

SUMMER 2009

- S. The SAGE Handbook of Qualitative Research (2d edition) (SAGE) – Professor Kaufmann (D-19)

140. SAGE did not obtain U.S. Copyright Registration for the contributions to the collective work. Accordingly, the Court grants no presumption of copyright validity under 17 U.S.C. §410(c) and accords no evidentiary weight to that registration. SAGE has failed to prove that it has or owns a valid copyright in *The SAGE Handbook of Qualitative Research (2d edition)*. SAGE has not shown it is entitled to maintain a claim for copyright infringement for this work.

141. Even if Plaintiff SAGE could assert a claim for infringement of a copyright in this work, Professor Kaufmann made a “fair use” of the work under 17 U.S.C. § 107. The excerpt at issue was posted to ERes for educational or teaching purposes. The nature of the work is fact based. *The SAGE Handbook of Qualitative Research (2d edition)* is 1065 pages. The excerpt was 78 pages in length, or approximately 7.3% of the work, which was not substantial. *The SAGE Handbook of Qualitative Research (2d edition)* is out of print. Plaintiff SAGE has not established that Professor Kaufmann’s posting of the excerpt negatively affected the market for this work. All four fair use factors favor Defendants.

142. Professor Kaufmann completed a fair use checklist for the accused excerpt of *The SAGE Handbook of Qualitative Research (2d edition)*.

Although Professor Kaufmann was unable to locate the completed fair use checklist, Professor Kaufmann recreated a fair use checklist that fairly and accurately represents Professor Kaufmann's analysis with reference to this excerpt in reaching her conclusion that the excerpt was a fair use. The Court finds that Professor Kaufmann acted in good faith and effectively complied with the 2009 Copyright Policy.

T. Inside Interviewing: New Lenses, New Concerns (SAGE) – Kaufmann (D-20)

143. SAGE has not come forward with evidence sufficient to prove that *Inside Interviewing: New Lenses, New Concerns* has been properly assigned to it.

144. *Inside Interviewing: New Lenses, New Concerns* is a collective work, and SAGE has not come forward with evidence sufficient to prove that the accused excerpt has been assigned to SAGE.

145. Even if Plaintiff SAGE could assert a claim for infringement of a copyright in this work, Professor Kaufmann made a "fair use" of the work under 17 U.S.C. § 107. The excerpt at issue was posted to ERes for educational or teaching purposes. The nature of the work is fact based. *Inside Interviewing: New Lenses, New Concerns* is 506 pages. The excerpt was 14 pages in length, or approximately 2.8% of the work, which was not substantial. Plaintiff SAGE has

not established that Professor Kaufmann's posting of the excerpt negatively affected the market for this work. All four fair use factors favor Defendants.

146. Professor Kaufmann completed a fair use checklist for the accused excerpt of *Inside Interviewing: New Lenses, New Concerns*. Although Professor Kaufmann was unable to locate the completed fair use checklist, Professor Kaufmann recreated a fair use checklist that fairly and accurately represents Professor Kaufmann's analysis with reference to this excerpt in reaching her conclusion that the excerpt was a fair use. The Court finds that Professor Kaufmann acted in good faith and effectively complied with the 2009 Copyright Policy.

U. Handbook of Ethnography (SAGE) – Esposito (D-21)

147. SAGE contends that *Handbook of Ethnography* is a "foreign work," but has not established that this work was not published in the United States within thirty (30) days of first publication. SAGE has thus failed to establish that the subject work is, in fact, a "foreign work." Plaintiffs have thus failed to demonstrate that *Handbook of Ethnography* is a foreign work that avoids the requirement of 17 U.S.C. §411(a) that registration of the copyright claim has been made (a "mandatory precondition") before a civil action for infringement the copyright in a U.S. work shall be instituted. The Court therefore concludes that

SAGE has not shown it is entitled to maintain a claim for copyright infringement for this work.

148. *Handbook of Ethnography* is a collective work, and SAGE has not come forward with evidence sufficient to prove that the accused excerpt has been assigned to SAGE.

149. Even if Plaintiff SAGE could assert a claim for infringement of a copyright in this work, Professor Esposito made a “fair use” of the work under 17 U.S.C. § 107. The excerpt at issue was posted to ERes for educational or teaching purposes. The nature of the work is fact based. *Handbook of Ethnography* is 492 pages. The excerpt was 16 pages in length, or approximately 3.3% of the work, which was not substantial. Plaintiff SAGE has not established that Professor Esposito’s posting of the excerpt negatively affected the market for this work. All four fair use factors favor Defendants.

150. Professor Esposito completed a fair use checklist for the accused excerpt of *Handbook of Ethnography*. Although Professor Esposito was unable to locate the completed fair use checklist, Professor Esposito recreated a fair use checklist that fairly and accurately represents Professor Esposito’s analysis with reference to this excerpt in reaching her conclusion that the excerpt was a fair use. Professor Esposito recreated a fair use checklist that fairly and accurately

represents Professor Esposito's analysis with reference to this excerpt in reaching her conclusion that the excerpt was a fair use. The Court finds that Professor Esposito acted in good faith and effectively complied with the 2009 Copyright Policy.

V. Handbook of Feminist Research: Theory and Praxis (SAGE) – Esposito (D-22)

151. Professor Esposito made a “fair use” of the work under 17 U.S.C. § 107. The excerpt at issue was posted to ERes for educational or teaching purposes. The nature of the work is fact based. *Handbook of Feminist Research: Theory and Praxis* is 712 pages. The excerpt was 18 pages in length, or approximately 2.5% of the work, which was not substantial. Plaintiff SAGE has not established that Professor Esposito's posting of the excerpt negatively affected the market for this work. All four fair use factors favor Defendants.

152. Professor Esposito completed a fair use checklist for the accused excerpt of *Handbook of Feminist Research: Theory and Praxis*. Although Professor Esposito was unable to locate the completed fair use checklist, Professor Esposito recreated a fair use checklist that fairly and accurately represents Professor Esposito's analysis with reference to this excerpt in reaching her conclusion that the excerpt was a fair use. The Court finds that Professor Esposito acted in good faith and effectively complied with the 2009 Copyright Policy.

W. The SAGE Handbook of Qualitative Research (2d edition) (SAGE) – Professor Esposito (D-23)

153. SAGE did not obtain U.S. Copyright Registration for the contributions to the collective work. Accordingly, the Court grants no presumption of copyright validity under 17 U.S.C. §410(c) and accords no evidentiary weight to that registration. SAGE has failed to prove that it has or owns a valid copyright in *The SAGE Handbook of Qualitative Research (2d edition)*. SAGE has not shown it is entitled to maintain a claim for copyright infringement for this work.

154. Even if Plaintiff SAGE could assert a claim for infringement of a copyright in this work, Professor Esposito made a “fair use” of the work under 17 U.S.C. § 107. The excerpt at issue was posted to ERes for educational or teaching purposes. The nature of the work is fact based. *The SAGE Handbook of Qualitative Research (2d edition)* is 1065 pages. The excerpt was 32 pages in length, or approximately 3% of the work, which was not substantial. *The SAGE Handbook of Qualitative Research (2d edition)* is out of print. Plaintiff SAGE has not established that Professor Esposito’s posting of the excerpt negatively affected the market for this work. All four fair use factors favor Defendants.

155. Professor Esposito completed a fair use checklist for the accused excerpt of *The SAGE Handbook of Qualitative Research (2d edition)*. Although Professor Esposito was unable to locate the completed fair use checklist,

Professor Esposito recreated a fair use checklist that fairly and accurately represents Professor Esposito's analysis with reference to this excerpt in reaching her conclusion that the excerpt was a fair use. The Court finds that Professor Esposito acted in good faith and effectively complied with the 2009 Copyright Policy.

X. The SAGE Handbook of Qualitative Research (1st edition) – Esposito (D-24)

156. SAGE obtained U.S. Copyright Registration TX 3-721-799 for the contributions to the collective work more than five (5) years after the date this work was first published. Accordingly, the Court grants no presumption of copyright validity under 17 U.S.C. §410(c) as to the contributing works and accords no evidentiary weight to that registration. SAGE has failed to prove that it has or owns a valid copyright in *The SAGE Handbook of Qualitative Research (1st edition)*. SAGE has not shown it is entitled to maintain a claim for copyright infringement for this work.

157. Even if Plaintiff SAGE could assert a claim for infringement of a copyright in this work, Professor Esposito made a "fair use" of the work under 17 U.S.C. § 107. The excerpt at issue was posted to ERes for educational or teaching purposes. The nature of the work is fact based. *The SAGE Handbook of Qualitative Research (1st edition)* is 586 pages. The excerpt was 13 pages in

length, or approximately 2.2% of the work, which was not substantial. *The SAGE Handbook of Qualitative Research (1st edition)* is out of print. Plaintiff SAGE has not established that Professor Esposito's posting of the excerpt negatively affected the market for this work. All four fair use factors favor Defendants.

158. Professor Esposito completed a fair use checklist for the accused excerpt of *The SAGE Handbook of Qualitative Research (1st edition)*. Although Professor Esposito was unable to locate the completed fair use checklist, Professor Esposito recreated a fair use checklist that fairly and accurately represents Professor Esposito's analysis with reference to this excerpt in reaching her conclusion that the excerpt was a fair use. The Court finds that Professor Esposito acted in good faith and effectively complied with the 2009 Copyright Policy.

Y. Handbook of Adult Development and Learning (Oxford) – Thompson (D-25)

159. *Handbook of Adult Development and Learning* is a collective work, and Oxford has not come forward with evidence sufficient to prove that the accused excerpt has been assigned to Oxford.

160. Even if Plaintiff Oxford could assert a claim for infringement of a copyright in this work, Professor Thompson made a "fair use" of the work under 17 U.S.C. § 107. The excerpt at issue was posted to ERes for educational or

teaching purposes. The nature of the work is fact based. *Handbook of Adult Development and Learning* is 536 pages. The excerpt was 26 pages in length, or approximately 4.9% of the work, which was not substantial. Plaintiff Oxford has not established that Professor Thompson's posting of the excerpt negatively affected the market for this work. All four fair use factors favor Defendants.

161. Professor Thompson's correspondence with the GSU library indicates that Professor Thompson completed a fair use checklist for the accused excerpt of *Handbook of Adult Development and Learning*.

Z. Awakening Children's Minds (Oxford) – Kruger (D-26)

162. Oxford has not come forward with evidence sufficient to prove that *Awakening Children's Minds* has been properly assigned to it.

163. Professor Kruger made a "fair use" of the work under 17 U.S.C. § 107. The excerpt at issue was posted to ERes for educational or teaching purposes. The nature of the work is fact based. *Awakening Children's Minds* is 250 pages. The excerpt was 19 pages in length, or approximately 7.6% of the work, which was not substantial. Plaintiff Oxford has not established that Professor Kruger's posting of the excerpt negatively affected the market for this work. All four fair use factors favor Defendants.

164. Professor Kruger completed a fair use checklist for the accused excerpt of *Awakening Children's Minds*. Although Professor Kruger was unable to locate the completed fair use checklist, Professor Kruger recreated a fair use checklist that fairly and accurately represents Professor Kruger's analysis with reference to this excerpt in reaching her conclusion that the excerpt was a fair use. The Court finds that Professor Kruger acted in good faith and effectively complied with the 2009 Copyright Policy.

AA. Film Theory and Criticism (2009) – Raengo (D-27)

165. Plaintiffs have withdrawn the assertion relating to *Film Theory and Criticism*. Consequently, the Court finds that Defendants do not infringe the work.

BB. The Cambridge Companion to Schubert (Cambridge) – Orr (D-28)

166. Cambridge contends that *The Cambridge Companion to Schubert* is a “foreign work,” but has not established that this work was not published in the United States within thirty (30) days of first publication. Cambridge has thus failed to establish that the subject work is, in fact, a “foreign work.” Plaintiffs have thus failed to demonstrate that *The Cambridge Companion to Schubert* is a foreign work that avoids the requirement of 17 U.S.C. §411(a) that registration of the copyright claim has been made (a “mandatory precondition”)

before a civil action for infringement the copyright in a U.S. work shall be instituted. The Court therefore concludes that Cambridge has not shown it is entitled to maintain a claim for copyright infringement for this work.

167. Oxford has not provided a copyright registration for *The Cambridge Companion to Schubert*, and has not proven that it is a foreign work, and therefore, cannot assert the work in this lawsuit.

168. *The Cambridge Companion to Schubert* is a collective work, and Cambridge has not come forward with evidence sufficient to prove that the accused excerpt has been assigned to Cambridge.

169. Even if Plaintiff Cambridge could assert a claim for infringement of a copyright in this work, Professor Orr made a “fair use” of the work under 17 U.S.C. § 107. The excerpt at issue was posted to ERes for educational or teaching purposes. The nature of the work is fact based. *The Cambridge Companion to Schubert* is 283 pages. The excerpt was 17 pages in length. In addition, there were 7 pages of public domain works in the excerpt, and after excluding that material, the excerpt constituted approximately 3.5% of the work, which was not substantial. Plaintiff Cambridge has not established that Professor Orr’s posting of the excerpt negatively affected the market for this work. All four fair use factors favor Defendants.

170. Moreover, while Professor Orr only mentally completed a fair use checklist, he acted within the spirit of the 2009 Copyright Policy. In that regard, the Court finds that Professor Orr acted in good faith and effectively complied with the 2009 Copyright Policy.

CC. Liszt: Sonata in B Minor (Cambridge) – Orr (D-29)

171. Cambridge has not come forward with evidence sufficient to prove that *Liszt: Sonata in B Minor* has been properly assigned to it.

172. Cambridge obtained U.S. Copyright Registration TX 7-274-041 more than five (5) years after the date this work was first published. Accordingly, the Court grants no presumption of copyright validity under 17 U.S.C. §410(c) and accords no evidentiary weight to that registration. Cambridge has failed to prove that it has or owns a valid copyright in *Liszt: Sonata in B Minor*. Cambridge has not shown it is entitled to maintain a claim for copyright infringement for this work.

173. Even if Plaintiff Cambridge could assert a claim for infringement of a copyright in this work, Professor Orr made a “fair use” of the work under 17 U.S.C. § 107. The excerpt at issue was posted to ERes for educational or teaching purposes. The nature of the work is fact based. *Liszt: Sonata in B Minor* is 82 pages. The excerpt was 21 pages in length. In addition,

there were 6 pages of public domain works in the excerpt, and after excluding that material, the excerpt constituted approximately 18.3% of the work, which was not substantial. Plaintiff Cambridge has not established that Professor Orr's posting of the excerpt negatively affected the market for this work. All four fair use factors favor Defendants.

174. Moreover, while Professor Orr only mentally completed a fair use checklist, he acted within the spirit of the 2009 Copyright Policy. In that regard, the Court finds that Professor Orr acted in good faith and effectively complied with the 2009 Copyright Policy.

DD. The Cambridge Companion to Mendelssohn (Cambridge) – Orr (D-30)

175. Cambridge contends that *The Cambridge Companion to Mendelssohn* is a “foreign work,” but has not established that this work was not published in the United States within thirty (30) days of first publication. Cambridge has thus failed to establish that the subject work is, in fact, a “foreign work.” Plaintiffs have thus failed to demonstrate that *The Cambridge Companion to Mendelssohn* is a foreign work that avoids the requirement of 17 U.S.C. §411(a) that registration of the copyright claim has been made (a “mandatory precondition”) before a civil action for infringement the copyright in a U.S. work

shall be instituted. The Court therefore concludes that Cambridge has not shown it is entitled to maintain a claim for copyright infringement for this work.

176. Even if Plaintiff Cambridge could assert a claim for infringement of a copyright in this work, Professor Orr made a “fair use” of the work under 17 U.S.C. § 107. The excerpt at issue was posted to ERes for educational or teaching purposes. The nature of the work is fact based. *The Cambridge Companion to Mendelssohn* is 268 pages. The excerpt was 16 pages in length. In addition, there were 2 pages of public domain works in the excerpt, and after excluding that material, the excerpt constitutes approximately 5.2% of the work, which was not substantial. Plaintiff Cambridge has not established that Professor Orr’s posting of the excerpt negatively affected the market for this work. All four fair use factors favor Defendants.

177. Moreover, while Professor Orr only mentally completed a fair use checklist, he acted within the spirit of the 2009 Copyright Policy. In that regard, the Court finds that Professor Orr acted in good faith and effectively complied with the 2009 Copyright Policy.

EE. *The Cambridge Companion to Schumann (Cambridge) – Orr (D-31)*

178. Cambridge contends that *The Cambridge Companion to Schumann* is a “foreign work,” but has not established that this work was not

published in the United States within thirty (30) days of first publication. Cambridge has thus failed to establish that the subject work is, in fact, a “foreign work.” Plaintiffs have thus failed to demonstrate that *The Cambridge Companion to Schumann* is a foreign work that avoids the requirement of 17 U.S.C. §411(a) that registration of the copyright claim has been made (a “mandatory precondition”) before a civil action for infringement of the copyright in a U.S. work shall be instituted. The Court therefore concludes that Cambridge has not shown it is entitled to maintain a claim for copyright infringement for this work.

179. Even if Plaintiff Cambridge could assert a claim for infringement of a copyright in this work, Professor Orr made a “fair use” of the work under 17 U.S.C. § 107. The excerpt at issue was posted to ERes for educational or teaching purposes. The nature of the work is fact based, and Plaintiffs did not provide the number of pages Professor Orr used. Ultimately, Professor Orr removed *The Cambridge Companion to Schumann* from his syllabus, and did not teach from it to his class. Plaintiff Cambridge has not established that Professor Orr’s posting of the excerpt negatively affected the market for this work. All four fair use factors favor Defendants.

180. Moreover, while Professor Orr only mentally completed a fair use checklist, he acted within the spirit of the 2009 Copyright Policy. In that

regard, the Court finds that Professor Orr acted in good faith and effectively complied with the 2009 Copyright Policy.

FF. The Cambridge Companion to Beethoven (Cambridge) – Orr (D-32)

181. *The Cambridge Companion to Beethoven* is a collective work, and Cambridge has not come forward with evidence sufficient to prove that the accused excerpt has been assigned to Cambridge.

182. Cambridge obtained U.S. Copyright Registration TX 7-274-037 more than five (5) years after the date this work was first published. Accordingly, the Court grants no presumption of copyright validity under 17 U.S.C. §410(c) and accords no evidentiary weight to that registration. Cambridge has failed to prove that it has or owns a valid copyright in *The Cambridge Companion to Beethoven*. Cambridge has not shown it is entitled to maintain a claim for copyright infringement for this work.

183. Even if Plaintiff Cambridge could assert a claim for infringement of a copyright in this work, Professor Orr made a “fair use” of the work under 17 U.S.C. § 107. The excerpt at issue was posted to ERes for educational or teaching purposes. The nature of the work is fact based. *The Cambridge Companion to Beethoven* is 305 pages. The excerpt was 21 pages in length. In addition, there were 5 pages of public domain works in the excerpt, and

after excluding that material, the excerpt constitutes approximately 5.2% of the work, which was not substantial. Plaintiff Cambridge has not established that Professor Orr's posting of the excerpt negatively affected the market for this work. All four fair use factors favor Defendants.

184. Moreover, while Professor Orr only mentally completed a fair use checklist, he acted within the spirit of the 2009 Copyright Policy. In that regard, the Court finds that Professor Orr acted in good faith and effectively complied with the 2009 Copyright Policy.

GG. The Music of Berlioz (Oxford) – Orr (D-33)

185. Oxford contends that *The Music of Berlioz* is a “foreign work,” but has not established that this work was not published in the United States within thirty (30) days of first publication. Oxford has thus failed to establish that the subject work is, in fact, a “foreign work.” Plaintiffs have thus failed to demonstrate that *The Music of Berlioz* is a foreign work that avoids the requirement of 17 U.S.C. §411(a) that registration of the copyright claim has been made (a “mandatory precondition”) before a civil action for infringement the copyright in a U.S. work shall be instituted. The Court therefore concludes that Oxford has not shown it is entitled to maintain a claim for copyright infringement for this work.

186. Oxford has not come forward with evidence sufficient to prove that *The Music of Berlioz* has been properly assigned to it.

187. Even if Plaintiff Oxford could assert a claim for infringement of a copyright in this work, Professor Orr made a “fair use” of the work under 17 U.S.C. § 107. The excerpt at issue was posted to ERes for educational or teaching purposes. The nature of the work is fact based. *The Music of Berlioz* is 347 pages. The excerpt was 18 pages in length. In addition, there were 2 pages of public domain works in the excerpt, and after excluding that material, the excerpt constitutes approximately 4.6% of the work, which was not substantial. Plaintiff Oxford has not established that Professor Orr’s posting of the excerpt negatively affected the market for this work. All four fair use factors favor Defendants.

188. Moreover, while Professor Orr only mentally completed a fair use checklist, he acted within the spirit of the 2009 Copyright Policy. In that regard, the Court finds that Professor Orr acted in good faith and effectively complied with the 2009 Copyright Policy.

HH. The Operas of Charles Gounod (Oxford) – Orr (D-34)

189. Oxford has not come forward with evidence sufficient to prove that *The Operas of Charles Gounod* has been properly assigned to it.

190. Oxford has not provided a copyright registration for *The Operas of Charles Gounod*, and therefore, cannot assert the work in this lawsuit.

191. Even if Plaintiff Oxford could assert a claim for infringement of a copyright in this work, Professor Orr made a “fair use” of the work under 17 U.S.C. § 107. The excerpt at issue was posted to ERes for educational or teaching purposes. The nature of the work is fact based. *The Operas of Charles Gounod* is 314 pages. The excerpt was 28 pages in length. In addition, there were 7 pages of public domain works in the excerpt, and after excluding that material, the excerpt constitutes approximately 6.7% of the work, which was not substantial. Plaintiff Oxford has not established that Professor Orr’s posting of the excerpt negatively affected the market for this work. All four fair use factors favor Defendants.

192. Moreover, while Professor Orr only mentally completed a fair use checklist, he acted within the spirit of the 2009 Copyright Policy. In that regard, the Court finds that Professor Orr acted in good faith and effectively complied with the 2009 Copyright Policy.

II. The Cambridge Companion to Berlioz (Cambridge) – Orr (D-35)

193. Professor Orr did not place *The Cambridge Companion to Berlioz* on ERes, and it does not appear on an ERes report. Rather, he placed this

text on hardcopy reserve, and accordingly, the Court finds that the alleged use was not copyright infringement.

194. Even if Plaintiff Cambridge could assert a claim for infringement of a copyright in this work, Professor Orr made a “fair use” of the work under 17 U.S.C. § 107. The work was used for educational or teaching purposes. The nature of the work is fact based. *The Cambridge Companion to Berlioz* is 268 pages. Plaintiffs did not identify a portion of the work allegedly used. Plaintiff Cambridge has not established that Professor Orr’s posting of the excerpt negatively affected the market for this work. All four fair use factors favor Defendants.

195. Moreover, while Professor Orr only mentally completed a fair use checklist, he acted within the spirit of the 2009 Copyright Policy. In that regard, the Court finds that Professor Orr acted in good faith and effectively complied with the 2009 Copyright Policy.

JJ. The Gendered Society Reader (3d ed) (Oxford) – Kahn Brown (D-36)

196. Plaintiffs have withdrawn the assertion relating to *Film Theory and Criticism*. Consequently, the Court finds that Defendants do not infringe the work.