

# EXHIBIT G-2

## (Second Half)

1 been used in course EPY 7090, the Psychology of  
2 Learning of Young Children, in spring 2009 taught by  
3 Flexner, Kruger, and Lederberg?

4 MR. ASKEW: I'll object to the form of  
5 that question. I don't think there's a  
6 foundation for that question with this  
7 witness, and I don't know how this witness  
8 would know whether that document was used in  
9 this class or not. All this witness knows is  
10 what is reported on this form.

11 MS. SINGER: Okay.

12 MR. ASKEW: We went through this a lot  
13 yesterday, and I felt like at one point that  
14 we really needed to stop and see if we  
15 couldn't just have some sort of an agreement  
16 that the witness is allowed to tell you that  
17 these items are on the form. But you can ask  
18 her, but I seriously doubt that she's going  
19 to know whether that actual document was  
20 actually used in that class. It would be  
21 beyond what she would know. She can tell you  
22 it's on the form. She can probably you tell  
23 you that she has no reason to believe that  
24 the form is inaccurate, but all she's going  
25 to be able to tell you is that this document

1 appears in that report --

2 MS. SINGER: All right. I appreciate --

3 MR. ASKEW: -- and the data's there.

4 MS. SINGER: I appreciate your position.

5 MR. ASKEW: And if you'd like to maybe  
6 go through and just identify the various  
7 items that you would like to have that  
8 acknowledgement made, I think we could do  
9 that, maybe it could speed things up; but  
10 beyond that, I don't know what else she can  
11 tell you.

12 MS. SINGER: I appreciate your position.  
13 I'm going to go ahead and ask my questions  
14 because it's my deposition.

15 Q (BY MS. SINGER) So on page 7, entry 15a),  
16 it's the second entry on page 17 of P-77, we see that  
17 this excerpt from the Oxford Unity -- University Press,  
18 Awakening Children's Minds, is listed as being used in  
19 course EPY 7090, the Psychology of Learning of Young  
20 Children, in spring 2009. Do you see that?

21 A Yes.

22 Q Do you have any reason to believe that  
23 that -- that excerpt was list -- not listed for that  
24 course?

25 A No.

1 Q Okay. And we see that it was -- the hit  
2 count is one, do you see that?

3 A Yes.

4 Q Okay. Now, if you would please turn to page  
5 85 of P-77.

6 MR. ASKEW: Which page?

7 MS. SINGER: 85.

8 MR. ASKEW: Thank you.

9 Q (BY MS. SINGER) Do you see five -- five  
10 lines up from the bottom on page 85 of P-77, we see  
11 "Susan Chase, narrative inquiry, Sage Handbook of  
12 Qualitative Research." Do you -- do you see that  
13 entry?

14 A Um-hmm.

15 Q And that --

16 A Yes.

17 Q That's listed as being used in course EPRS  
18 8500, Qualitative Interpretative Research and Education  
19 1, spring, 2009. Do you see that?

20 A Yes.

21 Q And that's listed as having been hit 84  
22 times?

23 A Yes.

24 Q Do you have any reason to believe that wasn't  
25 hit 84 times?

1           A     No.

2           Q     Okay.  Who would have loaded these excerpts  
3 up onto the EReserve system for spring 2009?

4           A     For spring 2009, I do not know if Jim Palmour  
5 was actually loading them onto the server or if that  
6 was being done in the reserves unit in the library.

7           Q     Okay.  If you wanted to check whether an  
8 excerpt was actually on the reserve system, how would  
9 do you that?

10          A     I would log in as an administrator.  There  
11 are levels of administrator.  I have whatever the  
12 highest level is that would let me actually access this  
13 page, and I would click on that link and see if it's  
14 there.  Is that what you're asking?

15          Q     That's -- yep, thank you.

16                     If you would please turn to page 133 of P-77,  
17 the bottom two entries, first one says, "Feminist Media  
18 Studies, Chapter 2, from Liesbet Feminist Media  
19 Studies, Sage Publications."  Do you see that?

20          A     Yes.

21          Q     Listed as being used for course JOU 4780,  
22 Women and Media, spring 2009.  Do you see that?

23          A     Yes.

24          Q     And that's listed as being hit 52 times?

25          A     Right.

1 Q The entry after that is Chapter 3 from the  
2 same book, Liesbet Feminist Media Studies, Sage  
3 Publications, 1994. Do you so that?

4 A Yes.

5 Q For the same course, JOU 4780, Women  
6 andMedia?

7 A Yes.

8 Q And that has been hit 41 times in the -- the  
9 date range of this report?

10 A Yes.

11 Q Is that a problem for -- does that -- strike  
12 that.

13 Would you expect it to set off a red flag, as  
14 you call it, for -- or an alarm bell, I think you might  
15 have said, to have two chapters from the same work.

16 A Without seeing the work and what the  
17 professor said about it, I can't answer that. I don't  
18 know.

19 Q Okay. If you would turn to page 137 of  
20 Plaintiffs' 77. The first line there is, "Focus on the  
21 Language Classroom, Chapter 10." Do you see that?

22 A Yes.

23 Q And that is from Focus on the Language  
24 Classroom, Cambridge University Press, 1991?

25 A Um-hmm.

1 Q For course AL 8900, The Practicum. Do you  
2 see that?

3 A Yes.

4 Q And that was hit 57 times, according to this  
5 report?

6 A Yes.

7 Q Do you have any reason to believe that that  
8 information is inaccurate?

9 A No.

10 Q And the next entry is "Focus on the Language  
11 Classroom, Chapter 9," from the same work?

12 A Yes.

13 MR. ASKEW: I'm not following. What --  
14 are we on page 177?

15 MS. SINGER: 137.

16 MR. ASKEW: 137. Okay. Just a second.

17 Q (BY MS. SINGER) And that is listed for the  
18 same course, AL 8900, Practicum. Do you see that?

19 A Um-hmm, yes.

20 Q And that was hit 17 times?

21 A Correct.

22 Q If, for some reason, you wanted information  
23 about a hit count or about what items were listed on  
24 the EReserve system, would you rely on a report like  
25 this?

1           A       Yes.

2           Q       If you would please turn to page 195 of P-77.  
3 The third line from the bottom, we see a -- an excerpt  
4 from -- called "Rethinking Critical Theory and  
5 Qualitative Research" by J.L. Kincheloe and P. McLaren  
6 in the Sage Handbook of Qualitative Research. Do you  
7 see that?

8           A       Yes.

9           Q       And that was used for course EPRS 8500,  
10 Qualitative/Interpretive Research and Education 1 in  
11 spring 2009. Do you see that?

12          A       Yes.

13          Q       And that is listed as being hit 45 times?

14          A       Correct.

15          Q       Two more. We're getting there. Page 283 of  
16 P-77. Third line down, L. Richardson, "Writing As A  
17 Method of Inquiry," in Norman Denzin and Yvonna  
18 Lincoln, the Sage Handbook of Qualitative Research.

19          A       Right.

20          Q       And that is listed as being used in EPRS  
21 8510, Qualitative Research and Education 2?

22          A       Um-hmm.

23          Q       And that is listed as being hit 25 times  
24 during this semester?

25          A       Right.

1 Q Okay. Last one, page 307 of P-77, lines 4  
2 and 5 from the bottom, line 5 up says, "Slave  
3 Community, Chapter 4, The Slave Family by John  
4 Blassingame." Do you see that?

5 A Yes.

6 Q And below that, Chapter 7 from the same --  
7 Chapter 7, also from the Blassingame Slave Community  
8 book. Do you see that?

9 A Yes.

10 Q Both listed as being used in AAS 3000, the  
11 African -- African-American Family, in spring 2009 --

12 A Yes.

13 Q -- do you see that? And the first chapter  
14 was hit once and Chapter 7 was hit five times. Do you  
15 see that?

16 A Yes.

17 Q What does, to the best of your knowledge, hit  
18 count mean? I think you said it meant it was accessed?

19 A It means that somebody who had access to that  
20 course page clicked on it.

21 Q Okay.

22 A If it says zero or one -- they should all say  
23 at least one because the staff member who loaded it and  
24 created the course page will click on it to make sure  
25 it's there.

1 Q Okay.

2 A When it says one, that means no students  
3 looked at it.

4 Q Do you have any way -- I'm sorry, strike  
5 that.

6 But this report, according to the date at the  
7 top, was run through April 2nd, 2009, right?

8 A Yes.

9 Q So there was still time left in the semester?

10 A Right.

11 Q Okay. Do you have any way of knowing what a  
12 student did with the work after they accessed it?

13 A Can you clarify your question?

14 Q Sure. Do you have any way of knowing whether  
15 they printed it out or saved a copy to their computer  
16 or emailed it to 12 of their closest friends? Do you  
17 have any way of tracking that?

18 A No.

19 Q Okay. Is it possible for a student to save a  
20 copy to their computer?

21 A It's a PDF file, so I don't know of any  
22 reason it would not be, but I do not know directly if  
23 that's true.

24 Q Okay. Do you know whether students print  
25 out --

1           A       I have no way of knowing that.

2           Q       Do you know if it's possible for them to do  
3 so?

4           A       I believe it's possible since it is a PDF  
5 file.

6           Q       Okay. So, to the best of your knowledge, you  
7 could do with -- after you access a file from EReserves  
8 you can do with it whatever you could ordinarily do  
9 with a PDF file?

10          A       To the best of my knowledge.

11          Q       Okay. Directing your attention to  
12 Plaintiffs' Exhibit 24. Do you recognize Plaintiffs'  
13 Exhibit 24?

14          A       Yes.

15          Q       Have you seen this before?

16          A       Yes.

17          Q       And what is Plaintiffs' Exhibit 24?

18          A       It's the Complaint.

19          Q       When do you recall first seeing Plaintiffs'  
20 Exhibit 24?

21          A       Probably the day it was filed and we were  
22 notified that it was filed.

23          Q       What did you do after reviewing Plaintiffs'  
24 24?

25          A       I'm sorry?

1 Q What, if anything -- what -- what action, if  
2 any, did you take after reading Plaintiffs' 24?

3 A Can you give me an example of what you're  
4 looking for? I -- I'm not sure I'm following you.

5 Q Did you talk to anybody, did you research  
6 anything?

7 A Certainly, yes.

8 Q Okay.

9 A Yes, I talked to people, asked questions,  
10 "What does this mean?"

11 Q Who did you speak to about Plaintiffs' 24  
12 after you reviewed it?

13 A Well, I'm sure I spoke to Charlene Hurt, who  
14 was named in it and who is my boss. I spoke to legal  
15 counsel, obviously. I believe I had somebody look up  
16 the various items identified in here, I don't remember  
17 who.

18 Q Okay. What was the substance of your  
19 conversation with Charlene Hurt about Plaintiffs' 24?

20 A Oh, I don't remember.

21 Q Okay. Do you have any recollection of what  
22 she said to you about the complaint or what her general  
23 reaction was to having been named in the complaint?

24 A She was unhappy.

25 Q Anything else?

1           A       I -- I don't remember the substance of any of  
2 our immediate conversations.

3           Q       Okay.  What -- what kind of research did you  
4 ask someone to undertake after reviewing Plaintiffs'  
5 24?

6           A       Let me look at it for a moment and see if  
7 anything comes to mind.

8           Q       Sure.  Take your time.

9           A       Well, I definitely had somebody check to make  
10 sure that there was not a hole in our system that let  
11 the plaintiffs access this information, because it  
12 wasn't clear to me how it was obtained.  I did have  
13 somebody check to see if the things identified in here  
14 were -- the -- the citations were accurate, nobody  
15 owned the items, that they were on reserve.

16                   THE COURT REPORTER:  In the what?

17                   THE WITNESS:  In the -- in the exhibits,  
18 checked to see that we owned the items, that  
19 the citations were accurate, that these  
20 actually were items and that we had them on  
21 reserve.

22           Q       (BY MS. SINGER)  What did you learn through  
23 your investigation about the password or the access to  
24 it?

25           A       That the hole that had been in the system

1 previously had been repaired and that there was no way  
2 to access this without a password.

3 Q Okay. You said you checked the citations to  
4 make sure that these items actually were on reserve.  
5 What conclusion did you draw from that inquiry?

6 A I don't remember item by item, but most of  
7 them were.

8 Q Okay. Just to go back for a moment to  
9 Plaintiffs' 77, the report. Sorry. Who -- who would  
10 enter the information that appears in each of these  
11 columns?

12 A The people in the reserves unit.

13 Q And that would be the --

14 A Denise Dimsdale, Malia Cargile, Cory  
15 Schlotzhauer.

16 Q Okay. Will that still be the case for summer  
17 2009, that those three individuals or someone in the  
18 reserves department will be entering all of the data?

19 A I believe so, yes.

20 Q Okay. Do professors have access to their  
21 course reserve pages?

22 A Only when they're live during the semester,  
23 not after the semester is over.

24 Q Do professors have the ability to add items  
25 to their course reserve pages without going through the

1 library?

2 A No.

3 Q Do professors have the ability to remove  
4 items from their course reserve pages without going  
5 through the library?

6 A No.

7 Q Do professors have the ability to change any  
8 items on their course reserve page, whether it's  
9 editing text or anything like that, without going  
10 through the library?

11 A No.

12 Q So the only person -- the only people who are  
13 able to change a course reserve page would be the  
14 library staff?

15 A Correct.

16 Q And the library staff -- library reserve  
17 staff, I'm sorry, have the ability to add items to the  
18 course reserve page?

19 A Yes.

20 Q Does anybody besides those three individuals  
21 have the power to add things to a course reserve page?

22 A Not that I'm aware of.

23 Q Okay. Does anybody other than those three  
24 individuals have the power to remove things from a  
25 course reserve page?

1           A       Not that I'm aware of.

2           Q       Does anyone other than those three  
3 individuals have the power to alter in any way a course  
4 reserve page?

5           A       Not that I'm aware of.

6           Q       Okay. Just to be clear, my questions were  
7 directed to, as we sit here today. Was that your  
8 understanding of those?

9           A       Yes.

10          Q       Okay. Are you aware of any planned changes  
11 to that policy with respect to adding, removing, or  
12 changing anything from course reserve pages?

13          A       No.

14          Q       Okay.

15                MS. SINGER: Okay. If you would please  
16 mark a document with the Bates number Georgia  
17 State 691 as Plaintiffs' 78, please.

18 (WHEREUPON, Plaintiffs' Exhibit 78 was marked for  
19 identification.)

20          Q       (BY MS. SINGER) Ms. Burtle, you have in  
21 front of you Plaintiffs' Exhibit 78. Do you recognize  
22 this document?

23          A       I don't recall it. I mean, clearly, it was  
24 sent to me, but I don't remember what it's about.

25          Q       Okay. Plaintiffs' 78 is an email to you from

1 Marjorie Denise Dimsdale dated April 18th, 2008,  
2 subject re SP 2008 readings. And as we see on P78, it  
3 says -- the second paragraph says, "Kaufman's EPS 8500  
4 has been renewed for summer '08." Do you see that?

5 A Yes.

6 Q Might -- does this refresh your recollection  
7 at all about the research you --

8 A Well, I see my question down at the bottom of  
9 the page, which clearly, this is a follow-up to having  
10 received the complaint, as the date is three days after  
11 it was filed.

12 Q Okay. And we see in the third paragraph of  
13 P78, it says, "The book in question for Kaufman's EPS  
14 8500 page is Sage Handbook of Qualitative Research.  
15 This book is posted for summer '08. This 2005 edition  
16 has 1,210 pages, plus 19 supplementary pages. We  
17 scanned 183 pages." Do you see that?

18 A Yes.

19 Q It says, "The 2000 edition has 1,143 pages  
20 and we scanned 62 pages." Do you see that?

21 A Yes.

22 Q The next paragraph is, "Lazarus POLS 8170,  
23 Chapters 5, 7, and 8 of Legislative Leviathan were  
24 posted for" -- I assume that's spring '08?

25 A Right.

1           Q       It says, "These three chapters are under 20  
2 percent of the book"?

3           A       Correct.

4           Q       Okay. So am I correct in concluding that  
5 that would have been three chapters from a single work  
6 that were posted on the EReserve system for the single  
7 course?

8           A       That what it appears.

9           Q       Okay. The next paragraph of P78 says, "Dixon  
10 AAS 4030 and AAS 3000, these were posted for both  
11 courses for spring '08, Chapter 4 and Chapter 7 from  
12 Blassingame's the Slave Community"?

13          A       Yes.

14          Q       "This is less than 20 percent and the GSU  
15 library owns the book"?

16          A       Right.

17          Q       Okay. And then, "EPY 7090 was archived on  
18 12/17/07, was not available for spring." What does  
19 that mean?

20          A       That the course was not offered in the  
21 spring, so the page was sent to the dark archive and it  
22 was not available in the spring.

23          Q       Okay. Do you recall whether there was any  
24 further communications in answer to your question at  
25 the bottom of P78?

1           A       I -- I don't recall specifically. I believe  
2 more items than this were identified in the complaint,  
3 so I would assume that similar questions were asked for  
4 those items.

5           Q       Okay.

6           MS. SINGER: If you would please mark as  
7 Plaintiffs' 79 a document bearing the Bates  
8 stamp Georgia State 3167.

9 (WHEREUPON, Plaintiffs' Exhibit 79 was marked for  
10 identification.)

11          Q       (BY MS. SINGER) Ms. Burtle, you have in  
12 front of you Plaintiffs' Exhibit 79. Do you recognize  
13 this document?

14          A       I recognize what it is.

15          Q       And what is Plaintiffs' 79?

16          A       It's a summary of document hits from 2003 to  
17 5/6/08.

18          Q       And when you say "document hits," those  
19 are --

20          A       In EReserves.

21          Q       Okay. So those would be the annual hit  
22 counts for the EReserve system for those years?

23          A       For the active pages in the EReserve system  
24 for each of those years.

25          Q       Okay. To the best of your knowledge, are

1 these figures accurate?

2 A I have no reason to think they aren't.

3 Q Okay. Do you know who compiled this report?

4 A No.

5 Q Do you know why it would have been compiled?

6 A No. It appears to be looking at trends, but

7 I -- I don't have any recollection of it, so if

8 there's -- yeah, I don't know.

9 Q As part of your responsibilities, do you look  
10 at trends in the usage of the EReserve system?

11 A Not on a regular basis, but if I had  
12 questions about whether it was still useful, I would  
13 take a look.

14 Q Do you believe that EReserves is still  
15 useful?

16 A Yes.

17 Q And Plaintiffs' 79 shows that for 2007, there  
18 was 259,691 hits for the active pages in EReserves?

19 A Correct.

20 Q And then the figure for 2008 is 95,007, but  
21 that is a partial year; is that correct?

22 A Correct.

23 Q So the final number of hit counts for the  
24 year 2008, we presume would have been greater than  
25 95,000?

1 A Yes.

2 Q Okay.

3 MS. SINGER: I'm -- if you would please  
4 mark as Plaintiffs' Exhibit 80 a document  
5 bearing the Bates stamp Georgia State 3610.

6 (WHEREUPON, Plaintiffs' Exhibit 80 was marked for  
7 identification.)

8 Q (BY MS. SINGER) Ms. Burtle, you have in  
9 front of you a -- an exhibit marked Plaintiffs' Exhibit  
10 80. It's an email to you from Marjorie Denise Dimsdale  
11 dated April 21st, 2008. Do you recognize this  
12 document?

13 A I don't recall it, but I see what it is.

14 Q And what is Plaintiffs' 80?

15 A It appears to be a response to a question I  
16 asked about features in ERes.

17 Q Do you recall asking -- do you recall why you  
18 asked about the ERes features?

19 A No. No, I don't.

20 Q Okay. And Ms. Dimsdale replies in  
21 Plaintiffs' 80, "There are an awful lot of features  
22 about ERes that we are not using." Do you know what  
23 she -- what did you understand that to mean?

24 A That there are features we aren't using.

25 Q Okay. Do you know what those features are?

1           A       Well, she says here a lot of them have to do  
2 with copyright options. Beyond that, I don't know. I  
3 know ERes has options for faculty to fax something in  
4 and post it directly, which we don't use. It's the  
5 only thing I can think of. I'm sure it has other  
6 features that I don't know about.

7           Q       Okay. Did you have occasion to look into  
8 using these copyright options?

9           A       I recently looked at the screens that have  
10 these.

11          Q       And what did -- what did you see when you  
12 looked at those screens?

13          A       That they were not integrated with the rest  
14 of the system and were not helpful for posting  
15 EReserves.

16          Q       Did you make a decision about whether to use  
17 any of these additional features or not?

18          A       At this point, I decided we didn't need to be  
19 using those.

20          Q       Okay.

21                 MS. SINGER: If you would please mark as  
22 Plaintiffs' Exhibit 81 a document with the  
23 Bates number Georgia State 3160.  
24 (WHEREUPON, Plaintiffs' Exhibit 81 was marked for  
25 identification.)

1 Q (BY MS. SINGER) Do you recognize Plaintiffs'  
2 Exhibit 81?

3 A It's an email I sent.

4 Q And Plaintiffs' 81 is an email from you to  
5 Denita Hampton and Denise Dimsdale dated April 17th,  
6 2008, asking where the 20 percent came from. What was  
7 the 20 percent to which you were referring?

8 A Our guide -- our library guidelines at that  
9 point said that we would digitize up to 20 percent of  
10 the book.

11 Q Okay. And then you go on to say, "I only see  
12 the one chapter stipulation in the Regents' guideline."  
13 What did you mean by that?

14 A I had assumed all of our practices were based  
15 on the Regents' guidelines that were in existence at  
16 that time and I didn't see the 20 percent there, so I  
17 wanted to know where it came from.

18 Q And did you get a response to Plaintiffs'  
19 Exhibit 81?

20 A Yes, I believe you have that.

21 Q Okay.

22 MS. SINGER: Well, let's do this: If  
23 you would please mark as Plaintiffs' Exhibit  
24 82 a document bearing the Bates stamp Georgia  
25 State 860.

1 (WHEREUPON, Plaintiffs' Exhibit 82 was marked for  
2 identification.)

3 Q (BY MS. SINGER) Plaintiffs' Exhibit 82 is an  
4 email from Marjorie Denise Dimsdale to you dated April  
5 21st, 2008, with the subject "Info tidbit."

6 A Um-hmm.

7 Q And in it, Ms. Dimsdale says to you, "I'm  
8 going through school by school to find info for you  
9 regarding 20 percent and continued use."

10 A Yes.

11 Q What -- what sorts of information did she  
12 find for you regarding 20 percent and the continued  
13 use?

14 A There's an email somewhere where she sent me  
15 a number of schools that did have the 20 percent. I  
16 don't recall about continued use. We had verbal  
17 discussions where she indicated that at the time the  
18 reserve system was set up, which was before I was  
19 involved in it, they had done a scan of the environment  
20 and that was kind of a standard that was seen out  
21 there, that she didn't have documentation of that.

22 Q Okay. And she also says in Plaintiffs' 82,  
23 "I believe that it is probably common practice for  
24 other schools to scan this material for ERes," I assume  
25 meaning the sentence before, interlibrary loan or --

1 what is GIL Express items?

2 A GIL Express is a book borrowing service  
3 between University System of Georgia libraries.

4 Q Okay. She says, "I think that most schools  
5 do not consider whether or not they own the original  
6 item to affect fair use." Do you know what she meant  
7 by that?

8 A I know what she means by "scan ILL or GIL  
9 Express," that we -- you know, if we don't own it, we  
10 don't scan it and put it on reserve. I don't know  
11 where she's making that assumption from, though.

12 Q Do you -- do you have any basis with which to  
13 agree or disagree with that assumption?

14 A No. I would find it surprising, but I don't  
15 have any factual knowledge of it.

16 Q Okay. You would find it surprising that  
17 other libraries do scan it?

18 A Yes.

19 MS. SINGER: And if you would please  
20 mark as Plaintiffs' Exhibit 83 a document  
21 bearing the Bates stamp Georgia State 932.  
22 (WHEREUPON, Plaintiffs' Exhibit 83 was marked for  
23 identification.)

24 Q (BY MS. SINGER) Do you --  
25 (Whereupon, there is a discussion off the record.)

1 Q (BY MS. SINGER) Ms. Burtle, do you recognize  
2 Plaintiffs' Exhibit 83?

3 A Yes.

4 Q And what is Plaintiffs' 83?

5 A It appears to be an email that Denise sent me  
6 in response to my question of April 17th on -- on the  
7 20 percent rule. It's not exactly an answer. I asked  
8 where the 20 percent came from and she responded with  
9 the current practice that she found.

10 Q Did you ever get an answer to the question on  
11 where the 20 percent came from?

12 A That's the thing I told you she verbally told  
13 me.

14 Q Okay. Aside from Plaintiffs' -- the emails  
15 of Plaintiffs' Exhibit 82 and eighty -- Plaintiffs' 83,  
16 do you recall any other written communications  
17 regarding the 20 percent rule?

18 A I don't recall any, no.

19 Q Okay. What is the status of the 20 percent  
20 rule today?

21 A We no longer use the 20 percent rule.

22 Q Has the 20 percent rule been replaced by  
23 anything?

24 A It's been replaced by the faculty doing an  
25 analysis of fair use using the checklist. And if they

1 determine it to be fair use, we accept it, unless it  
2 sets them off an alarm and...

3 Q Okay. Is it your testimony, then, that the  
4 20 percent is still used as -- as some kind of informal  
5 alarm threshold for the library?

6 A Not officially, I wouldn't be surprised if  
7 people who are used to the 20 percent are sensitive to  
8 that amount and it sets off an alarm for them, but it's  
9 certainly not something we instruct.

10 Q Okay. When the 20 percent rule existed prior  
11 to the new policy, who was responsible for enforcing  
12 the 20 percent rule?

13 A Denise Dimsdale was the first level of  
14 responsibility for that and handled most of the issues.

15 Q And what did handling the issues entail?

16 A Telling the faculty no.

17 Q Do you have a sense of how often she had to  
18 tell faculty no?

19 A No, I don't.

20 Q Did she ever escalate to you or to anyone  
21 instances in which the -- the faculty pressed even  
22 after they were told no?

23 A I don't recall any instances.

24 Q Okay. And if we look back at Plaintiffs' 81,  
25 it says, "20 percent. I only see the one chapter

1 stipulation." Was there a one chapter stipulation at  
2 Georgia State University prior to the new policy?

3 A Yes, one chapter or 20 percent.

4 Q How did that work, what if it was three  
5 chapters, but only 18 percent of a work?

6 A Say that again.

7 Q How -- what was the relationship between the  
8 20 percent and the one chapter? For instance --

9 A It -- it could be greater than one chapter if  
10 it was less than 20 percent.

11 Q Okay. And what if it was one chapter, but it  
12 was a short work that only had four chapters, so one  
13 chapter was 25 percent of the work?

14 A I don't know. By this guideline, it would  
15 have been the one chapter was done, but I don't know if  
16 the practice differed from that.

17 Q Okay. Did the -- what did --

18 A I want to amend that.

19 Q Please.

20 A I don't think they ever went over 20 percent.

21 Q Okay. How did the -- the 20 percent or one  
22 chapter -- how was that applied? Was that applied to  
23 just work by work? So, what I'm trying to ask is, if a  
24 professor had 20 different excerpts and they wanted to  
25 use them in four classes, did -- would you look at the

1 20 percent of the particular work for each of those  
2 classes -- strike that.

3 Did you have any rules about how -- whether a  
4 professor could post 20 percent of a work -- if -- if  
5 they wanted to post a different 20 percent of a work,  
6 they were teaching two classes in a semester, and they  
7 wanted to post 20 percent of a work for one class and a  
8 different 20 percent of the work for a different class  
9 they were teaching in the same semester, how would you  
10 have applied the 20 percent rule?

11 A We only looked at an individual course page.  
12 So if there were multiple sections of a book on an  
13 individual course -- individual course page, we would  
14 look at the cumulative effect, but not between course  
15 pages.

16 Q Okay. Thank you. I'm sorry, that was a bit  
17 of a tortured question.

18 MS. SINGER: If you would please mark as  
19 Plaintiffs' Exhibit 84 a document bearing the  
20 Bates stamp Georgia State 904.

21 (WHEREUPON, Plaintiffs' Exhibit 84 was marked for  
22 identification.)

23 Q (BY MS. SINGER) Do you recognize Plaintiffs'  
24 Exhibit 84?

25 A It's an email from me to several people about

1 BOR guidelines.

2 Q And BOR is Board of Regents?

3 A Correct.

4 Q Okay. So the subject of P84 says, "BOR says  
5 continued use is okay." And you write, "Yeah, I think  
6 the concern here is the Board of Regents' guideline as  
7 much as our practice." What -- what concern were you  
8 referring to there?

9 A The Complaint.

10 Q Okay. And you say, "A lot of schools pay a  
11 royalty after the first semester, but I don't see on  
12 what basis. Maybe some sort of case law." What were  
13 you referring to there?

14 A The various guidelines about fair use and  
15 educational fair use, I didn't see where this practice  
16 was based.

17 Q Did you do any research or ask anyone to do  
18 any research into where that paying a royalty after the  
19 first semester might have come from, the basis?

20 A Yes.

21 Q And what did -- what research did either you  
22 do or you ask to have done?

23 A I just looked around different Websites and  
24 different pieces of the -- the law, and the only  
25 location I identified, that was the CONFU guidelines

1 that were never actually enacted seemed to be where  
2 people got that from, but I didn't see any official law  
3 or agreement that ever indicated that.

4 Q Okay. As we sit here today, do you have an  
5 understanding of the basis for which other schools  
6 would pay royalties after the first semester?

7 A Well, I think our following CONFU guidelines  
8 didn't -- don't get -- have any issues, but I don't --  
9 I still don't see -- a fair use analysis might indicate  
10 that you have a problem, you should pay a royalty; and  
11 that's certainly one of the factors to consider, but  
12 it's not the only factor, so I don't know that that's a  
13 black and white question. It's going to vary from case  
14 to case.

15 Q Do you believe that should be a factor that  
16 Georgia State professors consider when they're doing  
17 their fair use analysis?

18 A It's part of the checklist, so certainly.

19 Q Okay. And just to be clear, the Board of  
20 Regents' guideline that we're talking about here is  
21 what you referred to, I believe, earlier this morning  
22 as having been superseded and no longer in effect; is  
23 that correct?

24 A Correct.

25 MS. SINGER: If you would please mark as

1           Plaintiffs' Exhibit 85 a document bearing the  
2           Bates stamp Georgia State 772.  
3           (WHEREUPON, Plaintiffs' Exhibit 85 was marked for  
4           identification.)

5           Q           (BY MS. SINGER) Ms. Burtle, do you recognize  
6           Plaintiffs' Exhibit 85?

7           A           It's an email from me to Charlene Hurt.

8           Q           And it's -- Plaintiffs' 85 is dated May 5th,  
9           2008, the subject is, "Another fair use statement."  
10          What were you referring to there?

11          A           I don't recall specifically, but given the  
12          date, I assume I was looking at what other schools had  
13          on their Websites about EReserves --

14          Q           Okay.

15          A           -- or about fair use.

16          Q           And you say in Plaintiffs' 85, "Not specific  
17          to EReserves but I like Principal 1, fair use is both  
18          technology and medium neutral." What do you like about  
19          that statement?

20          A           Reserves is reserves, and the fact that it's  
21          online doesn't make it not reserves. It's still  
22          reserves and it's still fulfilling the same function it  
23          always fulfilled.

24          Q           Do you believe that print reserves and  
25          EReserves should be treated the same way in terms of

1 copyright?

2 A I think primarily, yes, they're both subject  
3 to fair use analysis. Print reserves it comes up less  
4 because we're not taking pieces and parts, it's a whole  
5 book being checked out that falls under regular library  
6 practice that's, you know, existed for centuries, but,  
7 yeah.

8 MS. SINGER: If you would please mark  
9 as Plaintiffs' Exhibit 86 a document bearing  
10 the Bates stamp Georgia State 920.  
11 (WHEREUPON, Plaintiffs' Exhibit 86 was marked for  
12 identification.)

13 Q (BY MS. SINGER) Do you recognize Plaintiffs'  
14 86?

15 A It's an email from Terrence Manion to me.

16 Q And this Plaintiffs' 86, this email dated  
17 4/30/2008, subject Re: Law Library EReserve statement.  
18 And we see at the bottom of Plaintiffs' 86, earlier in  
19 the chain, Terrence Manion sending an email to you on  
20 April 28th, 2008 attaching a statement concerning the  
21 law library EReserve policy and procedures. Do you see  
22 that?

23 A Yes.

24 Q Do you know why Terrence Manion came to send  
25 you the law library EReserve policy on April 28th?

1           A       My assumption is that I asked him for it.

2           Q       Okay. And then you, in the return email  
3 dated April 30th, 2008, ask him to provide you with the  
4 rationale behind paragraphs 2, 3, and 5.

5           MS. SINGER: And in order to make this  
6 easier, why don't we mark, if you would,  
7 please, as Plaintiffs' Exhibit 87 a document  
8 bearing the Bates stamp Georgia State 669.

9 (WHEREUPON, Plaintiffs' Exhibit 87 was marked for  
10 identification.)

11          Q       (BY MS. SINGER) Do you recognize Plaintiffs'  
12 Exhibit 87?

13          A       It appears to be the policy referred to in  
14 the email in 86.

15          Q       Okay. And so you're asking -- in Plaintiffs'  
16 86, you're asking him for the rationale behind  
17 paragraphs 2, 3, and 5. So paragraph 2 of Plaintiffs'  
18 87 talks about presented with article citations or PDF  
19 documents, they will search Westlaw, Lexis, or Hein  
20 Online for links to the articles and then post the  
21 links to the appropriate course page. Do you see  
22 that?

23          A       Yes.

24          Q       Is that the -- is that the library's -- your  
25 library's current policy?

1           A       Current policy?

2           Q       Yes.

3           A       Yes.

4           Q       Was that your --

5           A       Well, not Westlaw, Lexis.

6           Q       Well, not Westlaw, Lexis, right. But to --  
7 if it -- if the article citation exists in an  
8 electronic form. At the time of Plaintiffs' 86 and 87,  
9 so that's April 2008, was that your library's policy?

10          A       No.

11          Q       Okay. Paragraph 3 of Plaintiffs' 87 says,  
12 "When presented with pages from a book, we will  
13 continue to post them unless they are for multiple  
14 chapters of the same book. If multiple chapters from  
15 the same book are requested, we will purchase the book,  
16 request copyright clearance, and then post the  
17 requested pages. Once we have received clearance,  
18 pages from multiple chapters of the same book will  
19 not" -- all caps -- "be posted in the EReserve system  
20 unless copyright clearance is obtained. Instead, the  
21 book will be placed on physical reserves located behind  
22 the reference desk." Is that your library's current  
23 policy?

24          A       No.

25          Q       Was that your library's policy in April of

1 2008, at the time this document was sent?

2 A No.

3 Q Okay. And by "your library," I'm just trying  
4 to distinguish from the law library.

5 A I understand.

6 Q I don't -- I don't mean to imply anything  
7 else.

8 Paragraph 5 of Plaintiffs' 87 says, "Finally,  
9 all materials will be deleted from the EReserve system  
10 one week after the conclusion of the relevant  
11 semester's exam period."

12 Was -- is that your library's current policy?

13 A Well, as I told you before, I'm not sure  
14 exactly what the timing after the semester is.

15 Q Sure.

16 A But we do delete by putting them in the  
17 archive, delete from active use.

18 Q Okay. And was that your library's policy in  
19 April or early May 2008?

20 A Yes.

21 Q Okay. In Plaintiffs' 86, in response to your  
22 request for clarification, Terrence Manion writes, "We  
23 link into Westlaw or LexisNexis rather than post an  
24 article or case in EReserves in part because it pushes  
25 the copyright issues onto the legal research service,

1 but a larger part of that decision is those research  
2 services allow students to print to dedicated printers  
3 for free." Do you see that?

4 A Um-hmm.

5 Q Were either of those rationales considered in  
6 your library's decision to change its policy?

7 A No.

8 Q Okay. In the third paragraph of Plaintiffs'  
9 86, Terrence Manion writes, "As for why we purchase the  
10 book if we post a chapter, make a book available on  
11 physical reserves rather than EReserves if multiple  
12 chapters are requested, and delete materials after the  
13 semester, while those decisions are governed by the  
14 guidelines, an argument can be made that the  
15 guidelines" are -- "are irrelevant because the  
16 publishers have never agreed to them, but in the  
17 absence of other guidance, we have applied the  
18 guidelines here."

19 Do you know what guidelines he was referring  
20 to?

21 A I believe he identifies those in the first  
22 paragraph. CONFU and AALL.

23 Q Okay. And those would be the same guidelines  
24 that you -- that we talked about a little bit earlier?

25 A Not AALL. That's the American Association of

1 Law Libraries, so we don't have anything to do with  
2 that.

3 Q That's not your problem, okay. But the CONFU  
4 guidelines are the same ones we discussed earlier?

5 A Yes.

6 Q Okay. And then in Plaintiff 86, Terrence  
7 Manion writes, "I have always been curious if doing so  
8 has led to greater copyright problems, as faculty who  
9 are frustrated or are unhappy with our practices post  
10 material themselves, completely taking the library out  
11 of the loop. We do not actively inspect law classes to  
12 see where and what they are posting, but if word gets  
13 to us, we will address it."

14 Do you have any concern that faculty -- GSU  
15 faculty who are frustrated or unhappy with the  
16 library's practices may post materials themselves?

17 A I have no way of knowing if they would do  
18 that.

19 Q Do you have any concern that they might?

20 A I would be concerned if faculty aren't  
21 following the policy that the Board of Regents has  
22 mandated.

23 MS. SINGER: Are we good or do -- okay.

24 Q (BY MS. SINGER) On Plaintiffs' 87, at the  
25 bottom there, it says, "my response to you, not to

1 him." Do you know who the -- the "my" of "my response"  
2 might be?

3 A No, I don't even know who -- no, I don't.

4 Q Okay. So, that's not you?

5 A Give me a minute to look at all of this.

6 Q Okay.

7 A It would appear to be me, although it's not  
8 completely clear. I don't know who this was -- who  
9 this was addressed to. And the font is weird, I don't  
10 use that font so -- but --

11 Q Okay.

12 A -- it's probably me. But I can't swear to  
13 that.

14 Q Do you know who you might have been talking  
15 to when you say "to you, not to him"? It says, "my  
16 response to you, not to him." Do you know who the "to  
17 you" might have been?

18 A If it is, indeed, my response --

19 Q Um-hmm.

20 A -- it was most likely my boss, Charlene Hurt.

21 Q Okay.

22 A But since I don't know if it was my words...

23 Q Fair enough. Where it says the multi -- I'm  
24 sorry, Plaintiffs' 87, at the very bottom, it says,  
25 "The multiple chapters I would be okay conceding,

1 although I don't like it," emoticon smiley face. Do  
2 you know if that -- would you be okay conceding  
3 multiple chapters?

4 MR. ASKEW: I'll object to the form of  
5 the question, it's vague.

6 THE WITNESS: Conceding multiple  
7 chapters to what?

8 Q (BY MS. SINGER) In the context -- would you  
9 agree with the statement, "The multiple chapters I  
10 would be okay conceding, although I don't like it"?

11 A The multiple chapters is irrelevant under our  
12 new policy because it's a fair use analysis that I'm  
13 not in the position to concede anything one way or the  
14 other.

15 Q Okay. One last question, and then we'll take  
16 a break to change the tape, just clean up.

17 Terrence Manion, M-A-N-I-O-N, is the director  
18 of IT and instructor of law and a librarian at Georgia  
19 State University College of Law?

20 A Correct.

21 MS. SINGER: Okay. Why don't we take a  
22 break so we can change the tape.

23 THE VIDEOGRAPHER: Off the record at

24 2:03:51.

25 (Whereupon, there was a brief recess.)

1 THE VIDEOGRAPHER: This is Tape 5. We  
2 are back on the record at 2:17:08.

3 MS. SINGER: Okay. If you would please  
4 mark as Plaintiffs' Exhibit 88 a document  
5 bearing the Bates stamp Georgia State 38881.  
6 (WHEREUPON, Plaintiffs' Exhibit 88 was marked for  
7 identification.)

8 Q (BY MS. SINGER) Do you recognize Plaintiffs'  
9 Exhibit 88?

10 A It's an email from Nancy Seamans to me about  
11 a University System of Georgia Webcast.

12 Q Do you recall whether you were able to attend  
13 the University System of Georgia Webcast referenced in  
14 Plaintiffs' 88?

15 A No, I did not attend this.

16 Q Okay. Do you know whether anyone from your  
17 staff attended?

18 A I don't know.

19 Q Okay.

20 MS. SINGER: If you could please mark as  
21 Plaintiffs' Exhibit 89 a document bearing the  
22 Bates stamp Georgia State 38883.  
23 (WHEREUPON, Plaintiffs' Exhibit 89 was marked for  
24 identification.)

25 Q (BY MS. SINGER) Do you recognize Plaintiffs'

1 Exhibit 89?

2 A Give me a minute to read this.

3 Q Sure, take your time.

4 A I kind of recall it. I do recognize it.

5 It's an email from Nancy Seamans to me about audio and  
6 video materials.

7 Q Okay. Plaintiffs' 89, Nancy Seamans writes  
8 to you at the top of the first page, "Laura, to provide  
9 a specific example, Jan is interested in using Eyes on  
10 the Prize as part of a hybrid class that he will be  
11 teaching in the spring. Who supports him in this,  
12 permissions, digitizing, server space, et cetera, and  
13 probably a conversation would be easier than an email."  
14 Do you see that?

15 A Yes.

16 Q Did you subsequently have a conversation with  
17 Ms. Seamans?

18 A I don't recall.

19 Q Okay. Who would support Jan for permissionS?

20 A I don't know.

21 Q Who would support him on digitizing?

22 A I believe Mike Russell's unit.

23 Q Okay. And who would support him for server  
24 space?

25 A That would be IS&T.

1 Q Okay. I am handing you what's been marked as  
2 Plaintiffs' Exhibit 17. And that is a PowerPoint  
3 entitled "Copyright in Instruction and the New USG  
4 Copyright Policy," dated February 23rd, 2009. Do you  
5 recognize Plaintiffs' 17?

6 A Yes.

7 MR. ASKEW: Do you know which deposition  
8 this was first used in? Was it Potter or  
9 Seamans?

10 MS. SINGER: Nan Seamans, my learned  
11 colleague tells me.

12 Q (BY MS. SINGER) Have you seen Plaintiffs' 17  
13 before?

14 A Yes.

15 Q When was that?

16 A This is the PowerPoint that accompanied the  
17 training on the new copyright policy that I attended.

18 Q Okay. Do you -- I don't recall if we  
19 discussed the date. Would February 23rd, 2009 have  
20 been the date you attended the training?

21 A It seems reasonable.

22 Q Okay. So this would have been before -- you  
23 would have received this training before you went to  
24 the RACL meeting and presented the policy to the other  
25 librarians?

1           A       Yes.

2           Q       Okay. Directing your attention to the page  
3 bearing the Bates stamp 21128. The second bullet point  
4 says, "Tools to assist in copyright and fair use  
5 analysis: See fair use checklist."

6                     What was your understanding of what tools are  
7 available to assist in copyright and fair use analysis?

8           A       The fair use checklist.

9           Q       Anything else?

10          A       Well, legal counsel, when needed.

11          Q       Okay. So other than legal counsel and the  
12 fair use checklist, are you aware of any other tools  
13 that are available to assist in copyright and fair use  
14 analysis?

15          A       I'm not aware of any.

16          Q       Okay. And the copyright and fair use  
17 analysis would be performed by the faculty; is that  
18 correct?

19          A       The faculty or whoever at the university was  
20 responsible for that, so it could be their graduate  
21 assistant or something like that.

22          Q       Okay. Somebody on the instructional side as  
23 opposed to the library, though?

24          A       Yes.

25          Q       Okay. And the fourth bullet point on page

1 21128 says, "Individuals to counsel faculty and staff:  
2 Office of legal affairs, others." What's your  
3 understanding of who the individuals who will counsel  
4 are?

5 A Currently, they are all people in the office  
6 of legal affairs.

7 Q Okay. When you say "currently," are you  
8 aware of any plans for there to be other people other  
9 than the office of legal affairs to counsel  
10 individuals?

11 A To counsel individuals?

12 Q Yeah.

13 A Not at this time, no.

14 Q Okay. If you would turn to page 21131, it's  
15 a statement of fair use. Do you see that?

16 A Yes.

17 Q Prior to this training, did you have an  
18 understanding of what fair use was?

19 A A general understanding, yes.

20 Q And what was your general understanding?

21 A Well, there's four factors that are  
22 considered.

23 Q Okay. Do you know what those factors are?

24 A Off the top of my head, I'll have to think a  
25 moment. The nature of the work, nature of the use, I

1 believe the amount of the work, and the market effect  
2 of the work.

3 Q Okay. Had --

4 A But I would use the checklist if I were going  
5 to actually do that.

6 Q Fair enough. Did this training change your  
7 understanding of what -- of the concept of fair use at  
8 all?

9 A No, not this training.

10 Q Okay. Did there come a time when your  
11 understanding of what fair use is changed?

12 A I learned more about fair use when I began  
13 doing a lot of research following the filing of the  
14 complaint.

15 Q So that would have been April of 2008-ish?

16 A And subsequently.

17 Q And subsequently, okay.

18 Do you know whether this PowerPoint,  
19 Plaintiffs' Exhibit 17, is the same PowerPoint that's  
20 used for training faculty members?

21 A I don't know.

22 Q Okay. And this training, I believe, is the  
23 one you testified took about two hours?

24 A Yes.

25 Q Okay. Okay. Let's look at the -- the fair

1 use checklist we've been talking so much about. I  
2 believe it has been previously marked as Plaintiffs'  
3 Exhibit 15, but because the version that was marked as  
4 Plaintiffs' Exhibit 15 apparently was filled in, we're  
5 going to mark it again as Plaintiffs' Exhibit 90.  
6 (WHEREUPON, Plaintiffs' Exhibit 90 was marked for  
7 identification.)

8 MR. ASKEW: Can you identify for me the  
9 source of this copy, is this one you-all  
10 made?

11 MS. SINGER: No, I believe -- yes, I  
12 will -- I will represent to you that what has  
13 now been marked as Plaintiffs' Exhibit 90 is  
14 a version that I downloaded from the  
15 University System of Georgia Website  
16 yesterday afternoon.

17 MR. ASKEW: Are you going to give it a  
18 document production number, or has it been  
19 given a document production number?

20 MS. SINGER: It's an excellent question.  
21 I will look into that for you, but for now,  
22 we'll mark it as Plaintiffs' Exhibit 90.

23 Q (BY MS. SINGER) This is somewhat  
24 disingenuous having heard my explanation, but do you  
25 recognize Plaintiffs' Exhibit 90?

1           A     Yes.

2           Q     And what is Plaintiffs' Exhibit 90?

3           A     This is the fair use checklist provided by  
4 the Board of Regents.

5           Q     Okay. Have you had occasion to review this  
6 checklist prior to today?

7           A     Yes.

8           Q     And what did that review entail?

9           A     Reading it, making sure I knew what the  
10 different items, different factors meant.

11          Q     You've taught classes at GSU; is that  
12 correct?

13          A     Yes.

14          Q     Are you currently teaching any courses?

15          A     No.

16          Q     Okay. When was the last time you taught a  
17 class at GSU?

18          A     I believe 2005. I'm not certain.

19          Q     Did you utilize ERes to post course readings  
20 for your course?

21          A     I don't -- I don't recall that I did. I'm  
22 not certain.

23          Q     What course did you teach?

24          A     Most frequently I taught a course called  
25 World Hunger Perspectives 2002. It was team taught.

1 Q Okay. And was perspectives the department  
2 that it was offered in or the type of course, what is  
3 perspectives?

4 A It's part of the general education  
5 curriculum. It's a type of course.

6 Q Okay. And who did you team teach that course  
7 with?

8 A Mildred Cody.

9 Q What department is Mildred in?

10 A Nutrition.

11 Q What -- what was the nature of the required  
12 reading for that class, by which I mean, did you have a  
13 textbook, did you have a Coursepack?

14 A The required reading for this course was all  
15 items that were available freely on the Internet.

16 Q And how did you communicate to the students  
17 which items available they should read?

18 A The syllabus.

19 Q So the syllabus just listed URLs or something  
20 like that?

21 A Correct.

22 Q Do you have any plans to teach that course  
23 again in the future?

24 A No.

25 Q Is that course still offered?

1           A       I don't know.

2           Q       So let's look at Plaintiffs' Exhibit 90. The  
3 instructions say, "Where the factors favoring fair use  
4 outnumber those against it, reliance on fair use is  
5 justified. Where fewer than half the factors favor  
6 fair use, instructors should seek permission from the  
7 rights holder."

8                       So that's fewer than half the factors, so  
9 that would be if only one factor is in favor of fair  
10 use, one or none?

11          A       That would be fewer than half.

12          Q       Okay. And then, "Where the factors are  
13 evenly split, instructors should consider the total  
14 facts weighing in favor of fair use as opposed to the  
15 total facts weighing against fair use in deciding  
16 whether fair use is justified."

17                       What do you understand would be involved in  
18 considering the total facts?

19          A       For each factor, the facts are the check  
20 boxes underneath or -- the facts determine how the  
21 check boxes underneath are checked.

22          Q       Okay.

23          A       Is that your question?

24          Q       Yes. So Factor 1, "the purpose and character  
25 of the use," in the "weighs in favor of fair use"

1 column, it says, "nonprofit educational." Do you see  
2 that?

3 A Yes.

4 Q Can you think of any situation in which a  
5 faculty or instructor at Georgia State University would  
6 not check the box nonprofit educational?

7 A No.

8 Q Okay. Next to that, in the "weighs against  
9 fair use" column of Plaintiffs' Exhibit 90, it says,  
10 "commercial activity."

11 Can you think of a -- any case in which a  
12 Georgia State University professor or faculty member  
13 would ever check commercial activity?

14 A I'm going to say no, but I want to qualify  
15 that.

16 Q Sure.

17 A In the context of EReserves.

18 Q Sure, sure.

19 A What they do outside of EReserves could vary.

20 Q Of course. We'll -- we'll -- we can  
21 stipulate that all of my questions are meant to be in  
22 the context of EReserves.

23 A Okay.

24 Q Can you -- do you think any of the factors in  
25 the weighs in favor of fair use category are more

1 important or less important? Do you have a -- do you  
2 have an opinion about which of the factors in the  
3 weighs in favor of fair use column are most important,  
4 or are they all equal?

5 A There's not an indication that anything is  
6 more important than anything else in the facts under  
7 the factor.

8 Q In your opinion, though, are any of them more  
9 important, or are they all equally important?

10 A I think they're all important.

11 Q Okay. So you think you would weigh all of  
12 the factors in the weighs in favor of fair use column  
13 equally?

14 A Generally speaking. I don't think they're  
15 all equally relevant for EReserves.

16 Q Okay. In the context of EReserves, do you  
17 believe they're all equally important?

18 A Well, EReserves is not multiple copies for  
19 classroom use, so that would not be as important.

20 Q Okay.

21 A Personal study, that would be important, in  
22 the context of EReserves, if it's for personal study,  
23 it doesn't -- it's not course -- it's not an  
24 appropriate use of EReserves, so, no.

25 Q Okay. So you're interpreting personal study

1 as not being -- who's -- strike that.

2 Who is the -- who is the person in personal  
3 study?

4 A That's --

5 Q In your opinion?

6 A It's the student --

7 Q Okay.

8 A -- for the purpose and character of the use  
9 because the use is a student using this in a course.

10 Q So when the professor is filling out the fair  
11 use checklist, who -- who should the professor consider  
12 the -- the personal study to be?

13 A I can't make sense of the question in the  
14 context of -- of EReserves.

15 Q Okay. Does this fair use checklist give any  
16 guidance as to the meaning of any of the factors that  
17 are listed? Does it provide -- does it provide any  
18 explication of who the person in personal study would  
19 be, for example?

20 A No, I don't believe it does. The checklist  
21 does not, no.

22 Q Okay. Do you know if there's any tools  
23 available to GSU faculty members that they -- if they  
24 wanted help in understanding who the person in personal  
25 study was, how would they get that information?

1           A     Legal.

2           Q     Okay.  Let's say in filling out this  
3 checklist, let's say we're talking about, I don't know,  
4 we'll take Blassingame's slave -- the slave -- I don't  
5 remember the title -- Slave Community work.  Let's say  
6 I am a -- I'm teaching African-American family and I  
7 want to post six chapters from the Blassingame slave  
8 game work, okay?  How -- can you run through the  
9 checklist, can you help me think through the checklist  
10 how to apply that?  Would that be not profit  
11 educational use?  I'm a professor at GSU and I want to  
12 use six chapters from Blassingame's slave game.

13          A     Yes.

14          Q     That would be nonprofit.  It would be -- what  
15 about the factor teaching, including multiple copies  
16 classroom use?

17          A     I'm -- I'm not the faculty, so I assume the  
18 faculty is teaching, but --

19          Q     Okay.  How about research or scholarship?

20          A     I don't know what the goal of the use of the  
21 work is for the learning outcomes for the class, so I  
22 don't know if the goal was for research or scholarship  
23 or not.

24          Q     Okay.  Let's take another example, then.  
25 You're teaching -- let's say you're teaching

1 Perspectives World Hunger again for spring -- I'm  
2 sorry, summer 2009 and you want to post four chapters  
3 from an anthology that includes readings on hunger.  
4 Would you consider that to be nonprofit educational  
5 use?

6 A Yes.

7 Q Okay. Would you consider that to be  
8 teaching, including multiple copies for classroom use?

9 A Yes.

10 Q Would you consider that to be research or  
11 scholarship?

12 A It would depend on what I wanted the students  
13 to do with it, but most likely I would expect them to  
14 be doing research and something scholarly with what I  
15 was asking them to read.

16 Q That would be the hope and the intention,  
17 right?

18 Would you consider it to be criticism,  
19 comment, news reporting, or parody?

20 A It would depend on what my outcome was.

21 Q Okay. What about would you consider posting  
22 six chapters from the anthology to be transformative?

23 A No.

24 Q Okay. Would you consider it to be personal  
25 study?

1           A     No.   Still not sure what that means.

2           Q     Okay.  Would you -- let's say you've --  
3 you've looked at this and you've decided the use is  
4 necessary to achieve your intended educational purpose.  
5 How would you -- let me change my question.

6                     How would you decide whether the use was  
7 necessary to achieve your intended educational purpose?

8           A     I would use my knowledge of the discipline  
9 and the book and what works are out there to determine  
10 whether it was necessary.

11          Q     Okay.  What if you looked at it and you said,  
12 "Gosh, probably I could get away with only using four  
13 chapters, I don't need all six chapters," and so that  
14 factor weighed against fair use, okay?  You would get a  
15 check for use exceeds that which is necessary to  
16 achieve your intended educational purpose?  Are you  
17 following me?

18          A     Say -- say it again.

19          Q     Let's say you checked the first -- one, two,  
20 three, four, five -- six factors in favor of fair use.

21                     MR. ASKEW:  Just a second, two, three,  
22 four -- you've just gone through it and she  
23 didn't do that.

24                     MS. SINGER:  Okay.

25                     MR. ASKEW:  You're asking her to

1 change -- because she didn't check  
2 transformative, she didn't check personal  
3 study, she's not sure about criticism.

4 MS. SINGER: Okay. Well, let's -- let  
5 me change my hypothetical, then.

6 MR. ASKEW: All right.

7 Q (BY MS. SINGER) Let's assume you checked all  
8 six factors, okay?

9 A Okay.

10 Q And then --

11 MR. ASKEW: There's seven. I'm -- I --  
12 there's seven there, which six did you think  
13 she --

14 MS. SINGER: The first six, which is  
15 what I meant when I said "the first six."

16 Q (BY MS. SINGER) So let's assume you checked  
17 the first six factors under "Purpose and character of  
18 use" in Factor 1 on Plaintiffs' Exhibit 90, okay?

19 A Okay.

20 Q But then you look at it and you say, "Six  
21 chapters is really too many, I don't need all six  
22 chapters to achieve my intended educational purpose."

23 So in the column "weighs against fair use,"  
24 you check the last factor, "use exceeds that which is  
25 necessary to achieve your intended educational

1 purpose." Do you see that?

2 A Yes.

3 Q How would you then, at the end of the day,  
4 weigh Factor 1, if you have the first six boxes checked  
5 in "weighs in favor of fair use" column and the last  
6 box in the "weighs against fair use column" checked?

7 A It's hard to know that without knowing why I  
8 would want someone to read six chapters if it's more  
9 than I need to -- to achieve my intended educational  
10 purpose, so I would ask myself why I'm doing that.

11 Q Okay. Say you just liked -- you came up with  
12 a reason, that, you know, it wasn't absolutely  
13 necessary, but they were useful and they provided good  
14 information and you decided you were going to offer  
15 them anyway, how would Factor 1 come out?

16 A It would weigh in favor of fair use.

17 Q Okay. Can you think of -- before we turn the  
18 page, any -- in the context of EReserves, can you think  
19 of any -- the situation in which you might check the  
20 profiting from use box?

21 A No.

22 Q Can you think of any context in which you  
23 might check the entertainment box in the context of  
24 EReserves?

25 A Theoretically, yes.

1 Q Okay. How about the nontransformative box;  
2 do you think you would check that in the context of  
3 EReserves, is there any situation in which you can  
4 imagine checking that?

5 A Yes.

6 Q Okay. How about for publication in the  
7 context of EReserves?

8 A No.

9 Q How about for public distribution in the  
10 context of EReserves; would you ever check that box?

11 A No.

12 Q In your opinion, is it important to have  
13 factors that you would never check in the context of  
14 EReserves listed?

15 A For the checklist, it's because this is not  
16 only for EReserves.

17 Q What else is this checklist designed to be  
18 used for, to the best of your knowledge?

19 A Any faculty use of published material.

20 Q Okay.

21 A Or not -- any university use.

22 Q Fair enough.

23 Okay. Let's look at page 2 of Plaintiffs'  
24 Exhibit 90. It says, "Factor 2, the nature of the  
25 copyrighted work."

1           Are there -- are you aware of any instances  
2 in which unpublished works have been posted on  
3 EReserves?

4           A     Yes.

5           Q     Okay. Are you aware of any instances in  
6 which consumable works, workbooks or tests, have been  
7 posted to EReserves, copyrighted consumable works?

8           A     I'm not aware one way or the other.

9           Q     Is there a policy one way or the other about  
10 posting consumable works?

11          A     I don't know that there is, we certainly  
12 don't purchase them for the library, so it's unlikely  
13 we ever would post them, since we don't purchase them.

14          Q     Okay. In -- in my example, you're -- let's  
15 say you're posting the four chapters that you think are  
16 absolutely necessary of the anthology for your  
17 perspectives in world hunger course. How would we  
18 apply the checklist then, would that be a published  
19 work?

20          A     Yes.

21          Q     Okay. It would be a factual or a nonfiction  
22 work?

23          A     In this circumstance, yes.

24          Q     Okay. And it would be important to your  
25 educational objectives?

1           A     Yes.

2           Q     Okay. Can you think of any situation in  
3 which a faculty member would post something to  
4 EReserves that's not important to their educational  
5 objective?

6           A     I hope not.

7           Q     Okay. "Factor 3, the amount and  
8 substantiality of the portion used." In the -- the  
9 first column in "weighs" in fact -- "in favor of fair  
10 use," it says "small portion of work used." Do you see  
11 that?

12          A     Yes.

13          Q     What's your understanding of what a small  
14 portion would mean?

15          A     Not a substantial bit of the -- of the book  
16 or of the work.

17          Q     Do you have any understanding of what that  
18 means, not a substantial portion?

19          A     I think it varies from work to work. It  
20 plays into the next one as well.

21          Q     And by "next one," you mean "portion used is  
22 not central or significant to the entire work as a  
23 whole"?

24          A     Um-hmm.

25          Q     Okay. The last factor in that column,

1 "amount taken is narrowly tailored to educational  
2 purpose, such as criticism, comment, research, or  
3 subject being taught." Do you see that?

4 A Yes.

5 Q Can you imagine any circumstance in which a  
6 professor or faculty member is trying to post something  
7 to EReserve that would not be narrowly tailored to the  
8 educational purpose?

9 A No.

10 Q Okay. Are all the factors or all of the --  
11 all three items listed in Factor 3 in the weighs in  
12 favor of fair use column of the checklist, are all  
13 those equally important in the context of EReserves?

14 A Yes. I think in that case, I would say yes.

15 Q Okay. How about in Factor 2 in the "weighs  
16 in favor of fair use" column, are all three of those  
17 factors equally important in the context of EReserves?

18 A I'm not sure I can say that about Factor 2  
19 because the published or unpublished is a -- is a  
20 question that depends on the work very highly.

21 Q How does it depend on the work?

22 A Faculty members often have unpublished works  
23 that they want their students to read.

24 Q So how would that affect whether or not --  
25 how you weigh the factor?

1           A       The -- the factor is important. No, I think  
2 they are equally important. My concern is -- is  
3 faculty owned copyright, in which case this isn't  
4 necessary anyway.

5           Q       Okay. How about Factor 4, "the effect on the  
6 market for the original"; do you believe that all of  
7 the factors listed to consider for Factor 4 are equally  
8 important?

9           A       You'll have to give me a moment to go through  
10 them.

11          Q       Sure, take your time.

12          A       So can you repeat your question?

13          Q       Do you believe that all of the individual  
14 factors listed under Factor 4 are of equal importance?

15          A       I think it will depend on the work, they  
16 potentially are.

17          Q       Okay. The first entry in the column "weighs  
18 in favor of fair use" under Factor 4 says "no  
19 significant effect on market or potential market for  
20 copyrighted work." What do you understand that factor  
21 to mean?

22          A       That using this work does not affect the  
23 overall market for the work.

24          Q       So in the hypothetical where you're posting  
25 four chapters from the anthology for your world hunger

1 course, how would you evaluate whether there's a  
2 significant effect on the market?

3 A Well, is the book available?

4 Q Yes.

5 A Is there licensing? I mean, I think these  
6 all play together to determine that. They're not --  
7 the questions underneath often -- the factors  
8 underneath often determine the factor at the top.

9 Q Okay. So if licensing is available for it?

10 A Is it something that is widely used?

11 Q Yes.

12 A I mean, these are the questions that --

13 Q Sure.

14 A -- I would --

15 Q Sure.

16 A -- ask myself.

17 Q Okay.

18 A I'm not -- I'm not asking you for answers  
19 necessarily.

20 Q No, no, no. I'm pretending I'm you and  
21 I'm --

22 A Okay.

23 Q -- answering them --

24 A Okay.

25 Q -- for purposes this question.

1           A       Without the work in front of me and  
2 knowing --

3           Q       Right.

4           A       -- the context and the discipline, it's hard  
5 to know, but --

6           Q       Of course.

7           A       -- these are the kinds of things that I would  
8 consider.

9           Q       Of course. So what if you determined that it  
10 was still in print, there was licensing available?

11          A       Again, it would just depend on how -- is this  
12 the kind of work that people would purchase -- purchase  
13 widely minus it being available on ERes, minus it being  
14 made available in whatever I'm doing with it.

15          Q       So are you saying that what you're looking at  
16 is would students purchase the work if you hadn't made  
17 those four chapters available?

18          A       Well, not my particular students, but  
19 students in general. Is this something that many  
20 people purchase?

21          Q       How is the --

22          A       Is the market -- is the market rich, are  
23 there lots of -- is it widely available and widely  
24 used?

25          Q       How would you use that information in making

1 your analysis?

2 A Well, if it is, then I do think it would  
3 probably have a -- potentially have an impact.

4 Q Am I understanding you to say -- I want to  
5 make sure I understand. Are you saying that if it's a  
6 rich market, there's a lot of people who purchase the  
7 book, posting, say, four chapters that you've  
8 determined to be necessary to your educational purpose,  
9 would that have an effect on the market or -- a  
10 significant effect on the market?

11 A It could, but I think it depends on my use.  
12 I mean, the market is a rather broad category.

13 Q How -- how would you define the -- the market  
14 as it's used in Factor 4 here on the fair use  
15 checklist?

16 A The overall purchasing power or the overall  
17 use -- paying for the book, the entire work overall in  
18 its -- in its published form.

19 Q And by whom would you include, who would be  
20 the potential purchasers?

21 A Library, student, faculty members, people who  
22 think this is a fascinating subject.

23 Q Would you include licensing as well as  
24 purchasing?

25 A Licensing is a narrow -- narrower issue, if

1 you're not affiliated with a -- I think it's unlikely a  
2 random person out there would license access to a piece  
3 of a book.

4 THE COURT REPORTER: Say that again for  
5 me, please.

6 THE WITNESS: It's unlikely that a  
7 person just unaffiliated out there in the  
8 market generally would purchase a licensed  
9 piece of a book.

10 Q (BY MS. SINGER) Okay. Would you think that  
11 a university use -- might a university -- strike that.

12 Are there any circumstances under which you  
13 can imagine that a university would take a license for  
14 a -- a piece of a published book, would license the  
15 use?

16 A A university?

17 Q Um-hmm.

18 A Sure.

19 Q Okay. So would, then, licensing be a  
20 potential -- part of the potential market?

21 A Yes.

22 Q Okay. And if you were to decide that it was  
23 to put this -- these four chapters on EReserves, do you  
24 think that that would have a -- a significant effect on  
25 the potential market?

1           A       I can't answer yes or no without a work in  
2 front of me that I know the market for.

3           Q       Okay. What if -- what if every faculty  
4 member -- how many -- we've said about a thousand  
5 faculty members, is that --

6           A       It's an approximation.

7           Q       Approximately. If all thousand faculty  
8 members at Georgia State University fill out this  
9 checklist for every single one of their readings and  
10 they all determine that all of their readings are fair  
11 use, do you think that would have a significant effect  
12 on the market?

13                   MR. ASKEW: I'll object to the form of  
14 the question as vague. Market for what?

15                   MS. SINGER: Market as the term is used  
16 in Plaintiffs' Exhibit 90, which is the  
17 University System of Georgia's checklist.

18                   MR. ASKEW: Are you telling me that all  
19 thousand members of the faculty are going to  
20 be looking at the same work in their  
21 analysis? That's why understand your  
22 question.

23                   MS. SINGER: Well, I'm not telling you  
24 anything.

25                   MR. ASKEW: I've made the objection.

1 MS. SINGER: I'm asking her a question.

2 MR. ASKEW: I'm just telling you I think  
3 it's vague.

4 THE WITNESS: Can you ask the question  
5 again, please?

6 Q (BY MS. SINGER) Sure. Let's say that for  
7 all -- all 4,000 works that are currently on EReserves,  
8 okay, approximately 4,000 excerpts that are currently  
9 on EReserves, okay?

10 A Okay.

11 Q The professors -- we're going to repeat the  
12 semester and they're going to do the fair use --  
13 they're going to go through the fair use checklist for  
14 every single one of those works, which they need to do  
15 under the new policy, correct?

16 A Correct, well, for things that they don't own  
17 the copyright, but --

18 Q For things -- okay. Let's say there's 4,000  
19 works and the professors are all going to do the fair  
20 use analysis on them and they're going to determine  
21 that every single one of those 4,000 uses qualifies as  
22 fair use. Do you think that would have a -- an  
23 significant effect on the market or potential market  
24 for copyrighted work?

25 A But you have to look at it on the individual

1 item one by one, and it may or may not, depending on  
2 how it's used, how many students are in the class,  
3 how -- you know, I don't think you can look at it as a  
4 whole because this is a case-by-case basis.

5 Q So do I understand you to be saying, then,  
6 that as long as each case-by-case use is determined to  
7 be fair use, it doesn't matter if nobody ends up buying  
8 the textbook ever again because every single individual  
9 person has determined it to be fair use?

10 A Well, textbooks aren't generally put on  
11 reserve because they're required reading of the whole  
12 thing, but if you're speaking of supplemental readings,  
13 yes, that's what I'm saying.

14 Q Okay. Would you -- do you have a view on the  
15 ability of a faculty member who has not yet received  
16 the training or has not studied the literature on fair  
17 use very extensively, do you think they're able to  
18 perform a meaningful analysis of these factors?

19 A It would depend on the faculty member, some  
20 yes, some no. I think most faculty members, if they  
21 didn't know what they were doing, would seek advice  
22 before they did it.

23 Q Okay.

24 MS. SINGER: If you would mark as  
25 Plaintiffs' Exhibit 91 a document bearing the

1 Bates stamp Georgia State 928.

2 (WHEREUPON, Plaintiffs' Exhibit 91 was marked for  
3 identification.)

4 Q (BY MS. SINGER) Do you recognize what's been  
5 marked as Plaintiffs' Exhibit 91?

6 A Yes, it's information sent to me from Denise  
7 Dimsdale.

8 Q Okay. And this is an email dated May 8th,  
9 2008, with the subject "some answers." Do you see  
10 that?

11 A Yes.

12 Q Okay. And we see the first line of  
13 Plaintiffs' 91 is Denise saying she's still looking  
14 into how many of the books on EReserve have 20 percent  
15 posted versus less than that. Do you see that?

16 A Yes.

17 Q Do you know whether she was ever able to  
18 figure out a way to answer that question?

19 A I don't recall ever receiving an answer to  
20 that, but I may just not recall.

21 Q Fair enough. Okay. And then it's -- the  
22 next paragraph of Plaintiffs' 91 says, "How many items  
23 are on reserve the spring semester 2008? The library  
24 posted about 367 course pages containing about 4,300  
25 items." Do you see that?

1           A       Yes.

2           Q       Does that number -- has that been consistent,  
3 to the best of your knowledge, for the period you've  
4 been responsible for EReserves?

5           A       I have not looked at the numbers prior to the  
6 complaint being filed, but I have no reason to think  
7 differently, but I do not know.

8           Q       Okay. And then it says, "Of those, how many  
9 are not actively for a class, but posted for a  
10 professor to look at?" What -- what -- what did you  
11 mean by that when you asked the question?

12          A       She told me verbally that sometimes they will  
13 renew a page so a professor can see what they had on  
14 reserve when they're planning their next semester. So  
15 I asked her is that something that happens all the  
16 time, or is that just an occasional thing, and that was  
17 the response.

18          Q       Okay. Is it your understanding that under  
19 the new policy, will that occur?

20          A       No, it will not.

21          Q       Okay. One, two, three -- the fifth paragraph  
22 down on Plaintiffs' Exhibit 91, towards the end of the  
23 paragraph, it says -- they're talking about needing to  
24 use an original item and not scanning anything that  
25 comes -- "looks like it came from ILL or GIL Express,

1 we will not scan it." And she says in the middle of  
2 that paragraph, "I think that part of the idea behind  
3 this seem to be that we are not offering anything on  
4 ERes that we would not have offered on physical reserve  
5 if ERes didn't exist." Do you see that?

6 A Yes.

7 Q Do you agree with that statement?

8 A Yes.

9 Q Okay. "But we are more limiting with ERes."  
10 Would you agree with that statement?

11 A Yes.

12 Q Okay. "Also, by owning the original item, we  
13 have paid for some copyright use." Do you see that?

14 A Yes.

15 Q What's your understanding of what copyright  
16 use has been paid for by owning the original item?

17 A Libraries have a -- a section in copyright  
18 law that allows them to buy an item and lend it out to  
19 multiple people, buy once and lend multiple times.

20 Q Okay. And then it says in Plaintiffs'  
21 Exhibit 91, "We are willing to post material that does  
22 not meet our fair use guidelines if the instructor  
23 brings a detailed permission letter from the copyright  
24 holder or a receipt showing that licensing to make the  
25 item available on ERes was paid, but the instructors

1 just say never mind when we ask for this." Do you see  
2 that?

3 A Yes.

4 Q Okay. And then she -- the next line is -- I  
5 assume it's your question, "Are many of the books on  
6 ERes from the reference collection?" Is that your  
7 question?

8 A Yes.

9 Q And the answer was, "No, approximately 1  
10 percent." What -- where would the other 99 percent of  
11 the books on EReserve have come from?

12 A The general collection, the circulating  
13 collection.

14 Q Oh. Okay. Am I understanding, then, that  
15 there's a difference between the reference collection  
16 and the general collection?

17 A Yes.

18 Q And what's -- how would you characterize that  
19 difference?

20 A Reference collection is -- is books like  
21 encyclopedias, directories, reference books.

22 Q Okay. And those are books that someone can't  
23 come into the library and check out if they wanted to?

24 A Correct, they are inhouse use.

25 Q Is that -- is the reference collection

1 different from the print reserves that we talked about  
2 before? I think you said there were three shelves of  
3 books behind the counter that the professors would put  
4 on reserve. Is that different than the reference  
5 collection?

6 A Yes.

7 Q Okay. In the last paragraph on the -- on  
8 Plaintiffs' 91, it says, "Instructors are not allowed  
9 to manage their own EReserves page. We experimented  
10 with allowing instructors to manage their pages without  
11 about five instructors back when we first started using  
12 the system." And that -- that was before your --  
13 before you had responsibility for the ERes system,  
14 right?

15 A Yes.

16 Q Okay. And then she goes on to say in  
17 Plaintiffs' 91, "It wasn't working out very good, as  
18 they wanted to just post anything." Do you see that?

19 A Yes.

20 Q And so she says, "We took away the access  
21 from all of the experimental professors except for  
22 Professor Eilertson. She made a fuss about not being  
23 able to manage her own page and Liz Bagley said it  
24 would be a good idea to go ahead and let her do it, but  
25 keep an eye on her pages." Who is Liz Bagley?

1           A       She was my predecessor over that area before  
2 I was.

3           Q       Is she still at Georgia State University?

4           A       No.

5           Q       Do you know when she left?

6           A       I believe she left probably -- no, I don't  
7 know.

8           Q       Okay. Have you ever had occasion to look at  
9 Professor Eilertson's course reserve pages?

10          A       No.

11          Q       Do you have any understanding of whether she  
12 still has control over her pages?

13          A       I instructed Denise to take away her control.

14          Q       And why was that?

15          A       I did not want any faculty member to have  
16 different -- different privileges than any other one.

17          Q       Okay. If the library now is not doing any --  
18 it's not applying the -- the 20 percent or one chapter  
19 rule, if the library -- let me ask you this: Is -- is  
20 the library relying entirely on the professor having  
21 gone through the fair use analysis and using the fair  
22 use checklist to determine what's appropriate to post  
23 on their EReserve page?

24                 MR. ASKEW: I'll object to the form of  
25 the question as vague as to "relying

1           entirely." What do you mean by that?

2           THE WITNESS: No, not entirely.

3           Q       (BY MS. SINGER) Okay. What other factors  
4 does the library look at before deciding whether to  
5 post something to a professor's course reserves page?

6           A       As I told you earlier, they do a gut check,  
7 you know, this doesn't feel right, this seems like too  
8 much, and they will refer it to me or to legal.

9           Q       Is there any reason under the new policy not  
10 to allow professors just to post whatever they want to  
11 the library -- to the -- I'm sorry, to their course  
12 reserve page?

13          A       Yes.

14          Q       And what's that reason?

15          A       Because they need to post things that are  
16 eligible to be posted under one of the criteria that we  
17 have identified, fair use or they've paid...

18          Q       But if the professors are making that  
19 determination themselves anyway, why can't they then  
20 just post it to the course reserves page after they've  
21 made that determination?

22          A       Well, in many cases, we scan the item for  
23 them, would be one reason. We also find the link for  
24 them, would be another reason. We like the gut check  
25 kind of -- of response. We also organize the pages for

1 them. We do a lot of work to make the material easier  
2 to read -- easier to use for the student, that faculty  
3 don't do and then we end up with the upset students.

4 Q But if you had a very technically savvy  
5 faculty member who was able to organize it very well  
6 and -- and was able to do their own scanning or find  
7 their own links, is there any reason why they shouldn't  
8 be able to post it -- they shouldn't be able to post  
9 things to their own course reserves page?

10 A I don't know enough about all the steps  
11 involved and all the mechanics to answer that.  
12 Theoretically, I suppose not, but I don't see it  
13 happening.

14 MS. SINGER: Are we -- how are we doing  
15 on tape? Okay. Why don't -- this is  
16 actually a good point, why don't we take a  
17 break for a few minutes and let me get my  
18 notes together, because I think we've  
19 probably got another half hour, 45 minutes.

20 THE VIDEOGRAPHER: Off the record at  
21 3:08:05.

22 (Whereupon, there was a brief recess.)

23 THE VIDEOGRAPHER: This is Tape 6, we  
24 are back on the record at 3:26:34.

25 MS. SINGER: Okay. If you would please

1 mark as Plaintiffs' Exhibit 92 a document  
2 bearing the Bates stamp Georgia State 21184  
3 through 21196.

4 (WHEREUPON, Plaintiffs' Exhibit 92 was marked for  
5 identification.)

6 Q (BY MS. SINGER) Do you recognize Plaintiffs'  
7 Exhibit 92?

8 A Yes.

9 Q Okay. Can you -- can you tell me what we're  
10 looking at with Plaintiffs' 92?

11 A This is the first run at revising our  
12 EReserves or our reserves Web pages.

13 Q Okay. And when you say "first run," were  
14 there subsequent -- subsequent -- I don't want to use  
15 the word attempts, but subsequent changes made to  
16 the --

17 A Yes, this is not the final version.

18 Q Okay. Thank you.

19 So you started -- it looks like the date on  
20 the first page of Plaintiffs' 92 is an email from you  
21 dated February 11th, 2009. Does that sound about right  
22 from when you might have started this?

23 A Probably a few days before then, but yes.

24 Q Okay. Okay. Fair enough. The second page  
25 of Plaintiffs' 92 with the Bates stamp 21185, which the

1 title at the top says, "Electronic Reserves Request  
2 Form." Which version are we looking at here? Is  
3 this --

4 A What do you mean?

5 Q -- the current version, is this an interim  
6 version, is this what's on the Website today?

7 A No, this was never on the Website.

8 Q This was never on the Website, okay.

9 So this -- what is the second page of P92?

10 A This is a draft during the process we went  
11 through updating our reserves pages.

12 Q Okay. The third page of P92, it says,  
13 "Georgia State 21186." In the first number there, it  
14 says, "Check to see if the library already has a  
15 license for the electronic version by using the  
16 electronic journal locator or GIL for a book. If you  
17 would like help determining if an item is licensed,  
18 please send the citation to <mailto:libreserves>" --  
19 L-I-B-R-E-S-E-R-V-ES -- at landscape --  
20 "langate.gsu.edu." Do you see that?

21 A Yes.

22 Q Is that section that I just read currently on  
23 the Website?

24 A I don't know if it's word for word identical,  
25 but something similar.

1 Q Okay, something like that in concept.

2 My question is, who answers the email address  
3 libreserves@langate.gsu.edu?

4 A That goes to the members of the reserves  
5 department.

6 Q Okay.

7 A For this particular item, this particular  
8 number, if they have difficulty with that, they send it  
9 back up to me and I will either try to find it myself  
10 or I will send it to the subject liaison that's  
11 responsible for the databases and journals in that area  
12 and may have a better sense of how to find something.

13 Q Okay. And so that's currently the email  
14 address to which questions about whether the library  
15 has an electronic version of something are directed at?

16 A If it's an EReserves question.

17 Q EReserves question, sorry. Thank you.

18 If you turn a little bit later in Plaintiffs'  
19 92 to the page that has the Bates stamp 21191. It  
20 looks to be a redline of some kind?

21 A Yes, it does.

22 Q Do you know what -- what you were redlining  
23 against, what was the original that you were creating  
24 the redline off of, do you know, do you recall?

25 MR. ASKEW: I'll object, it assumes

1 facts I don't think are in evidence as to  
2 whether she was the one that did this  
3 redline.

4 THE WITNESS: I'll affirm I did do this  
5 redline, I'm almost certain. And I believe  
6 it's the old reserves page.

7 Q (BY MS. SINGER) Okay. And the -- the markup  
8 here is -- again, is -- is this what's on the Website  
9 today, or this was an interim version that never  
10 appeared --

11 A This is an interim version, I don't know  
12 exactly how it compares to what's on the Website today.

13 Q Okay. Okay. We can put that exhibit aside,  
14 then.

15 MS. SINGER: If you would please mark as  
16 Plaintiffs' Exhibit 93 a document bearing the  
17 Bates stamp Georgia State 21231.

18 (WHEREUPON, Plaintiffs' Exhibit 93 was marked for  
19 identification.)

20 Q (BY MS. SINGER) Do you recognize Plaintiffs'  
21 93. Take your time to look at it, if you need to.

22 A Yes.

23 Q What is Plaintiffs' 93?

24 A It is Nancy Seamans' response to my request  
25 for her edits to the draft version.

1 Q Okay. How can we tell on Plaintiffs' 93  
2 which comments are -- are yours and which comments are  
3 her response?

4 A I don't know that you can.

5 Q Okay. Who -- you see in the margins of P-93,  
6 at the very beginning there, there's a -- it says,  
7 "Comment D1, maybe always capitalize reserve or never  
8 capitalize reserve." Was that her comment?

9 A Yes.

10 Q Okay. And just to make sure I understand,  
11 Plaintiffs' 93 is Nancy Seamans' response to your  
12 redline in Plaintiffs' 92?

13 A Yes, 92 and 93 are working versions --

14 Q Okay.

15 A -- not final versions.

16 Q Okay.

17 MS. SINGER: If you would please mark as  
18 Plaintiffs' Exhibit 94 a document bearing the  
19 Bates stamp Georgia State 21157 through  
20 21158.

21 (WHEREUPON, Plaintiffs' Exhibit 94 was marked for  
22 identification.)

23 Q (BY MS. SINGER) Do you recognize Plaintiffs'  
24 Exhibit 94?

25 A It appears to be a forwarded email exchange

1 that I -- yeah, between directors at Georgia State,  
2 Georgia Tech, and University of Georgia, and was sent  
3 to me and it was sent to Kristen Swift.

4 Q Okay. Do you see about -- about a third of  
5 the way down the page on Plaintiffs' 94, Nancy Seamans,  
6 2/17/2009, it looks like it's addressed to you, it  
7 says, "Laura, I think that it is Bob Fox that Catherine  
8 tapped to work with you on this. Let me know if you  
9 want to talk about it. I'm inclined to postpone  
10 working on what you've pulled together until after  
11 you've run it by Bob and Viki, but would also be glad  
12 to explain to both of them what I'm asking for.  
13 Thanks."

14 Is that an email that was -- are you the  
15 Laura to whom that is addressed?

16 A Yes.

17 Q Okay. What is it that you've been tapped to  
18 work on here?

19 A Revising our Web pages. The directors at  
20 Georgia Tech, University of Georgia, and Georgia State  
21 decided it would be nice for all of us to revise our  
22 Web pages together, which later expanded to the entire  
23 RACL, so this was the initial phase of that.

24 Q Okay. Is this related to the committee that  
25 you are going to be chairing or --

1           A       The committee that I'm going to be chairing  
2 will probably have these people on it. This predated  
3 that.

4           Q       Okay. Who is Bob Fox, do you know?

5           A       He is the associate director at Georgia Tech,  
6 associate library director at Georgia Tech.

7           Q       Is he your -- roughly your counterpart at  
8 Georgia --

9           A       Roughly.

10          Q       And who is Catherine?

11          A       Catherine is the director at Georgia Tech.

12          Q       Is Catherine roughly Nancy Seamans's --

13          A       Yes.

14          Q       Okay. Have you met with Bob Fox on -- to  
15 talk about coordinating the Web pages?

16          A       Not physically.

17          Q       Have you had any conversations with Bob Fox  
18 about coordinating your Web pages?

19          A       I believe he forwarded this on to one of his  
20 employees, and there's been minimal conversation -- or  
21 exchange about their Web pages.

22          Q       Okay. Are you -- I'm not sure how the  
23 membership works. Are either you or Georgia State  
24 University a member of any library trade associations  
25 or trade organizations?

1           A       Yes.

2           Q       Does membership in those trade organizations  
3 run to the individual or run to the library, do you  
4 know?

5           A       It varies from organization to organization.

6           Q       Okay. What -- which organizations are you a  
7 member of?

8           A       Me personally?

9           Q       Yes, let's start with that.

10          A       The American Library Association, the  
11 Association of College and Research Libraries, and the  
12 Georgia Library Association.

13          Q       Are there any additional library trade  
14 association-type organizations that Georgia State is a  
15 member of?

16          A       The Association of Southeastern Research  
17 Libraries.

18          Q       Okay.

19          A       OCLC.

20          Q       What does OCLC stand for?

21          A       It's a library organization. It doesn't  
22 stand for anything anymore.

23          Q       Okay.

24          A       It used to stand for Ohio something, but  
25 that's not part of its name anymore.

1 Q Okay.

2 A Center for Research Libraries, SOLINET,  
3 S-O-L-I-N-E-T.

4 Q What is SOLINET?

5 A SOLINET is also a library cooperative.

6 Q Have you had conversations with the members  
7 of any of these organizations about this lawsuit?

8 A Not beyond if members of the -- if  
9 representatives from those organizations were at that  
10 RACL meeting.

11 Q Okay.

12 MS. SINGER: Let's mark as Plaintiffs'  
13 Exhibit 95 a document bearing the Bates stamp  
14 Georgia State 773.

15 (WHEREUPON, Plaintiffs' Exhibit 95 was marked for  
16 identification.)

17 Q (BY MS. SINGER) Do you recognize Plaintiffs'  
18 Exhibit 95?

19 A Yes.

20 Q What is Plaintiffs' Exhibit 95?

21 A It's an email to me -- from me to Mary Ellen  
22 Davis at ALA.

23 Q And ALA is the American Library Association?

24 A Correct.

25 Q Okay. And this is an email dated May 21st,

1 2007.

2 A Yes.

3 Q Okay. So that's before the lawsuit was  
4 filed, right?

5 A Correct.

6 Q Okay. And the subject of Plaintiffs' 95 is,  
7 "APA EReserves complaint." And you write, "Mary Ellen,  
8 Prue Adler will be contacting you about this, but in  
9 case she hasn't, I wanted to alert you about the APA  
10 EReserves complaint." And APA would be the -- the  
11 Publishers Association?

12 A Correct.

13 Q "They sent a letter threatening a lawsuit  
14 over electronic reserves to six schools. Four of those  
15 are ARL libraries." What does ARL stand for?

16 A The Association of Research Libraries.

17 Q Okay. Was that one of the organizations we  
18 just talked about?

19 A No, we do not belong to the Association of  
20 Research Libraries.

21 Q Okay. Why not?

22 A We are not big, powerful, and rich enough.

23 Q Fair enough.

24 So, "Four of those are ARL libraries, Duke,  
25 Syracuse, Texas A&M, and Florida. One is as yet

1 unidentified and the other is Georgia State." Did  
2 there come a time when you were able to identify that  
3 sixth school?

4 A Yes.

5 Q Do you recall who it was?

6 A I believe it was Marquette, but I'm not  
7 certain.

8 Q Okay. "The attorneys from the schools and  
9 ARL are in contact with each other, as well as Mary  
10 McDonald, who handled the situation at UCSD." What is  
11 UCSD?

12 A University of California San Diego.

13 Q And what was the situation at UCSD that you  
14 referred to in Plaintiffs' 95?

15 A I believe AAP filed suit against them for  
16 copyright infringement.

17 Q Okay. "The belief is that AAP are trying to  
18 get a nationwide guideline on EReserves modeled on  
19 Cornell's. Of course, we don't want to see that  
20 happen." Why don't you want to see that happen?

21 A My understanding of the Cornell model is that  
22 it does not take into account the validity of fair use.

23 Q And how did you develop that understanding  
24 about the Cornell guideline -- or the Cornell model?  
25 I'm sorry.

1           A       It's been widely discussed in the library  
2 literature.

3           Q       And then you say in Plaintiffs' 95, "I'm sure  
4 Prue will update you on this at the ARL meeting." Now,  
5 who is Prue Adler?

6           A       Prue Adler works at the Association of  
7 Research Libraries.

8           Q       Did you have conversations with Prue Adler  
9 about this lawsuit?

10          A       Yes.

11          Q       How many conversations, approximately, have  
12 you had with Prue Adler about this lawsuit?

13          A       I don't know.

14          Q       More than three?

15          A       Probably three -- three to five.

16          Q       Over what time period did those conversations  
17 with Prue Adler occur?

18          A       Well, let me clarify what you mean by "this  
19 lawsuit."

20          Q       The Complaint -- when you answered the  
21 question, what did you understand me to mean by "this  
22 lawsuit"?

23          A       I was initially contacted by Prue Adler when  
24 this threat was made by APA.

25          Q       Okay.

1 A I have spoken to her in regards to that --

2 Q Okay.

3 A -- in consultation with the other schools.

4 I've also spoken to her since the current Complaint was  
5 filed.

6 Q Okay. I want to be sure I understand you.

7 Prue Adler contacted you in approximately the time  
8 frame of Plaintiffs' 95, so that's approximately May  
9 2007 --

10 A Yes.

11 Q -- give or take?

12 And what did Prue Adler say when she  
13 contacted you that first time in May-ish 2007?

14 A I don't remember exactly. It was a phone  
15 call. But generally, that she was aware that we had  
16 received a threat of a lawsuit and that other schools  
17 had also and we were not alone and that they were all  
18 talking together and the lawyers were all talking  
19 together.

20 Q Did you have any subsequent conversations  
21 with representatives from any of the other schools?

22 A There were a couple of conference calls.

23 Q Okay. Do you recall approximately how many  
24 conference calls there were?

25 A A couple is the best I can do.

1 Q Okay. And approximately what time frame were  
2 those couple of conference calls?

3 A Around this time.

4 Q Did the conference calls go on for -- how  
5 long did the conference calls go on for? I'm looking  
6 for months, weeks, what was the time period over which  
7 those conference calls took place?

8 A I don't remember exactly, but they were not  
9 extensive. Certainly a month or two, maybe.

10 Q Okay. What was -- what was the substance of  
11 the discussions on those conference calls?

12 MR. ASKEW: Just a second. Did you say  
13 these were conference calls with lawyers  
14 about these lawsuits?

15 THE WITNESS: There were lawyers and  
16 librarians on the conference calls.

17 MR. ASKEW: I think these parties had a  
18 common interest, Ms. Singer, and I'm going to  
19 object based on privilege.

20 MS. SINGER: I respectfully disagree  
21 with that, but I -- are you going to instruct  
22 her not to answer if I --

23 MR. ASKEW: Well, as I understand it,  
24 she's on a call with several lawyers  
25 representing other schools that have been

1           threatened with a lawsuit.  And they're  
2           discussing these matters.  And it seems to me  
3           like those kind of calls would be normally  
4           considered privileged, as these parties are  
5           all being threatened and they have a common  
6           interest among themselves with respect to  
7           defending against these lawsuits.

8           MS. SINGER:  Are -- are you going to  
9           instruct her not to answer questions?

10          MR. ASKEW:  Well, are you going to  
11          pursue this question?  Are you going to ask  
12          her what the substance of these -- I'll go to  
13          talk to her for a few minutes, if you want me  
14          to see if I can find out if there's anything  
15          there but -- and then we can discuss it, if  
16          you want to.

17          MS. SINGER:  Why don't we --

18          Q        (BY MS. SINGER)  Before we do that, were  
19          there any lawyers representing Georgia State University  
20          on those calls?

21          A        Not the calls that I was on.

22          Q        Okay.

23          MS. SINGER:  Okay.  Why don't we take a  
24          break, then, and let's see if we can cut  
25          through this.  I appreciate that.

1 THE VIDEOGRAPHER: Off the record at  
2 3:46:21.

3 (Whereupon, there was a brief recess.)

4 THE VIDEOGRAPHER: Back on the record at  
5 3:48:45.

6 MR. ASKEW: I'm not going to instruct  
7 her not to answer the question. You can  
8 proceed.

9 MS. SINGER: Okay.

10 Q (BY MS. SINGER) What -- what was the  
11 substance of the -- the conference calls in the May  
12 2007-ish time frame regarding the -- the draft  
13 complaints you had received?

14 A Just general discussion about our current  
15 practices, what system do you have, what system do you  
16 have, you know, have your legal people been involved,  
17 what -- you know, what's going on, nothing -- I don't  
18 remember any of the specifics.

19 Q Okay.

20 A Supportive phone calls.

21 Q Did you report on those -- those calls to  
22 anyone at GSU?

23 A Legal.

24 Q Legal?

25 A (Nods head affirmatively.)

1 Q Okay. Did you discuss or report those calls  
2 to anybody else at GSU besides legal?

3 A Not that I recall.

4 Q Okay.

5 A Other librarians.

6 Q At GSU or outside of GSU?

7 A My boss.

8 Q Okay. When was the next time that you spoke  
9 to Prue Adler?

10 A Oh, I have no idea.

11 Q Did you speak to Prue Adler after this series  
12 of conference calls?

13 A Yes.

14 Q Okay. And what was the substance of those  
15 conversations?

16 A I believe there was a conversation where she  
17 told me how some of the different schools had responded  
18 to the letter.

19 Q Do you remember what she told you about how  
20 the other schools had responded to the letter?

21 A Not specifically, no.

22 Q In general, what was the substance?

23 A I recall education campaigns, that's the main  
24 thing I remember her telling me about, some schools  
25 were doing internal training as we're doing now.

1 Q What steps did GSU take after receiving that  
2 letter in the May 2007 time frame?

3 A Legal assessed our situation and responded to  
4 the letter.

5 Q Did the library take any steps?

6 A No.

7 Q Did you have any conversations with Prue  
8 Adler after she told you how the other schools were  
9 responding?

10 A Yes.

11 Q And when was that?

12 A I called her when this complaint was filed to  
13 let her know what was going on.

14 Q And what was the substance of that  
15 conversation?

16 A "We've been sued."

17 Q And what was her reaction?

18 A She wanted to know the details.

19 Q What did you tell her?

20 A I sent her a link to where the Complaint was  
21 posted online.

22 Q Did you have any other conversations with  
23 her?

24 A We have had periodic conversations, just  
25 what's going on sorts of things, but I can't give you

1 the details of them at all. I don't recall.

2 Q Okay. Have you had any conversations with  
3 any of the other five schools that received the same  
4 draft letter complaint in 2007?

5 A No.

6 Q Are you aware of any steps taken by any of  
7 those schools beyond what Prue Adler communicated to  
8 you?

9 A No.

10 Q Without -- well, let me ask this as -- as a  
11 first question: Was the -- are you able to tell me  
12 anything about the library's decision not to take any  
13 action following receiving the draft complaint in 2007?  
14 Are you able to tell me anything that wouldn't involve  
15 legal advice or consultation with legal?

16 A No.

17 Q Okay. Do you know whether anybody else from  
18 GSU talked to Prue Adler?

19 A I know Nan Seamans has spoken with her. I  
20 don't know if Charlene Hurt spoke with her or not. I  
21 was the primary person she spoke to.

22 Q Is Georgia State University receiving any  
23 kind of support from the ARL with respect to this  
24 lawsuit?

25 A No.

1 Q Okay.

2 MS. SINGER: Let's mark as Plaintiffs'  
3 Exhibit 96 a document bearing the Bates stamp  
4 Georgia State 671 through 675.

5 MR. ASKEW: So this is going to be,  
6 what, 96?

7 MS. SINGER: 96.

8 (WHEREUPON, Plaintiffs' Exhibit 96 was marked for  
9 identification.)

10 (Whereupon, there was a discussion off the record.)

11 Q (BY MS. SINGER) Ms. Burtle, do you recognize  
12 what's been marked as Plaintiffs' Exhibit 96?

13 A Yes.

14 Q What is Plaintiffs' 96?

15 A It's a compilation of information that I  
16 made.

17 Q Okay. Which -- what information did you  
18 compile?

19 A Primarily information about fair use,  
20 different library statements, library association  
21 statements and library statements on electronic  
22 reserves.

23 Q Do you know approximately when you compiled  
24 this information?

25 A No, but I compiled a lot of information in

1 the months after the lawsuit was filed, so somewhere in  
2 there.

3 Q Okay. So you think this was after the  
4 lawsuit was filed?

5 A Yes.

6 Q Okay. What caused you to compile the  
7 information in Plaintiffs' Exhibit 96?

8 A Find out what's out there.

9 Q Did anyone ask you to compile this  
10 information?

11 A Not that I recall.

12 Q Did anyone help you compile it?

13 A Not that I recall.

14 Q What did you do with the information that  
15 you've compiled in Plaintiffs' 96, if anything?

16 A I believe I shared it with my boss.

17 Q Other than sharing it with your boss, do you  
18 know if anything was done with the information in  
19 Plaintiffs' 96?

20 A I don't believe so.

21 Q Okay. The first line, or the title, really,  
22 of Plaintiffs' 96 says, "ARL Statement," and then in  
23 parentheses, "(Laura's emphases)".

24 A Yes.

25 Q Are we able to tell from Plaintiffs' 96 what

1 your emphases are, is there font different or --

2 A It looks like the bottom two bullet points  
3 are -- are bolded.

4 Q Okay. And you believe that that was your  
5 emphasis?

6 A Yes.

7 Q Okay. Why did you choose to emphasize those  
8 last two bullet points?

9 A They seemed relevant to the lawsuit.

10 Q Relevant in what way?

11 A Without infringing copyright, the public has  
12 the right to expect to have made -- to make or have  
13 made for them a first generation copy for personal use  
14 of an article or other small part of a publicly  
15 marketed, blah-blah-blah, or work in a library's  
16 collection. They're relevant to reserves, they're  
17 relevant things I found interesting.

18 Q Okay.

19 A And this wasn't used to create anything.  
20 Things I found interesting.

21 Q Sure. Sure. Do you believe that posting  
22 something on EReserves is the same as making or having  
23 made a first generation copy for personal use?

24 A No.

25 Q Okay. On page 2 of Plaintiffs' 96, it says,

1 "Georgia State 672." There's -- two of the four bullet  
2 points at the top are also in bold italics. Are those  
3 your emphases as well, do you know?

4 A That would be my assumption.

5 Q Okay. And the fourth bullet point at the top  
6 of the second page of Plaintiffs' 96 says, "Libraries,  
7 on behalf of their clientele, should be able to avoid  
8 liability after posting appropriate copyright notices  
9 for the unsupervised actions of their users." Do you  
10 see that?

11 A Yes.

12 Q Do you -- did you believe that that was  
13 relevant to the lawsuit or to EReserves?

14 A Yes.

15 Q How was that relevant?

16 A I believe there was an implication in the  
17 complaint that people just made copies and sent them to  
18 all their friends.

19 Q And making copies and sending them to their  
20 friends, would that constitute unsupervised action of  
21 the users?

22 A Yes.

23 Q Does the library, in fact, post appropriate  
24 copyright notices as part of EReserves?

25 A Yes.

1 Q How is that -- how are those copyright  
2 notices posted?

3 A When a student clicks on an item, they are  
4 presented with a copyright notice that they have to  
5 read, put in the password for the page, and then click  
6 accept.

7 Q And are they presented with that page -- when  
8 are they presented with that page, is it every time  
9 they access the system?

10 A Yes.

11 Q Is it before each work that they access, for  
12 instance, if they go to a course reserves page, and  
13 they access the first reading and then they go back to  
14 the page and access the second reading, will they be  
15 presented with the appropriate copyright notice?

16 A I'm not sure of the flow of that.

17 Q Okay. What is the -- the substance of the  
18 copyright notice that EReserves users are presented  
19 with?

20 A Oh, I can't quote it to you, but it's the  
21 standard copyright notice that's seen everywhere on  
22 photocopy machines and -- it's standard language of --  
23 I can't tell you what it says off the top of my head.

24 Q Okay. Does it reference that the specific  
25 work is copyrighted, or is it about -- that the

1 specific work that the user is about to access is  
2 copyrighted, or is it just a general notice about  
3 complying with copyright?

4 A I don't know.

5 Q Okay.

6 A I'd have to look at it.

7 Q Okay. At the bottom of the second page of  
8 P96, we see the title is "ALA Statement," do you see  
9 that?

10 A Yes.

11 Q What is the ALA?

12 A American Library Association.

13 Q Okay. And is this a statement that you took  
14 from the American Library Association's Website?

15 A Yes.

16 Q Do you have any -- did you add any emphasis  
17 to this section that you --

18 A It doesn't look like it.

19 Q Okay. The third page of Plaintiffs' 96 says,  
20 "Fair use analysis from the IUPUI." Do you see that?

21 A Yes.

22 Q What is the IUPUI?

23 A Indiana University, Purdue University,  
24 Indiana -- Indianapolis, I think, something like that.

25 Q And they abbreviate that? Is that a --

1 that's a specific university --

2 A Yes.

3 Q -- that you took that from? Okay.

4 And it says, "Laura's comments in blue." Are  
5 you able, as you look at this photocopy, to tell  
6 which your -- which were your comments?

7 A No, I'm not.

8 Q Okay. Me neither. I was hoping you could  
9 help me.

10 Okay. If you look at the fourth page of  
11 Plaintiffs' 96, it says, "UW Madison libraries policy  
12 for electronic reserve access to copyright-protected  
13 materials," again, "Laura's emphases." Do you see  
14 that?

15 A Yes.

16 Q Is this the -- again, a -- a single  
17 university or a University System policy?

18 A Yes.

19 Q Okay. And are you able to tell what was your  
20 emphasis?

21 A There's a bolded paragraph towards the end, I  
22 believe that was my emphasis.

23 Q Okay. Okay. You'll be very happy to hear  
24 the last exhibit.

25 MS. SINGER: If you would please mark as

1 Plaintiffs' Exhibit 97 a document bearing the  
2 Bates stamp Georgia State 7483 to 7485.  
3 (WHEREUPON, Plaintiffs' Exhibit 97 was marked for  
4 identification.)

5 Q (BY MS. SINGER) Do you recognize Plaintiffs'  
6 Exhibit 97?

7 A Yes.

8 Q What is Plaintiffs' 97?

9 A It's a draft memo from Prue Adler to the  
10 directors of the ARL libraries.

11 Q Did Prue Adler send you a copy of this draft  
12 memo?

13 A Yes.

14 Q Okay. Do you know approximately the date of  
15 this memo?

16 A No.

17 Q Okay. You see about a third of the way down  
18 the page of -- first page of Plaintiffs' 97, it says,  
19 "Wednesday, May 21st, ARL public policy session, fair  
20 use working group." Do you see that?

21 A Read it to me again, I'm sorry.

22 Q It's -- it's the heading, "Wednesday" --

23 A Oh, yes.

24 Q -- "May 21st, ARL public policy session, fair  
25 use working group"?

1           A       Yes.

2           Q       Were you present at that public policy  
3 session of the fair use working group?

4           A       No.

5           Q       Okay. Was anyone at GSU invited to be  
6 present there?

7           A       No.

8           Q       Okay. And it says -- on Plaintiffs' 97, it  
9 says, "Situation at GSU, glitch in the system meant  
10 that reserves were wide open, allowed AAP to see what  
11 was being provided. Patched the system, but when  
12 contacted about the numbers, pushed back and said they  
13 were in compliance. Some question about who from the  
14 university and/or library was working with the AAP.  
15 Feeling that there was some information that could only  
16 have come from someone at the institution. Original  
17 letter to GSU included commercial publishers, but not  
18 included in the lawsuit."

19                       Was that information that you communicated to  
20 Prue Adler?

21           A       Presumably.

22           Q       Would you agree with the statement that there  
23 was a feeling that there was information that could  
24 only have come from someone at the institution?

25           A       There was a suspicion of as much, never any

1 proof.

2 Q Okay. Was any investigation done?

3 A No.

4 Q Okay. Next paragraph of Plaintiffs' 97 says,  
5 "Prue has talked with Laura at GSU about how to handle  
6 this, Laura Burtle." That's you, right?

7 A Yes.

8 Q Okay. "Apparently there is no one in the GA  
9 AG's office who feels qualified to handle the lawsuit,  
10 so have talked with Prue about identifying other  
11 lawyers who are qualified to represent GSU. Counsel  
12 from ARL libraries who have pushed back as a resource.  
13 University attorney Kerry.

14 Did Prue ever help you identify other lawyers  
15 who might be qualified to represent GSU?

16 A I don't believe that I was involved in those  
17 conversations.

18 Q Okay. So you -- okay.

19 A couple more lines down on Plaintiffs' 97,  
20 it says, "More discussion of AAP long-term looking for  
21 an opportunity to attack the Regents copyright policy.  
22 Saw it as pushing the boundaries." Do you see that?

23 A Yes.

24 Q Was that your general sense of what AAP was  
25 looking to do? Was --

1           A       I believe it was the sense of legal.

2           Q       Okay. Was that a conversation that -- did  
3 you discuss what AAP was long-term looking to do when  
4 you spoke to Prue Adler?

5           A       No.

6           Q       Okay. The next line on Plaintiffs' 97, it  
7 says, "AAP's deliberate use of Coursepacks terminology,  
8 equating Coursepacks with EReserves even though they  
9 are not." Do you believe that Coursepacks and  
10 EReserves should be equated?

11          A       No.

12          Q       Why not?

13          A       They're not the same.

14          Q       Why not, how are they different?

15 (Whereupon, there was an outside interruption.)

16                THE WITNESS: One is a commercial  
17 enterprise; one is a university providing  
18 information it purchased to its own  
19 students.

20                THE COURT REPORTER: What, I'm sorry?

21                THE WITNESS: Sorry, where -- where did  
22 you miss from?

23                MR. ASKEW: Would you reask that  
24 question. I heard her shout something from  
25 down there, and I don't know that I heard the

1 answer.

2 MS. SINGER: Yeah, and you can't read it  
3 back, can you? Are you able to read back  
4 that question?

5 THE VIDEOGRAPHER: Off the record at  
6 4:08:07.

7 (Whereupon, there was a discussion off the record.)

8 THE VIDEOGRAPHER: Back on the record at  
9 4:09:14.

10 MS. SINGER: If you would, could you  
11 read back the last question and the last  
12 answer.

13 (Whereupon, the record was read by the court reporter  
14 as follows:

15 "QUESTION: Why not, how are they  
16 different?

17 "ANSWER: One is a commercial  
18 enterprise; one is a university providing  
19 information it purchased to its own  
20 students.")

21 Q (BY MS. SINGER) Are there any other  
22 differences between Coursepacks and EReserves?

23 A Yes.

24 Q What else?

25 A Well, fair use is rarely going to come into

1 play in a commercial Coursepack situation, it is  
2 something to be considered in almost all course --  
3 EReserve situations.

4 Q Okay. Anything else?

5 A Anybody can purchase a Coursepack, if they so  
6 desired. EReserves are limited to students enrolled in  
7 a course.

8 Q Okay. Does the university -- I'm sorry, does  
9 Georgia State University provide any Coursepacks  
10 itself, or are they all through commercial copy shops?

11 A I believe we covered that earlier, where I  
12 indicated I think Jim Palmour's shop might still  
13 provide a few Coursepacks, but I am not in a position  
14 to know that for sure.

15 Q Okay. If, indeed, Jim Palmour's shop still  
16 provides Coursepacks, would you consider those to be  
17 commercial?

18 A Yes.

19 Q Why is that?

20 A They're sold.

21 Q Okay. Back to Plaintiffs' Exhibit 97, it  
22 says -- about three-quarters of the way down the first  
23 page of Plaintiffs' 97, it says, "UCSD pushed back  
24 successfully. Who is the UC lawyer? Prue indicated GA  
25 GSU should be talking with her."

1                   Did Prue indicate that to you, or do you --  
2 was she indicating that --

3           A        I think these are her notes to herself, these  
4 are not my notes, so...

5           Q        Okay. So you didn't have any discussions  
6 with her about who the UC lawyer was?

7           A        Not that I recall.

8           Q        Okay. And on Plaintiffs' 97, the next line,  
9 where she says, "Strategy should be to address how AAP  
10 is defining fair use," did you have a conversation with  
11 her about that?

12          A        No, these are her notes.

13          Q        Okay. The next page of Plaintiffs' 97 has  
14 the Bates stamp Georgia State 7484. The fourth  
15 paragraph down says, "Let faculty get in trouble. They  
16 have clout that libraries do not have. They'll be the  
17 ones who connect the dots between NIH, provosts' open  
18 access letter, CMSs course reserves. Move to a  
19 negotiation between faculty, authors, and publishers  
20 and get libraries out of the middle."

21                   Did you have any conversations with Prue  
22 Adler regarding the concept of letting the faculty  
23 getting -- get in trouble?

24          A        No.

25          Q        Do you believe that faculty have clout that

1 libraries do not have?

2 A Yes.

3 Q And what's the basis for that belief?

4 A They get the money, and we don't.

5 Q What is NIH, if you know?

6 A National Institutes of Health.

7 Q Okay. And what is provost open access  
8 letter?

9 A I don't recall which provosts, but some  
10 provosts have issued statements that they expect their  
11 faculty to publish materials in open access sources.

12 Q And in that context, what would open access  
13 mean?

14 A Things that are available usually online,  
15 without charge to the user, to the viewer.

16 Q Okay.

17 A The reader.

18 Q So, in other words, the reader, the user  
19 would not have to pay licensing fees?

20 A Right, or purchase the journal.

21 Q Or purchase the journal. Okay. Do you know  
22 what CMS's refers to?

23 A Well, it could be content management system  
24 or course management system.

25 Q Okay. Was there any sense at Georgia State

1 University that pushing the fair use analysis to the  
2 faculty instead of the library would -- would somehow  
3 protect the library?

4 A I don't think I can answer that for the  
5 university as a whole.

6 Q Okay. Did you have any sense, personally?

7 A I was never involved in that kind of  
8 conversation --

9 Q Okay.

10 A -- personally.

11 Q Okay. Fair enough.

12 MS. SINGER: I think if we can take a  
13 short break, I can put my notes in order and  
14 see if I have any last questions.

15 THE VIDEOGRAPHER: Off the record at  
16 4:14:22.

17 (Whereupon, there was a brief recess.)

18 THE VIDEOGRAPHER: Back on the record at  
19 4:22:31.

20 Q (BY MS. SINGER) Okay. Ms. Burtle, just  
21 directing your attention back for a moment to  
22 Plaintiffs' Exhibit 97. You see about halfway down the  
23 page, it says, "Madeleine, legal counsel at UVA,  
24 participating via phone, and I don't know her." The  
25 last sentence of that paragraph is, "Hard to defend

1 some of what GSU is doing, extremely liberal policy."

2 Do you see that?

3 A Yes.

4 Q Do you agree with that statement? I know  
5 it's not your statement.

6 A No. I -- I don't have any idea what it's  
7 referring to specifically. I can't speak to  
8 Madeleine's thoughts.

9 Q But do you agree that some of what GSU is  
10 doing is -- is an extremely liberal policy?

11 A Is now or was when this was written that was  
12 applying to the Regents copyright guidelines?

13 Q When was this was written applying to the  
14 Regents copy -- copyright guidelines?

15 A No, I don't think I would characterize it as  
16 extremely liberal, but that's a relative term. That  
17 means different things to different people.

18 Q Would you have characterized it as liberal?

19 A I don't know how to apply a word like that to  
20 this situation.

21 Q Okay.

22 MS. SINGER: Okay. I have no further  
23 questions, subject, of course, to any --  
24 anything that may come up if Tony asks you  
25 questions.

1 EXAMINATION

2 By MR. ASKEW:

3 Q Would you find Exhibit 82 in your stack  
4 there, Ms. Burtle. It's a one-page exhibit.

5 A It's a one-page, I've got a bunch of one  
6 pages together. There were go, got it.

7 Q All right. This exhibit was shown to you by  
8 Ms. Singer several hours ago. The last sentence in  
9 this email reads, "I think that most schools do not  
10 consider whether or not" --

11 A It's not Exhibit 81.

12 Q Okay. Excuse me.

13 A Sorry.

14 Q It should be the next one in sequence. 82.  
15 No, it's only about three lines.

16 A 82, I'm sorry, my pages -- oh, that's  
17 eighty -- okay. Yes. All right.

18 Q Direct your attention to the last sentence of  
19 this exhibit --

20 A Yes.

21 Q -- Ms. Burtle, it reads, "I think that most  
22 schools do not consider whether or not they own the  
23 original item to affect fair use."

24 With respect to that sentence, I believe  
25 Ms. Singer asked you a question at the conclusion of

1 her discussion about this exhibit to the effect that  
2 did you consider it surprising that other schools would  
3 scan it. And my recollection is your answer was yes.  
4 And I wanted you to -- if you would explain what you  
5 meant by that answer of yes to that question about  
6 whether you would find it surprising that other schools  
7 would scan it.

8 A I would find it surprising if other schools  
9 would scan materials they don't own, materials they got  
10 through interlibrary loan or GIL Express. Does that  
11 answer your question?

12 Q Yes. And you don't have to find this  
13 exhibit, but just to give you a frame of reference,  
14 with respect to Exhibit number 85, Ms. Singer asked you  
15 if print reserves and EReserves should be treated the  
16 same for copyright purposes. I believe your answer was  
17 yes, and I wondered if you could explain that answer  
18 for me further.

19 A Well, they both -- there are parts of  
20 copyright that affect both print reserves and EReserves  
21 so print reserves are treated like books that circulate  
22 in the library. And there's a part of copyright that  
23 allows for book to circulate out of the library to  
24 multiple students and then there are parts of copyright  
25 that apply to electronic reserves, particularly the

1 fair use guidelines, that would apply there. So  
2 copyright applies -- it's not the same piece of the  
3 copyright law, but copyright does apply to lending  
4 books on print reserve or lending books from the  
5 library, as well as electronic reserves.

6 Q With respect to the fair use checklist,  
7 Ms. Burtle, are -- are there other sources of  
8 information that might aid a professor or user of the  
9 checklist for the purpose of understanding the  
10 checklist and what is being asked in the checklist?

11 A Other sources beyond the checklist, I mean,  
12 the policy itself explains the context of the questions  
13 that are asked in the fair use checklist, so the policy  
14 itself includes information that would be useful, in  
15 addition to legal. So if someone reads the policy,  
16 which they're expected to read the policy before they  
17 use the checklist, that's part of what they've been  
18 told to do as members of the university, they should  
19 have that context before they use the checklist.

20 Q Is it your understanding that it -- that it  
21 is a part of the policy that the University System  
22 expects the professor to review the entire policy and  
23 its guidelines and information as a part of reviewing  
24 and completing the checklist?

25 A Yes, the university sent out an email to

1 every member of the university telling them that.

2 MR. ASKEW: I have no further questions  
3 for the witness.

4 MS. SINGER: I have just one question.

5 FURTHER EXAMINATION

6 BY MS. SINGER:

7 Q When Mr. Askew asked you if it was the policy  
8 to expect -- I think it was faculty or professors to  
9 review the entire policy, what do you understand the  
10 entire policy to comprise?

11 A The Board of Regents' copyright policy, which  
12 is on the Website, it has a number of different  
13 sections.

14 Q Okay.

15 A Introduction, it has a section on copyright  
16 generally, a section on fair use, it has a section on  
17 EReserves, so the entirety of what's on that policy.

18 Q Okay. Just so that we're -- just so that  
19 we're all clear -- you're not going to have in your  
20 stack Plaintiffs' Exhibit 38. Let me show you my copy  
21 of Plaintiffs' Exhibit 38.

22 MR. ASKEW: You go ahead and look at it,  
23 though.

24 (Whereupon, there was a discussion off the record.)

25 Q (BY MS. SINGER) Let's do this, let me give

1 you a copy of Plaintiffs' Exhibit 21, which is a little  
2 bit harder to read, but it's screen shots. Would --  
3 how much of -- if at all, of Plaintiffs' Exhibit 21  
4 would you say constitutes -- what -- strike that. Let  
5 me start again.

6 What, if any, of Plaintiffs' Exhibit 21 would  
7 you consider to be the entire copyright policy?

8 A Oh, it's not the entire copyright policy by  
9 any means. It references back to the entire copyright  
10 policy.

11 Q Okay. Where -- where is the entire copyright  
12 policy found?

13 A On the Board of Regents' Website.

14 Q Okay. There is a section on policy on the  
15 use of copyrighted works in education and research?

16 A Yes.

17 Q There is a section on additional guidelines  
18 for electronic reserves?

19 A Yes.

20 Q There's a fair use checklist?

21 A Yes.

22 Q And there's an introduction to the fair use  
23 checklist?

24 A Yes.

25 Q Is there more to the entire copyright policy?

1           A       I believe there is. I can't tell you off the  
2 top of my head what's missing, but I feel like that's  
3 not all of it. But I -- I'm not positive.

4           Q       Okay.

5           A       I know there's an introduction you don't  
6 have.

7           Q       Is that the introduction that's actually on  
8 the -- the checklist itself?

9           A       No.

10          Q       Besides possibly an introduction, are there  
11 any other parts to the copyright policy, that you're  
12 aware of?

13          A       I haven't memorized the copyright policy. I  
14 know where to go to look for it when I need it. So I  
15 feel like it's longer than that, because I handed out  
16 copies to a lot of people, and there were more pages  
17 than that, but I can't tell you specifically what's  
18 missing.

19                   MS. SINGER: Okay. I have no further  
20 questions.

21                   MR. ASKEW: Okay. That will conclude  
22 the deposition.

23                   THE VIDEOGRAPHER: Off the record at  
24 4:32:15.

25                   (Deposition concluded at 4:32 p.m.)

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E R R A T A P A G E

Pursuant to Rule 30(e) of the Federal Rules of Civil Procedure and/or Georgia Code Annotated 9-11-30(e), any changes in form or substance which you desire to make to your deposition testimony shall be entered upon the deposition with a statement of the reasons given for making them. To assist you in making any such corrections, please use the form below. If supplemental or additional pages are necessary, please furnish same and attach them to this errata sheet.

I, the undersigned, Laura G. Burtle, do hereby certify that I have read the foregoing deposition and that, to the best of my knowledge, said deposition is true and accurate with the exception of the following corrections below.

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\_\_\_\_\_  
Laura G. Burtle

Sworn to and subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

\_\_\_\_\_  
Notary Public.  
My commission expires \_\_\_\_\_

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C E R T I F I C A T E

STATE OF GEORGIA:

GWINNETT COUNTY:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages represent a true and correct transcript of the evidence given upon said hearing. I further certify that I am not of kin or counsel to the parties in the case, am not in the regular employ of counsel for any of said parties, nor am I in anywise interested in the result of said case.

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This, the 30th day of April, 2009

\_\_\_\_\_  
SHARON A. GABRIELLI, CCR-B-2002

1 DISCLOSURE

2 STATE OF GEORGIA:

3 COUNTY OF DEKALB:

4  
5 Deposition of Laura G. Burtle

6  
7 Pursuant to Article 8.B of the Rules and  
8 Regulations of the Board of Court Reporting of the  
9 Judicial Council of Georgia, I make the following  
10 disclosure:

11 I am a Georgia Certified Court Reporter acting  
12 as an agent of Shugart & Bishop to provide court  
13 reporting services for this deposition. I will not be  
14 taking this deposition under any contract  
15 that is prohibited by OCGA 15-14-37 (a) and (b).

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18 any counsel in the case, or any reporter or reporting  
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22 the case, and a financial discount will not be given to  
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SHARON A. GABRIELLI, CCR-B-2002

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