

**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.

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

**JOINT SUBMISSION OF PROPOSED SCHEDULING ORDERS
REGARDING SUPPLEMENTATION OF DISCOVERY AND BRIEFING**

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

Court's consideration their respective proposed scheduling orders governing supplementation of discovery and briefing in the above-captioned proceeding.

The parties present their respective proposed scheduling orders pursuant to the Court's Order of September 30, 2010, which instructed the parties "to confer and determine whether further discovery is needed," and to "present a proposed scheduling order" within twenty days.

1. Discovery

The parties have conferred as directed, and have reached agreement as to the supplementation of certain discovery. Specifically, Defendants have agreed to produce the following materials:

- Updated ERes reports for the 2009 Maymester, Summer 2009 term, and Fall 2009 term;
- Available Syllabi for each course identified in Plaintiffs' August 20, 2010 submission to the Court;
- Available Fair-use checklists for each work identified in Plaintiffs' August 20, 2010 submission to the Court; and
- Existing licenses (if any) for each work identified in Plaintiffs' August 20, 2010 submission to the Court.

Plaintiffs have agreed to produce the following materials:

- Supplemental responses to Defendant document requests and interrogatories relating to Plaintiffs' ownership and/or licensing of the subject works;

- Supplemental responses to Defendant document requests and interrogatories relating to copyright registrations for the subject works;
- Supplemental responses to document requests and interrogatories relating to the effect on the market of Defendants' use of each of the subject works.

2. Depositions

The Parties have agreed that Plaintiffs have five (5) remaining depositions that may yet be taken of GSU personnel. Plaintiffs have requested, but Defendants have not agreed, that Plaintiffs be able to depose, in addition, any person who subsequently submits a declaration in support of Defendants' briefing on the fair-use issue. Plaintiffs' arguments in favor of their request to take such depositions are presented in paragraph 5 below. Defendants' arguments against such depositions are presented in paragraph 6 below. Plaintiffs' proposed order includes, in paragraph (e), a provision providing that Plaintiffs shall be permitted to take the depositions of such declarants.

3. Briefing

The parties believe that the remaining contributory copyright infringement claim, identified by the Court's September 30, 2010 Order, is amenable to being resolved through further written submissions to the Court according to the following sequence:

- Plaintiffs' Initial Filing: Within 21 days of the date for completion of depositions, Plaintiffs shall file their submission setting forth instances of copyright infringement of the works identified in the Court's September 30, 2010 Order.
- Defendants' Opening Brief: Within 30 days of the filing of Plaintiffs' initial filing, Defendants shall submit their opening brief as to the claimed infringements.
- Plaintiffs' Opposition Brief: Within 30 days of the filing of Defendants' Opening Brief, Plaintiffs shall submit an opposition brief as to the claimed infringements.
- Defendants' Reply Brief: Within 21 days of the filing of Plaintiffs' Opposition Brief, Defendants shall submit their reply brief as to the claimed infringements.

4. Proposed Schedules

Because of disagreements over the scope of certain additional discovery (described in paragraphs 5 and 6 below), the parties were unable to reach complete agreement on a joint proposed scheduling order. Accordingly, the parties are submitting separate proposals for the Court's consideration. Plaintiffs' proposed scheduling order is attached as Exhibit A to this submission and Defendants' proposed scheduling order is attached as Exhibit B. The schedules differ only as to paragraphs (e) and (f) of Plaintiffs' proposal.

5. Plaintiffs' Statement Regarding Disputed Discovery Issues

As described in paragraph 2 above, Plaintiffs seek the Court's permission to take certain additional depositions, beyond the five Defendants have agreed to allow during the discovery period, in the event that GSU submits one or more faculty or other declarations in support of their fair-use briefing. Plaintiffs should not be potentially prejudiced by being forced to respond to any such declaration without the benefit of deposing the proponent(s), or by being limited artificially to a total number of depositions agreed to during the original discovery period, well over a year before the Court's determination that the case will move forward based on infringements identified in the parties' August submissions. Paragraph (e) of the scheduling order provides that in the event Defendants elect to submit declarations from witnesses not previously deposed by Plaintiffs, Plaintiffs will have the opportunity to take depositions of these declarants prior to Plaintiffs' responsive briefing. Any undue burden argument from Defendants is one wholly within their control; Plaintiffs seek the right to additionally depose solely the number of declarants from whom defendants determine to proffer evidence. Plaintiffs anticipate that any such deposition would require not more than two hours.

In addition, for the reasons set forth in their accompanying Motion for Reconsideration of the Court's September 30, 2010 Order, Plaintiffs request that the Court order Defendants to produce the following materials, which Defendants have refused to produce: (a) ERes reports, syllabi, and fair-use checklists for the Spring, May, Summer, and Fall 2010 terms; and (b) syllabi and fair-use checklists related to any additional claimed infringements identified in the updated ERes reports for 2009 (reports which Defendants have agreed to provide).

6. Defendants' Statement Regarding Disputed Discovery Issues

The parties have agreed as to certain supplementation of discovery. For example, Defendants have agreed to produce updated ERes reports for the 2009 Maymester, 2009 Summer and 2009 Fall terms (which were the subject of the August 20, 2010 Submission), syllabi for courses identified in the August 20, 2010 Submission, and "fair use" checklists for the works identified in the August 20, 2010 Submission. Thus, progress has been made in terms of the substantive supplementation to be completed.

There is, however, a key area of dispute. With reference to the August 20, 2010 Submission, Plaintiffs have identified an additional forty-nine (49) instructors that allegedly misused a copyrighted work of a Plaintiff. Now, having for the first time made an allegation of infringement outside of the works identified in the First

Amended Complaint and the discovery period, Plaintiffs seek the ability to depose, potentially, all forty-nine (49) professors. Plaintiffs contend that they only seek to depose professors who might file a declaration in support of Defendants' claim of fair use. However, Plaintiffs have alleged from the outset that GSU was making "systematic, widespread, and unauthorized copying" that was "pervasive, flagrant and ongoing." In view of such allegations, Plaintiffs agreed that only fourteen (14) discovery depositions were required, and took only nine (9) of such depositions. It is only now that Plaintiffs seek to depose all professors who would declare that they have made a fair use of an allegedly copyrighted work. Forty-nine (49) depositions is unreasonable. Scheduling alone presents substantial challenges in conducting such a significant number of depositions in a reasonable period of time. The cost would also be significant. Plaintiffs should be bound by their agreement to take fourteen (14) depositions. In that regard, Defendants have agreed to five (5) additional depositions to complete the agreed limit of fourteen (14) depositions.

WHEREFORE, the Parties respectfully request entry of a scheduling order governing further discovery and briefing.

Respectfully submitted this 20th day of October, 2010.

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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 **JOINT SUBMISSION OF PROPOSED SCHEDULING ORDER REGARDING SUPPLEMENTAL OF DISCOVERY AND BRIEFING** 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 20th day of October, 2010.

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