

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

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

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

Plaintiffs,

- v. -

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

Defendants.

**PLAINTIFFS' RESPONSE TO DEFENDANTS' SUPPLEMENTAL
STATEMENT OF ADDITIONAL FACTS IN SUPPORT OF
DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

In accordance with L.R. 56.1(B)(3), Plaintiffs submit this Response to Defendants' Supplemental Statement of Additional Facts in Support of Defendants' Response to Plaintiffs' Motion for Summary Judgment, which was filed by Defendants, not with their April 5, 2010 response to Plaintiffs' motion for summary judgment (as required under L.R. 56.1(B)(2)(b)), but rather with their April 26, 2010 reply brief in support of their own motion for summary judgment.

30. Georgia State University licenses a number of electronic journal titles, including ones owned by Oxford University Press, Cambridge University Press, and Sage Publications, Inc. Attached hereto as Exhibit A is a list of all journal titles licensed by Georgia State University that are owned by Oxford University Press, Cambridge University Press, and Sage Publications. *See* Dkt. 211, Ex. A, Burtle Decl. ¶ 3.

RESPONSE: Plaintiffs object to this statement and the admissibility of the evidence upon which it relies on the ground that it is untimely. Local Rule 56.1 does not provide for the filing of a statement of additional facts other than with a responsive brief (not a reply); this statement of additional facts could and should have been included in Defendants' previously filed statement of additional facts. Plaintiffs also object to this statement on the ground that it is immaterial. Plaintiffs do not dispute that Defendants license "a number of electronic journal titles," including those owned (or administered through agreements with learned societies and the like) by the Plaintiffs; Plaintiffs' claims in this case, however, are based not upon Defendants' authorized use of copyrighted works for which Defendants have paid an appropriate licensing fee, or Defendants' linking to such works from GSU's ERes system, but rather upon the electronic distribution of copyrighted works at GSU for which Defendants have not received authorization or made payment. The fact that Defendants license "a number of electronic journal titles" from Plaintiffs is immaterial and irrelevant to the legality of their unauthorized electronic distribution of *other* non-licensed works. *See, e.g.*, Plaintiffs' First

Amended Complaint for Declaratory Judgment and Injunctive Relief (“Complaint”), Docket No. 39, ¶¶ 22-27, Ex. 1; Declaration of Frank Smith, Cambridge University Press (“Smith Decl.”), Docket No. 164, ¶¶ 10-30; Supplemental Declaration of Frank Smith (“Smith Supp. Decl.”), Docket No. 194, ¶¶ 2-12; Declaration of Niko Pfund (“Pfund Decl.”), Docket No. 166, ¶¶ 21-32, 35; Supplemental Declaration of Niko Pfund (“Pfund Supp. Decl.”), Docket No. 192, ¶¶ 2-10; Declaration of Sara van Valkenburg (“van Valkenburg Decl.”), Docket No. 166, ¶¶ 19-32, 34; Supplemental Declaration of Sara van Valkenburg (“van Valkenburg Supp. Decl.”), Docket No. 193, ¶¶ 2-8.

31. Georgia State University licenses eighty (80) Cambridge University Press electronic journal titles. *Id.* ¶ 4.

RESPONSE: Plaintiffs object to this statement and the admissibility of the evidence upon which it relies on the ground that it is untimely. Local Rule 56.1 does not provide for the filing of a statement of additional facts other than with a responsive brief (not a reply); this statement of additional facts could and should have been included in Defendants’ previously filed statement of additional facts. Plaintiffs also object to this statement on the ground that it is immaterial. Plaintiffs do not dispute that Defendants license a number of electronic journal titles from Cambridge, but Plaintiffs’ claims in this case are based not upon Defendants’ authorized use of copyrighted works for which Defendants have paid an

appropriate licensing fee, or Defendants' linking to such works from GSU's ERes system, but rather upon the electronic distribution of copyrighted works at GSU for which Defendants have not received authorization or made payment. The fact that Defendants license electronic journal titles from Cambridge is immaterial and irrelevant to the legality of their unauthorized electronic distribution of *other* non-licensed works, including copyrighted works owned by or licensed to Cambridge. *See* Complaint, ¶¶ 25-26, Ex. 1; Smith Decl., ¶¶ 10-30; Smith Supp. Decl., ¶¶ 2-12. In addition, Plaintiffs object to this statement on the ground that it is not supported by the evidence upon which Defendants rely. Exhibit A to the Declaration of Laura Burtle (dated April 23, 2010) includes journals to which Defendants last subscribed in 2009, titles that are no longer published by Cambridge, and journal titles for which Cambridge has no record of subscription from Defendants.

32. Georgia State University licenses sixty-nine (69) Oxford University Press electronic journal titles. Georgia State University also licenses Oxford Music Online, and has access to three (3) other Oxford University Press databases, Oxford Art Online, and two (2) versions of the Oxford English Dictionary, through GALILEO, a unit of the Board of Regents of the University System of Georgia that licenses resources on behalf of Georgia libraries. In addition, Georgia State University licenses approximately ten (10) Oxford University Press eBooks. *Id.* ¶ 5.

RESPONSE: Plaintiffs object to this statement and the admissibility of the evidence upon which it relies on the ground that it is untimely. Local Rule 56.1 does not provide for the filing of a statement of additional facts other than with a

responsive brief (not a reply); this statement of additional facts could and should have been included in Defendants' previously filed statement of additional facts. Plaintiffs also object to this statement on the ground that it is immaterial. Plaintiffs do not dispute that Defendants license certain electronic content from Oxford, but Plaintiffs' claims in this case are based not upon Defendants' authorized use of copyrighted works for which Defendants have paid an appropriate licensing fee, or Defendants' linking to such works from GSU's ERes system, but rather upon the electronic distribution of copyrighted works at GSU for which Defendants have not received authorization or made payment. *See* Complaint, ¶ 27, Ex. 1; Pfund Decl., ¶¶ 21-32, 35; Pfund Supp. Decl., ¶¶ 2-10. The fact that Defendants license electronic content from Oxford is immaterial and irrelevant to the legality of their unauthorized electronic distribution of *other* non-licensed works, which are not available for licensing through the mechanisms described by Defendants, but are available for licensing or permission directly through Oxford or Copyright Clearance Center. *See* Pfund Decl., ¶¶ 18-20; Pfund Supp. Decl., ¶¶ 5, 9; Declaration of Debra J. Mariniello (Feb. 24, 2010), Docket No. 163, Ex. 1 at 15-18. In addition, Plaintiffs object to this statement on the ground that it is not supported by the evidence upon which Defendants rely. Exhibit A to the Declaration of Laura Burtle, dated April 23, 2010, Docket No. 211, includes

journal titles for which Oxford has no record of an active subscription from Defendants.

33. Georgia State University licenses or otherwise has permission to use two-hundred forty-five (245) Sage Publications, Inc. electronic journal titles. The two-hundred forty-five Sage Publications, Inc. electronic journal titles include Sage Criminology, which contains approximately twenty-four (24) titles. Georgia State University does not pay for or license Sage Criminology; it is used through an arrangement the Criminal Justice faculty have with Sage Publications, Inc. *Id.* ¶ 6.

RESPONSE: Plaintiffs object to this statement and the admissibility of the evidence upon which it relies on the ground that it is untimely. Local Rule 56.1 does not provide for the filing of a statement of additional facts other than with a responsive brief (not a reply); this statement of additional facts could and should have been included in Defendants' previously filed statement of additional facts. Plaintiffs also object to this statement on the ground that it is immaterial. Plaintiffs do not dispute that Defendants license the identified content from SAGE, but Plaintiffs' claims in this case are based not upon Defendants' authorized use of copyrighted works for which Defendants have paid an appropriate licensing fee, or Defendants' linking to such works from GSU's ERes system, but rather upon the electronic distribution of copyrighted works at GSU for which Defendants have not received authorization or made payment. The fact that Defendants license electronic journal titles from SAGE is immaterial and irrelevant to the legality of

their unauthorized electronic distribution of *other* non-licensed works, including copyrighted works owned by or licensed to SAGE. *See* Complaint, ¶¶ 22-24, Ex. 1; van Valkenburg Decl., ¶¶ 19-32, 34; van Valkenburg Supp. Decl., ¶¶ 2-8.

Respectfully submitted this 7th day of May, 2010.

/s/John H. Rains IV

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), I hereby certify that this document complies with the font and point selections set forth in Local Rule 5.1. This document was prepared in Times New Roman 14 point font.

/s/ John H. Rains IV
John H. Rains IV

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the foregoing **PLAINTIFFS' RESPONSE TO DEFENDANTS' SUPPLEMENTAL STATEMENT OF ADDITIONAL FACTS IN SUPPORT OF DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** with the Clerk of Court using the CM/ECF filing system which will automatically send e-mail notification of such filing to the following attorneys of record:

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This 7th day of May, 2010.

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