically in the folder bearing the Bates number GSU8249.

10. “PageName” shall mean, in the context of uLearn Audit Reports, the column identified by that name in the sample uLearn Audit Report produced by Defendants bearing the Bates number GSU008043 and shall describe the fourth column (column D) in each of the uLearn Audit Reports produced electronically in the folder bearing the Bates number GSU8249.

11. “LCName” shall mean, in the context of uLearn Audit Reports, the column identified by that name in the sample uLearn Audit Report produced by Defendants bearing the Bates number GSU008043 and shall describe the fifth column (column E) in each of the uLearn Audit Reports produced electronically in the folder bearing the Bates number GSU8249.

12. “Transmitted” shall mean delivery of an electronic file to one or more users through any electronic process, including when a user views the file in an Internet web browser window, opens it and views it in Adobe Acrobat, downloads the file (whether or not viewed at the time), or prints the file.

### **STIPULATED FACTS**

The parties stipulate as follows:

1. Employees of GSU post Electronic Course Material made available on the ERes system.

2. Employees of GSU save Electronic Course Materials to a GSU computer server so that it may be made available to ERes users enrolled in a specified course during the time of that course. GSU is implementing a policy to periodically delete these materials off the GSU server.

3. GSU students enrolled in a specified course use the ERes system to access Electronic Course Materials made available on that system for such course.

4. The ERes Reports were generated using computers and software within the possession, custody, and control of Defendants.

5. The ERes Software has the ability to create reports that depict information regarding Electronic Course Materials posted on ERes and accessed by ERes users.

6. The ERes Reports produced by Defendants to Plaintiffs in this action were created using the ERes Software's reporting capabilities.

7. The content of the ERes Reports were not altered by Defendants following their creation and were produced to Plaintiffs exactly as they were generated by the ERes Software.

8. Each row on the ERes Reports provides information regarding a distinct Electronic Course Material posted on the ERes system for a specified course.

9. The ERes Reports list Electronic Course Materials available on the ERes system for a specified course during the time periods specified in the “Date Range” column.

10. Employees of GSU manually input into the ERes system the information which appears in the columns of the ERes Reports bearing the headings “Document” and “Course Reserves Page.”

11. The ERes Software compiles and stores the information entered by GSU employees as to each Electronic Course Material posted on the system for a specified course.

12. The ERes Software tracks the number of times each Electronic Course Material on the system for a specified course is accessed by an ERes User.

13. The information in the “Document” column on the ERes Reports identifies the title of a specific Electronic Course Material made available on the ERes system for the course specified in the “Course Reserves Page” column.

14. The information in the “Course Reserves Page” column on the ERes Reports identifies the course for which the specific Electronic Course Material in that row of the Reports is/was offered through ERes.

15. Where a personal name is given in the “Course Reserves Page” column on the ERes Reports, the name identifies the instructor of the identified course.

16. Where a season and year are given in the “Course Reserves Page” column on the ERes Reports (*e.g.* “Fall 2008” or “Spring 2008”), the information identifies the semester during which the identified course was offered.

17. The information in the “Date Range” column of each ERes Report identifies the time period during which the ERes activity measured by the Report took place.

18. The data in the “Hit Count” column of each ERes Report represent the number of times the specific Electronic Course Material listed in that row of the Report was accessed by ERes Users during the corresponding Date Range. Every time the same ERes User accesses a specific Electronic Course Material it generates a “hit” in the ERes Report for that time period.

19. Each time a specific Electronic Course Material was viewed via the ERes system by representatives of the Association of American Publishers or the Copyright Clearance Center or Plaintiffs, by their counsel, or by counsel for Defendants during the period in 2007 in which the ERes system password protection was not functioning, or during the course of the discovery process in

this litigation, that access was recorded by the ERes software and was counted as a “hit” in the ERes Report entry for that specific Electronic Course Material.

20. Each “hit” represented in the “Hit Count” column of the ERes Reports represents the appearance of the corresponding Electronic Course Material on the authorized user’s computer monitor.

21. Electronic Course Materials accessed via ERes are capable of being printed and capable of being downloaded and/or saved by the ERes user to his or her hard drive.

22. The uLearn Audit Reports produced by Defendants were generated using computers and software within the possession, custody, and control of Defendants.

23. The uLearn system records and stores data regarding files uploaded to the system, including any Electronic Course Materials made available to uLearn Users enrolled in the course for which the materials were posted; that data includes every time the same uLearn User accesses a single piece of Electronic Course Material.

24. The uLearn system records and stores data regarding student access to those files on the system available to such students, including any Electronic Course Materials.

25. The uLearn Software has the ability to create reports that depict information regarding those files made available on uLearn to authorized student users enrolled in the course for which the files were posted, including any Electronic Course Materials.

26. The uLearn Audit Reports produced by Defendants to Plaintiffs in this action were created using the uLearn Software's reporting capabilities.

27. The content of the uLearn Reports was not altered by Defendants following their creation and the uLearn Reports were produced to Plaintiffs exactly as they were generated by the uLearn Software.

28. Instructors at GSU may post Electronic Course Materials on the uLearn system.

29. As part of the process of posting Electronic Course Materials to uLearn, professors at GSU or their authorized representatives save copies of such materials to their computers to facilitate the upload of these files to the uLearn system.

30. GSU students enrolled in a specified course may use the uLearn system to access Electronic Course Materials made available for such course, which access is tracked and listed on the uLearn Reports.

31. uLearn is capable of providing students enrolled in a specified course with a direct electronic link to Electronic Course Materials available on the ERes system for such course.

32. Electronic Course Materials accessed via uLearn are capable of being printed and capable of being downloaded and/or saved by the uLearn user to his or her hard drive.

33. Each row on the uLearn Audit Reports provides information regarding an action taken by a uLearn User on a particular course section's uLearn site.

34. Instructors at GSU can choose the name for their course's uLearn page and this page name is stored in the audit table and automatically inputted into the uLearn Audit Report under the heading "PageName."

35. The information in Column D (or the "PageName" column) on the uLearn Audit Reports includes either the names of uLearn pages for a particular course (e.g., "Home Page") or the file names of specific files, including any Electronic Course Materials, made available on the uLearn system.

36. The information in Column E (or the "LCName" column) on the uLearn Audit Reports identify the GSU department abbreviation, course number, section number, and semester for the course for which the report's content

was generated, though this information may not always be accurate if the information was entered manually.

37. The information in Column C (or the “Time” column) of each uLearn Audit Report identifies the date and time at which the uLearn activity reflected in that particular row of the report took place.

38. The information in the Column B (or the “Action” column) of each uLearn Audit Report indicates the particular uLearn activity undertaken by a specific uLearn User, at the date and time reflected in that row of the report.

39. Where a particular row of a uLearn Audit Report includes the text “content-page-viewed” in the “Action” column it reflects the uLearn User’s having accessed or viewed the Electronic Course Material listed in the “PageName” column in that same row.

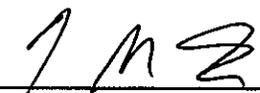
40. The information in the “User” column identifies the specific uLearn User’s access to the content of the uLearn system.

41. Each row of a uLearn audit report that contains the words “content-page-viewed” in the “Action” column represents the appearance of the corresponding Electronic Course Material on the uLearn User’s computer monitor.

42. The documents bearing the Bates range GaState0031388 through GaState0038234 are true, accurate, and correct copies of Electronic Course Reading Material, syllabi, and web pages that were made available to

students in specific course sections through uLearn during the Spring 2009 semester.

Respectfully submitted this 10th day of July, 2009.

  
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