

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

CAMBRIDGE UNIVERSITY

PRESS, *et al.*,

Plaintiffs,

v.

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

Defendants.

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Case No. 1:08-CV-1425-ODE

**DEFENDANTS’ RESPONSE TO PLAINTIFFS’ SUPPLEMENTAL FILING**

Defendants MARK P. BECKER, in his official capacity as Georgia State University President, et al. (collectively, “Defendants”), hereby respond to the Court’s August 11, August 12, and August 25, 2010 Orders requiring Defendants to respond to Plaintiffs’ charts submitted to identify Defendants’ alleged infringement of Plaintiffs’ copyrighted works (Dkt. 226, 227, 229).

With respect to Exhibit A (Maymester 2009), Exhibit B (Summer 2009), and Exhibit C (Fall 2009), Defendants include all of the information that Plaintiffs submitted in their Exhibits A-C, but combined several of the columns so that the resultant combined charts could be provided on single pages.

With respect to the title of Defendants' Exhibits A-C, Defendants modify the Plaintiffs' description which reads "Plaintiff Works Infringed At GSU" to now read "Plaintiffs' Works Allegedly Infringed At GSU." This language more closely follows the language of the Court's August 11, 2010 Order directing Plaintiffs to identify "allegedly infringed work[s]." Dkt. 226, p. 1.

With respect to Plaintiffs' column titled "Title of Work," Defendants' Exhibits modify the description to read "Title of Work Allegedly Infringed" to more closely follow the language used by the Court. Similarly, with respect to Plaintiffs' column titled "Retail List Price (New)," Defendants' Exhibits modify the description to read "Retail List Price (New) of Allegedly Infringed Work" to again more closely follow the language used by the Court.

With respect to Plaintiffs' column titled "Licensing Cost Per Student (class of 20 students, incl. \$3.00 service fee), Defendants' Exhibits break those into two categories: "License Cost Per Student" and "License Cost Per Class (assume 20 students, incl. \$3.00 service fee)."

Defendants' Exhibits add five columns: (1) Actual Class Size (number of students enrolled), (2) Adjusted License Cost Per Class (based on Actual Class Size, incl. \$3.00 service fee), (3) Whether Excerpt Was Required Reading, (4)

Textbooks and Coursepacks Required To Be Purchased, and (5) Defendants' Objections.

With respect to the "Actual Class Size" column, information therein responds to the Court's August 25 Order directing Defendants to list "(4) how many students were enrolled in each such course during that particular semester."

With respect to the "Adjusted License Cost Per Class" column, information therein revises the costs included in Plaintiffs' column titled "Licensing Cost Per Student (class of 20 students, incl. \$3.00 service fee)." Specifically, the Court's August 12 Order directed Plaintiffs to "assume a class size of twenty students," and Plaintiffs described the column as "the cost for a 20-person class (including a \$3.00 service fee)." Dkt. 227, p. 2. Since Defendants have provided the actual class size, the addition of the "Adjusted License Cost Per Class" column is provide to assist the Court in determining "the total amount that each instructor . . . would have had to pay in order to license each excerpt for distribution in the course . . . ." Dkt. 227, p. 1.

With respect to the "Whether Excerpt Was Required Reading" column, information therein responds to the Court's August 25 Order directing Defendants to detail "(3) whether each excerpt listed was required reading for that particular course." *See* Dkt. 229, p. 2.

With respect to the “Textbooks and Coursepacks Required To Be Purchased” column, information therein responds to the Court’s August 25 Order directing Defendants to list “(2) all books and coursepacks that students were required to purchase for each course.” *See* Dkt. 229, p. 1.

With respect to the “Defendants’ Objections” column, information therein responds to the Court’s August 25 Order directing Defendants to detail “(1) Defendants’ objections to the information stated by Plaintiff with regard to each excerpt listed.” *See* Dkt. 229, p. 1. In this column, Defendants provide the following types of objections:

- (1) Publisher/Plaintiff reported as Licensee---not Owner;
- (2) Work/Excerpt never disclosed;
- (3) Excerpt never disclosed;
- (4) Work/Excerpt not disclosed until SJ briefing;
- (5) Work not disclosed until SJ briefing; and
- (6) No students enrolled in offered course.

Defendants’ Objection (1) relates to Plaintiffs’ failure to identify the owner of the copyright and instead lists the publisher as a licensee. The Court’s August 11 Order directed Plaintiffs to identify “[t]he owner of the copyright for that work” and not merely the licensee. Dkt. 226, p. 1. Plaintiffs have not provided

Defendants with copies of these license agreements in discovery, and as such, Defendants are unable to determine whether ownership of the copyrights has been transferred to Plaintiffs.

Defendants' Objection (2) relates to Plaintiffs' failure to ever identify in any discovery response or pleading the work or the excerpt as being used in the semester.

Defendants' Objection (3) relates to Plaintiffs' failure to ever describe the excerpt as being used in the semester. This objection is provided where Plaintiffs only described the work without specifying which excerpts were used.

Defendants' Objection (4) relates to Plaintiffs' failure to disclose during discovery the work or excerpt as being used in the semester. This objection is asserted where the work and excerpt information was provided to Defendants for the first time during Plaintiffs' summary judgment briefing.

Defendants' Objection (5) relates to Plaintiffs' failure to disclose during discovery the work as being used in the semester. This objection is provided where the work was disclosed for the first time during Plaintiffs' summary judgment briefing.

Defendants' Objection (6) relates to courses in which no students enrolled and thus ultimately no students were taught.

The Court's August 25 Order directs Defendants to list "(5) the total number of courses that were taught in each of the following semesters: Maymester 2009, Spring 2009, and Summer 2009." Based on the fact that the previous August 11, 2010 and August 12, 2010 Orders, as well as the first paragraph of the Court's August 25, 2010 Order are directed to Maymester 2009, Summer 2009, and *Fall* 2009, Defendants believe that the Court is requesting the total number of courses that were taught in Maymester 2009, Summer 2009, and Fall 2009 (rather than Spring 2009). If Defendants' understanding is incorrect, Defendants will supplement this filing accordingly.

Further, Georgia State University's (GSU) electronic course tracking system does not separate the Maymester 2009 academic period information from the Summer 2009 academic period information. Similarly, the GSU computer system only tracks the courses that were offered (rather than those courses that were actually taught). If a course was offered, but no students enrolled, the course was ultimately not taught. The system does not electronically delete such courses.

Defendants can, however, manually separate the Maymester 2009 information from the Summer 2009 information and can manually delete courses that were offered but not taught. Because that must be done manually, the

information was not reportable at the time of this filing. In particular, the number of printed pages summarizing the course schedule for Maymester 2009/Summer 2009 is 371 pages and for Fall 2009 is 731 pages. Defendants are reviewing the 1,102 pages and will supplement promptly this filing after the completion of these manual tasks.

Thus, the following information obtained from the course tracking electronic system is as follows:

**Total Number of Courses**

- Maymester 2009/Summer 2009: 3,370
- Fall 2009: 6,949

In addition, the number of textbooks (new and used) sold to students by the GSU Bookstore and the approximate dollar amount of such sales is as follows:

- Spring 2009: 42,049 text books sold (\$2,819,000.00)—29,459 new and 12,590 used.
- Maymester 2009/Summer 2009: 12,296 text books sold (\$813,000.00)—6,342 new and 5,954 used.
- Fall 2009: 51,631 text books sold (\$3,596,000.00)—37,073 new and 14,558 used.

Respectfully submitted this 30th day of August, 2010.

THURBERT E. BAKER                      033887  
Attorney General

R. O. LERER                                      446962  
Deputy Attorney General

DENISE E. WHITING-PACK 558559  
Senior Assistant Attorney General

MARY JO VOLKERT  
Georgia Bar No. 728755  
Assistant Attorney General

Anthony B. Askew  
Georgia Bar No. 025300  
Special Assistant Attorney General  
Stephen M. Schaetzel  
Georgia Bar No. 628653  
Kristen A. Swift  
Georgia Bar No. 702536  
KING & SPALDING LLP

/s/ Katrina M. Quicker  
Katrina M. Quicker  
Georgia Bar No. 590859  
BALLARD SPAHR LLP

*Attorneys for Defendants*



**CERTIFICATE OF COMPLIANCE**

I hereby certify, pursuant to L.R. 5.1B and 7.1D of the Northern District of Georgia, that the foregoing Defendants' Response to Plaintiffs' Supplemental Filing complies with the font and point selections approved by the Court in L.R. 5.1B. The foregoing pleading was prepared on a computer using 14-point Times New Roman font.

*/s/ Katrina M. Quicker* \_\_\_\_\_  
Katrina M. Quicker

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this 30<sup>th</sup> day of August, 2010, I have electronically filed the foregoing Defendants' Response to Plaintiffs' Supplemental Filing with the Clerk of the Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorneys of record:

Edward B. Krugman  
krugman@bmelaw.com  
Georgia Bar No. 429927  
Corey F. Hirokawa  
hirokawa@bmelaw.com  
Georgia Bar No. 357087  
John H. Rains IV  
Georgia Bar No. 556052

BONDURANT, MIXSON &  
ELMORE, LLP  
1201 West Peachtree Street NW  
Suite 3900  
Atlanta, GA 30309  
Telephone: (404) 881-4100  
Facsimile: (404) 881-4111

R. Bruce Rich  
Randi Singer  
Todd D. Larson

WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

/s/ Katrina M. Quicker  
Katrina M. Quicker