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

CAMBRIDGE UNIVERSITY PRESS, et al.,

Plaintiffs,

-*vs.*-

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

Defendants.

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

**DEFENDANTS' AMENDED AND SUPPLEMENTAL RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANTS**

Defendants MARK P. BECKER, in his official capacity as Georgia State University President, RON HENRY, in his official capacity as Georgia State University Provost, NANCY SEAMANS, in her official capacity as Georgia State University Dean of Libraries, J.L. ALBERT, in his official capacity as Georgia State University Associate Provost for Information Systems and Technology, (collectively, "University Administrators"), KENNETH R. BERNARD, JR., in his official capacity as member of the Board of Regents of the University System of Georgia, JAMES A. BISHOP, in his official capacity as member of the Board of Regents of the University System of Georgia, HUGH A. CARTER, JR., in his

official capacity as member of the Board of Regents of the University System of Georgia, WILLIAM H. CLEVELAND, in his official capacity as member of the Board of Regents of the University System of Georgia, ROBERT F. HATCHER, in his official capacity as Vice Chair of the Board of Regents of the University System of Georgia, FELTON JENKINS, in his official capacity as member of the Board of Regents of the University System of Georgia, W. MANSFIELD JENNINGS, JR., in his official capacity as member of the Board of Regents of the University System of Georgia, JAMES R. JOLLY, in his official capacity as member of the Board of Regents of the University System of Georgia, DONALD M. LEEBURN, JR., in his official capacity as member of the Board of Regents of the University System of Georgia, ELRIDGE MCMILLAN, in his official capacity as member of the Board of Regents of the University System of Georgia, WILLIAM NESMITH, JR., in his official capacity as member of the Board of Regents of the University System of Georgia, DOREEN STILE POITEVINT, in her official capacity as member of the Board of Regents of the University System of Georgia, WILLIS J. POTTS, JR., in his official capacity as member of the Board of Regents of the University System of Georgia, WANDA YANCEY RODWELL, in her official capacity as member of the Board of Regents of the University System of Georgia, KESSEL STELLING, JR., in his official capacity

as member of the Board of Regents of the University System of Georgia, BENJAMIN J. TARBUTTON, III, in his official capacity as member of the Board of Regents of the University System of Georgia, RICHARD L. TUCKER, in his official capacity as Chair of the Board of Regents of the University System of Georgia, and ALLAN VIGIL, in his official capacity as member of the Board of Regents of the University System of Georgia ("Board Members") (collectively, "Defendants"),and only in said capacities, respond and object to Plaintiff's First Set of Interrogatories to Defendants ("First Set of Interrogatories") as follows:

## GENERAL OBJECTIONS

1. Defendants object to the First Set of Interrogatories to the extent they call for disclosure of information which reflect or constitute in full or in part privileged communications between attorney and client. ("Privilege Objection").

2. Defendants object to the First Set of Interrogatories to the extent they call for identification of documents which have been prepared either in anticipation of litigation or for hearing or trial, or which constitute the mental impressions, conclusions, opinions, or legal theories of counsel for Defendants. ("Work Product Objection").

3. Defendants object to the First Set of Interrogatories to the extent they call for (a) information which is not within the applicable scope of discovery in

this action, or (b) information which is not relevant to the subject matter of this action and are not reasonably calculated to lead to discovery of admissible evidence. Defendants further objects to the First Set of Interrogatories to the extent they call for information which is not within the possession, custody, or control of Defendants or are equally so available to Defendants and Plaintiffs. ("Scope Objection").

4. Defendants object to the First Set of Interrogatories to the extent that they are overly broad or overly inclusive or call for extensive research, investigation, information, or identification of information which would subject Defendants to annoyance, embarrassment, oppression, or undue burden or expense. ("Burden Objection").

5. Defendants object to the First Set of Interrogatories to the extent that they are vague, indefinite, uncertain, or ambiguous and cannot be reasonably answered. ("Vague Objection").

6. Defendants' response to the First Set of Interrogatories is not a waiver of their objections or their right to object to any additional, supplemental, or further request, or any part thereof.

7. Defendants' response to Plaintiffs' First Set of Interrogatories is hereby made without waiving or intending to waive, but rather, preserving and intending to preserve:

(a) All questions as to the competence, relevance, materiality, and admissibility as evidence for any purpose of the information, in any aspect of this action or any other action or judicial or administrative proceeding or investigation;

(b) The right to object on any ground to the use of any such information in any aspect of this action or any other action or judicial or administrative proceeding or investigation;

(c) The right to object at any time for any further response to this or any other request for information; and

(d) The right at any time to supplement this response.

8. Defendants have conducted a reasonable search for information responsive to these interrogatories by searching in those locations where responsive information is reasonably believed or expected to be located. To the extent that the Plaintiffs seek Defendants to take further action in responding to these interrogatories, Defendants object to Plaintiffs' First Set of Interrogatories as subjecting Defendants to annoyance, oppression or undue burden or expense

because such interrogatories are overly broad or overly inclusive or call for extensive research, investigation, information or identification of information.

## SPECIFIC OBJECTIONS

9. Defendants object to Plaintiffs' Instruction 1 to the extent that Instruction 1 requires Defendants to state, for any document withheld as privileged, "(a) the name and position of each person who prepared the document or communication and each person (if any) who signed it; (b) the name and position of each person to whom the document or communication was directed, circulated, or distributed; (c) the date of the document or communication; and (d) the subject matter of the document or communication." Defendants will identify the basis for their privilege objections in the form of a privilege log, as contemplated in FED. R. CIV. P. 26(B)(5), at a mutually agreeable time.

Defendants, subject to each and all of the foregoing objectives, hereby further respond to the individually numbered interrogatories of Plaintiffs' First Set of Interrogatories as follows.

## RESPONSES TO INTERROGATORIES

**Interrogatory No. 1:**

State all facts and identify all documents that you contend support each of the affirmative defenses in your answer, and identify/label such facts/documents according to the affirmative defense to which they correspond.

**Response:** Defendants specifically object to Interrogatory No. 1 on the basis of the Burden Objection, the Scope Objection, the Privilege Objection, and the Work Product Objection. Interrogatory No. 1 improperly seeks a legal conclusion regarding the determination or identification of documents that support Defendants' affirmative defenses. Defendants further object that Interrogatory No. 1 is a contention interrogatory which is premature at this stage in the litigation. Defendants further object that Interrogatory No. 1 is an improper multi-part interrogatory, which asks for facts that support the affirmative defenses in part 1(a), for documents that support the affirmative defenses in part 1(b), and to label such facts and documents according to the affirmative defense to which they correspond in part 1(c). Interrogatory No. 1 is also duplicative of Plaintiffs' Request for Production of Documents No. 1 and thus represents an improper and unduly burdensome attempt to circumvent FED. R. CIV. P. 34.

Subject to and without waving these objections, Defendants respond as follows:

The library at Georgia State University ("GSU") facilitates GSU professors in making excerpts of reading materials for particular courses available via GSU's electronic reserve system ("ERes") and facilitates student access to such excerpts. Only students who are given a specific password can access the excerpts on ERes. The course reading material excerpts made available by the GSU library though ERes are intended to allow students online access to such excerpts held in reserves by the GSU library, and are not digital replacements or substitutes for textbooks or paper "coursepacks."

GSU also facilitates professors in making digitized course information available via uLearn (Blackboard/WebCT Vista), course web pages and faculty web pages. Such electronic course management tools may provide syllabi, reading materials, and other course-related information. Only students who are given a specific password and are registered for an affected course can access the information for such course on uLearn. Course web pages and faculty web pages may or may not be password-protected. Course reading material available via uLearn, course web pages, or faculty web pages, if any, is intended to allow

students online access to such material and is a not digital replacement or substitute for textbooks or paper "coursepacks."

GSU also facilitates the provision of individual GSU college or school departmental web pages. Such web pages provide information related to the particular department, including information pertaining to faculty and courses. Defendants do not believe that course reading material is intended to be made available or is made available via departmental web pages.

On February 17, 2009, the University System of Georgia ("USG") adopted a new policy on copyright, which is publicly available at www.usg.edu/copyright. The new policy -- which was developed after several months of research into existing practices and policies of various universities -- was intended to reflect not only the current state of copyright law, but also the best practices for fair use of copyrighted materials in the educational setting.

An important component of the new policy is a Fair Use Checklist ("Checklist"). Based on a checklist developed by Kenneth D. Crews (Director of the Copyright Advisory Office for Columbia University), USG's Checklist serves as a helpful tool to guide laypersons, including professors at GSU, through the fair use analysis. Under each statutory fair use factor, the Checklist provides for the professors' consideration of circumstances that have been specifically identified by

both Congress and the Supreme Court as relevant to a fair use determination. The Checklist is designed to help professors carefully consider and work through the four fair use factors and apply them to their selected excerpts. The policy requires professors to complete the Checklist for each work that they wish to post on ERes or other course management systems.

In addition to the explanatory material accompanying the new policy, GSU has begun to conduct an extensive implementation campaign, including educational efforts aimed at professors and library faculty. GSU's Office of Legal Affairs has conducted mandatory seminars for library personnel on the new copyright policy and copyright law generally, and intends to continue and expand upon this educational program. The Office of Legal Affairs has also offered and will continue to offer copyright workshops for professors and other faculty members.

In all of the foregoing, Defendants believe and understand that the University System of Georgia's Policy on the Use of Copyrighted Works in Education and Research is followed and will be followed in the future. That policy is in part grounded upon the statutory doctrine of fair use as set forth in the Copyright Act, 17 U.S.C. §§ 101 et seq. or permission granted by the copyright holder. It is Defendants' understanding that compliance with the USG copyright policy will lead to the proper application of fair use in the educational setting.

Defendants further respond that the following documents support Defendants' affirmative defense of fair use:

- The University System of Georgia's Policy on the Use of Copyrighted Works in Education and Research, available at http://www.usg.edu/copyright/;
- All documents produced by Plaintiffs in this litigation, including but not limited to documents addressing the effect, if any, on the market for Plaintiffs' works;
- All documents produced by Defendants in this litigation, including but not limited to documents reflecting the amount of the work posted on ERes, completed Checklists, and documents related to GSU's implementation of the new copyright policy; and
- All documents produced by Copyright Clearance Center, Inc. in response to Defendants' subpoena, including but not limited to Copyright Clearance Center, Inc.'s fair use checklist and documents addressing the effect, if any, on the market for Plaintiffs' works.

Defendants respond that the above-stated facts and documents are the bases for the affirmative defenses asserted by Defendants in their Answer.

**Interrogatory No. 2:**

If you contend that any of the Plaintiffs gave GSU or any of the Defendants permission to provide students access to Plaintiffs' copyrighted works through GSU's library services, including its electronic library services, state all facts and identify all documents you contend support such contention.

**Response:** Defendants object to Interrogatory No. 2 on the basis of the Privilege Objection and the Work Product Objection. Interrogatory No. 2 improperly seeks a legal conclusion regarding the determination or identification of documents that constitute permission. Defendants further object that Interrogatory No. 2 is a contention interrogatory which is premature at this stage in this litigation. Defendants further object that Interrogatory No. 2 is an improper multi-part interrogatory, which asks for facts that support Defendants' contention that Plaintiffs gave GSU permission to provide students access to Plaintiffs' copyrighted works through GSU's library services in part 1(a), and for documents which support such contention in part 1(b).

Subject to and without waving these objections, Defendants respond that GSU has obtained permission to provide students access to Plaintiffs' copyrighted works pursuant to the following licenses:

- License for Cambridge's Millennial Edition of the Historical Statistics of the United States (GaState 2874 - GaState 2884);
- License for Oxford's International Law in Domestic Courts Online (GaState 2924 - GaState 2934);
- License for Sage Journals Online (GaState 3015 - GaState 3020);
- License to use portions of Materials Development in Language Teaching on electronic reserves (CUP0000236).

Defendants further respond that GaState 3742 - GaState 3744, which provides a summary of other GSU licenses, supports Defendants' contention that GSU was given permission to provide students access to Plaintiffs' copyrighted works through GSU's library services.

**Interrogatory No. 3:**

Identify each and every person at GSU who participates or has participated in any way in copying, scanning, posting, and/or transmitting Course Reading Material on ERes or any Course Management System, and his or her job title. (This need not include every instructor or professor that has distributed Electronic Course Reading Material.)

**Response:** Defendants object to Interrogatory No. 3 on the basis of the Scope Objection, the Burden Objection, and the Vague Objection. Based on Plaintiffs'

broad definition of the term "transmitting," Interrogatory No. 3 requires Defendants to identify "each and every person who has in any way participated" in viewing such materials in an Internet web browser window, in opening and viewing such materials in Adobe Acrobat, in downloading such materials whether viewed or not, and/or in printing such materials. Further, it is unclear who Plaintiffs are carving out of the interrogatory in stating, "This need not include every instructor or professor that has distributed Electronic Course Reading Material."

Subject to and without waiving these objections, Defendants respond as follows:

Denise Dimsdale, Library Media & Reserves Coordinator, and Malia Cargile, Library Assistant II Digital Reserves, receive requests from faculty members to make excerpts of course reading materials (which the faculty members have certified comply with the USG copyright policy) available via ERes, collect the requested excerpts, and perform a secondary review of the excerpts for compliance with the GSU copyright policy. Before January 2009, Jim Palmour, Information Systems Specialist Lead, performed a third-level review for compliance with the GSU copyright policy, created PDFs of the excerpts which he determined complied with the policy, and made the PDFs available via ERes. As

of January 2009, Jim Palmour is no longer involved in copying, scanning, posting, and/or transmitting Course Reading Material on ERes.

Michael Tillman-Davis, Reference-Faculty Services Librarian for the College of Law, receives requests from faculty members at the College of Law to make excerpts available via ERes, collects the requested excerpts, and reviews the excerpts to ensure they comply with the USG copyright policy. Once Mr. Tillman-Davis determines the excerpts comply, he scans the excerpts and makes them available via ERes. Terrance Manion, Director of Information Technology for the College of Law, Ron Wheeler, Associate Director for Public Services for the College of Law Library, and Pam Brannon, Law Librarian, from time to time assist Michael Tillman-Davis in reviewing the excerpts to ensure they comply with the USG copyright policy.

Zoe Salloom, Project Manager, has relevant knowledge regarding how digitized course information may be made available via uLearn. J.L. Albert, Associate Provost and CIO, Keith Campbell, Assistant Director of University Computing and Communication Services, Carl Stucke, Assistant Professor and Associate Chair of the Computer Information Systems Department at the Robinson College of Business, Martin Grace, Professor of Risk Management and Insurance in the Robinson College of Business, and Randy Jones, Director of Information

Systems and Technology for the College of Education have relevant knowledge regarding how digitized course information may be made available via faculty web pages and course web pages.

**Interrogatory No. 4:**

Identify each and every person at GSU with responsibility for or knowledge of the development, construction, programming, function, structure, management, maintenance, repair, and/or monitoring of ERes or any Course Management System for the purposes of technical operation, legal compliance, or any other purpose, and his or her job title.

**Response:** Defendants object to Interrogatory No. 4 on the basis of the Scope Objection, the Burden Objection, and the Vague Objection. The meaning of the terms "function," "structure," "management," and "monitoring" is unclear and the phrases "or knowledge of," "legal compliance" and "any other purpose" is indefinite. The interrogatory, as worded, literally asks for the identification of every faculty member, teaching assistant, administrative assistant, secretary, staff member, and/or student with knowledge regarding the operation of ERes, ULearn, and faculty and course web pages.

Subject to and without waiving these objections, Defendants respond that the GSU staff with relevant knowledge include Jim Palmour, Information Systems

Specialist Lead, Zoe Salloom, Project Manager, J.L. Albert, Associate Provost and CIO, Laura Burtle, Associate Dean and Associate University Librarian for Learning and Technology Initiatives, Charlene Hurt, former Dean of Libraries (retired), Nancy Seamans, Dean of Libraries, Keith Campbell, Assistant Director of University Computing and Communication Services, Carl Stucke, Assistant Professor and Associate Chair of the Computer Information Systems Department at the Robinson College of Business, Martin Grace, Professor of Risk Management and Insurance in the Robinson College of Business Randy Jones, Director of Information Systems and Technology for the College of Education, Terrance Manion, Director of Information Technology for the College of Law, and Michael Tillman-Davis, Reference-Faculty Services Librarian for the College of Law.

**Interrogatory No. 5:**

Identify each and every person at GSU responsible for determining whether a license is required for the distribution of any Electronic Course Reading Material or Course Reading Material in hard copy form and his or her job title.

**Response:** Defendants object to Interrogatory No. 5 on the basis of the Scope Objection, the Burden Objection, and the Vague Objection. The phase "responsible for determining whether a license is required" is vague and indefinite.

The phrase “Electronic Course Reading Material ... in hard copy form” is also vague and indefinite.

Subject to and without waiving these objections, as stated in response to Interrogatory No. 1, Defendants believe and understand that all relevant persons at GSU follow the USG copyright policy. Therefore, naming all such persons is burdensome. Defendants further respond that Jim Palmour, Information Systems Specialist Lead, is responsible for obtaining requisite licenses for materials in coursepacks prepared by GSU IS&T and sold at the Georgia State University Bookstore.

**Interrogatory No. 6:**

Identify each and every person at GSU with knowledge of the extent to which Course Reading Material in electronic or hard copy coursepacks or copypacks is distributed at the University. (This need not include every instructor or professor that has distributed Electronic Course Reading Material.)

**Response:** Defendants object to Interrogatory No. 6 on the basis of the Scope Objection and the Vague Objection. The meaning of the phrase “knowledge of the extent to which Course Reading Material ... is distributed at the University” is unclear and indefinite. Defendants further object to the terms “electronic coursepacks” and “copypacks” as unclear and indefinite. Coursepacks are

understood to be hard-copy excerpts assembled into a single work. Further, it is unclear who Plaintiffs are carving out of the interrogatory in stating, "This need not include every instructor or professor that has distributed Electronic Course Reading Material."

Subject to and without waiving these objections, Defendants respond that individual professors, graduate research assistants, teaching assistants or others are believed to have knowledge regarding access to excerpts given to students, but only for a particular class or classes. Defendants further respond that Jim Palmour has relevant knowledge regarding coursepacks prepared by GSU IS&T.

**Interrogatory No. 7:**

Identify every bookstore, copy shop, or other establishment (Kinko's, *e.g.*) that provides coursepacks or copy packs to students for use in GSU classes.

**Response:** Defendants object to Interrogatory No. 7 on the basis of the Scope Objection and the Burden Objection. Defendants further object to the term "copy packs" as unclear and indefinite. Subject to and without waiving these objections, Defendants respond that they are aware of the following entities:

- The Print Shop / The Copy Shop
  6 Decatur St.
  Atlanta, Georgia

- BestWay Copy Center
  18 Decatur St.

Atlanta, Georgia

- Alpha Graphics
  34 Peachtree St.
  Atlanta, Georgia

- www.XanEdu.com

- www.Study.net

- Georgia State University Bookstore
  (operated by Follett Educational Services)
  University Bookstore Building
  66 Courtland St SE
  Atlanta, GA 30303

- Georgia Bookstore
  124 Edgewood Ave. NE
  Atlanta, GA 30303-3015
  www.Gabookstore.com

Respectfully submitted this 19th day of May, 2009.

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

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| CAMBRIDGE UNIVERSITY PRESS, et al,<br><br>Plaintiffs,<br><br>-*vs.*-<br><br>CARL V. PATTON, in his official capacity as Georgia State University President, et al,<br>Defendants. | Civil Action No.<br>1:08-CV-1425-ODE |

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 19th day of May, 2009, the foregoing **DEFENDANTS' AMENDED AND SUPPLEMENTAL RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES** were served by electronic mail -- as agreed by the parties -- on the following counsel of record:

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