

ATTACHMENT H-1

874935.1

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

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

Plaintiffs,

- v. -

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

Defendants.

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

Plaintiffs' Pretrial Memorandum of Law

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INTRODUCTION

In this action, three prominent academic publishers, Cambridge University Press, Oxford University Press, Inc., and SAGE Publications, Inc. (collectively, “Plaintiffs”), seek to enjoin Defendants from enabling and allowing the continued unlawful copying, display, and distribution of substantial portions of their copyrighted works by faculty and other employees of Georgia State University (GSU) for use as digital course readings. Since at least 2003, under the control and/or supervision of Defendants,¹ significant excerpts from hundreds of Plaintiffs’ works, and thousands of works of other book publishers, have been digitally scanned, distributed, displayed, downloaded and copied multiple times via one or more GSU online systems. The net effect has been to create customized digital anthologies of assigned readings for hundreds of courses with no permission from or payment to the publishers for use of their book excerpts – even after the adoption in 2009 of a revised copyright policy in response to this lawsuit.

¹ Defendants (sometimes referred to collectively herein as “GSU”) are sued on the basis of their own conduct and that of the GSU librarians and faculty who are agents of GSU and whose infringing conduct falls under the supervisory authority of each of the Defendants.

This conduct exceeds the boundaries of any reasonable conception of fair use. Although Defendants have readily available to them efficient and cost-effective means for procuring licenses that would enable GSU to continue to use these works while at the same time preserving Plaintiffs' and other publishers' incentives to continue to publish them, the foregoing activity has, as noted, been undertaken without permission from, or customary payment to, the publishers of the works used in reliance on an insupportable interpretation of fair use. This ongoing infringement, exemplified by the evidence identified on the parties' March 15, 2011 Joint filing, Docket No. 266, should be enjoined.

The law is clear that when students at GSU and elsewhere obtain course reading materials collated into paper "coursepacks" – which serve as substitutes for purchases of textbooks and other reading materials – permissions payments are required to be (and are) made to the publishers of the component contributions. Yet Defendants operate under the assumption that providing students with collections of course reading materials electronically does not implicate the same copyright concerns as do coursepacks and does not require commensurate licensing. That assumption is incorrect. New technological means for disseminating copyrighted

materials do not in and of themselves alter the obligation to pay for the copying, display, and distribution of the materials.

Operating from this erroneous premise, since at least May 2003, Defendants – according to their own records – have not paid a single penny to any publisher (plaintiffs included) for use of thousands of separate copyrighted book excerpts on the ERes and uLearn systems. GSU has neither budgeted any funds for permissions fees nor assessed any student copyright fees for these uses (in contrast to the imposition of, *inter alia*, student activity, athletics, and technology fees). Nothing has changed in this regard since GSU’s revised copyright policy went into effect in February 2009.

At trial, Plaintiffs will demonstrate the significant adverse consequences for their businesses if this rampant copyright infringement at GSU is allowed to continue. They will show that they make substantial investments in – and play an important role in the development of – scholarly books that serve the teaching needs of colleges and universities, that advance scholarship, and that enable faculty authors to advance their careers. They will show that these investments are underwritten by two sources of income: (1) sales and licensing of the works and (2) permissions income for uses of excerpts from them. When students purchase books from

the university bookstore or licensed coursepacks, Plaintiffs' publishing efforts are sustained. But when non-trivial portions of these same works are taken for free, and are combined into unlicensed digital course reading collections – as occurs routinely at GSU – the viability of Plaintiffs' businesses is jeopardized.

The impact on Plaintiffs' businesses of the infringement occurring at GSU cannot properly be assessed solely on a work-by-work basis. Instead, the law considers systematic unauthorized copying of the type occurring at GSU in its totality and, moreover, requires the Court to evaluate the impact on Plaintiffs' continued ability to publish leading works of scholarship *were the challenged conduct to become widespread*. See *Princeton Univ. Press v. Mich. Document Servs., Inc.*, 99 F.3d 1381, 1387 (6th Cir. 1996) (noting potential impact on plaintiff publisher if unlicensed coursepacks were offered nationwide); *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 590 (1994) (stating that courts must consider ““whether unrestricted and widespread conduct of the sort engaged in by the defendant . . . would result in a substantially adverse impact on the potential market’ for the original”) (quoting *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 569 (1985)).

The trial testimony will demonstrate unequivocally that if consumers in Plaintiffs' primary market – academia – are provided with significant portions of Plaintiffs' works for free, Plaintiffs cannot possibly stay in business. For this reason the pervasive copyright infringement at GSU is ultimately self-defeating: if allowed to continue, it will deprive faculty and students of scholarly publications that are the foundation of the academic enterprise.

Defendants will likely profess that they responded to Plaintiffs' complaint by promulgating a legally sufficient new copyright policy in 2009. But good faith does not convert infringement into fair use, and the trial record will reveal that the new policy, however well intentioned, is an utter failure. It is deeply flawed in both conception and implementation, and it has not meaningfully curtailed infringing conduct at GSU. Defendants cannot evade their responsibility for assuring GSU's compliance with federal copyright law by simply promulgating a new policy and leaving its implementation to untrained faculty members without exercising any oversight over their routinely erroneous fair use decisions. *See Order, Docket No. 235, at 17* (stating that Defendants cannot encourage instructors to make fair use decisions and then claim to be immune from liability for those decisions).

The continuing, widespread copyright infringement occurring at GSU is the predictable result of (i) Defendants' having delegated responsibility for applying the fair use doctrine to faculty members who are unschooled in copyright law and (ii) their provision to the faculty of a deeply-flawed "Fair Use Checklist" as the principal tool for making fair use determinations. The design of the checklist, coupled with demonstrably inadequate faculty training in fair use, leads copyright-novice professors almost without exception to affirmative fair use findings that are contrary to law.

By ascribing equal weight to every listed factor and by listing multiple, redundant "weighs in favor of fair use" factors that invariably are satisfied by the mere fact that the instructor has selected the work as reading material for a class, the checklist virtually preordains a finding of fair use. Thus, for example, the critically important fact that the uses at issue are not transformative (which Defendants have conceded) is outweighed on the checklist by the fact that the copying is occurring in a course taught at a non-profit educational institution (which is good for at least two "checks"). Similarly, proper assessment of the crucial fourth fair use factor – potential market harm – is precluded by the typical instructor's asserted (legally irrelevant) conclusion that he or she would not have assigned the work in

question if the instructor or students were required to purchase it or pay a permissions fee.

Given the foregoing, it is no surprise that every one of the 174 completed checklists produced by Defendants to date has resulted in a conclusion that the proposed use was a fair use. This result has come about notwithstanding takings as extensive as eight chapters, 187 pages, and 35.6 percent of various works – and the combination of as many as 27 separate takings into a digital anthology for a single class. This is not primarily the faculty’s fault: the checklist is constructed to produce this unlawful outcome.

Further undermining the legitimacy of the new policy is the fact that some faculty members who had works posted on ERes in 2009 did not fill out checklists at all or did so only more than a year later at the request of Defendants’ counsel for purposes of this litigation, even though filling out and retaining the checklists is required by – indeed, is the heart of – the new policy.

In contrast to the fundamentally flawed conception of fair use reflected in GSU’s copyright policy and practice, Plaintiffs’ entitlement to prospective injunctive relief follows from straightforward application of established fair use principles to the facts to be adduced at trial. It is clear from the case law and from the legislative history of the Copyright Act that

the unauthorized, non-transformative, literal copying (as well as display and distribution) of qualitatively and quantitatively significant portions of Plaintiffs' scholarly works, semester after semester, at GSU – which, if it were to become widespread, would seriously impair the primary market for Plaintiffs' works – is not fair use.

As we discuss (and contrary to Defendants' misleading checklist), this conclusion is not altered by the fact that the copying activity is occurring in a non-profit educational setting. Nor does the self-serving argument that if students were unable to use the works for free, they would not have been assigned avoid the market harm to Plaintiffs were the challenged activity to continue and spread. This is an easy (and untestable) claim for Defendants to make *after* the takings have actually occurred and the materials have been used in the classroom. It reflects a legally baseless conception of market harm that would logically enable anyone to justify taking *any copyrighted material* for free so long as he or she is (or claims to be) unwilling to pay for it. It also reflects the implausible proposition that GSU instructors would forego using any work for which any publisher sought compensation, including seminal works in their respective fields.

The binary choice with which GSU faculty seem to believe they are presented under the new policy between either using excerpts of Plaintiffs'

works for free or making students buy the entire book (even if only a chapter or two is assigned) is a false one, missing as it does the third option: paying a modest permission fee for use of the selected excerpts. The Court will hear that most GSU instructors are not even aware of the existence of a functioning market for licensing use of Plaintiffs' works and therefore fail to consider this salient fact in completing the checklists. Yet the availability of Plaintiffs' works for licensing either directly from the publisher or through one or more efficient and affordable licensing mechanisms offered by their agent the Copyright Clearance Center (CCC) causes Defendants' "if we cannot use it for free we would not buy it" defense to ring hollow.

In sum, the straightforward application of settled fair use principles to the facts to be adduced at trial will demonstrate that an injunction that brings GSU's practice in line with what Congress and the courts have viewed as the permissible scope of fair use in connection with classroom teaching is appropriate and necessary. Such an injunction will impose modest costs on GSU and its students while protecting Plaintiffs from the certain, substantial, and continuing threat of the loss of revenues that are the lifeblood of the publishing businesses on which the academic enterprise ultimately depends.

FACTUAL BACKGROUND

A. Plaintiffs and the Licensing of Their Copyrighted Works

Plaintiffs are the publishers and owners or exclusive licensees of the copyright rights in thousands of works, many of which are marketed primarily for academic use. These works lie at the heart of the educational enterprise, reflecting leading scholarship by university faculty (including at GSU) as well as by renowned experts in myriad subjects of vital importance to society. The thousands of textbooks, monographs, journal articles, and handbooks Plaintiffs publish each year form the backbone of college and university teaching in the full range of fields of study offered at GSU.

As the Court will hear at trial, the creation and promotion of scholarly works is the reason Plaintiffs exist. They are deeply involved in all aspects of creating and selling the books they publish: soliciting and working with authors to shape manuscripts; arranging for peer review by experts in the field; editing, designing, illustrating, producing, promoting, and distributing the works; and administering payments to authors and third-party contributors. The importance of academic publishers to higher education will be illustrated by, *inter alia*, the testimony of SAGE's witness, who will explain that SAGE was instrumental in the creation of new academic disciplines after perceiving a need for publications on research methodology.

In addition to supplying the texts used for university teaching, Plaintiffs' publishing activities also help to establish the academic credentials of the college and university instructors who author these works. The record will demonstrate, in short, that Plaintiffs play a key role in the higher education "ecosystem."

Although income from direct sales of book and online products constitutes Plaintiffs' largest revenue stream, licensing and other permissions fees for the use of portions of their books also represent important sources of income for publishers and authors. It is, therefore, Plaintiffs' mission to make works available by ensuring that permissions are readily obtainable by institutions like GSU as an alternative to requiring students to purchase books, and they do so both directly and through CCC, a not-for-profit licensing organization. As particularly pertinent here, Plaintiffs offer efficient and affordable procedures for licensing the right to copy and distribute portions of their works to students electronically. Plaintiffs partner with CCC to administer comprehensive permissions coverage so that third parties can use portions of Plaintiffs' works in hardcopy or digital format, including as a part of coursepacks and digital course reading anthologies, for prices typically ranging from 12 to 15 cents per page.

The ease with which low-cost permissions for digital uses of Plaintiffs' works can be obtained from Plaintiffs or from CCC belies any claim of undue cost or burden to secure these rights. Indeed, Plaintiffs will show that many academic institutions obtain permission to use portions of the works at issue for teaching purposes without apparent disruption to their mission.

B. Defendants

Georgia State University, located in Atlanta, Georgia, is a public university and a unit of the Regents of the University System of Georgia. Answer, Docket No. 42 ¶ 13. It has approximately 1,000 full-time faculty members and more than 27,000 full-time students.

Defendants are responsible for the adoption and implementation of GSU's current copyright policy, and they all hold and have exercised supervisory authority over the operation of the ERes and uLearn systems at GSU. The record will establish that each of the defendant officials of GSU and/or USG is responsible in part for the infringement of Plaintiffs' works; that each has participated in, facilitated, encouraged, and/or overseen the process and/or policy by which Plaintiffs' works have been digitally copied, displayed, and distributed on the GSU campus; and that each has the authority to effect a change in the relevant practices.

C. ERes and uLearn

Since 2003, GSU has enabled instructors to distribute course materials in digital form via Internet-based tools rather than in the form of paper coursepacks. Foremost among these tools at GSU are ERes and uLearn, which have become increasingly popular as a means of giving students access to assigned and recommended course readings. That these online systems serve the same purpose as coursepacks is stated explicitly on the Fall 2009 syllabus for Professor Gabler-Hover's course English 4200 "Cyborgs in American Culture," which instructs students that many of the course readings "are on library e-reserve for you to print out immediately, forming a course packet for yourself." Plaintiffs' Exhibit 534, attached hereto as Exhibit A.

Whereas GSU's written policy requires payment of permissions fees to the publishers whose works are incorporated into paper coursepacks, the record contains no evidence (other than a single instance in 2003) of permissions fees having been paid for the use of copyrighted book excerpts made available through the ERes and uLearn systems – whether under GSU's prior copyright policy or its current one.

D. The Representative Works Copied by GSU

The Court has ordered that the lawfulness of Defendants' practices under the ERes and uLearn systems is to be determined based on alleged infringements of Plaintiffs' works during three 2009 academic terms (only one of which – Fall 2009 – was a traditional full term). Although Plaintiffs have been harmed by infringements that occurred both before and after those terms, evidence as to infringements of more than 80 of Plaintiffs' works during those three terms, as detailed on the parties' March 15, 2011 Joint Filing, Docket No. 266, more than suffices to demonstrate the ongoing nature of GSU's infringing practices.

The evidence will demonstrate the extensiveness of the infringing excerpts – many a full chapter or more of an original scholarly book, with several takings exceeding 20 percent of the work – under the new policy. It also will show how these takings have been combined with unauthorized takings of as many as 27 other published works to create digital course anthologies akin to coursepacks. Fall 2009 ERes Report, Joint Exhibit 3, an excerpt of which is attached hereto as Exhibit B. Digital copies of excerpts from Plaintiffs' and other publishers' books are distributed for display, downloading, and copying by entire classes of students. Plaintiffs will testify as to how the professor-created anthologies available on ERes

substitute for sales and licensing of their textbooks, customized course readings, and other published offerings.

E. GSU's New Copyright Policy

Until February 2009, the University System of Georgia's official position on copyright law as applied to its member institutions was embodied in a 1997 "Regents' Guide to Understanding Copyright & Educational Fair Use." This policy, which was in effect when this lawsuit was filed, invited – and led to – massive unauthorized takings of copyrighted materials under an interpretation of fair use so broad that even Defendants' expert Dr. Crews could not and would not defend it.

In December 2008, eight months after this suit was filed, the Board of Regents convened a committee composed of representatives of various State of Georgia educational institutions to "revisit" the Regents' existing copyright policy. Regrettably, the hastily crafted new copyright policy has left the practices that prompted this lawsuit essentially intact.

The current copyright policy, which GSU implemented in February 2009, delegates the responsibility for determining whether copyrighted course materials may be copied and distributed without permission entirely to faculty members, who must determine whether their contemplated use constitutes fair use or whether, instead, permission must be obtained and any

necessary license fees paid. The committee chairman termed this delegation a “fundamental element” of the policy, based on the assumption that faculty will “do the right thing given the right tools and the right information.” Deposition of William Potter, Docket No. 170, at 145:14-146:9. This sentiment was echoed by GSU’s head librarian. *See* Deposition of Nancy Seamans, Docket No. 174, at 115:13-16 (“The faculty member is the person who best understands . . . how they’re going to use it and whether there’s a fair use determination that can be made.”). Unfortunately, the faculty are given neither the right tools nor the right information to make accurate fair use determinations. Plaintiffs will demonstrate – including through the testimony of GSU faculty – that GSU’s new policy is severely flawed in both design (being heavily biased in favor of erroneous affirmative fair use determinations) and execution (as, among other things, it fails accurately to instruct faculty members in basic precepts of copyright law or to institute oversight and compliance procedures).

The principal tool with which faculty members have been furnished to evaluate the legality of contemplated electronic course readings is a “Fair Use Checklist.” The checklist is a form, divided into two columns (entitled “weighs in favor of fair use” and “weighs against fair use”), that presents users with lists of purportedly relevant criteria under four separate headings

that correspond to each of the four statutory fair use factors. The policy requires instructors to complete the checklist for each work they propose to distribute digitally to students and to decide in doing so which of the listed criteria apply to the proposed use.

The checklist is designed so that if there are more checks in the “weighs in favor of fair use” column than in the “weighs against fair use” column, the factor cuts in favor of fair use. Following this rote numeric computation, if the factors favoring fair use outnumber those against it, GSU policy authorizes instructors to use the work in question without obtaining publisher permission. The checklist contains no indication that some criteria (such as whether the use is transformative) are legally more important than others. Indeed, with its listing of several redundant “favoring fair use” criteria that focus on the nonprofit educational/teaching purpose of the use, the checklist virtually dictates a “favors fair use” conclusion as to Factors 1-3, a result that effectively renders the all-important Factor 4 – addressing potential market harm – superfluous.

In light of the foregoing, it is no surprise that *every* checklist produced to Plaintiffs, no matter the size or content of the excerpt at issue, concludes that each of the four factors “weighs in favor of fair use,” and most contain between 10 and 15 checks on the left (pro-fair-use) side. By contrast, not a

single checklist contains more than four checks on the “weighs against fair use” side, and most contain none or only one. No checklist provided to Plaintiffs concludes that the proposed taking is not fair use.

The trial testimony will show how faculty members placed in the untenable position of being experts in copyright law struggled to make sense of the checklist. For example, most faculty simply left blank both the transformative and non-transformative boxes because GSU failed to instruct them as to what these centrally important terms mean or how they matter to the fair use analysis.² The checklists also reflect a pervasive failure to investigate or give any weight to whether licenses (or “permissions”) are available for the intended use, which is critical to the Factor 4 analysis. In fact, most faculty members had never even heard of CCC, let alone accorded its services proper weight under Factor 4.

The inevitability of “favors fair use” determinations under the new policy is reinforced by GSU’s failure to budget, collect fees from students, or establish any procedures for obtaining permission to post electronic course materials on ERes or uLearn. This leaves faculty members in a

² Even when faculty have exhibited some grasp of these concepts, such as their acknowledgement that ERes postings are not transformative, few of the checklists completed in 2009 contain checks in the box for “non-transformative.”

quandary as to what they can do should a contemplated reading not be fair use, and it contrasts sharply with the practice at many other schools and with GSU's own practice with respect to paper coursepacks.

F. Harm to Plaintiffs

GSU's systematic, ongoing, and widespread practice of copying and distributing Plaintiffs' works as digital course readings or anthologies without securing permission and paying customary license fees strikes at the heart of Plaintiffs' businesses. A single copy of a Plaintiff's work acquired by the library or by a professor at GSU forms the basis for providing entire classes of students, semester after semester, with their own copies for free, *i.e.*, with no income generated for the publisher.

In addition to depriving Plaintiffs of book sales, GSU's practice avoids permissions payments to Plaintiffs for uses of scanned excerpts. Plaintiffs will show that permissions income is crucial to maintaining their businesses on sound financial footing. Contrary to the assumption of many GSU instructors, the record will show that Plaintiffs and CCC offer efficient licensing mechanisms that authorize the very uses at issue in this case and that cost mere pennies per page. Defendants will be hard-pressed to argue that such a modest incremental fee would jeopardize GSU's educational mission. For Plaintiffs, on the other hand, the continued loss of sales and

permissions revenue from GSU, and potentially from schools across the country if the Court were to endorse GSU's practices, would be devastating and ultimately would curtail their ability to publish the works on which academic institutions such as GSU depend.

ARGUMENT AND CITATION OF AUTHORITIES

I. ACTIONABLE COPYING

Each of the works on which the trial will center, identified in the Joint Filing, is an original work of authorship owned or exclusively licensed by one of the Plaintiffs. Each work is registered with the U.S. Copyright Office or is protected under U.S. copyright law as a foreign work first published in a country that is a signatory to the Berne Convention without the need for registration. 17 U.S.C. §§ 104(b)(2), 101.³

II. DEFENDANTS' ONLINE COURSE MATERIAL PRACTICES ARE NOT FAIR USE

Defendants' principal merits defense is that the unauthorized copying Plaintiffs seek to enjoin is fair use. As discussed below, application of settled law to the facts to be adduced at trial will demonstrate the clear deficiency of this defense.

³ We refer the Court to our *in limine* motion addressing Defendants' challenges to certain of the works that appear on the Joint Filing.

A. Overview

Our nation’s copyright law seeks to “promote[] the public access to new ideas and concepts.” *SunTrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257, 1262 (11th Cir. 2001). It does so by “suppl[ying] the economic incentive to create and disseminate ideas,” *Harper & Row*, 471 U.S. at 558, including in the form of works of scholarship. Copyright law “rewards the individual author in order to benefit the public,” *id.* at 546 (citation omitted), because “[w]ithout this limited monopoly, authors would have little economic incentive to create and publish their work,” which would undermine the goal of copyright. *SunTrust Bank*, 268 F.3d at 1262. The incentive rationale also applies to the publishers responsible for disseminating copyrighted works.

Built into the fabric of copyright law is a judicially crafted fair use privilege that “permits courts to avoid rigid application of the copyright statute when, *on occasion*, it would stifle the very creativity which that law is designed to foster.” *Campbell*, 510 U.S. at 577 (citation omitted) (emphasis added). The fair use privilege is a *limited exception* to the exclusive rights of copyright owners. It is intended to accommodate socially productive “transformative” uses that serve purposes different from the original, as opposed to merely supplanting or superseding the original. As

Plaintiffs explain below, takings that are not transformative by their nature deprive the copyright owner of the compensation necessary to stimulate the creation and dissemination of copyrighted works and do not qualify as fair use even when the use occurs in a non-profit educational setting.

The challenged practices at GSU – systematic literal copying and distribution of significant portions of thousands of copyrighted works, year after year, without any compensation to Plaintiffs or other copyright owners – directly threaten the long-term viability of academic publishers such as Plaintiffs by substituting for purchases of books or licensed excerpts, thereby usurping their primary market. The fair use doctrine is not intended – and has never been found – to shield such conduct.

B. Application of the Statutory Fair Use Factors to Defendants' Activities

The Supreme Court has expressly rejected reliance on “categories of presumptively fair use.” *Peter Letterese & Assocs., Inc. v. World Inst. of Scientology Enters., Int'l*, 533 F.3d 1287, 1309 (11th Cir. 2008) (quoting *Campbell*, 510 U.S. at 584). Rather, whether a particular use is “fair” depends primarily on consideration of the four factors set forth in section 107 of the Copyright Act, 17 U.S.C. § 107:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

We briefly discuss each factor below as applied to the anticipated trial record.

1. The Purpose and Character of the Use (Factor 1)

The “central purpose” of the first-factor inquiry is to determine “whether the new work merely ‘supersede[s] the objects’ of the original creation . . . or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message; it asks, in other words, whether and to what extent the new work is ‘transformative.’” *Campbell*, 510 U.S. at 579 (citations omitted). Transformative works “lie at the heart of the fair use doctrine[.]” *Id.* See also *Am. Geophysical Union v. Texaco Inc.*, 60 F.3d 913, 923 (2d Cir. 1994). The centrality of transformative value to the fair use doctrine stems from its relationship to the constitutional objective of promoting the progress of

science and the useful arts, which is “generally furthered by the creation of transformative works.” *Campbell*, 510 U.S. at 579.

Whereas a transformative work furthers the purposes of copyright, “an untransformed copy is likely to be used simply for the same intrinsic purpose as the original, thereby providing limited justification for a finding of fair use.” *Am. Geophysical Union*, 60 F.3d at 923. *See also Letterese*, 533 F.3d at 1310 (“[A] work that is not transformative . . . is less likely to be entitled to the defense of fair use because of the greater likelihood that it will ‘supplant’ the market for the copyrighted work. . . .”) (citation omitted).

Photocopying or other exact duplication is a paradigmatic nontransformative use. In *Princeton University Press*, 99 F.3d 1381, the leading fair use decision involving university course readings, the court stated:

[T]he degree to which the challenged use has transformed the original copyrighted works . . . is virtually indiscernible. If you make verbatim copies of 95 pages of a 316-page book, you have not transformed the 95 pages very much – even if you juxtaposed them to excerpts from other works and package everything conveniently. This kind of mechanical “transformation” bears little resemblance to the creative metamorphosis accomplished by the parodists in the *Campbell* case.

Id. at 1389. *American Geophysical Union*, which involved photocopying and archiving copies of scientific journal articles by Texaco scientists, held

that the photocopying “merely transforms *the material object* embodying the intangible article that is the copyrighted original work. . . . Texaco’s making of copies cannot properly be regarded as transformative use of the copyrighted material.” 60 F.3d at 923 (emphasis in original).

In *Princeton University Press*, the court found that even though coursepack anthologies allowed professors to create readings perfectly tailored to their courses, the anthologies nevertheless were not transformative. See 99 F.3d at 1384. Similarly, in *Basic Books, Inc. v. Kinko’s Graphics Corp.*, 758 F. Supp. 1522 (S.D.N.Y. 1991), the court found that the “excerpts in suit were merely copied, bound into a new form, and sold.” The copying “had productive value only to the extent that it put an entire semester’s resources in one bound volume for students.” *Id.* at 1531.

The copying and distribution of Plaintiffs’ works in connection with ERes is not materially different from the copying and distribution of the plaintiffs’ works in *Princeton University Press* or in *Basic Books*. As with coursepacks, ERes postings entail exact mechanical reproduction without any repurposing of the material. GSU witnesses (including the chairman of the committee that developed the current policy, GSU’s head librarian, and

individual faculty members) have acknowledged that the use of electronic course materials is not transformative.

The ERes system is not a digital analog to physical library reserves, as Defendants may argue. For one thing, only one copy (usually the original) of a copyrighted work is placed by the library on physical reserve. That single copy is available for borrowing by only one student at a time, and for a limited period of time. In contrast, after GSU scans a given work and uploads it to ERes, multiple copies of the material are supplied to every student in a course for simultaneous viewing. Students can freely display, download, print, and save copies of ERes course readings, and they regularly bring printed copies of downloaded ERes course readings to class.

Defendants also will rely heavily on the non-profit educational context of the copying. But nonprofit educational use is “only one element of the first factor enquiry,” and it “does not insulate [the use] from a finding of infringement.” *Campbell*, 510 U.S. at 584. Where, as here, there is a total absence of transformative benefit, the mere fact that the takings may have occurred without the immediate purpose of monetary gain does not even tip the Factor 1 analysis in Defendants’ favor, let alone automatically result in an overall finding of fair use.

The Fair Use Checklist reflects none of these governing legal principles. To the contrary, it effectively nullifies the significance of non-transformativeness by according each statutory factor and each of the criteria within each factor equal weight. Thus, even if the concession by GSU witnesses that the copying involved is not transformative were reflected in the completed checklists (which it almost never is), it is “balanced out” (and in practice *cancelled* out) by a determination under Factor 1 as to any of six other considerations given equal weight, such as that the use is “nonprofit educational,” “teaching,” and/or “necessary to achieve your educational purpose.” Each of these three overlapping/duplicate considerations will be (and is) checked almost by definition for faculty-selected GSU course materials. The checklist therefore preordains an outcome that is contrary to a core teaching of the case law as to Factor 1.

Defendants will strenuously assert that the mere promulgation of the new policy and the requirement that faculty fill out the Fair Use Checklist should by themselves give them a free pass under the fair use doctrine, insofar as these efforts reflected a well-intentioned effort to promote copyright compliance. But, as the Eleventh Circuit stated in *Letterese*, such professions of good faith “do[] not insulate a defendant from liability” and constitute “merely a ‘presupposition’ of a defendant’s claim to the [fair use]

defense.” 533 F.3d at 1312 n.27. What is relevant are the *results* of the application of the policy, since it is those results, not statements of good intention, that impact Plaintiffs’ businesses.

For all these reasons, Factor 1 weighs against fair use.

2. The Effect of the Use on the Potential Market for or Value of the Copyrighted Works (Factor 4)

The fourth and perhaps most important statutory fair use factor requires the court to consider “not only the extent of market harm caused by the particular actions of the alleged infringer” but also ““whether unrestricted and widespread conduct of the sort engaged in by the defendant . . . would result in a substantially adverse impact on the potential market’ for the original.” *Campbell*, 510 U.S. at 590 (citation omitted). The inquiry focuses not on provable actual damages but on predictable future market harm if the challenged conduct were to be deemed legal.

The first and the fourth fair use factors harmonize in that “a work that merely supplants or supersedes another is likely to cause a substantially adverse impact on the potential market of the original,” whereas a transformative work “is less likely to do so.” *SunTrust*, 768 F.3d at 1274 n.28 (citation omitted). The mere duplication of an original serves as a market replacement for it, “making it likely that cognizable market harm to

the original will occur.” *Campbell*, 510 U.S. at 591. *See also Letterese*, 533 F.3d at 1315 (“the adverse effect with which fair use is primarily concerned is that of market substitution”). This case involves direct market substitution – free digital copies instead of purchased or licensed ones in class after class, semester after semester – in Plaintiffs’ primary market, which is exactly what copyright law forbids.

Market harm is not limited to lost book sales; lost permissions fees are a recognized form of market harm, especially where, as here, the copyright holder is already successfully exploiting the licensing market. *See Princeton Univ. Press*, 99 F.3d at 1387; *Am. Geophysical Union*, 60 F.3d at 930 (noting that “since there currently exists a viable market for licensing the[] rights for individual journal articles, it is appropriate that potential licensing revenues for photocopying be considered in a fair use analysis”).

In *Princeton University Press*, the court discussed the potential ramifications for permissions revenue if the defendant’s photocopying were to be deemed fair use:

[M]ost of the copyshops that compete with MDS in the sale of coursepacks pay permission fees for the privilege of duplicating and selling excerpts from copyrighted works. . . . If copyshops across the nation were to start doing what the defendants have been doing here, this revenue stream would shrivel and the potential value of

the copyrighted works of scholarship published by the plaintiffs would be diminished accordingly.

99 F.3d at 1387. The unauthorized copying at GSU will have the same adverse effect on Plaintiffs if endorsed by the Court, regardless of the copying being done by the university rather than by a copyshop and regardless of the copies being in digital rather than paper form.

The Court will hear that there is an established, widely used, user-friendly system for licensing excerpts from academic books for fees in the range of 12-15 cents per page through the CCC for the very type of educational use engaged in by GSU: the customized assembly by faculty of numerous excerpts from copyrighted works into comprehensive electronic course readings. Plaintiffs will show that the per-student cost of obtaining permission for such uses is extremely modest and that the destruction of the multimillion-dollar market for licensing reproduction rights for academic use would materially harm Plaintiffs' incentive to continue to publish academic works.

GSU's lack of regard for Plaintiffs' economic interests is striking. Notwithstanding the indisputable relevance of lost permissions fees to the Factor 4 analysis, the GSU instructors deposed in this case failed even to take licensing fees (as distinct from lost sales) into account in their

evaluation of market harm – one of the most egregious examples of GSU’s failure to equip its faculty with an adequate understanding of fair use. Worse, because the checklist implements a “majority rules” approach to the four-factor test, an instructor *need not evaluate Factor 4 at all* if he or she has already determined that the other three factors weigh in favor of fair use.

The Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions that accompanied the 1976 Copyright Act (the “Classroom Guidelines”), while not binding, do “evoke a general idea, at least, of the type of educational copying Congress had in mind,” *Princeton University Press*, 99 F.3d at 1390, and they speak directly to market substitution in a way that underscores the divergence of GSU’s ERes practices from Congress’s conception of fair use. Not only are most individual excerpts posted to ERes much longer than the lesser of ten pages or 1,000 words permitted by the Classroom Guidelines, but the use of excerpts from multiple works to make up a significant portion of the total readings for a class is contrary to the admonition in the Guidelines that copying “shall not be used to create or to replace or substitute for anthologies, compilations or collective works.” Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with

Respect to Books and Periodicals, H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. (1976) § III(A).

The Classroom Guidelines make clear that “replacement or substitution” can occur when excerpts from various works are “accumulated.” *Id.* They state that the copying shall not “substitute for the purchase of books, publishers’ reprints, or periodicals” and shall not “be repeated with respect to the same item by the same teacher from term to term.” *Id.* § III(C)(a)(c). The House Report explained:

Where the unauthorized copying displaces what realistically might have been a sale, no matter how minor the amount of money involved, the interests of the copyright owner need protection. Isolated instances of minor infringements, when multiplied many times, become in the aggregate a major inroad on copyright that must be prevented.

H.R. Rep. No. 90-83, 90th Cong., 1st Sess. (1967), at 35 (cited approvingly in H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. (1976), at 67). Plaintiffs will show systematic, non-transformative appropriation of their copyrighted works at GSU that is far removed from Congress’s conception of fair use. They will thus establish that what the court found in *Princeton University Press* is no less present at GSU: copying that “goes well beyond anything envisioned by the Congress that chose to incorporate the guidelines in the legislative history.” 99 F.3d at 1391.

In sum, Factor 4 should weigh heavily in Plaintiffs' favor.

3. The Nature of the Copyrighted Work (Factor 2)

Under the second fair use factor, Plaintiffs will establish that their books, while nonfiction, are creative, literary works that are quite different from the factual compilations that courts have held are entitled to relatively little protection against fair use. The Eleventh Circuit has expressly disapproved of allowing too wide a berth for fair use of factual works, noting that courts should "take care not to discourage authors from addressing important topics for fear of losing their copyright protections."

Pac. & S. Co. v. Duncan, 744 F.2d 1490, 1497 (11th Cir. 1984).

The creative works of original scholarship and analysis at issue in this case are of the same nature and thus are entitled to the same weight under Factor 2 as the academic books at issue in the coursepack cases. As the Sixth Circuit noted in *Princeton University Press*, academic coursepacks are "certainly not telephone book listings" but, instead, "contain[] creative material, or 'expression'" warranting awarding Factor 2 to the plaintiff publishers in that case. 99 F.3d at 1389.

4. The Amount and Substantiality of the Use (Factor 3)

The third fair use factor looks at the amount and substantiality of the portion used in relation to the copyrighted work as a whole. In applying this

factor, courts “evaluate the qualitative aspects as well as the quantity of material copied.” *Basic Books*, 758 F. Supp. at 1533. Verbatim copying (such as the digital reproduction at issue here) “is evidence of the qualitative value of the copied material.” *Harper & Row*, 471 U.S. at 565.

The appropriate parameters for this analysis were delineated by the Sixth Circuit in *Princeton University Press*, where the court compared the extent of the copying – 8,000 words in the case of the shortest excerpt in that case – to the 1,000-word “safe harbor” in the Classroom Guidelines and found that it was “not insubstantial.” 99 F.3d at 1389. The record will show verbatim copying by GSU that is substantial in both the quantitative and qualitative senses and that any change in practice under the new policy has been marginal at best.

The routine surpassing at GSU of what is even arguably a permissible amount of copying is attributable, at least in part, to the design of the checklist (to the extent it is followed). The checklist is constructed so that even if the instructor determines that a large percentage of a work would be used or that the excerpt constitutes the “heart of the work,” it will be offset by a subjective determination that the amount taken “is narrowly tailored to educational purpose” – a “check” that will be made almost by definition for GSU course readings.

The Factor 3 analysis is further impaired by the fact the checklist provides no guidance as to how “small” is to be interpreted, leaving faculty members to guess, to revert to the twenty percent guideline from GSU’s prior policy, or to rely on what they have picked up anecdotally over their careers. In at least one instance, more than thirty-five percent of an entire work was deemed to be “small” and, hence, permissible. Exhibit C-5 to Joint Filing, Docket No. 266.

* * *

Because each of the statutory fair use factors weighs in Plaintiffs’ favor, the Court should conclude that Defendants’ current copyright practice does not constitute fair use.

RELIEF SOUGHT

Section 502(a) of the Copyright Act, 17 U.S.C. § 502(a), authorizes the Court to enter an injunction that awards relief not just as to the specific works sued upon but also as to future infringements of those and other works owned or controlled by Plaintiffs. *See, e.g., Am. Geophysical Union*, 60 F.3d at 915 (granting relief based on the copying from one representative journal by one representative employee); *Pac. & S. Co, Inc.*, 744 F.2d at 1499 n.17 (rejecting defendant’s argument that injunction could not sweep more broadly than the single work named in the suit and upholding court’s

authority to issue an injunction addressing all plaintiff works, including “unregistered works” and “works that have not been created”); *Pac. & S. Co. v. Duncan*, 618 F. Supp. 469, 471 (N.D. Ga. 1985) (Evans, J.) (subsequently enjoining the copying of any of the plaintiff’s broadcast news programs); *Cable News Network v. Video Monitoring Servs. of Am.*, 949 F.2d 378 (11th Cir. 1991) (vacating panel decision limiting injunction to single infringing example); *Cable News Network v. Video Monitoring Servs. of Am.*, 959 F.2d 188 (11th Cir. 1992) (allowing reinstated injunction covering all of plaintiff’s newscasts).

In *Basic Books*, the court enjoined the defendant “from future anthologizing and copying of plaintiffs’ works without permission” and extended the prohibition to “works not currently existing but which may in the future be owned by plaintiffs and as to which plaintiffs have not consented.” 758 F. Supp. at 1542.

Plaintiffs will demonstrate that Defendants’ current policies and practices present a “threat of continuing violation,” *Basic Books*, 758 F. Supp. at 1542, thus warranting an injunction that covers existing and future works owned or controlled by Plaintiffs.

CONCLUSION

The applicable legal authorities, when applied to the facts to be

adduced at trial, will clearly establish Plaintiffs' entitlement to the injunctive relief they seek.

Respectfully submitted, this 29th day of April, 2011.

/s/ John H. Rains IV
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Georgia Bar No. 429927
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Georgia Bar No. 556052

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Attorneys for Plaintiffs

EXHIBIT A

Professor Gabler-Hover
Fall 2009
Office: 938 G
Hours: MW 12:15-1:15
engjgh@gsu.edu

English 4200 Cyborgs in American Culture
327 General Classroom
1:30-2:45 MW

FICTION TEXTS FROM GEORGIA BOOKSTORE ONLY. The only page numbers used in class will come from the editions listed below, available at the Georgia Bookstore

Course Texts

Isaac Asimov *I, Robot* Bantam 0-553-29438-5
Philip K. Dick *Do Androids Dream of Electric Sheep?* Del Rey 978-0-345-40446-3
William Gibson *Neuromancer* Penguin 0-441-56959-5
Pat Cadigan *Tea from An Empty Cup* Tor 0-812-54197-9
Octavia Butler *Lilith's Brood* Hachette 0-446-67610-1

E-Reserves. Although I will provide several of my own handouts, many of the prose and fiction items you will need for the course are on library e-reserve for you to print out immediately, forming a course packet for yourself. If you've never accessed e-reserve, go on the library site to e-reserve, then plug in the instructor's name, and access the texts. You will need the course password, which is 96yqy4fwF The list of e-reserves is attached to the end of your syllabus.

2 8 ½ by 11 bluebooks for course exam.

Course Description

This course explores what fascinates American popular culture about the concept of the cyborg. This plumbs the area of myth—those stories a culture tells itself to understand what being “human” means in relationship to other forces in the universe and to unconscious fears and desires that fuel human identity, and that elevate “human” above nature, above machines, and above “lesser” categories of humans. There is, also, of course, the “reality” of cyborgs—one in which the boundary between human and machine is quite complex and transgressive. From prosthetic limbs, to artificial hearts, to meat/metal fusions that bind human to machine, “real” cyborgic existence could be said to define each and every one of us. As one scholar of cyborg technology, Stacy Gillis notes, “The point of contact between the inanimate object—whether a computer keyboard or a prosthetic limb—and the body does, at some indefinable point, become a cyborgic one.”

In this course, we will examine selective American film and literature that features the cyborg as both a threat to and provocateur of setting the baseline upon which humanity defines itself. The fiction we read will usually render a more complex and problematic sense of the division between human and machine, and the ethical implications of such divisions. Our films—*I, Robot*, *Terminator*, *Blade Runner*, *AI*, and *Sarah Connor Chronicles*—are much more archetypal and delve into the psychology of the unconscious with the reductive melodrama of dreams, and nightmares. You will see that both the fiction and film key in to central American male myths that focus on the heroic journey—the hunter, the cowboy, the hard-boiled detective, the Utopian/dystopian dreamer—and set up the cyborg as the antagonist of that journey. We will also see, later in the semester, what happens when gender and race interact with this male myth in the realm of the cyborg.

There is no way to remotely cover the proliferation of film and pop culture manifestations that relate to the cyborg or to its predecessor, the robot. You are welcome to explore any cyborg representation in the American medium to include in class discussion, when relevant, and to examine for your course paper.

Course Policy

Regular attendance is an important aspect of this course, and attendance could become a part of your grade if you do not meet the minimum days required of class attendance. **If you miss more than 7 class days assigned on the syllabus, your grade in this class will be lowered by one grade, regardless of the reason for the absence.**

Plagiarism: ESSAY PLAGIARISM, WHETHER FROM PRINTED SOURCES OR FROM THE INTERNET, WILL RECEIVE AN F GRADE. If you have any doubt about what constitutes plagiarism, either ask me or go to the English Department Writing Center (976G). Plagiarism is lack of citation of sources that you use. This constitutes academic dishonesty in that without citation you take someone else's work as your own. Plagiarism is not just word for word copying. It can also be "cut and paste"—that is, taking part of one sentence, using a few of your own words, taking another phrase or part of a sentence, etc. Obviously, using someone else's work entirely is also plagiarism.

Course Requirements

You will choose two out of the five listed film response essays and submit typed film responses using one of the response question options handed out prior to film response due dates. Film responses will contain an opening thesis taking an argumentative point of view which will be supported by specific film details. There are a number of short answer quizzes that you will note on the Weekly schedule. These will typically contain 5 short questions that ask for textual recall and hence prove that you are doing your reading assignments. The exam will be a two-day event covering id, short answer, and essay on the film and literature you have read this semester. Taking good notes and reading all the assignments/films is the best way you can prepare for the exam. You will get a study guide suggesting relevant subjects of study prior to the exam. The essay, 6 to 10 typed pages, is due in 327

G on Exam Day Wednesday December 9. I will accept your paper from 12:30-1:00. **Late papers will not be accepted.** The essay should be thesis driven, clearly argumentative and analytical, addressing one or more of the cyborg texts we have used this semester, or any that you might want to select that we didn't cover. I'll hand out directions for the essay later in the semester.

Assignment Percentages

2 Film response essays	(2pp.)	20%
Quizzes:		10\$
Exam:		30%
Course Paper (6-10 pp.)		40%

Grading System:

I grade on a 4.0 scale and translate each letter grade that you receive into its numerical equivalent when calculating grades, then multiply that number by the percentage it represents. Hence, you may calculate your grade at any point. The only exception to the grade letter component is quiz grades, which will receive a number grade that will be averaged with other quiz grades. Here are the numerical equivalents for each letter grade you receive:

4.0 = A
3.7 = A-
3.5 = A-B+
3.3 = B+
3.0 = B
2.7 = B-
2.5 = B-C+
and so forth.

Example:

Film response 1	(10%)	A .40
Film response 2	(10%)	B .30
Quizzes	(10%)	B .30
Exam:	(30%)	A 1.20
Course Paper	(40%)	B-1.08
Final Grade		3.28 B+

List of Weekly Readings. Make sure to bring your books and photocopies to class and be sure to bring the right ones. On a Wednesday, be sure to look ahead to Monday to prepare for Monday's class, and etc. If class events change because of an unforeseen development or more time needed for a particular test, the schedule is subject to change, so be sure to follow announcements in class. Dates that absolutely **will not change** are the exam dates and the paper due date.

Week One August 17-19

Monday: Syllabus

Wednesday: Lecture, "the Cyborg"

Week Two August 24-26

Monday: *I, Robot* - xi-29; 56-81 Pop Quiz. Pop Quiz on *Robot*. Handout Althusser for Wednesday

Wednesday: Handout discussion. *I, Robot* - 136-205; 240-272

Week Three August 31-September 2

Monday: Film *I, Robot*

Wednesday: Discussion film. Film *I, Robot*

E-reserve *Projecting the Shadow* 1-8; 11-27 for Wednesday September 9

Week Four September 7-9

Monday: Labor Day holiday.

Wednesday: Film Response Paper 1. Discussion *Projecting Handout*. Class handouts on "Cowboy" and "Detective" for Monday September 14

Week Five September 14-16

Monday: Discussion handouts "Cowboy" and "Detective." Handout on Utopia for Wednesday, September 16

Wednesday: Utopia handout and *Terminator*

Week Six September 21-26

Monday: Class Discussion *Terminator*

Wednesday: *Terminator* - conclusion

Week Seven September 28-30

Monday: **Film Response 2 due.** Do *Androids Dream of Electric Sheep* - 96. Pop quiz on *Androids*

Wednesday: *Androids* - conclusion. *Blade Runner* E-reserve *Projecting the Shadow* 142-163 for Monday October 3

Week Eight October 5-7

Monday: Film Response Paper 3 due. *Blade Runner* Handouts *Astro Boy* and Bruno Bettelheim, 15-24

Wednesday: *Astro Boy*. Bettelheim.

Week Nine October 12-14

Monday: *AI*

Wednesday: Film Discussion *AI*

Week Ten October 19-21

Monday: *AI*

Wednesday: **AI Film Response Paper 4 due.**

Week Eleven October 26-28

Monday: *Neuromancer* 1-53. Pop Quiz

Wednesday: *Neuromancer* 54-156

Week Twelve November 2-4

Monday: *Neuromancer* - conclusion. Pop Quiz on *Neuromancer* E-Reserve from *History of Feminist Literary Theory* 322-335 for Wednesday November 4

Wednesday: **Discussion feminist literary theory**

Week Thirteen November 9-11

Monday: *Tea from an Empty Cup* -140 Pop Quiz

Wednesday: *Tea from an Empty Cup* - conclusion Exam Study Guide handed out

Week Fourteen November 16-18

Monday: **Exam Day One**

Wednesday: **Exam Day Two** Handout Freud for Monday November 23

Week Fifteen November 23-25

Monday: *Sarah Connor Chronicles*

Wednesday: Thanksgiving holiday

Week Sixteen November 30-December 2

Monday: **Film response 5 due.** *Lilith's Brood*) From *Adulthood Rites* 253-355

Wednesday: *Adulthood Rites* 356-439

**Paper Due Classroom 327 G on Exam day and time Wednesday December 9
from 12:30-1:00. LATE PAPERS NOT ACCEPTED.**

EXHIBIT B

Excerpt from Joint Exhibit 5 (Fall 2009 ERes Report)

	Document	Course Reserves Page	Date Range	Hit Count	% of Total
	Althusser, Louis. Ideology and Ideological State Apparatuses (Notes Towards an Investigation). [from Durham and Kellner (ed.) Media and Cultural Studies]	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	33	0.05%
	Arnheim, Rudolf. The Complete Film. [from Braudy, Leo, and Marshall Cohen. Film Theory and Criticism: Introductory Readings. New York: Oxford University Press, 1999. pp. 212-215.]	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	10	0.02%
	Barthes, Roland "The Death of the Author" In John Caughey ed. Theories of Authorship: A Reader. Routledge: 1981. pp. 208-213.	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	26	0.04%
	Barthes, Roland, and Stephen Heath. Image, Music, Text. New York: Hill and Wang, 1977. pp. 155-164.	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	13	0.02%
	Barthes, Roland. "The Reality Effect." The Rustle of Language. vols. New York: Hill and Wang, 1986. 141-48.	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	40	0.07%
	Baudry, Jean-Louis. Ideological Effects of the basic Cinematographic Apparatus. [from Braudy, Leo, and Marshall Cohen. Film Theory and Criticism: Introductory Readings. New York: Oxford University Press, 1999. pp. 345-355.]	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	14	0.02%
	Bazin, Andre "The Myth of Total Cinema" In What is Cinema? Vol. 1. Univ of California: 1967. pp. 17-22.	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	1	0.00%
	Bazin, Andre. What is Cinema? Essays selected and translated by Hugh Gray. Berkeley : University of California Press, 1974. "The Evolution of the Language of Cinema."	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	14	0.02%

Excerpt from Joint Exhibit 5 (Fall 2009 ERes Report)

	Bordwell, David. The Art Cinema as a Mode of Film Practice. [from Braudy, Leo, and Marshall Cohen. Film Theory and Criticism: Introductory Readings. New York: Oxford University Press, 1999. pp. 716-724]	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	22	0.04%
	Bordwell, David; Janet Staiger; and Kristin Thompson. Classical narration. [from The Classical Hollywood Cinema. New York : Columbia University Press, 1985. pp. 24-41.]	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	61	0.10%
	Browne, Nick. Cahiers Du Cinéma 1969-1972: The Politics of Representation. Harvard film studies. Cambridge, Mass: Harvard University Press, 1990. pp. 58-67	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	10	0.02%
	Chion, Michel "Projections of Sound on Image" In Audio-Vision: Sound on Screen. Columbia Univ Press: 1984. pp.3-24.	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	8	0.01%
	Cinema 16 (Call #: DVD PN1997.A1 E9 2007)	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	1	0.00%
	Conboy, Katie, Nadia Medina, and Sarah Stanbury. Writing on the Body: Female Embodiment and Feminist Theory. A Gender and culture reader. New York: Columbia University Press, 1997. pp. 176-194	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	3	0.00%
	Foucault, Michel "What is an Author?" In Language, counter-memory, practice: selected essays and interviews. Cornell: 1977. pp. 113-138.	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	35	0.06%
	Hall, Stuart. Cultural Identity and Cinematic Representation. [from Baker, Houston A., ed. et al. Black British Cultural Studies.]1996.	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	12	0.02%

Excerpt from Joint Exhibit 5 (Fall 2009 ERes Report)

	Jones, Amelia. The Feminism and Visual Culture Reader. In sight. London: Routledge, 2003. Ch. 14: Hooks, "The Oppositional Gaze". pp. 94-105	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	4	0.01%
	Kester, Grant H. Art, Activism, and Oppositionality: Essays from Afterimage. Durham [NC]: Duke University Press, 1998. pp. 60-75: Coco Fusco	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	3	0.00%
	Lacan, Jacques. The Mirror Stage. [from Du Gay, Paul, Jessica Evans, and Peter Redman. 2000. Identity: a reader. London: SAGE Publications in association with The Open University. pp. 44-50]	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	3	0.00%
	Lady Eve (Call #: DVD PN1997.L32 2001)	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	1	0.00%
	Metz, Christian. "The Imaginary Signifier." From Film and Theory: An Anthology, edited by Robert Stam and Toby Miller. Malden MA : Blackwell, 2000.	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	10	0.02%
	Metz, Christian. Film Language; A Semiotics of the Cinema. New York: Oxford University Press, 1974. Chapter 5: Problems of denotation in the Fiction Film	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	16	0.03%
	Metz, Christian. Some Points in the Semiotics of Cinema. [from Braudy, Leo, and Marshall Cohen. Film Theory and Criticism: Introductory Readings. New York: Oxford University Press, 1999. pp. 68-74]	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	14	0.02%

Excerpt from Joint Exhibit 5 (Fall 2009 ERes Report)

	Mulvey, Laura. Visual and Other Pleasures. Bloomington: Indiana University Press, 1989. "Visual Pleasure and Narrative Cinema" (pp. 14-26).	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	17	0.03%
	Munsterberg, Hugo. The Photoplay: A Psychological Study. New York : Arno Press & The New York Times, 1970. Ch. 5. "Memory and Imagination."	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	11	0.02%
	Nichols, Bill. Movies and Methods. Vol 2, An Anthology. University of California Press, 1985. pp. 303-315	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	2	0.00%
	Perfect Film (Call #: DVD MC-3103)	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	1	0.00%
	Ray, Satyajit "The Question of Reality" In Lewis Jacobs' The Documentary Tradition. W.W. Norton: 1979. pp.381-382	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	2	0.00%
	Sarris, Andrew "Notes on the Auteur Theory in 1962" In P. Adams Sitney ed. Film Culture Reader. Praeger: 1970. pp. 121-135.	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	24	0.04%
	Schatz, Thomas. Hollywood Genres: Formulas, Filmmaking, and the Studio System. 1981. [Chapters 1 & 2].	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	5	0.01%
	Schatz, Thomas. The Genius of the System: Hollywood Filmmaking in the Studio Era. New York : Henry Holt & Co., 1996. Chapters 1 & 2.	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	1	0.00%
	Sobchack, Vivian "Phenomenology" In Routledge Companion to Philosophy and Film. Eds. Paisley Livingston, Carl R. Plantinga. Routledge: 2009. pp. 435-445	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	7	0.01%

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	Wollen, Peter "The Auteur Theory" In John Caughe ed. Theories of Authorship: A Reader. Routledge: 1981. pp. 138-151.	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	19	0.03%
	Wollen, Peter "The Auteur Theory" In Signs and Meaning in the Cinema. Indiana Univ Press: 1969. chp 2, pp. 74-115.	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	2	0.00%
	Wood, Robin. "Ideology, Genre, Auteur." From Film Theory and Criticism, edited by Leo Braudy and Marshall Cohen. New York : Oxford University Press, 2004.	FILM4750 - Film Theory and Criticism (Fall 2010) Barker	8/17/2009 - 12/19/2009	15	0.02%