

# ATTACHMENT C

## **Attachment C**

### **Plaintiffs' Outline of the Case**

This is a copyright infringement action brought by Cambridge University Press, Oxford University Press, Inc., and SAGE Publications (collectively, “Plaintiffs”), publishers of textbooks and other scholarly works. Since at least 2003, significant excerpts from hundreds of Plaintiffs’ works, and thousands of works of other publishers, have been digitally scanned, distributed, displayed, downloaded, and copied multiple times at Georgia State University (GSU) via one or more online systems. The net effect has been to create customized digital compilations of assigned readings for hundreds of courses per academic term. This infringing conduct supplants sales and licensing of Plaintiffs’ works in their primary market: academia.

Even after GSU adopted a new copyright policy in 2009 in the midst of this lawsuit, no permission or authorization has been sought for the use of these copyrighted works, and no license or permission fees have been paid. This is the case despite the fact that Plaintiffs offer various mechanisms through which academic institutions can easily license the right to copy and distribute portions of their works to students in print or electronic format, in addition to offering their works for sale.

Plaintiffs contend that the systematic, widespread, unauthorized copying, display, and distribution of their copyrighted works at GSU across various electronic course reading systems, such as its electronic reserves system (“ERes”) and uLearn, without payment of permissions fees, constitutes copyright infringement and that the Defendants, individually and collectively, are legally liable for such infringement through the legal doctrines of *respondeat superior* and contributory copyright infringement. Plaintiffs also contend that each of the Defendants has been properly named under the holding of *Ex parte Young*, 209 U.S. 123 (1908).

Defendants are officials at GSU and the University System of Georgia who have supervisory authority over the operation of electronic course reading systems at GSU and who can ensure that the university is in compliance with federal copyright law. After this lawsuit was filed, Defendants instituted a new copyright policy that delegates to GSU instructors who have no copyright expertise responsibility for evaluating whether a proposed use of copyrighted material is a “fair use.”

Plaintiffs contend that systematic, widespread, unauthorized infringement of their copyrighted material has continued largely unabated at GSU under the new copyright policy, which is fundamentally flawed in both design and execution. In

particular, the “fair use checklist” at the heart of the policy accords virtually dispositive significance to the nonprofit, educational purpose of the copying, notwithstanding the lack of any legal support for that outcome. GSU has encouraged an overly broad conception of fair use by budgeting no money for the payment of permissions fees to publishers.

Under the new policy, GSU professors have continued to post one or more complete chapters of copyrighted works to ERes and uLearn without seeking permission from Plaintiffs or paying any associated customary fees. Moreover, the readings digitally distributed to students are often bundled with other excerpts and readings to create an electronic anthology or coursepack. Representative alleged instances of infringement of Plaintiffs’ works during the 2009 Maymester, Summer 2009 term, and Fall 2009 term are documented in the Joint Filing submitted to the Court on March 15, 2011 (Docket No. 266).

The ongoing infringement of Plaintiffs’ copyrighted works at GSU has significantly reduced payments for sales and/or permissions to use excerpts of those works. Were Defendants’ conduct to become widespread, it would inevitably ruin Plaintiffs’ businesses by decimating their main market, thereby diminishing their incentive and ability to continue to publish the scholarly works on which academic institutions like GSU depend.

In its Order dated September 30, 2010, the Court:

- granted summary judgment in favor of Defendants on Plaintiffs' vicarious copyright infringement claims;
- denied Plaintiffs' and Defendants' motions for summary judgment on the contributory infringement claims;
- granted Defendant's motion for summary judgment on Plaintiffs' copyright infringement claim identified as "Claim One." However, in an Order dated December 28, 2010 (Docket No. 249), the Court granted Plaintiffs' Motion for Partial Reconsideration, holding that Claim One could proceed under the theory of *respondeat superior*.

Thus, Plaintiffs' Claim One, construed as an indirect infringement claim (via *respondeat superior*) rather than as a direct infringement claim, and Claim Three (contributory copyright infringement) remain for trial.

The infringing practices at GSU that were described in the Amended Complaint are ongoing despite the 2009 policy changes. Accordingly, Plaintiffs seek declaratory and injunctive relief against Defendants to prevent the continued copying, display, or distribution of their copyrighted works across electronic platforms without permission from the copyright owner and the payment of proper licenses and/or permissions fees, plus attorneys' fees and costs. Plaintiffs do not seek damages.

**Rules, Regulations, Statutes and Illustrative Case Law Relied Upon By**  
**Plaintiffs**

- U.S. Const. art. 1, § 8
- 17 U.S.C. § 101
- 17 U.S.C. § 104(b)(2)
- 17 U.S.C. § 106
- 17 U.S.C. § 107
- 17 U.S.C. § 201(d)
- 17 U.S.C. § 411(a)
- 17 U.S.C. § 501(b)
- 17 U.S.C. § 502(a)
- 17 U.S.C. § 505
- Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions, H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. (1976)
- Ga. Code Ann. ¶ 51-2-2
- Ga. State University Statutes Art. I § 1, Art. II, Art. III
- Restatement (Third) of Agency § 2.04 (1999)
- *Am. Geophysical Union v. Texaco Inc.*, 60 F.3d 917 (2d Cir. 1994)
- *Basic Books, Inc. v. Kinko's Graphics Corp.*, 758 F. Supp. 1522 (S.D.N.Y. 1991)
- *Cable/Home Commc'n Corp. v. Network Prods., Inc.*, 902 F.2d 829 (11th Cir. 1990)

- *Cable News Network v. Video Monitoring Servs. of Am.*, 949 F.2d 378 (11th Cir. 1991)
- *Cable News Network v. Video Monitoring Servs. of Am.*, 959 F.2d 188 (11th Cir. 1992)
- *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994)
- *Ex parte Young*, 209 U.S. 123 (1908)
- *Gordon v. Nextel Comm.*, 345 F.3d 922 (6th Cir. 2003)
- *Harper & Row Pub., Inc. v. Nation Enters.*, 471 U.S. 539 (1985)
- *Letterese & Assoc., Inc. v. World Inst. of Scientology Enters., Int'l*, 533 F.3d 1287 (11th Cir. 2008)
- *Luckey v. Harris*, 860 F.2d 1012 (11th Cir. 1988)
- *Pac. & S. Co., Inc. v. Duncan*, 744 F.2d 1490 (11th Cir. 1994)
- *Pac. & S. Co. v. Duncan*, 618 F.Supp. 469 (N.D. Ga. 1985)
- *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146 (9th Cir. 2007)
- *Princeton Univ. Press v. Michigan Document Servs., Inc.*, 99 F.3d 1381 (6th Cir. 1996)
- *Salerno v. City University of New York*, 191 F. Supp. 2d 352 (S.D.N.Y. 2001)
- *Sandoval v. Hagan*, 197 F.3d 484, 500 (11th Cir. 1999)
- *Saregama India Ltd. v. Mosley*, No. 10-10626, 2011 WL 1103337 (11th Cir. Mar. 25, 2011)
- *Shapiro, Bernstein & Co. v. H.L. Green Co.*, 316 F.2d 304 (2d Cir. 1963)
- *Sony BMG Music Entm't v. Villarreal*, No. 5:06-CV-323(CAR), 2007 U.S. Dist. LEXIS 883 (M.D. Ga. Jan. 5, 2007)
- *Sygma Photo News, Inc. v. High Soc'y Magazine, Inc.*, 596 F. Supp. 28 (S.D.N.Y. 1984)

The preceding citations are illustrative only; Plaintiffs incorporate by reference and may rely on other authorities identified in their summary judgment briefing, their pretrial brief, their motions *in limine*, and their Proposed Conclusions of Law and Proposed Findings of Fact, which will be submitted to the Court prior to trial.