

## APPENDIX A

### ERes and uLearn

#### ERes

Conceptually, ERes can be understood as an electronic version of the traditional library reserve system where instructors place a hard copy of a course reading on reserve at the library so that students can check it out for a period of time to complete the reading assignment, make photocopies, and take notes for classroom use. Rather than placing a hard copy on reserve at the library, Georgia State's ERes system allows instructors to place an electronic copy of the reading on a centralized website that students in the course can access in order to complete the reading. ERes is commercial third-party software, meaning that the program was created by a software manufacturer and purchased or licensed by Georgia State [Doc. 142-2; Dimsdale Dep., Doc. 144-5 at 32-33]. Georgia State has used ERes since 2004 [Doc. 144-5 at 32].

In order to place a reading on ERes,<sup>1</sup> an instructor first determines whether the reading is copyrighted. If so, the instructor must complete a Fair Use Checklist. If the instructor determines through the checklist that his or her proposed use of the reading is "fair use" or concludes that the work's copyright status otherwise allows its use,<sup>2</sup> the instructor then submits a request to the Georgia State library staff to place the reading on ERes using an online submission form called a "Course Reserves Request Form" [Doc. 142-2 at 12; Doc. 144-5 at 34; Doc. 206-1 at 6]. This form requires instructors to identify the "copyright status" of the work, which may be that the work "falls under fair use according to the Fair Use Checklist I completed" or that "[t]he library licenses a database that provides an electronic version" [Doc. 206-1 at 6]. After the instructor enters all this information on the form, he or she must review a summary page and

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<sup>1</sup>The process described here is required under the 2009 Copyright Policy, which was instituted on February 17, 2009 and is the policy currently in place for all the University System of Georgia schools.

<sup>2</sup>For instance, this might occur if Georgia State already pays for permission to license electronic copies of the copyrighted work [Doc. 206-1 at 18]. Georgia State pays a significant amount of money to license electronic databases containing copyrighted material, including material owned by Plaintiffs [Id.; Doc. 218 at 2-6].

affirm that he or she completed a Fair Use Checklist and that the work falls under the fair use exception [Id.]. If the instructor determines that the reading is not fair use, he or she must obtain permission from the copyright holder in order to place the reading on ERes.

Once the form is submitted, a Georgia State library staff member reviews the request and, if he or she finds something that appears to be improper, the staff member raises a "red flag" indicating that something about the request is problematic.<sup>3</sup> The staff member would then contact the library director or associate director regarding the issue and then that person would contact Georgia State's office of legal affairs for a final determination [Doc. 187 at 16; Doc. 144-5 at 34]. If this process results in the conclusion that the request to place copyrighted material on ERes exceeds the boundaries of fair use, the staff member rejects the request. Since the adoption of the 2009 Copyright Policy,

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<sup>3</sup>It appears that this determination is primarily based on the length of the work requested [Dimsdale Dep., Doc. 144-5 at 59-62]. Marjorie Dimsdale, Georgia State's "library media and reserves coordinator" who works with ERes and reviews instructors' ERes requests, stated that there was no specific policy regarding what number of pages was inappropriate, but that a request that was "[a] significant portion of the book would raise a red flag." [Doc. 144-5 at 60-61].

library staff have rejected at least one request on this basis [Doc. 160-3 at 53].

If the request is satisfactory, the library staff member obtains a hard copy of the requested reading, either from the instructor or from the library [Doc. 144-5 at 34-35]. Next, the staff member scans the hard copy of the requested reading into a digital file on a Georgia State computer and then uploads the digital file to a Georgia State computer server [Doc. 142-2 at 13]. If the reading already exists in a digital form somewhere in a database owned by Georgia State or licensed for access to Georgia State students, the staff member may create an electronic "link" to the reading rather than scanning a hard copy [Id. at 35].

Once the reading is scanned and uploaded to the ERes system, students in the instructor's course can access the digital file or link on a web page within the ERes system dedicated to the course, known as a "course page" [Doc. 142-2 at 13]. If any of the material on the course page is copyrighted, the page is password-protected so that only students in the course can access it and a copyright notice is displayed on the reading [Doc. 144-5 at 35]. The course pages are set to "expire" so they are no longer

accessible by students at the end of the semester [Id. at 35-36]. During the semester, students in the course can view, download to another computer, and print the course materials they access on ERes [Doc. 142-2 at 14].

**uLearn**

uLearn<sup>4</sup> is an electronic course management system that the University System of Georgia licenses from the third-party vendor Blackboard/WebCT [Id. at 21]. uLearn resides on a server owned and maintained by the University System of Georgia, and Georgia State pays the University System of Georgia a licensing fee to use the uLearn software. Unlike ERes, where course materials are submitted to the library and then uploaded by library personnel, Georgia State instructors upload electronic course materials to uLearn themselves, generally in PDF format, directly to their course's uLearn page [Id. at 21-22]. uLearn provides various "tools" that instructors can use to manage their courses, including mechanisms to hold discussions, give quizzes, post assignments, give grades, post announcements, and provide readings in electronic form. Students access uLearn by going to the

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<sup>4</sup>Plaintiffs have not specified any infringements stemming from use of uLearn. The description of the uLearn system here is included for completeness.

Georgia State uLearn website and logging in with their campus ID and password [Christopher Dep., Doc. 146-2 at 116-17]. Once logged in, a student can view the uLearn course page for the classes in which he or she is registered for the current semester. At each uLearn course page the student can utilize whatever tools the instructor has implemented for the course. If the instructor has uploaded readings to the uLearn course page, students can read and (depending on the file format) download and print the readings [Doc. 142-2 at 22; Doc. 146-2 at 118].