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

CAMBRIDGE UNIVERSITY PRESS,)	CV. NO. 1:08-1425
ET AL.,)	ATLANTA, GA
)	JUNE 1, 2011
PLAINTIFF,)	
)	
)	
VERSUS)	
)	
J. L. ALBERT, IN HIS OFFICIAL))	
CAPACITY AS GEORGIA STATE)	
UNIVERSITY ASSOCIATE PROVOST))	
FOR INFORMATION SYSTEMS AND))	
TECHNOLOGY, ET AL.,)	
)	
DEFENDANTS.)	

BEFORE THE HONORABLE ORINDA D. EVANS
UNITED STATES SENIOR DISTRICT COURT JUDGE
BENCH TRIAL
VOLUME XI

APPEARANCES:

FOR THE PLAINTIFF:	EDWARD B. KRUGMAN, ESQ.
	JOHN RAINS, ESQ.
	BONDURANT, MIXSON & ELMORE, LLP
	1201 WEST PEACHTREE STREET, NW
	3900 ONE ATLANTIC CENTER
	ATLANTA, GA 30309-3417
	JONATHAN BLOOM, ESQ.
	W. BRUCE RICH, ESQ.
	RANDI W. SINGER, ESQ.
	TODD LARSON, ESQ.
	WEIL GOTSHAL & MANGES-NY
	767 FIFTH AVENUE
	NEW YORK, NY 10153

1 APPEARANCES CONTINUED

2 FOR THE DEFENDANT:

STEPHEN M. SCHAEZEL, ESQ.
JOHN W. HARBIN, ESQ.
NATASHA MOFFITT, ESQ.
MARY KATHERINE BATES, ESQ.
KING & SPALDING, LLP-ATL
1180 PEACHTREE STREET, NE
ATLANTA, GA 30309-3521

6 ANTHONY B. ASKEW, ESQ.
LAW OFFICE OF ANTHONY B. ASKEW
211 TOWNSEND PLACE
ATLANTA, GA 30327

8 KATRINA M. QUICKER, ESQ.
9 RICHARD W. MILLER, ESQ.
10 BALLARD SPAHR, LLP
999 PEACHTREE STREET
11 SUITE 1000
ATLANTA, GA 30309

12 COURT REPORTER:

DEBRA R. BULL, RPR, CRR
UNITED STATES COURT REPORTER
13 1959 RICHARD RUSSELL BUILDING
14 75 SPRING STREET, SW
ATLANTA, GA 30303

15 STENOTYPE/COMPUTER-AIDED TRANSCRIPTION

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1 THE COURT: GOOD MORNING, FOLKS. HOW ARE YOU ALL
2 DOING?

3 PROFESSOR MURPHY, YOU ARE REMINDED YOU ARE STILL UNDER
4 OATH.

5 MR. KRUGMAN: JUST ONE HOUSEKEEPING MEASURE,
6 OTHERWISE SOMEONE ON THIS SIDE WILL TACKLE ME. THAT IS TO
7 MOVE INTO EVIDENCE DEFENDANT'S EXHIBIT 808, WHICH IS THE BOOK
8 "ASSESSING SPEAKING."

9 MS. QUICKER: NO OBJECTION.

10 MR. KRUGMAN: THANK YOU.

11 CROSS EXAM CONTINUED

12 BY MR. KRUGMAN:

13 Q. GOOD MORNING, PROFESSOR. I WANT TO KIND OF BRING US
14 BACK TO WHERE WE WERE. YOU TESTIFIED ON OR ABOUT APRIL 27,
15 2009, YOU DELIVERED WORKS FOR POSTING ON ERESERVES OF AL 8084
16 YOU WERE TEACHING IN THE MAYMESTER?

17 A. YES.

18 Q. YOU RECEIVED A PASSWORD FOR THE LIBRARY FOR THE
19 STUDENTS TO PASSWORD THESE WORKS?

20 A. YES.

21 Q. SOME TIME AFTER APRIL 27TH YOU DECIDED TO REQUIRE
22 STUDENTS TO PURCHASE FOUR TEXTBOOKS INSTEAD OF USING THOSE
23 ELECTRONIC RESERVE MATERIALS THAT YOU POSTED OR THAT YOU HAD
24 THE LIBRARY POST?

25 A. I DECIDED TO HAVE THEM PURCHASE THE FOUR TEXTBOOKS AND

1 I CONTINUED TO SEE THE ERESERVE MATERIAL AS SUPPLEMENTARY
2 MATERIAL, YES.

3 Q. IN FACT, WHEN THE CLASS STARTED, YOU GAVE STUDENTS THE
4 PASSWORD BUT INFORMED THEM THAT THEY WERE NOT REQUIRED TO READ
5 THOSE WORKS, CORRECT?

6 A. I WOULDN'T HAVE USED THE PHRASING "NOT REQUIRED." I
7 WOULD HAVE GIVEN THEM THE PASSWORD AND DESCRIBED THE MATERIALS
8 AS SUPPLEMENTARY MATERIALS TO THE COURSE.

9 Q. IF YOU COULD PLEASE TURN TO YOUR DEPOSITION THAT WAS
10 TAKEN ON APRIL 22, 2011, AND ASK YOU TO TURN TO PAGE 34.

11 A. THIRTY-FOUR?

12 Q. YES, SIR. LINES 21 TO 23.

13 A. TWENTY-ONE, OKAY.

14 Q. YOU PROVIDED THE FOLLOWING TESTIMONY:

15 (WHEREUPON, THE VIDEOTAPED DEPOSITION WAS PLAYED.)

16 "Q. AND YOU INFORMED YOUR STUDENTS
17 THAT THEY WERE NOT REQUIRED TO READ
18 THEM; IS THAT CORRECT?

19 A. THAT'S CORRECT."

20 (WHEREUPON, THE VIDEOTAPED DEPOSITION WAS STOPPED.)

21 BY MR. KRUGMAN:

22 Q. THAT WAS THE TESTIMONY YOU GAVE IN YOUR DEPOSITION,
23 CORRECT?

24 A. YES.

25 Q. YOU TESTIFIED, I BELIEVE YESTERDAY, THAT NONE OF THE

1 STUDENTS IN YOUR CLASS ACTUALLY USED THE ERESERVE MATERIAL,
2 DID I UNDERSTAND YOUR TESTIMONY CORRECTLY?

3 A. I AM NOT SURE IF THAT IS WHAT I SAID.

4 Q. IF YOU COULD BRING UP JUST THE TRANSCRIPT AT PAGE 80,
5 LINES 5 TO 8.

6 MS. QUICKER: OBJECTION. YOU ASKED ABOUT TESTIMONY
7 YESTERDAY.

8 MR. KRUGMAN: IF I MAY APPROACH THE WITNESS, YOUR
9 HONOR.

10 MS. QUICKER: THERE IS NO REASON TO BE SHOWING A
11 DEPOSITION IF YOU ARE ASKING ABOUT WHAT HE TESTIFIED TO
12 YESTERDAY.

13 MR. KRUGMAN: I'M SORRY, THIS IS A PORTION OF THE
14 TRANSCRIPT FROM YESTERDAY'S PROCEEDING. I AM SIMPLY TRYING
15 TO REFRESH HIS RECOLLECTION.

16 THE COURT: YOU MAY APPROACH.

17 MR. KRUGMAN: I APOLOGIZE FOR THE CONFUSION.

18 BY MR. KRUGMAN:

19 Q. PROFESSOR MURPHY, THIS IS A PORTION OR THIS IS THE
20 TRANSCRIPT OF THE TESTIMONY THAT YOU GAVE YESTERDAY IN COURT.
21 AND I WOULD ASK YOU TO TURN TO PAGE 80.

22 A. EIGHTY?

23 Q. YES, SIR. BEGINNING AT LINE FIVE, THE QUESTION WAS:
24 "AND TO YOUR KNOWLEDGE, DID ANY OF
25 YOUR STUDENTS IN FACT USE THE

1 SUPPLEMENTAL READING MATERIALS IN
2 THE COURSE WORK IN MAYMESTER 2009?"

3 AND THE ANSWER WAS:

4 ANSWER, "USED IN THE COURSEWORK,
5 NO."

6 THAT WAS THE TESTIMONY THAT YOU GAVE YESTERDAY, SIR, WAS
7 IT NOT?

8 A. YEAH, I AM JUST LOOKING.

9 MS. QUICKER: I WOULD LIKE THE WHOLE ANSWER READ.

10 MR. KRUGMAN: I WILL READ.

11 "NO. BECAUSE THAT WOULD MEAN IN
12 THE CLASSROOM THEY WOULD HAVE USED
13 SOME OF THE MATERIALS THROUGH THE
14 MICROTEACHING, AND TO THE BEST OF MY
15 RECOLLECTION, NO ONE USED
16 SUPPLEMENTAL READING MATERIALS OTHER
17 THAN THE ONES WHICH ARE LISTED AS
18 REQUIRED ON THE COURSE SYLLABUS.
19 AND AGAIN IN MIDTERM ESSAY AND IN
20 THE FINAL PROJECT, I DON'T BELIEVE
21 THAT ANYONE ACTUALLY USED THOSE
22 MATERIALS IN EITHER ONE OF" -- I
23 THINK THAT SHOULD BE -- "THOSE
24 FORMATS EITHER."

25 IS THAT CORRECT?

1 THE WITNESS: YEAH, THE PHRASING "MY RECOLLECTION"
2 AND "I DON'T BELIEVE," YES.

3 BY MR. KRUGMAN:

4 Q. NOW, YOU DON'T KNOW WHETHER STUDENTS IN FACT READ THE
5 MATERIALS THAT WEREN'T -- THAT WERE ON ELECTRONIC RESERVE,
6 CORRECT?

7 A. I DON'T KNOW IF THEY DID.

8 Q. AND SOME STUDENTS MAY HAVE GONE TO THE ELECTRONIC
9 RESERVE PAGE FOR THIS COURSE AND READ THE WORKS, CORRECT?

10 A. THEY MAY HAVE, YES.

11 Q. THAT IS CERTAINLY POSSIBLE, YES?

12 A. YES.

13 Q. NOW, LEGAL AFFAIRS CONTACTED YOU WHEN YOU WERE IN NEW
14 ORLEANS AT A CONFERENCE AND ASKED YOU TO COMPLETE THE
15 CHECKLIST THAT HAD BEEN INTRODUCED INTO EVIDENCE FOR THIS
16 PROCEEDING; IS THAT CORRECT?

17 A. YES.

18 Q. AND ON DIRECT YOU TESTIFIED THAT IT WAS, I BELIEVE,
19 AN INTERNATIONAL CONFERENCE?

20 A. YES.

21 Q. DO YOU RECALL WHETHER THE NAME OF THE CONFERENCE WAS
22 THE TESOL CONFERENCE, TEACHERS OF ENGLISH TO SPEAKERS OF
23 OTHER LANGUAGES?

24 A. YES.

25 Q. IT WAS HELD MARCH 16TH TO 19TH IN NEW ORLEANS; IS THAT

1 CORRECT?

2 A. THE CONFERENCE, AND I WAS THERE TWO OR THREE DAYS
3 BEFORE THAT SERVING IN THE CAPACITY FOR EDUCATIONAL TESTING
4 SERVICE THROUGH PRINCETON. I'M ON A COMMITTEE THAT DOES
5 AWARDS THAT ARE ALSO TIED TO THE CONVENTION, SO I WAS THERE A
6 FEW DAYS BEFORE THE START OF THE CONVENTION.

7 Q. BUT IT IS YOUR RECOLLECTION IT WAS DURING THAT PERIOD
8 THAT THE CONFERENCE WAS HELD?

9 A. YES.

10 Q. LEGAL AFFAIRS ASKED YOU TO COMPLETE CHECKLISTS FOR
11 WORKS THAT YOU HAD POST -- THAT YOU HAD THE LIBRARY POST ON
12 ELECTRONIC RESERVES FOR THE 8480 COURSE THAT YOU TAUGHT DURING
13 THE 2009 MAYMESTER, CORRECT?

14 A. YES.

15 Q. AND WERE YOU AWARE WHEN LEGAL AFFAIRS MADE THIS REQUEST
16 THAT THE PLAINTIFFS IN THIS CASE HAD ASKED FOR YOUR
17 DEPOSITION?

18 A. I DON'T REMEMBER. I DON'T REMEMBER THAT.

19 Q. WERE YOU CURIOUS WHY LEGAL AFFAIRS WAS ASKING YOU TO
20 RECREATE A CHECKLIST THAT YOU HAD FILL -- COMPLETED IN SOME
21 FASHION NEARLY TWO YEARS EARLIER?

22 A. I WAS CURIOUS. AT THE TIME I WOULD NOT HAVE KNOWN
23 WHAT A DEPOSITION WAS.

24 Q. THAT IS FAIR.

25 DID YOU HAVE AN UNDERSTANDING AT OR ABOUT THE TIME LEGAL

1 AFFAIRS MADE THAT REQUEST THAT FOR SOME REASON YOU WERE --
2 YOU HAD SOME INVOLVEMENT IN THE LITIGATION THAT WAS ONGOING
3 BETWEEN THE PLAINTIFFS AND REPRESENTATIVES OF GEORGIA STATE
4 WITH RESPECT TO THE ELECTRONIC RESERVE SYSTEM?

5 A. ONCE THAT -- ONCE I SAW THAT EMAIL AND READ WHAT IT
6 SAID, YES.

7 Q. NOW, YOU HAD POSTED WORKS FROM A NUMBER OF PUBLISHERS
8 FOR THE 2009 MAYMESTER CLASS; IS THAT CORRECT?

9 MS. QUICKER: OBJECTION, YOUR HONOR. THIS IS THE
10 THIRD TIME THAT WE HAVE GONE INTO ADDITIONAL POSTINGS ON ERES,
11 AND THIS CASE IS LIMITED TO THE POSTINGS AT ISSUE WHICH ARE
12 NINE, TWO OF WHICH THE PLAINTIFFS HAVE WITHDRAWN.

13 MR. KRUGMAN: THE PURPOSE IS JUST TO FIND OUT IF WHAT
14 HE COMPLETED, IF IT WAS LIMITED TO THE PLAINTIFFS' WORKS OR
15 DID HE COMPLETE THE CHECKLIST FOR EVERYTHING. IF I MAY
16 APPROACH THE WITNESS WITH WHAT IS DEFENDANT'S EXHIBIT --

17 THE COURT: WHAT DIFFERENCE DOES IT MAKE WHETHER HE
18 COMPLETED THE CHECKLIST FOR EVERYTHING?

19 MR. KRUGMAN: I THINK IT MAKES A LOT -- WELL, A LOT
20 OF DIFFERENCE IN TERMS OF WHAT THE MOTIVATION WAS. I JUST
21 WANT TO GET THE ANSWER TO THAT, INTRODUCE ONE EXHIBIT THAT IS
22 ON THE DEFENDANT'S EXHIBIT LIST AND THEN MOVE ON, YOUR HONOR.

23 THE COURT: OBJECTION SUSTAINED.

24 MR. KRUGMAN: MAY I APPROACH THE WITNESS?

25 THE COURT: YOU MAY. I ASSUME THIS IS FOR A PURPOSE

1 OTHER THAN WHAT YOU ORIGINALLY HAD IN MIND?

2 MR. KRUGMAN: LET ME THINK. I DON'T KNOW. LET ME
3 THINK ABOUT THAT AND COME BACK. I THINK THERE IS ANOTHER
4 PURPOSE, BUT I WILL RETURN.

5 THE COURT: I JUST DON'T SEE WHAT IT DOES FOR YOU TO
6 GO INTO HOW THE CHECKLISTS WERE COMPLETED FOR WORKS OTHER THAN
7 THOSE ALLEGEDLY INFRINGED IN OUR CASE.

8 MR. KRUGMAN: I HAD NO INTENTION OF GOING INTO HOW
9 OTHER CHECKLISTS WERE COMPLETED, YOUR HONOR. I THINK WHAT
10 IS RELEVANT IS, I AM NOT -- I AM NOT GOING TO GO INTO THAT,
11 BUT SIMPLY THAT THERE WERE OTHER MATERIALS POSTED ON
12 ELECTRONIC RESERVE AT THE SAME TIME BEYOND THOSE OF OUR
13 PLAINTIFFS. I DON'T INTEND TO ASK QUESTIONS.

14 THE COURT: WHAT DOES THAT ACHIEVE FOR YOU, IN YOUR
15 OPINION?

16 MR. KRUGMAN: I THINK IT ACHIEVES THAT WHAT WE HAVE
17 IS THE DIGITAL EQUIVALENT OF A COURSEPACK. DIGITAL
18 EQUIVALENT OF AN ANTHOLOGY OF DIFFERENT WORKS BY NOT ONLY OUR
19 AUTHORS, BUT MANY OTHER AUTHORS. AND WE BELIEVE THAT THAT IS
20 RELEVANT TO THIS COURT'S DETERMINATION AS TO WHETHER
21 ULTIMATELY THE DEFENDANTS CAN BE LIABLE IN THIS CASE. THAT
22 THAT RELATES IN SOME FASHION TO FAIR USE DETERMINATIONS.

23 THE COURT: LET ME HEAR FROM THE OTHER SIDE.

24 MS. QUICKER: THAT ASSUMES THAT EVERY POSTING IS
25 SOMETHING OTHER THAN A FAIR USE AND THAT IS NOT BEFORE THE

1 COURT FOR THAT TO APPLY. AS WELL AS THIS ISSUE IS ADDRESSED
2 IN THE MOTION IN LIMINE WHERE WE LIMITED THE WORKS AT ISSUE TO
3 THE ONES THAT WERE ALLEGED BY PLAINTIFFS IN WHICH THEY HAVE
4 STANDING TO COMPLAIN ABOUT.

5 THE COURT: MY THOUGHT ABOUT YOUR IDEA OF THE ERES
6 POSTINGS BEING A SUBSTITUTE FOR A COURSEPACK WAS THAT, NUMBER
7 ONE, HERE WE HAVE THE COPYING BEING MADE BY THE EDUCATIONAL
8 INSTITUTION, NOT BY A COMMERCIAL COMPANY LIKE IN THE KINKO'S
9 CASE. AND MY OTHER THOUGHT WAS THAT AT THE END OF THE
10 COURSE, ALL OF IT GETS ERASED. SO IT IS NOT LIKE IT IS
11 GOING TO HAVE -- IT IS GOING TO BE OUT IN THE STREAM OF
12 COMMERCE INDEFINITELY.

13 MR. KRUGMAN: I WOULD LIKE TO RESPOND FURTHER, YOUR
14 HONOR, THAT I THINK IT MAY BE APPROPRIATE TO EXCUSE THE
15 WITNESS WITH RESPECT TO THIS ISSUE.

16 THE COURT: I AM JUST TRYING TO THINK THROUGH
17 WHETHER WE NEED TO MAKE ANY MORE OF A RECORD ABOUT IT. AND
18 THE OTHER THING I THINK IS -- PROFESSOR MURPHY LET ME ASK YOU
19 TO STEP OUT IN THE HALL FOR A SECOND, PLEASE.

20 (WHEREUPON, THE FOLLOWING WAS HEARD OUTSIDE THE PRESENCE OF
21 THE WITNESS.)

22 MR. KRUGMAN: YOUR HONOR, IN LARGE PART WE THINK
23 THAT THIS EVIDENCE GOES NOT TO FACTOR ONE, WHETHER IT IS
24 COMMERCIAL OR NOT, BECAUSE TO BACK BEFORE IN TERMS OF THE
25 IMPACT ON THE MARKET, AND AS WE, I THINK, INDICATED

1 THROUGHOUT, THE MARKET, FOR THE MOST -- FOR MUCH OF THE MARKET
2 IS THE MARKET FOR PERMISSIONS AND LICENSING OF THESE VARIOUS
3 WORKS. AND I THINK THE EVIDENCE IS PRETTY CLEAR NOT A SINGLE
4 PROFESSOR IN MAKING FAIR USE DETERMINATIONS EVER CONSIDERED
5 THAT. BUT THERE IS ALSO A MARKET FOR BOOKS THEMSELVES. AND
6 IT IS MY BELIEF BY AT LEAST ALLOWING THE WITNESS TO IDENTIFY
7 THE OTHER WORKS THAT WERE POSTED ON ELECTRONIC RESERVE IN
8 MARCH OF 2009 THAT IT IS OUR STRONG BELIEF HE WAS INTENDING TO
9 USE THOSE AS THE TEXTBOOKS FOR THIS COURSE. AND THEN
10 SOMETHING -- THEN SOMETHING HAPPENED, THAT TEXTBOOK WOULD
11 HAVE BEEN A SUBSTITUTE FOR THE BOOKS THAT HE ULTIMATELY
12 ASSIGNED. AND THAT TEXTBOOK IN THE COURSEPACK READING WOULD
13 HAVE APPEARED IN THE MARKET FOR SALES IF HE HAD GONE AHEAD AND
14 PROCEEDED WITH WHAT HE INITIALLY WAS PLANNING TO DO. I THINK
15 YOU WILL UNDERSTAND FROM THE TESTIMONY THAT I WILL ELICIT FROM
16 THE WITNESS WHY HE MADE THAT CHANGE, THAT IT WAS NOT BECAUSE
17 HE WAS TINKERING WITH THE TEXTBOOK, IT WAS BECAUSE OF
18 SOMETHING ELSE. IT HAS TO DO WITH THE LITIGATION.

19 THE COURT: ISN'T THE SYLLABUS ALREADY IN EVIDENCE?

20 MR. KRUGMAN: THE SYLLABUS IS IN EVIDENCE, BUT THE
21 SYLLABUS DOES NOT CONTAIN THE LIST OF THE READINGS THAT THE
22 PROFESSOR HAD POSTED ON ELECTRONIC RESERVE BECAUSE, AS HE
23 SAID, HE WAS TINKERING AND DECIDED NOT TO INCLUDE THOSE.

24 THE COURT: SO DOES THE RECORD OR DOESN'T IT ALREADY
25 REFLECT WHAT HE PLACED ON ELECTRONIC RESERVE INITIALLY?

1 MR. KRUGMAN: THE RECORD ONLY REFLECTS THE WORKS OF
2 OXFORD AND CAMBRIDGE THAT THE PROFESSOR PLACED ON ELECTRONIC
3 RESERVE. IN ADDITION TO THOSE WORKS, HE HAD PLACED ON
4 ELECTRONIC RESERVE SIX WORKS PUBLISHED BY TESOL, WHICH WAS THE
5 CONFERENCE THAT HE ATTENDED IN MARCH OF 2011 WHEN HE WAS ASKED
6 TO RECREATE HIS CHECKLIST. TWO WORKS PUBLISHED BY LONGMAN,
7 WORKS BY PRENTISS HALL, ANOTHER BY TESOL, SOLEI, CAMBRIDGE
8 AGAIN, AND MORE TESOL. SIX TESOL, TWO BY LONGMAN, AND MANY
9 OTHERS. IT IS OUR BELIEF IT WAS HIS INTENTION WHEN HE HAD
10 THOSE POSTED THAT THOSE WERE GOING TO BE THE REQUIRED READINGS
11 IN THE COURSE.

12 THE COURT: OKAY. GO AHEAD AND COMPLETE YOUR
13 PROFFER. WHAT IS IT YOU THINK HAPPENED?

14 MR. KRUGMAN: WHAT I THINK HAS HAPPENED, YOUR HONOR,
15 IS THAT BETWEEN APRIL 27TH AND THE MAY 11TH CLASS, HE WAS
16 CONTACTED BY LEGAL AFFAIRS AND TOLD TO -- BASICALLY INVITED,
17 AS DR. DIXON TESTIFIED, TO A TRAINING SESSION. IT WAS THAT,
18 WE BELIEVE, THAT TRAINING SESSION IS WHAT THEN CAUSED HIM TO
19 CHANGE HIS MIND AND DECIDE TO ASSIGN TEXTBOOKS AS REQUIRED
20 READINGS. WE THINK THAT WOULD BE A FAIR INFERENCE FROM THE
21 EVIDENCE AS IT WILL COME OUT IN JUST A FEW MOMENTS.

22 THE COURT: LET ME ASK YOU THIS, I ASSUME Y'ALL
23 TOOK HIS DEPOSITION. YOU DID TAKE HIS DEPOSITION. DID HE
24 SAY THAT IN HIS DEPOSITION OR YOU THINK THE TIMING OF THE
25 TRAINING SESSION WAS SUCH THAT ONE COULD INFER THAT HE WAS

1 CALLED IN?

2 MR. KRUGMAN: WE THINK IT IS THE LATTER, YOUR HONOR.
3 AT THE TIME OF THE DEPOSITION, I DON'T BELIEVE WE -- I DON'T
4 KNOW WHAT WE HAD AT THE TIME. I DIDN'T TAKE THE DEPOSITION,
5 BUT AT LEAST THE EMAIL FROM CYNTHIA HALL TO A NUMBER OF
6 PROFESSORS, WHICH INCLUDED PROFESSOR MURPHY, WAS NOT USED AT
7 THE DEPOSITION, HAS SINCE BEEN USED IN THE DEPOSITION OF
8 CYNTHIA HALL THAT WAS TAKEN. AND ALL I WANT TO DO IS PUT
9 THIS INTO EVIDENCE. THIS WILL SHOW THE OTHER WORKS. I CAN
10 ASK THE WITNESS ABOUT THOSE, I CANNOT. I LITERALLY HAD
11 ABOUT, I WOULD SAY, 30 SECONDS OF TESTIMONY JUST TO HAVE HIM
12 IDENTIFY THAT THAT LIST CONTAINS THE OTHER WORKS THAT HE
13 REQUESTED THE LIBRARY TO PUT ON ERESERVE. I AM NOT GOING TO
14 GO INTO THAT ANY MORE IN TERMS OF THE EXAMINATION AND I WANT
15 THAT IN THE RECORD SIMPLY TO BE ABLE TO ALLOW US TO HAVE WHAT
16 WE THINK IS A VERY CRITICAL ELEMENT OF THE CASE IN EVIDENCE.

17 THE COURT: I WILL ACCEPT WHAT YOU ARE SAYING AS A
18 PROFFER. IT SEEMS TO ME, NUMBER ONE, WHAT YOU ARE SAYING IS
19 THAT THIS IS SOMETHING THAT ARGUABLY COULD HAVE BEEN A
20 COURSEPACK, BUT IT DIDN'T TURN OUT THAT WAY. I MEAN, IT
21 ALSO STRIKES ME THAT WE ARE TALKING JUST ABOUT WHAT ALLEGEDLY
22 HAPPENED IN ONE INSTANCE AND THAT IS NOT GOING TO GET YOU VERY
23 FAR AT ALL WITH THE CLAIM YOU HAVE REMAINING IN THE CASE.

24 MR. KRUGMAN: WELL, YOUR HONOR, WE THINK THAT, YOU
25 KNOW, PROFESSOR MURPHY'S CONDUCT, AS WELL AS OTHER PROFESSORS

1 THAT YOU HAVE USED PROFESSOR DIXON, PROFESSOR KAUFMAN, AND
2 OTHERS WHO HAVE RECEIVED --

3 THE COURT: YOU HAVE THE TESTIMONY WITH RESPECT TO
4 EVERYBODY WHO POSTED READINGS OTHER THAN THOSE EXCERPTED FROM
5 YOUR CLIENT'S WORKS. THAT TESTIMONY IS IN THE RECORD. IT
6 SHOWS ON THE SYLLABUS, YOU KNOW, WHATEVER THEY WERE TOLD TO
7 READ. I THINK -- I AM GOING TO SUSTAIN THE OBJECTION, BUT
8 AS I SAID, I WILL ACCEPT WHAT YOU SAID AS A PROFFER. AND IF
9 YOU WANT TO MAKE A FULLER PROFFER OF EVERYTHING THAT IS ON THE
10 LIST THAT YOU MIGHT THINK WOULD BE HELPFUL, YOU COULD DO
11 THAT.

12 MS. QUICKER: YOUR HONOR, IF WE MAY, PROFESSOR
13 MURPHY NEVER ATTENDED THE TRAINING. SO WE HAVE AN ISSUE WITH
14 THIS PROFFER IN THAT IT ASSUMES THAT HE ATTENDED A TRAINING.
15 AND AT THAT TRAINING HE SUDDENLY DECIDED TO REVISE HIS
16 SYLLABUS THAT HE HAS CONSISTENTLY TESTIFIED WAS A DRAFT
17 SYLLABUS HE WAS WORKING AND TINKERING WITH UNTIL THE DAY
18 BEFORE CLASS. AND THAT IS CONSISTENTLY HIS TESTIMONY FOR
19 EVERY CLASS THAT THEY OBJECTED TO AND SAID HE IS ONLY ALLOWED
20 TO TESTIFY ABOUT THIS CLASS.

21 THE COURT: I THINK IT IS CORRECT THAT HE TESTIFIED
22 YESTERDAY THAT HE DID NOT ATTEND ANY TRAINING.

23 MR. KRUGMAN: HE ALSO TESTIFIED, YOUR HONOR, THAT HE
24 WAS COMPLETELY UNAWARE THAT TRAINING EVEN EXISTED. THE
25 EVIDENCE I INTEND TO SUBMIT WITH THE EMAIL FROM CYNTHIA HALL

1 -- I WILL READ IT TO YOU.

2 THE COURT: YOU CAN FOLLOW UP WITH HIM ON THE ISSUE
3 OF TRAINING. BUT ON THIS ISSUE, WHAT ELSE HE MIGHT HAVE BEEN
4 THINKING ABOUT PUTTING ON THE LIST WHICH HE ULTIMATELY DIDN'T
5 PUT ON THE LIST I THINK DOESN'T GO ANYWHERE. I WILL SUSTAIN
6 THE OBJECTION TO THAT.

7 MR. KRUGMAN: LET ME MAKE ONE FINAL ONE, WITHOUT
8 EXAMINING THE WITNESS ABOUT IT, ONLY BECAUSE THIS WILL ALLOW
9 THE WORKS AT LEAST TO BE IN EVIDENCE. IF I MAY INTRODUCE
10 INTO EVIDENCE DEFENDANT'S EXHIBIT 894, WHICH IS ON THE
11 DEFENDANT'S EXHIBIT LIST. THEY PUT IT ON THE EXHIBIT LIST
12 AND WHAT IT CONTAINS ARE THE EXHIBITS TO PROFESSOR MURPHY'S
13 DEPOSITION. AT THIS TIME I WOULD MOVE DEFENDANT'S EXHIBIT
14 894 INTO EVIDENCE. OBVIOUSLY THE DEFENDANTS DID NOT OBJECT
15 TO THEIR OWN EXHIBIT LIST.

16 MS. QUICKER: WELL, YOUR HONOR, MY RECOLLECTION OF
17 THE EXHIBIT LIST IS THAT WHILE WE WERE DRAFTING THE EXHIBIT
18 LIST, ALL OF THESE DEPOSITIONS WERE TAKING PLACE, AND AS A
19 SAFEGUARD WE INCLUDED FOR EACH OF THE DEPOSITIONS THAT WAS
20 HAPPENING AT THAT TIME AN ENTRY THAT SAID ALL EXHIBITS
21 INCLUDED AT THE DEPOSITION TESTIMONY OF PROFESSOR X. WE DID
22 NOT LAYOUT EACH INDIVIDUAL EXHIBIT AS A SEPARATE EXHIBIT.

23 MR. KRUGMAN: MOST OF THESE ARE SIMPLY COPIES OF
24 OTHER DOCUMENTS THAT ARE ON VARIOUS EXHIBIT LISTS.

25 MS. QUICKER: CAN I HAVE A COPY OF WHAT YOU ARE

1 LOOKING AT, PLEASE?

2 MR. KRUGMAN: I'M SORRY. ALL I WOULD LIKE TO DO --

3 THE COURT: WHAT YOU ARE SAYING IS IT LISTS THE
4 NAMES OF THE OTHER PUBLICATIONS THAT HE WAS THINKING ABOUT
5 INCLUDING ON HIS LIST OF READINGS?

6 MR. KRUGMAN: ALL IT DOES, ON PAGES THEY HAVE SAID I
7 THINK 41 TO 42 OF DEFENDANT'S EXHIBIT 894 HAS WHAT IS A
8 PORTION, WHICH IS AN ELECTRONIC RESERVE REPORT, THAT SHOWS
9 EACH OF THE WORKS THAT WERE POSTED ON ELECTRONIC RESERVE FOR
10 THE MAYMESTER 2009 AS WELL AS THE NUMBER OF TIMES IT WAS
11 ADDED.

12 THE COURT: YOU SAID THAT IS ON PAGES 41 AND 42.

13 MR. KRUGMAN: YES, YOUR HONOR, ALTHOUGH THE PAGES
14 ARE NOT NUMBERED. I COULD HAND THIS UP TO YOUR HONOR IF YOU
15 WOULD LIKE.

16 THE COURT: NO, THAT IS ALL RIGHT. I WILL TELL YOU
17 WHAT I WILL DO. I WILL ADMIT THOSE PAGES FROM DEFENDANT'S
18 EXHIBIT 894. AND IF YOU WANT TO QUESTION THE WITNESS ABOUT
19 THEM, YOU CAN.

20 MR. KRUGMAN: I CAN?

21 THE COURT: YEAH. YOU CAN ASK HIM ARE THESE THE
22 ONES, IF YOU FEEL IT IS NECESSARY.

23 MR. KRUGMAN: OKAY. THANK YOU, YOUR HONOR.

24 MS. QUICKER: JUST SO THE RECORD IS CLEAR, IS THAT
25 MURPHY'S PLAINTIFF EXHIBIT 5 FROM HIS DEPOSITION?

1 MR. KRUGMAN: YES. THE TWO PAGES THAT COMPRISED
2 MURPHY -- MURPHY DEPOSITION EXHIBIT FIVE. MAYBE WE SHOULD
3 REMARK THAT.

4 THE COURT: IT SHOULD BE REMARKED.

5 MR. KRUGMAN: LET ME GO AHEAD AND DO THAT. IT IS
6 PLAINTIFF'S EXHIBIT 1011, WHICH COMPRISES PAGES 41 AND 42 OF
7 DEFENDANT'S EXHIBIT 894 AND WAS MURPHY DEPOSITION EXHIBIT
8 NUMBER 5. I UNDERSTAND THAT THAT EXHIBIT, PLAINTIFF'S
9 EXHIBIT 1011, IS NOW IN EVIDENCE.

10 THE COURT: IT IS ADMITTED.

11 MR. KRUGMAN: THANK YOU, YOUR HONOR.

12 THE COURT: ARE YOU READY FOR THE WITNESS?

13 MR. KRUGMAN: I THINK WE ARE.

14 (WHEREUPON THE WITNESS RE-ENTERED THE COURTROOM AND THE
15 FOLLOWING WAS HEARD.)

16 MR. KRUGMAN: IF I MAY APPROACH, YOUR HONOR.

17 THE COURT: YOU MAY.

18 BY MR. KRUGMAN:

19 Q. PROFESSOR MURPHY, I HAVE HANDED YOU WHAT HAS BEEN
20 MARKED AS PLAINTIFF'S TRIAL EXHIBIT 1011, I BELIEVE YOU WERE
21 SHOWN THIS IN YOUR DEPOSITION. THE ONLY QUESTION ABOUT THIS,
22 CAN YOU IDENTIFY THE VARIOUS WORKS ON PLAINTIFF'S EXHIBIT 1011
23 AS THE WORKS YOU REQUESTED ON OR ABOUT APRIL 27 OF 2009 TO BE
24 POSTED ON ELECTRONIC RESERVE FOR YOUR AL 8480 COURSE THAT YOU
25 WOULD BE TEACHING IN THE MAYMESTER OF 2009? YOU CAN TAKE A

1 MOMENT TO LOOK OVER THOSE.

2 A. YES, I WILL NEED TO. (WITNESS COMPLIES.)

3 UP UNTIL NOW, I HAD BEEN FOCUSING ON THE NINE THAT ARE
4 LISTED, BUT THIS LOOKS RIGHT.

5 Q. IS THAT RIGHT? THERE WERE 20 WORKS YOU HAD THE LIBRARY
6 POST ON ELECTRONIC RESERVE BASED ON THE LIST IN PLAINTIFF'S
7 EXHIBIT 1011?

8 A. SEGMENTS OF THESE WORKS, YES.

9 Q. I UNDERSTAND. THOSE SEGMENTS ARE REFLECTED ON THE
10 EXHIBIT, THE VARIOUS PAGE NUMBERS, CORRECT? YOU WILL SEE IN
11 EACH BOX ON THE LEFT --

12 A. YES, THERE ARE PAGE NUMBERS INDICATED.

13 Q. AND TO THE BEST OF YOUR RECOLLECTION, WE CAN MATCH
14 THOSE UP TO THE OXFORD CAMBRIDGE WORKS, BUT I DON'T SEE ANY
15 NEED TO TAKE THAT. BUT YOUR BEST RECOLLECTION IS THAT THOSE
16 WERE THE EXCERPTS FROM THOSE VARIOUS WORKS?

17 A. I BELIEVE SO.

18 Q. AND I BELIEVE AS YOU TESTIFIED YESTERDAY, SINCE THE NEW
19 POLICY WENT INTO EFFECT, YOU HAVE NOT SOUGHT PERMISSION FROM
20 ANY PUBLISHERS OF POSTING WORK ON ELECTRONIC RESERVE?

21 MS. QUICKER: OBJECTION, YOUR HONOR. HE IS NOW
22 GETTING INTO ADDITIONAL ANALYSIS OF THESE 20 WORKS.

23 MR. KRUGMAN: I WITHDRAW THE QUESTION. THE
24 TESTIMONY IS CLEAR FROM YESTERDAY. I WILL JUST MOVE ON.

25

1 BY MR. KRUGMAN:

2 Q. NOW, YOU TESTIFIED YESTERDAY THAT YOU ORIGINALLY
3 COMPLETED THE CHECKLIST ELECTRONICALLY; IS THAT CORRECT? WAS
4 THAT YOUR BEST RECOLLECTION?

5 A. YES.

6 Q. IS THAT CORRECT?

7 A. YES.

8 Q. AND YOUR CONCLUSIONS THAT YOUR USE OF EACH OF THE WORKS
9 WAS A FAIR USE WAS BASED ON THE FAIR USE CHECKLIST THAT HAD
10 BEEN PROVIDED TO YOU BY GEORGIA STATE; IS THAT CORRECT?

11 A. YES.

12 MR. KRUGMAN: AND IF I MAY APPROACH, YOUR HONOR?

13 THE COURT: YOU MAY.

14 MR. KRUGMAN: WITH JOINT TRIAL EXHIBIT NUMBER 4. I
15 DON'T NEED A COPY. BRADFORD, BRING UP PAGES SEVEN AND EIGHT
16 OF JOINT TRIAL EXHIBIT FOUR.

17 BY MR. KRUGMAN:

18 Q. PROFESSOR MURPHY, CAN YOU IDENTIFY PAGES SEVEN AND
19 EIGHT OF JOINT TRIAL EXHIBIT 4 AS THE CHECKLIST THAT YOU
20 COMPLETED ELECTRONICALLY BACK IN APRIL OF 2009?

21 A. NOW, I DON'T HAVE A CLEAR MEMORY OF THE SPECIFICS,
22 BUT I BELIEVE SO, YES.

23 Q. THIS IS WHAT IT LOOKED LIKE, CORRECT.

24 A. I BELIEVE THAT IS RIGHT.

25 Q. YOUR DETERMINATION -- FAIR USE DETERMINATIONS THAT YOU

1 MADE WERE BASED EXCLUSIVELY ON THIS FAIR USE CHECKLIST THAT
2 YOU COMPLETED ELECTRONICALLY IN APRIL OF 2009?

3 A. YES.

4 Q. FOR EACH WORK YOU CHECKED EACH OF THE RELEVANT ITEMS
5 THAT YOU BELIEVE APPLIED TO THE WORK; IS THAT CORRECT?

6 MS. QUICKER: OBJECTION, YOUR HONOR. I WANT TO
7 MAKE SURE WHEN HE IS REFERRING TO "EACH WORK," WE ARE BACK TO
8 ONLY THE WORKS AT ISSUE IN THIS CASE, WHICH ARE THE NINE
9 WORKS, TWO OF WHICH HAVE BEEN WITHDRAWN.

10 THE COURT: IS THAT WHAT YOU ARE REFERRING TO?

11 MR. KRUGMAN: I DON'T THINK IT REALLY MATTERS, BUT I
12 WILL SAY FOR THE, YOU KNOW, LET ME ASK IT JUST THIS WAY.

13 BY MR. KRUGMAN:

14 Q. ON PLAINTIFF'S TRIAL EXHIBIT 1011, THERE ARE WORKS BY
15 BOTH THE PLAINTIFFS, WHICH ARE CAMBRIDGE AND OXFORD, AND OTHER
16 WORKS, CORRECT?

17 A. I AM LOOKING FOR ANOTHER PUBLISHER, YES.

18 Q. TESOL AND LONGMAN, MICHIGAN UNIVERSITY PRESS,
19 PRENTISS HALL, THERE WERE A BUNCH OF OTHER PUBLISHERS,
20 CORRECT?

21 A. YES.

22 Q. DID YOU COMPLETE A CHECKLIST FOR EACH OF THOSE WORKS?

23 MS. QUICKER: OBJECTION, YOUR HONOR. NOW WE ARE
24 GOING INTO THE FAIR USE ANALYSIS OF THOSE ADDITIONAL WORKS.

25 MR. KRUGMAN: I DON'T BELIEVE I AM GOING INTO THE

1 FAIR USE ANALYSIS. I AM NOT GOING TO GO INTO THOSE. I WANT
2 TO ESTABLISH FROM THIS WITNESS THAT HE ESSENTIALLY COMPLETED
3 THE CHECKLIST THE SAME IN ALL INSTANCES SO I DON'T HAVE TO GO
4 THROUGH EACH AND EVERY INDIVIDUAL CHECKLIST.

5 THE COURT: OBJECTION SUSTAINED.

6 BY MR. KRUGMAN:

7 Q. NOW, WITH RESPECT TO THE CHECKLIST FOR THE OXFORD AND
8 CAMBRIDGE WORKS THAT ARE ON PLAINTIFF'S TRIAL EXHIBIT 1011,
9 IN MAKING THE FAIR USE DETERMINATIONS, WERE YOU RELYING
10 EXCLUSIVELY ON PAGES SEVEN AND EIGHT OF DEFENDANT -- OF THE
11 JOINT TRIAL EXHIBIT FOUR, THE FAIR USE CHECKLIST?

12 A. YES.

13 Q. AND FOR EACH OF THE PLAINTIFFS' WORKS, YOU CHECKED
14 ELECTRONICALLY EACH OF THE RELEVANT ITEMS THAT YOU BELIEVE
15 APPLIED TO THE WORK?

16 A. YES.

17 Q. AND THEN YOU ADDED UP THE NUMBERS UNDER EACH OF THE
18 FACTORS; IS THAT CORRECT?

19 A. I PROBABLY EYEBALLED, I DON'T KNOW IF I LITERALLY
20 COUNTED TWO, THREE, AND FOUR, BUT I DID LOOK AT THE
21 LEFT-HAND COLUMN AND THE RIGHT-HAND COLUMN.

22 Q. YOU LOOKED TO SEE IF THERE WERE MORE ON THE LEFT THAN
23 ON THE RIGHT, CORRECT?

24 A. YES.

25 Q. AND THE FACT THAT THE NUMBERS ON THE LEFT EXCEEDED THE

1 NUMBERS ON THE RIGHT FOR EACH OF THE FACTORS, THAT WAS THE
2 BASIS FOR YOUR FAIR USE DETERMINATION THAT YOU COULD USE THE
3 WORK WITHOUT PAYING PERMISSION TO THE COPYRIGHT HOLDER; IS
4 THAT CORRECT?

5 A. I DIDN'T UNDERSTAND PAYING PERMISSION. PAYING
6 ANYTHING NEVER ENTERED MY MIND.

7 Q. OKAY. WHY DID YOU UNDERSTAND YOU WERE COMPLETING THE
8 FAIR USE CHECKLIST? WHAT DID YOU UNDERSTAND THE REASON FOR
9 THAT TO BE?

10 A. THAT IF THE SEGMENTS OF THE WORK WOULD FALL UNDER FAIR
11 USE AND COULD BE INCLUDED IN THE RESERVE MATERIAL AS
12 SUPPLEMENTAL MATERIALS FOR THE COURSE.

13 Q. DID YOU HAVE ANY UNDERSTANDING AS TO WHAT YOU WOULD
14 NEED TO DO AS A PROFESSOR IF YOU CONCLUDED THERE WAS NO FAIR
15 USE BUT YOU WANTED TO USE SOME MATERIAL?

16 A. MY RECOLLECTION IS THAT THERE IS A FACTOR ON THE
17 RIGHT-HAND COLUMN THAT SAYS SOMETHING ABOUT, YOU KNOW --
18 WELL, LET ME LOOK. UNDER FACTOR FOUR IT SAYS "LICENSING OR
19 PERMISSION REASONABLY AVAILABLE." AND I BELIEVE THAT IS AN
20 ITEM WHICH I DID CHECK ON THE RIGHT-HAND SIDE.

21 Q. YES, BECAUSE YOU UNDERSTOOD THERE WAS A MARKET FOR
22 LICENSING AND PERMISSIONS FOR COPYRIGHTED WORKS, CORRECT?

23 A. OKAY. I DON'T UNDERSTAND THE WORD "MARKETING" IN THAT
24 CONTEXT, BUT I'M AWARE OF PERMISSION.

25 Q. YOU UNDERSTOOD FOR EACH OF THE CHECKLISTS THAT YOU

1 COMPLETED THAT I BELIEVE -- AND WE CAN LOOK AT ONE OF THOSE IN
2 A MOMENT -- THAT YOU UNDERSTOOD FOR THOSE THAT LICENSING OR
3 PERMISSION WAS REASONABLY AVAILABLE?

4 A. YES, I CHECKED THAT ITEM.

5 Q. AND LET ME ASK IT THIS WAY. AM I CORRECT IF UPON
6 COMPLETING THE CHECKLIST, YOU KNOW, LET'S SAY MAJORITY OF
7 THE FACTORS WEIGHED AGAINST FAIR USE RATHER THAN IN FAVOR OF,
8 DID YOU HAVE ANY UNDERSTANDING AS TO WHETHER YOU COULD,
9 NOTWITHSTANDING THAT DETERMINATION POST, HAVE THE LIBRARY
10 POST THE MATERIALS ON ELECTRONIC RESERVE BY GOING OUT AND
11 OBTAINING WHAT WAS REASONABLY AVAILABLE, LICENSING OR
12 PERMISSION, FOR THAT WORK?

13 A. I DON'T KNOW THAT I CAN ANSWER THAT AS YES OR NO.

14 Q. WHY DON'T YOU TRY IT.

15 A. OKAY. COULD YOU REPEAT THE QUESTION?

16 Q. I'M NOT CERTAIN I CAN. AM I CORRECT THAT IF UPON
17 COMPLETING THE CHECKLIST, A MAJORITY OF THE FACTORS HAD
18 WEIGHED AGAINST FAIR USE, WAS IT YOUR UNDERSTANDING THAT IF
19 THAT WERE THE SITUATION, THAT YOU COULD NONETHELESS HAVE THE
20 MATERIAL POSTED ON ELECTRONIC RESERVE BY GOING OUT AND
21 OBTAINING A LICENSE OR PERMISSION TO USE THE WORK THAT YOU
22 KNEW WAS REASONABLY AVAILABLE?

23 A. YOUR HONOR, CAN I ANSWER IN A WAY OTHER THAN YES OR
24 NO?

25 THE COURT: YOU CAN ANSWER YES OR NO THEN EXPLAIN.

1 THE WITNESS: YES. AND MY THINKING WAS IS THAT IF
2 THAT WERE THE CASE, IF I HAD SEEN IT AS NOT BEING AS WEIGHING
3 AGAINST FAIR USE, I WOULD HAVE LIKELY NOT HAVE USED THE
4 MATERIAL. SO I WOULD NOT HAVE TAKEN THE STEP OF SEEKING
5 PERMISSION BECAUSE I WOULD HAVE DECIDED, NO, I WON'T USE THE
6 MATERIAL IN SUPPLEMENTAL READING.

7 BY MR. KRUGMAN:

8 Q. YOU JUST WEREN'T GOING TO PAY ANYTHING FOR IT?

9 A. I DON'T KNOW WHAT "PAYING" MEANS IN THAT CONTEXT.

10 Q. PERMISSION. YOU KNOW, IS IT YOUR UNDERSTANDING WITH
11 RESPECT TO LICENSES OR PERMISSIONS THAT THAT ENTAILS SOME
12 PAYMENT GOING TO THE OWNER OF THE COPYRIGHT FOR THE ABILITY TO
13 REPRODUCE THAT PROTECTED WORK?

14 A. IN MY EXPERIENCE, I HAVE RECEIVED PERMISSION FROM
15 FORMER INSTRUCTORS AT COLUMBIA UNIVERSITY, THEY JUST GAVE
16 PERMISSION. THEY DIDN'T ASK FOR PAYMENT. SO, IT COULD BE
17 JUST GIVING PERMISSION OR IT COULD BE ASKING FOR PAYMENT,
18 THAT IS WHY I WAS QUESTIONING THE WORD PAYMENT IN THAT
19 CONTEXT.

20 Q. OKAY. SO I UNDERSTAND, LET'S ASSUME THAT YOU COMPLETED
21 A CHECKLIST FOR THE WORK AND IT WEIGHED AGAINST FAIR USE, YOU
22 KNOW, THAT LICENSING AND PERMISSION FOR THE WORK IS REASONABLY
23 AVAILABLE?

24 MS. QUICKER: OBJECTION, ASKED AND ANSWERED.

25 MR. KRUGMAN: IF I MAY FINISH THE QUESTION.

1 BY MR. KRUGMAN:

2 Q. WOULD YOU, UNDER THOSE CIRCUMSTANCES, AT LEAST CHECKED
3 WITH THE OWNER OF THE COPYRIGHT TO FIND OUT WHETHER YOU COULD
4 OBTAIN PERMISSION TO USE THE WORK WITHOUT PAYING ANY MONEY?

5 MS. QUICKER: OBJECTION, ASKED AND ANSWERED.

6 THE COURT: OVERRULED.

7 THE WITNESS: YOUR HONOR, IS THIS ONE I NEED TO
8 ANSWER YES OR NO?

9 THE COURT: YES.

10 THE WITNESS: OKAY. I NEED TO HEAR THE QUESTION
11 AGAIN.

12 BY MR. KRUGMAN:

13 Q. ASSUME YOU MAKE THE DETERMINATION THAT A PARTICULAR
14 WORK WAS NOT FAIR USE AND YOU KNEW THAT PERMISSIONS AND
15 LICENSING WERE REASONABLY AVAILABLE, WOULD YOU HAVE, UNDER
16 THOSE CIRCUMSTANCES, AT LEAST CONTACTED THE COPYRIGHT OWNER,
17 THE HOLDER OF THE COPYRIGHT, TO FIND OUT WHETHER YOU COULD
18 NONETHELESS USE THAT WORK TO NOT HAVE TO PAY ANYTHING TO USE
19 IT?

20 A. NOT IN THIS CONTEXT. I WOULD HAVE DECIDED IF IT WEIGHS
21 AGAINST FAIR USE I WOULD HAVE DECIDED IT WEIGHS AGAINST FAIR
22 USE SO I WOULD HAVE NOT HAVE USED THE MATERIAL. I HAVE HAD A
23 LOT OF ILLUSTRATIONS OF ACTIVITY RECIPE COLLECTIONS TO DRAW
24 FROM AND I WOULD HAVE DECIDED IF IT WEIGHS AGAINST FAIR USE I
25 CAN MOVE ON TO SOMETHING ELSE.

1 Q. YOU JUST WOULDN'T HAVE USED IT, PERIOD?

2 A. THAT'S CORRECT.

3 Q. EVEN THOUGH LICENSING OR PERMISSIONS WERE AVAILABLE?

4 MS. QUICKER: OBJECTION, ASKED AND ANSWERED.

5 THE COURT: SUSTAINED.

6 BY MR. KRUGMAN:

7 Q. NOW, YOU KNOW WITH RESPECT TO YOUR FAIR USE
8 DETERMINATIONS, YOU UNDERSTAND IT WAS BASED ON THE SPECIFIC
9 QUESTIONS THAT WERE POSED TO YOU ON THE FAIR USE CHECKLIST; IS
10 THAT CORRECT?

11 A. YES.

12 Q. SO THE NATURE OF THE QUESTIONS, THE TYPES OF QUESTIONS
13 YOU WERE ASKED TO ANSWER ON THE CHECKLIST ULTIMATELY
14 DETERMINED THE OUTCOME AS TO WHETHER YOU CONCLUDED THERE WAS
15 OR WAS NOT A FAIR USE?

16 A. YES.

17 Q. AND YOU WOULD AGREE, SIR, WOULD YOU NOT, THAT
18 CHANGING THE QUESTIONS ON THE CHECKLIST COULD LEAD TO A
19 DIFFERENT FAIR USE DETERMINATION?

20 A. I DON'T THINK I UNDERSTOOD THAT ONE. COULD YOU SAY
21 THAT AGAIN?

22 Q. WOULD YOU AGREE WITH ME, PROFESSOR MURPHY, IF ONE
23 CHANGED THE QUESTIONS THAT WERE ON THE CHECKLIST, POSED
24 DIFFERENT QUESTIONS, THAT THAT COULD LEAD TO A DIFFERENT FAIR
25 USE DETERMINATION?

1 MS. QUICKER: OBJECTION, YOUR HONOR. HOW IS THIS
2 RELEVANT IF WE CHANGED THE QUESTIONS ON THE FAIR USE
3 CHECKLIST? WHETHER OR NOT HE HAD ARRIVED AT FAIR USE WITH
4 RESPECT TO THESE SEVEN WORKS?

5 MR. KRUGMAN: I THINK IT IS VERY RELEVANT IN TERMS OF
6 WHETHER THE POLICY AND PRACTICE --

7 THE COURT: SAY YOUR QUESTION AGAIN.

8 BY MR. KRUGMAN:

9 Q. PROFESSOR, MURPHY, YOU WOULD AGREE THAT IF ONE
10 CHANGED THE ACTUAL QUESTIONS THAT WERE ON THE CHECKLIST,
11 STILL RELATED TO THE VARIOUS FACTORS, BUT POSED DIFFERENT
12 INDIVIDUAL BOXES, THAT THAT COULD LEAD TO A DIFFERENT FAIR USE
13 DETERMINATION THAN THE ONE YOU MADE?

14 A. DO YOU MEAN CHANGING?

15 MS. QUICKER: OBJECTION. AND NOW HE IS ASKING FOR
16 THE WITNESS TO SPECULATE AS TO WHAT WOULD HAPPEN.

17 THE COURT: I JUST DON'T UNDERSTAND THE QUESTION.
18 YOU ARE SAYING IF YOU CHANGED THE QUESTIONS WOULD IT CHANGE
19 THE ANSWERS? WELL, YEAH.

20 MR. KRUGMAN: IT COULD. THAT IS ALL I'M ASKING.

21 THE COURT: LET'S MOVE ON.

22 MR. KRUGMAN: MAYBE IT IS QUITE OBVIOUS.

23 BY MR. KRUGMAN:

24 Q. YOU CREATED THE CHECKLIST AT THE CONFERENCE IN MARCH OF
25 2011; IS THAT CORRECT?

1 A. I DID NOT CREATE THE CHECKLIST, THE CHECKLIST WAS
2 SOMETHING SENT TO ME AS AN ATTACHMENT THROUGH EMAIL, I
3 BELIEVE, AND I COMPLETED THE CHECKLIST TO THE BEST OF MY
4 ABILITY.

5 Q. THAT WAS IN APRIL OF 2009 THAT YOU ORIGINALLY COMPLETED
6 THE CHECKLIST, CORRECT?

7 A. YES.

8 Q. NOW LET'S JUMP AHEAD TO MARCH OF 2011. YOU WERE
9 CONTACTED BY LEGAL AFFAIRS AND YOU WERE ASKED TO PROVIDE THEM
10 CHECKLISTS FOR A CERTAIN NUMBER OF WORKS THAT YOU HAD POSTED
11 ON ELECTRONIC RESERVE FOR THE MAYMESTER OF 2009; IS THAT
12 CORRECT?

13 MS. QUICKER: OBJECTION TO THE NUMBER OF WORKS, WE
14 ARE TALKING ABOUT PLAINTIFFS' WORKS.

15 THE COURT: WE NEED TO MOVE ON.

16 MR. KRUGMAN: I AM TRYING TO.

17 THE COURT: OBJECTION SUSTAINED.

18 BY MR. KRUGMAN:

19 Q. LET'S BRING UP PLAINTIFF'S EXHIBIT, IF YOU LOOK IN
20 YOUR NOTEBOOK, SIR, PLAINTIFF'S EXHIBIT 656.

21 A. OKAY.

22 Q. AM I CORRECT THAT THAT IS THE FAIR USE CHECKLIST THAT
23 YOU RECREATED IN THE MIDDLE OF MARCH OF 2011 AT THE REQUEST OF
24 LEGAL AFFAIRS FOR AN EXCERPT FROM A WORK BY HANCOCK ENTITLED
25 "PRONUNCIATION GAMES"?

1 A. YES.

2 Q. NOW, THE FORMAT OF PLAINTIFF'S 656 IS UNUSUAL, IT
3 DOESN'T LOOK LIKE THE FAIR USE CHECKLIST THAT WE SAW ON PAGES
4 SEVEN AND EIGHT OF JOINT TRIAL EXHIBIT 4; IS THAT CORRECT?

5 A. IT LOOKS LIKE IT.

6 Q. IF YOU CAN BRING UP JUST QUICKLY. THE TWO DOCUMENTS
7 CERTAINLY ARE NOT IDENTICAL, YOU WOULD AGREE WITH THAT?

8 A. I WAS LOOKING AT THE FACTORS, BUT I AGREE THOSE TWO
9 DOCUMENTS ARE NOT IDENTICAL.

10 Q. THE FORMAT IS DIFFERENT. WHERE DID THAT FORMAT ON
11 DEFENDANT'S EXHIBIT 656 COME FROM?

12 A. OKAY. SO IN MY PREVIOUS TESTIMONY, I HAD DISCLOSED
13 THAT THIS WAS EMAIL COMMUNICATION AND THEY HAD FORWARDED ME
14 DOCUMENTS AS ATTACHMENTS TO EMAIL. AND IN MY DEPOSITION I
15 TALKED ABOUT FILLING IT OUT. AND NOW THAT YOU POINT OUT THE
16 DIFFERENCE IN FORMAT, I CAN SEE THAT IT MUST HAVE BEEN
17 ELECTRONIC AND I HAD TAKEN THE RELEVANT SECTIONS AND DID COPY
18 AND PASTE IN A WORD PROCESSING DOCUMENT, THAT IS WHAT IT LOOKS
19 LIKE TO ME, KEEPING THE FACTORS THE SAME. AND I WAS DOING IT
20 BECAUSE, BEING OUT OF TOWN, I WAS WORKING WITH MICROSOFT WORD
21 ATTACHMENTS FROM A HOTEL ROOM IN NEW ORLEANS.

22 Q. YOU HAD WEB ACCESS, DID YOU NOT?

23 A. YEAH, THE INTERNET CONNECTION WAS SLOW, BUT, YES.

24 Q. I AM JUST TRYING TO UNDERSTAND WHY YOU DIDN'T IN MARCH
25 OF 2011 COMPLETE THE FAIR USE CHECKLIST AS YOU TESTIFIED TO

1 THAT YOU COMPLETED ELECTRONICALLY IN APRIL OF 2009?

2 A. I DON'T UNDERSTAND THE QUESTION.

3 Q. I WILL MOVE ON.

4 HOW DID YOU KNOW WHICH WORKS YOU NEEDED TO COMPLETE
5 CHECKLISTS FOR?

6 A. IN THAT EMAIL COMMUNICATION, THEY PROVIDED ME THE
7 INFORMATION ON THE WORKS THAT NEEDED TO BE COMPLETED.

8 Q. IF WE CAN BRING UP THE TOP OF PLAINTIFF'S 656. IS
9 THAT THE INFORMATION THAT THEY PROVIDED YOU? WHY DON'T YOU
10 TELL ME WHAT INFORMATION IS ON PLAINTIFF'S 656 THE OFFICE OF
11 LEGAL COUNSEL PROVIDED YOU OR LEGAL AFFAIRS, EXCUSE ME?

12 A. I DON'T RECALL ON THAT SPECIFIC DETAIL. I KNOW THAT
13 WHEN I WAS IN NEW ORLEANS, I WAS MADE AWARE OF THE PARTICULAR
14 WORKS THAT THEY NEEDED THE FAIR USE CHECKLIST FOR. I DON'T
15 RECALL THE SPECIFIC FORMAT IN WHICH THEY COMMUNICATED THAT.

16 Q. I TAKE IT TWO YEARS LATER AFTER THE WORKS HAD BEEN
17 POSTED ON ELECTRONIC RESERVE YOU DIDN'T REMEMBER ALL OF THE
18 WORKS WHILE YOU WERE IN YOUR HOTEL ROOM IN NEW ORLEANS?

19 A. OH, OKAY. THE WORKS THAT WE HAVE BEEN FOCUSING ON,
20 THERE IS NINE WORKS, I KNOW ALL OF THEM VERY WELL.

21 Q. YOU KNOW -- OKAY. YOU KNOW THE AUTHORS OF ALL NINE
22 WORKS?

23 A. NO. I DON'T KNOW THAT I COULD SAY SPECIFICALLY THE
24 CITY IN WHICH THE WORK WAS PUBLISHED OR THE SPELLING OF THE
25 AUTHOR'S FIRST AND LAST NAME. I AM VERY FAMILIAR WITH THOSE

1 WORKS, I MEAN, THE CONTENT OF THE WORKS AND WHAT IT WAS
2 INVOLVED.

3 Q. I AM TRYING TO FIGURE OUT, WAS IT LEGAL AFFAIRS THAT
4 PROVIDED YOU AUTHOR AND TITLE OF EACH OF THE WORKS THAT YOU
5 NEEDED TO COMPLETE?

6 MS. QUICKER: OBJECTION, ASKED AND ANSWERED.

7 MR. KRUGMAN: I DON'T BELIEVE.

8 MS. QUICKER: I AM NOT SURE IT IS ENTIRELY RELEVANT
9 AFTER HE HAS BEEN ASKED THREE TIMES.

10 THE COURT: OVERRULED.

11 THE WITNESS: I DON'T RECALL THE DEGREE OF DETAIL
12 THAT LEGAL AFFAIRS PROVIDED FOR THE WORKS.

13 BY MR. KRUGMAN:

14 Q. SO YOU DON'T RECALL WHETHER THEY GAVE YOU THE NAME OF
15 THE AUTHOR?

16 MS. QUICKER: OBJECTION, ASKED AND ANSWERED.

17 THE COURT: SUSTAINED.

18 BY MR. KRUGMAN:

19 Q. DO YOU RECALL WHETHER THEY -- WHETHER YOU WERE ASKED
20 -- WHETHER THE WORKS YOU WERE ASKED TO RECREATE CHECKLISTS FOR
21 WERE WORKS BY CAMBRIDGE UNIVERSITY PRESS AND OXFORD UNIVERSITY
22 PRESS?

23 MS. QUICKER: OBJECTION. YOUR HONOR, IS THIS
24 GETTING IN TO THE ADDITIONAL WORKS AGAIN?

25 THE COURT: I DON'T THINK IT IS. YOU CAN ANSWER THE

1 QUESTION.

2 THE WITNESS: FOR ALL NINE OF THE WORKS ON MY OWN,
3 OFF THE TOP OF MY HEAD, I COULD NOT SAY SPECIFICALLY WHICH
4 ONES WERE CAMBRIDGE AND WHICH ONES WERE OXFORD, FOR SOME OF
5 THEM I COULD.

6 BY MR. KRUGMAN:

7 Q. YOU WERE ASKED TO COMPLETE CHECKLISTS FOR NINE WORKS?

8 A. YES.

9 Q. YEAR OF PUBLICATION, IS THAT -- WELL, LET ME ASK YOU
10 THIS: YOU DIDN'T HAVE THE BOOKS WITH YOU IN NEW ORLEANS, DID
11 YOU?

12 A. NO.

13 Q. YOU DIDN'T HAVE THE PHOTOCOPIES OF THE CHAPTERS THAT
14 YOU HAD DELIVERED TO THE LIBRARY IN APRIL OF 2009 WITH YOU IN
15 YOUR HOTEL ROOM IN NEW ORLEANS?

16 A. NO.

17 Q. AND SO WOULD IT BE FAIR TO SAY FOR EACH OF THE WORKS
18 THAT THE YEAR OF PUBLICATION, THAT WAS INFORMATION PROVIDED TO
19 YOU BY THE OFFICE OF LEGAL AFFAIRS?

20 A. YES.

21 Q. AND THE CHAPTER OR PAGE NUMBERS THAT HAD BEEN POSTED,
22 THAT WAS INFORMATION PROVIDED TO YOU BY THE OFFICE OF LEGAL
23 AFFAIRS?

24 A. YES.

25 Q. WHAT ABOUT THE DROP-OFF DATE, APRIL 27, 2009, WAS

1 THAT DATE PROVIDED TO YOU BY THE OFFICE OF LEGAL AFFAIRS?

2 A. I DON'T RECALL.

3 Q. NOW, IN RESPONSE TO MS. QUICKER'S QUESTIONS, YOU
4 TESTIFIED YESTERDAY THAT THE RECREATED CHECKLIST, EACH ONE WAS
5 A FAIR AND ACCURATE RECREATION OF THE FAIR USE ANALYSIS THAT
6 YOU INITIALLY PERFORMED IN 2009, DO YOU RECALL THAT?

7 A. TO THE BEST OF MY ABILITY, IT WAS.

8 Q. NOW, WHEN YOU TESTIFIED ON DIRECT ABOUT THAT ANALYSIS,
9 MS. QUICKER DIDN'T PUT EACH OF THESE FAIR USE CHECKLISTS UP ON
10 THE ELMO, DO YOU RECALL THAT?

11 A. I DON'T RECALL THAT. YOU MEAN YESTERDAY?

12 Q. YESTERDAY, SIR.

13 A. I REMEMBER DETAILED QUESTIONS, I DON'T RECALL WHAT WAS
14 ON THEM.

15 Q. YOU DON'T RECALL WHETHER IT WAS PUBLISHED FOR THE
16 COURTROOM WHEN THOSE QUESTIONS WERE BEING ASKED?

17 A. I DON'T BECAUSE IT WAS PRESENTED IN FRONT OF ME SO I
18 WAS LOOKING AT MY NOTEBOOK.

19 Q. THAT IS FAIR.

20 WHEN YOU WERE ASKED ABOUT FACTOR ONE, LET'S LOOK AT
21 FACTOR ONE, PURPOSE AND CHARACTER OF THE USE. FOR EACH OF
22 THE -- YOU WERE ASKED TO DESCRIBE BRIEFLY THE PROCESS THAT
23 YOU WENT THROUGH IN RECREATING THE CHECKLIST, YOUR THOUGHT
24 PROCESS, WHICH WAS THE SAME THOUGHT PROCESS THAT YOU HAD GONE
25 THROUGH BACK IN APRIL OF 2009 WHEN YOU INITIALLY COMPLETED THE

1 CHECKLIST ELECTRONICALLY TO THE BEST OF YOUR RECOLLECTION?

2 A. THAT WAS MY INTENTION.

3 Q. WHEN YOU TESTIFIED ABOUT FACTOR ONE, WHAT YOUR
4 TESTIMONY WAS, YOU TESTIFIED THAT YOU SAW USE OF EACH OF THE
5 WORKS AS, QUOTE, RELEVANT TO THE INTENDED EDUCATIONAL PURPOSES
6 OF THE COURSE, DO YOU RECALL THAT?

7 A. I RECALL USING THE WORD "RELEVANT," YES, I DID.

8 Q. IF YOU COULD LOOK AT, YOU HAVE THE TRANSCRIPT FROM
9 YESTERDAY.

10 A. UH-HUH (AFFIRMATIVE RESPONSE).

11 Q. LOOK AT PAGE 92, LINE 24. YOU TESTIFIED:

12 "I DID SEE IT AS BEING RELEVANT FOR
13 THE INTENDED EDUCATIONAL PURPOSES OF
14 THE COURSE."

15 MS. QUICKER: OBJECTION, YOUR HONOR.

16 MR. KRUGMAN: DO YOU SEE THAT?

17 MS. QUICKER: HE JUST CHARACTERIZED THAT TESTIMONY AS
18 HE USED THAT PHRASE FOR EVERY ONE OF THE NINE WORKS. AND
19 THIS IS AN ANALYSIS FOR A SPECIFIC WORK.

20 THE COURT: I'M SORRY, I DON'T UNDERSTAND YOUR
21 OBJECTION.

22 MS. QUICKER: HE JUST CHARACTERIZED THE PRIOR
23 TESTIMONY AS --

24 THE COURT: "HE," MR. KRUGMAN?

25 MS. QUICKER: MR. KRUGMAN. THAT YESTERDAY'S

1 TESTIMONY WAS ALL OF THE WORKS WERE RELEVANT FOR THE INTENDED
2 EDUCATIONAL PURPOSE. NOW HE IS POINTING IN THE RECORD FOR
3 ANALYSIS FOR "KEEP TALKING." SO I AM OBJECTING TO THE FACT
4 HE IS MISCHARACTERIZING YESTERDAY'S TESTIMONY.

5 MR. KRUGMAN: I DON'T BELIEVE I AM. I AM GOING TO
6 SHOW THE WITNESS, I MEAN, THIS IS FOR ONE OF THE WORKS, I
7 WILL GO THROUGH EACH ONE OF THEM. EACH AND EVERY WORK,
8 YESTERDAY. I WAS HOPING NOT TO DO THAT. FOR EACH AND EVERY
9 WORK HIS TESTIMONY WAS --

10 THE COURT: WHY DO YOU NEED TO DO IT? WHEN HE SAID
11 YESTERDAY HE THOUGHT IT WAS RELEVANT FOR THE INTENDED
12 EDUCATIONAL PURPOSE, WHAT WAS THE POINT HERE? I AM ASKING
13 YOU, MS. QUICKER.

14 MS. QUICKER: WHICH IS NOT IMPEACHMENT, SO I DON'T
15 KNOW WHY WE ARE GOING OVER YESTERDAY'S TESTIMONY. I THOUGHT
16 ORIGINALLY HE WAS SETTING A FOUNDATION FOR HIS QUESTION, NOW
17 WE ARE JUST REHASHING YESTERDAY'S TESTIMONY.

18 THE COURT: IT SOUNDS LIKE WE ARE.

19 MR. KRUGMAN: LET ME ASK IT THIS WAY.

20 THE COURT: I KNOW Y'ALL ARE ANXIOUS TO GET THROUGH
21 WITH THE CASE. THIS IS NOT ACCOMPLISHING THAT GOAL.

22 BY MR. KRUGMAN:

23 Q. YESTERDAY, YOU DID NOT TESTIFY A SINGLE TIME THAT FOR
24 ANY OF THE FAIR USE CHECKLISTS THAT IN APRIL OF 2009 OR IN
25 MARCH OF 2011 THAT YOU HAD DETERMINED THAT THE USE OF THE WORK

1 WAS NECESSARY TO ACHIEVE YOUR INTENDED EDUCATIONAL PURPOSE,
2 CORRECT?

3 THE COURT: WAS THE QUESTION ASKED YESTERDAY?

4 MR. KRUGMAN: YOUR HONOR, HE WAS ASKED ABOUT THE
5 ANALYSIS THAT HE WENT THROUGH.

6 THE COURT: RIGHT. WAS HE ASKED WHETHER IN EACH
7 INSTANCE HE MADE A DETERMINATION AS TO WHETHER USE OF THE
8 PARTICULAR WORK WAS NECESSARY OR RELEVANT?

9 MR. KRUGMAN: HE WAS ASKED WHAT HIS ANALYSIS WAS AND
10 HE DESCRIBED HIS ANALYSIS AND HERE HIS TESTIMONY IS, MAYBE WE
11 NEED TO GO BACK TO THE QUESTION.

12 THE COURT: LET ME ASK YOU FOR A REPRESENTATION,
13 WHAT DO YOU THINK HE SAID YESTERDAY ABOUT WHETHER EACH WORK
14 WAS RELEVANT FOR THE INTENDED PURPOSE?

15 MR. KRUGMAN: I WILL REPRESENT TO YOU THAT YESTERDAY
16 THAT HIS TESTIMONY WAS, FOR EACH OF THE WORKS WHEN HE TALKED
17 ABOUT HIS ANALYSIS OF FACTOR ONE UNDER THE CHECKLIST, THAT HIS
18 TESTIMONY WAS THAT THE USE WAS, QUOTE, RELEVANT FOR THE
19 INTENDED EDUCATIONAL PURPOSES OF THE COURSE.

20 THE COURT: OKAY. SO WHY DO WE NEED TO GO BACK INTO
21 THAT NOW?

22 MR. KRUGMAN: OKAY.

23 BY MR. KRUGMAN:

24 Q. LET'S TAKE A LOOK AT THE CHECKLIST.

25 THE COURT: ARE WE SWITCHING TO A DIFFERENT TOPIC?

1 MR. KRUGMAN: I THINK I CAN MOVE ON FROM THAT WITH
2 THAT REPRESENTATION FROM THE COURT.

3 THE COURT: OKAY.

4 MR. KRUGMAN: I WILL REPRESENT TO YOU THAT IS THE
5 CASE WITH THE POSSIBLE EXCEPTION OF ONE OF THE CHECKLISTS THAT
6 HE COMPLETED, I DON'T RECALL WHICH ONE, WHERE HE SIMPLY
7 DIDN'T ADDRESS.

8 THE COURT: HE ANSWERED ALL THE QUESTIONS THAT WERE
9 ASKED, I'M SURE.

10 MR. KRUGMAN: YES. I THINK YOU ARE CORRECT.

11 BY MR. KRUGMAN:

12 Q. LET'S GO BACK TO PLAINTIFF'S TRIAL EXHIBIT 656. AND
13 UNDER FACTOR ONE, THE LAST BOX WHERE IT SAYS, "USE IS
14 NECESSARY TO ACHIEVE YOUR INTENDED EDUCATIONAL PURPOSE," DO
15 YOU SEE THAT?

16 A. UH-HUH (AFFIRMATIVE RESPONSE).

17 Q. THE CHECKLIST DOESN'T SAY "RELEVANT," IT SAYS
18 "NECESSARY," CORRECT?

19 A. YES.

20 Q. AND THE TESTIMONY YOU GAVE YESTERDAY IS THAT YOUR USE
21 OF THE MATERIAL WAS RELEVANT TO YOUR EDUCATIONAL -- INTENDED
22 EDUCATIONAL PURPOSE WAS REALLY NOT RELEVANT TO THE CHECKLIST,
23 WAS IT?

24 MS. QUICKER: OBJECTION, YOUR HONOR.

25 THE COURT: SUSTAINED. IF YOUR POINT IS TO COMPARE

1 AND CONTRAST THE WORD "NECESSARY" WITH "RELEVANT," THAT CAN
2 BE DONE BY ARGUMENT TO THE COURT. IT ISN'T NECESSARY TO GO
3 OVER IT AGAIN WITH THE WITNESS.

4 MR. KRUGMAN: JUST SO IT IS NOTED, YOUR HONOR, THAT
5 HE NEVER, WHEN HE TESTIFIED ABOUT HIS ANALYSIS, THAT HE SIMPLY
6 SAID IT WAS RELEVANT.

7 THE COURT: WELL NOW THE FOCUS ON THAT WILL START
8 WITH WHAT WAS THE QUESTION AND WHAT WAS THE ANSWER AND THEN WE
9 WILL GO FROM THERE.

10 LET'S MOVE ON.

11 BY MR. KRUGMAN:

12 Q. NOW, WHEN YOU COMPLETED THE CHECKLIST BACK IN APRIL OF
13 2009 AND MARCH OF 2011, YOU DID CHECK THE BOX THAT THAT USE
14 IS NECESSARY TO ACHIEVE YOUR INTENDED EDUCATIONAL PURPOSE; IS
15 THAT CORRECT?

16 A. YES.

17 Q. THAT WAS SOMETHING THAT YOU BELIEVED WHEN YOU FILLED
18 OUT THE CHECKLIST AND DROPPED THE WORKS OFF AT THE LIBRARY ON
19 OR ABOUT APRIL 27, 2009?

20 A. THAT IS THE LANGUAGE PRESENTED IN THE VARIOUS
21 CHECKLISTS, YES.

22 Q. YOU COMPLETED IT?

23 THE COURT: WAIT. ARE WE TALKING ABOUT WHAT WE SEE
24 UP ON THE BOARD RIGHT NOW, WHICH IS I THINK PART OF A MEMO OR
25 EMAIL THAT CAME FROM SOMEBODY THAT WENT, OR ARE YOU TALKING

1 ABOUT WHAT IS THE FAIR USE CHECKLIST THAT ALL OF THE
2 PROFESSORS FILLED OUT? I THINK THIS IS A LITTLE CONFUSING.
3 WHAT YOU HAVE UP ON THE BOARD IS NOT THE FAIR USE CHECKLIST.

4 MR. KRUGMAN: WHAT WE HAVE UP ON THE BOARD, YOUR
5 HONOR, IS WHAT PROFESSOR MURPHY RECREATED IN APRIL -- EXCUSE
6 ME -- IN MARCH OF 2011.

7 THE COURT: WHAT IS THIS DOCUMENT ANY WAY? WHO
8 CREATED THAT? I AM ASKING YOU.

9 MR. KRUGMAN: PROFESSOR MURPHY.

10 THE COURT: THE FORMAT IS TOTALLY DIFFERENT.

11 MR. KRUGMAN: THAT IS WHAT I HAD ASKED HIM ABOUT A
12 FEW MINUTES AGO.

13 THE COURT: WHAT IS THIS? LET ME SEE THE WHOLE
14 DOCUMENT. I NEED TO SEE THE REST OF IT.

15 MR. KRUGMAN: WOULD YOU LIKE A PAPER COPY?

16 THE COURT: SURE. MY IMPRESSION IS PLAINTIFF'S
17 EXHIBIT 656 IS SOMETHING THAT SOMEONE, I PRESUME IN THE
18 OFFICE OF LEGAL AFFAIRS, SENT TO PROFESSOR MURPHY, RIGHT?

19 MR. KRUGMAN: NO, YOUR HONOR. SOME OF THE
20 INFORMATION ON PLAINTIFF'S EXHIBIT 656 WAS PROVIDED TO, I
21 BELIEVE, TO PROFESSOR MURPHY WHEN HE WAS IN NEW ORLEANS IN
22 MARCH OF 2011. HE THEN COMPLETED -- HE THEN WENT THROUGH
23 HIMSELF AND CHECKED THE VARIOUS BOXES THAT HE -- THAT HE
24 RECALLED HAVING CHECKED WHEN HE COMPLETED THE FAIR USE
25 CHECKLIST BACK IN APRIL OF 2009, AND THOSE WERE THE FACTORS

1 THAT HE DETERMINED APPLIED.

2 THE COURT: OKAY. SO PLAINTIFF'S 656 IS A DOCUMENT
3 THAT WAS SENT TO PROFESSOR MURPHY WHEN HE WAS IN NEW ORLEANS;
4 IS THAT RIGHT?

5 MR. KRUGMAN: A PORTION OF THAT WAS.

6 THE COURT: SEE, I DON'T KNOW WHO EVEN CREATED THE
7 DOCUMENT. I UNDERSTAND I BELIEVE YOU ARE SAYING THAT
8 PROFESSOR MURPHY PUT THE X'S ON IT; IS THAT RIGHT?

9 JUST A MINUTE. BUT WHERE DID THE FORM COME FROM? I
10 AM ASKING YOU? YOU DON'T KNOW?

11 MR. KRUGMAN: WELL THE FORM, I BELIEVE, THAT IS WHAT
12 I ASKED PROFESSOR MURPHY JUST A FEW MINUTES AGO AND THE FORM,
13 AS I UNDERSTAND IT, CAME FROM THE OFFICE OF LEGAL AFFAIRS.

14 THE COURT: THAT WAS MY ASSUMPTION.

15 MR. KRUGMAN: MAYBE WE NEED TO ASK THE WITNESS AGAIN.

16 THE COURT: DO YOU RECALL WHERE THIS CAME FROM AS
17 PLAINTIFF'S EXHIBIT 656? HOW DID IT GET INTO YOUR HANDS?

18 THE WITNESS: TRYING TO RECALL THE SPECIFICS, I KNOW
19 THEY COMMUNICATED TO ME THROUGH EMAIL. THERE WAS AN
20 ATTACHMENT AND I LOOKED AT THE ATTACHMENT AND I DON'T RECALL
21 SPECIFICALLY -- I DID DO SOME COPY/PASTE OF THE FACTORS ON TO
22 A DOCUMENT SO I COULD COMPLETE IT. I DON'T RECALL THE
23 HEADING AND HOW THAT WAS ASSOCIATED WITH THE FACTORS SECTIONS
24 AS FAR AS THE SPECIFICS OF WHAT LEGAL AFFAIRS PROVIDED TO ME.
25 BUT AS I WAS IN NEW ORLEANS, I DID HAVE TO CREATE A DOCUMENT

1 TO BE COMPLETED AND SEND BACK TO THEM.

2 THE COURT: SO, IS PLAINTIFF'S TRIAL EXHIBIT 656,
3 THE X'S THAT I SEE ON IT, DID YOU PUT THOSE X'S IN?

4 THE WITNESS: YES.

5 THE COURT: BECAUSE IT IS RIGHT OR NOT THAT THE
6 VARIOUS TOPICS OR STATEMENTS IN IT, FOR EXAMPLE, WHERE IT
7 SAYS "RESEARCH" OR "SCHOLARSHIP," THOSE ARE WORDS THAT WERE
8 ON THE FORM WHEN YOU GOT IT?

9 THE WITNESS: YES.

10 THE COURT: AND SO WHAT YOU WERE TRYING TO DO WAS
11 FILL IT OUT IN A WAY THAT WAS CONSISTENT WITH WHAT YOU BELIEVE
12 YOU DID IN 2009?

13 THE WITNESS: YES, YOUR HONOR.

14 THE COURT: OKAY. WHY DON'T WE MOVE ON? IS IT IN
15 EVIDENCE, 656?

16 MR. KRUGMAN: YES. THEY ARE ALL IN EVIDENCE. AND
17 WHEN YOU PUT THE TWO X'S, "USE IS NECESSARY TO ACHIEVE YOUR
18 INTENDED EDUCATIONAL PURPOSE," THAT WAS YOUR BEST RECOLLECTION
19 OF WHAT YOU HAD DONE BACK IN --

20 THE COURT: I DON'T THINK THAT IS A FAIR QUESTION
21 BECAUSE I DON'T THINK THAT THE FAIR USE -- WHAT IS THE
22 WORDING ON THE FAIR USE CHECKLIST?

23 MR. KRUGMAN: "USE IS NECESSARY TO ACHIEVE YOUR
24 INTENDED EDUCATIONAL PURPOSE."

25 THE COURT: THAT IS ON THE ORIGINAL FAIR USE

1 CHECKLIST?

2 MR. KRUGMAN: EACH OF THESE CATEGORIES,
3 SUBCATEGORIES ARE IDENTICAL TO THE SUBCATEGORIES THAT WERE ON
4 THE ORIGINAL FAIR USE CHECKLIST.

5 THE COURT: ALL RIGHT. I ACCEPT THAT. SO NOW
6 YOUR POINT IS, YOU REALLY JUST WANT TO POINT OUT THAT IN
7 COURT AND I GUESS IN HIS DEPOSITION, PROFESSOR MURPHY USED
8 THE WORD "RELEVANT" RATHER THAN "NECESSARY," RIGHT?

9 MR. KRUGMAN: HE USED IN COURT, I DON'T BELIEVE THE
10 WORD "RELEVANT" APPEARS ANYWHERE IN HIS DEPOSITION. BUT
11 YESTERDAY WHEN HE TESTIFIED ABOUT HIS FAIR USE ANALYSIS, HE
12 AVOIDED USING THE WORD "NECESSARY" AND INSTEAD SAID IT WAS
13 "RELEVANT."

14 THE COURT: WE ARE NOT MAKING FINDINGS OF FACT NOW,
15 BUT THE FACT IS YESTERDAY HE SAID WHATEVER HE SAID YESTERDAY.
16 LET'S MOVE ON. I THINK WE ARE BEATING A DEAD HORSE HERE.

17 MR. KRUGMAN: LET ME ASK THIS. IT IS THE FINAL
18 QUESTION.

19 THE COURT: STATE YOUR QUESTION.

20 BY MR. KRUGMAN:

21 Q. YOUR DETERMINATION IN MARCH OF 2009 THAT THE USE OF
22 THIS HANCOCK WORK WAS NECESSARY TO ACHIEVE YOUR INTENDED
23 EDUCATIONAL PURPOSE WAS A FACTOR IN YOUR FAIR USE
24 DETERMINATION?

25 THE COURT: MOVE ON. ASKED AND ANSWERED.

1 BY MR. KRUGMAN:

2 Q. LOOK AT PLAINTIFF'S EXHIBIT 540, PLEASE, WHICH IS A
3 SYLLABUS.

4 A. OKAY.

5 Q. HOW WERE STUDENTS PROVIDED A COPY OF THE SYLLABUS FOR
6 THE MAYMESTER COURSE?

7 A. THAT WOULD BE A HARD COPY ON THE FIRST DAY OF CLASS.

8 Q. DO YOU RECALL HOW FAR IN ADVANCE THE MAY 11TH COURSE
9 THAT YOU FINALIZED THE SYLLABUS AND DECIDED NOT TO ASSIGN THE
10 WORKS THAT WERE ON ELECTRONIC RESERVE?

11 A. I AM CAREFUL OF THE WORD "ASSIGNED." THEY WERE
12 INCLUDED AS SUPPLEMENTARY MATERIALS FOR THE COURSE. CAN YOU
13 REPEAT THE QUESTION?

14 Q. HOW FAR IN ADVANCE OF MAY 11TH DID YOU DECIDE NOT TO
15 INCLUDE THOSE SUPPLEMENTARY WORKS ON THE SYLLABUS?

16 A. I AM SURE I WAS WORKING ON THE SYLLABUS UP UNTIL THE
17 DAY BEFORE THE COURSE.

18 Q. OKAY. AND BECAUSE THOSE WORKS WERE NOT REQUIRED
19 READINGS, THEY WERE MERELY SUPPLEMENTARY READINGS, I TAKE IT
20 AT SOME POINT YOU DECIDED THAT THOSE WORKS WERE REALLY NOT
21 NECESSARY TO ACHIEVE YOUR INTENDED EDUCATIONAL PURPOSE?

22 MS. QUICKER: OBJECTION. IT IS ARGUMENTATIVE.

23 THE COURT: SUSTAINED. IT HAS ALSO BEEN ASKED AND
24 ANSWERED.

25

1 BY MR. KRUGMAN:

2 Q. WAS THERE ANYTHING THAT HAPPENED, IT WAS ROUGHLY 14
3 DAYS BETWEEN YOUR COMPLETION OF THE CHECKLIST, YOUR -- RATHER
4 YOUR SUBMISSION OF WORKS TO ELECTRONIC RESERVE AND THE CLASS,
5 DID ANYTHING HAPPEN DURING THAT TIME TO CHANGE THE DIRECTION
6 YOU WERE HEADING WITH THE COURSE?

7 A. NO.

8 Q. ON APRIL 27TH WHEN YOU SUBMITTED THE READINGS OR THE
9 WORKS TO ELECTRONIC RESERVE OR THE LIBRARY FOR ELECTRONIC
10 RESERVE, ON THAT DATE DID YOU INTEND TO ASSIGN THE STUDENTS
11 ANY REQUIRED TEXTS?

12 A. YES.

13 Q. WHAT WAS YOUR PLAN AS TO REQUIRED TEXTS ON APRIL 27TH
14 WHEN YOU SUBMITTED WORKS TO ELECTRONIC RESERVE?

15 A. YEAH, I DIDN'T HAVE A FINAL DECISION. THERE IS SOME
16 FLEXIBILITY THERE BECAUSE I HAVE, I ALWAYS HAVE A BACK-UP
17 PLAN BECAUSE FOR THE BOOK STORE FOR THE UNIVERSITY YOU HAVE TO
18 PLACE ORDERS IN ADVANCE. NOT ALL STUDENTS PURCHASE BOOKS
19 THROUGH THE BOOK STORE, THEY ALSO HAVE THE OPTION OF AMAZON,
20 SO I WAS STILL PLAYING AROUND WITH WHICH ONES. I HAD USED
21 THE FOUR TEXTS WHICH WERE REQUIRED IN THE COURSE THIS TIME
22 PREVIOUSLY, AND I WAS THINKING ABOUT SUBSTITUTING OTHER TEXTS
23 FOR THESE TEXTS. AND I HADN'T SETTLED ON THAT YET UNTIL RIGHT
24 BEFORE THE COURSE BEGAN.

25 Q. HAD YOU SETTLED ON A SINGLE TEXT AS OF THAT TIME, AS

1 OF MARCH OF 2009?

2 A. I LIKE THE RICHARD DAYS "READING," SO -- BUT I DID
3 HAVE OTHER OPTIONS. I LIKE ALL FOUR OF THOSE, SO I WAS
4 LEANING TOWARDS THEM, BUT I HADN'T MADE FINAL DECISIONS, YET.

5 Q. IF YOU CAN TAKE A LOOK AT DEFENDANT'S EXHIBIT 426.

6 MS. QUICKER: OBJECTION, YOUR HONOR. WE UNDERSTAND
7 THIS WORK HAD BEEN WITHDRAWN.

8 MR. KRUGMAN: I THOUGHT IT WAS OFFERED INTO EVIDENCE?

9 MS. QUICKER: I DID NOT COVER THIS WORK YESTERDAY.
10 AND I --

11 MR. KRUGMAN: OKAY. IT IS MY MISTAKE. I WILL MOVE
12 ON TO A DIFFERENT WORK.

13 BY MR. KRUGMAN:

14 Q. PLAINTIFF'S EXHIBIT 657. THIS IS THE CHECKLIST YOU
15 COMPLETED FOR THE KLIPPEL BOOK, "KEEP TALKING"?

16 A. YES.

17 Q. AS OF APRIL 27, 2009, YOU INCLUDED USE OF PAGES 58 TO
18 98, I BELIEVE, WAS NECESSARY TO ACHIEVE YOUR INTENDED
19 EDUCATIONAL PURPOSE, CORRECT?

20 A. THAT IS ONE OF THE FACTORS, ONE OF THE FACTORS UNDER
21 ONE, AND IT IS CHECKED.

22 Q. BY THE TIME YOU FINISHED THE SYLLABUS, YOU MADE THE
23 ENTIRE BOOK OF KLIPPEL MANDATORY?

24 A. YES.

25 Q. GO TO EXHIBIT 659, IT IS IN YOUR NOTEBOOK, PROFESSOR

1 MURPHY. THIS IS A CHECKLIST FOR THE UR WORK, "GRAMMAR
2 PRACTICE ACTIVITY"; IS THAT CORRECT?

3 A. YES.

4 Q. AS OF APRIL 27, 2009, YOU INCLUDED USE OF PAGES 44 TO
5 72 OF THAT BOOK TO BE NECESSARY TO ACHIEVE YOUR INTENDED
6 EDUCATIONAL PURPOSE; IS THAT CORRECT?

7 MS. QUICKER: OBJECTION. THIS IS ASKED AND ANSWERED
8 AGAIN.

9 MR. KRUGMAN: I DON'T THINK I HAVE ASKED THE QUESTION
10 WITH RESPECT TO THIS CHECKLIST.

11 MS. QUICKER: YOU ASKED WITH RESPECT TO ALL BOOKS AT
12 ISSUE IN THE CASE.

13 THE COURT: IS THAT CORRECT?

14 MR. KRUGMAN: I DON'T BELIEVE I HAVE, YOUR HONOR.

15 THE COURT: I AM JUST CONCERNED ABOUT WHAT SEEMS TO
16 BE AN UNNECESSARY PROLONGATION OF THIS WITNESS'S EXAMINATION.
17 IF THIS IS A QUESTION THAT COULD BE SATISFACTORILY COVERED
18 WITH SOME KIND OF GENERAL QUESTION, I DON'T SEE WHY WE ARE
19 GOING THROUGH EACH ONE OF THESE WORKS.

20 MR. KRUGMAN: AS OCCURRED QUITE OFTEN WHEN YOUR HONOR
21 HAS SAID TO MOVE ON, IT HAS GENERALLY BEEN RIGHT BEFORE MY
22 VERY LAST QUESTION. THIS IS THE ONLY OTHER CHECKLIST I AM
23 PLANNING TO LOOK AT.

24 THE COURT: OKAY. GO AHEAD.
25

1 BY MR. KRUGMAN:

2 Q. AND YOU DETERMINED THIS WAS NECESSARY AND THEN YOU
3 DECIDED TO ASSIGN IT AS A REQUIRED TEXT; IS THAT CORRECT?

4 A. YES.

5 Q. AND WHEN WE LOOKED AT PLAINTIFF'S 1011, THERE WERE A
6 BUNCH OF READINGS YOU HAD POSTED ON ELECTRONIC RESERVE AS
7 SUPPLEMENTARY READINGS, BUT THEY WERE NOT GOING TO BE ON YOUR
8 SYLLABUS, CORRECT?

9 MS. QUICKER: OBJECTION, ASKED AND ANSWERED.

10 THE COURT: SUSTAINED.

11 MR. KRUGMAN: OKAY.

12 BY MR. KRUGMAN:

13 Q. YOU TESTIFIED YESTERDAY IN RESPONSE TO A QUESTION I
14 POSED, YOU DON'T RECALL EVER BEING INFORMED THAT ANY KIND OF
15 TRAINING SESSION WAS AVAILABLE TO YOU AT GEORGIA STATE WITH
16 RESPECT TO THE NEW POLICY, DO YOU RECALL THAT?

17 A. I SAID I DON'T RECALL.

18 Q. YOU DON'T RECALL WHETHER THERE WAS ANY TRAINING
19 AVAILABLE, CORRECT?

20 A. I HEARD THAT TWO DIFFERENT WAYS. ONE WAS INVITED, I
21 THINK. I AM SORRY, I AM CONFUSED IN THE WAY YOU ARE ASKING.

22 Q. WHY DON'T WE TAKE A LOOK AT WHAT YOU TESTIFIED TO AND
23 THEN WE WILL MOVE ON. THE TRANSCRIPT 130, LINES --

24 MS. QUICKER: OBJECTION, HE IS NOT BEING IMPEACHED.

25 THE COURT: IT IS NOT IMPEACHMENT. SUSTAINED.

1 BY MR. KRUGMAN:

2 Q. DO YOU KNOW WHO CYNTHIA HALL IS?

3 A. THE NAME IS FAMILIAR, I HAVE HEARD THE NAME BEFORE, I
4 DON'T KNOW WHO SHE IS.

5 Q. CAN YOU EXPLAIN WHY CYNTHIA HALL WOULD HAVE SENT YOU AN
6 EMAIL ON APRIL 29TH, 2009, STATING THAT YOU HAD ASKED ABOUT
7 FUTURE DATES OF THE USG COPYRIGHT POLICY WORKSHOP?

8 MS. QUICKER: OBJECTION, CALLS FOR SPECULATION.

9 THE COURT: OVERRULED.

10 THE WITNESS: OVERRULED? YOUR HONOR MEANS I NEED TO
11 ANSWER THE QUESTION?

12 THE COURT: YES. DO YOU REMEMBER THE QUESTION?

13 THE WITNESS: I DON'T.

14 THE COURT: STATE THE QUESTION AGAIN.

15 BY MR. KRUGMAN:

16 Q. CAN YOU EXPLAIN WHY CYNTHIA HALL WOULD HAVE SENT YOU AN
17 EMAIL ON APRIL 29TH, 2009 STATING YOU HAD ASKED FOR FUTURE
18 DATES OF THE USG COPYRIGHT POLICY WORKSHOP?

19 A. I CANNOT EXPLAIN THAT, NO.

20 MR. KRUGMAN: IF I MAY APPROACH THE WITNESS, YOUR
21 HONOR.

22 THE COURT: YOU MAY.

23 BY MR. KRUGMAN:

24 Q. I HAVE HANDED YOU WHAT HAS BEEN MARKED AS PLAINTIFF'S
25 TRIAL EXHIBIT 1005. CAN YOU IDENTIFY THIS DOCUMENT AS AN

1 EMAIL DATED APRIL 29, 2009, FROM CYNTHIA HALL, SENT AT 12:48
2 P.M., TO A NUMBER OF PEOPLE INCLUDING, "PATRICIA DIXON,
3 JENNIFER ESPOSITO, JOHN MURPHY," AND THAT "JOHN MURPHY" IS
4 YOU, CORRECT?

5 A. I ASSUME THAT IT IS. EVERYWHERE I HAVE EVER WORKED
6 THERE HAVE BEEN MORE THAN ONE JOHN MURPHY AT THE INSTITUTION,
7 BUT I DO ASSUME THIS IS ME.

8 Q. AND THE SUBJECT OF IT IS "COPYRIGHT POLICY WORKSHOP,"
9 DO YOU SEE THAT?

10 A. I SEE IT, YES.

11 Q. AND UNDER THERE ARE SOME CC'S ON THAT, "KRISTEN SWIFT
12 AND LAURA GARY," DO YOU SEE THOSE NAMES?

13 A. YES.

14 Q. CAN YOU SEE -- DO YOU RECOGNIZE ANY OF THE OTHER NAMES
15 UNDER THE TWO LISTS AS PROFESSORS AT GSU?

16 A. THE NAME "RALPH LAROSSA" IS A NAME THAT IS FAMILIAR
17 WITH ME, ALTHOUGH I DON'T KNOW WHAT DEPARTMENT HE IS IN. I
18 BELIEVE HE IS A FACULTY MEMBER. I DON'T RECOGNIZE ANY OF THE
19 OTHER NAMES.

20 Q. THE FIRST LINE OF MS. HALL'S EMAIL:

21 "EACH OF YOU HAS ASKED ABOUT FUTURE
22 DATES OF THE USG COPYRIGHT POLICY
23 WORKSHOP."

24 DO YOU SEE THAT?

25 A. YES.

1 Q. HAS MS. HALL SOMEHOW MISTAKEN WHEN SHE WROTE THIS EMAIL
2 TO YOU?

3 A. I DON'T KNOW.

4 Q. WELL, HAD YOU? HAD YOU ASKED MS. HALL ABOUT FUTURE
5 DATES OF THE USG COPYRIGHT POLICY WORKSHOP AS OF APRIL 29TH,
6 2009?

7 A. YOUR HONOR, I AM UNDER OATH. I NEED TO SAY MORE THAN
8 YES OR NO TO CLARIFY.

9 THE COURT: ALL RIGHT.

10 THE WITNESS: YES, I WORK AT GEORGIA STATE AND
11 THROUGH GROUPWISE I RECEIVE LOTS OF MESSAGES FROM VARIOUS
12 PEOPLE AROUND THE UNIVERSITY. AND SOMETIMES THERE IS NOTICES
13 ABOUT RETIREMENT WORKSHOPS, WORKSHOPS ABOUT THINGS LIKE THIS
14 FOR VARIOUS PURPOSES. AND OFTEN IF I CAN'T ATTEND, IF IT IS
15 SOMETHING I MIGHT BE INTERESTED IN, I MIGHT REPLY, I'M
16 SORRY, I CAN'T ATTEND TODAY, WOULD THERE BE AN UPCOMING DATE
17 THAT COULD BE A POSSIBILITY? I HAVE NO CLEAR MEMORY THAT THAT
18 IS WHAT HAPPENED IN THIS CASE. THAT IS SOMETHING WHICH I
19 COMMONLY DO AND PEOPLE AT THE UNIVERSITY DO FOLLOW THROUGH
20 WITH REPLIES. SO I AM JUST SPECULATING. I CANNOT EXPLAIN
21 THIS MEMO, BUT THAT IS A POSSIBILITY.

22 BY MR. KRUGMAN:

23 Q. THAT WENT ON FOR A WHILE. I ASKED YOU HAD YOU AS OF
24 THAT DATE ASKED MS. HALL ABOUT FUTURE DATES OF THE USG
25 COPYRIGHT POLICY WORKSHOP AS SHE INDICATED TO YOU IN THE EMAIL

1 THAT SHE SENT?

2 MS. QUICKER: OBJECTION, ASKED AND ANSWERED.

3 THE COURT: SUSTAINED.

4 BY MR. KRUGMAN:

5 Q. WHEN YOU RECEIVED THIS EMAIL, DID YOU WONDER WHAT
6 MS. HALL WAS TALKING ABOUT?

7 MS. QUICKER: OBJECTION.

8 THE COURT: SUSTAINED.

9 BY MR. KRUGMAN:

10 Q. THE EMAIL GOES ON TO STATE:

11 "I AM MEETING WITH THE FACULTY
12 MEMBER TODAY AT ONE APPROXIMATELY TO
13 DISCUSS THE POLICY, BASICALLY DO
14 THE TRAINING ON A MORE INTIMATE
15 BASIS. YOU ARE EACH MORE THAN
16 WELCOME TO COME. COME AGAIN AS IT
17 IS LATE NOTICE, BUT I HAD A MEETING
18 CANCELED THIS AFTERNOON. I AM
19 TRYING TO SCHEDULE ANOTHER
20 UNIVERSITY-WIDE TRAINING FOR MAY 12
21 THROUGH 15 AS WELL. ARE THERE ANY
22 PARTICULARLY GOOD/BAD DAYS FOR YOU?
23 IF SO, LET ME KNOW AND I'LL TRY TO
24 SCHEDULE AROUND THEM SO YOU CAN
25 COME. IF YOU HAVE ANY SPECIFIC

1 QUESTIONS, PLEASE CALL, NOT EMAIL
2 MY OFFICE, AND I'LL TRY TO ANSWER
3 THEM OR RETURN YOUR CALL AS SOON AS
4 I CAN."

5 PROFESSOR MURPHY, DID YOU RESPOND TO MS. HALL'S EMAIL?

6 A. I DON'T KNOW.

7 Q. DID YOU, AFTER RECEIVING THE EMAIL, MEET WITH MS. HALL
8 AT ANY TIME?

9 A. MEET WITH MS. HALL? I DON'T RECALL SO. I HAVE NO
10 MEMORY OF THAT. IF I SAW MS. HALL IN THE HALLWAY, I WOULD
11 NOT RECOGNIZE HER. I DON'T THINK SO.

12 Q. DID YOU ATTEND THE COPYRIGHT POLICY WORKSHOP?

13 A. NO.

14 Q. NOW, I HAVE SOME BRIEF QUESTIONS ABOUT THE CHECKLIST.
15 PLAINTIFF'S EXHIBIT 656 UNDER FACTOR ONE.

16 A. I AM STILL LOOKING.

17 Q. I APOLOGIZE.

18 A. I GOT IT.

19 Q. UNDER FACTOR ONE, YOU DID NOT PUT A DOUBLE X BY EITHER
20 TRANSFORMATIVE OR NONTRANSFORMATIVE?

21 A. YES.

22 Q. THE REASON IS YOU ARE NOT SURE WHAT EITHER ONE OF THOSE
23 TERMS MEANS IN THIS CONTEXT?

24 A. THAT WAS IN MY DEPOSITION, YES.

25 Q. I AM ASKING YOU FOR YOUR TESTIMONY?

1 A. YES.

2 Q. YOU TESTIFIED -- LET'S TURN THE PAGE ON THIS TO THE
3 AMOUNT UNDER FACTOR THREE, AND YOU CHECKED: SMALL PORTION OF
4 WORK USED" ON THE RECREATED CHECKLIST; IS THAT CORRECT?

5 A. YES.

6 Q. THAT WAS SOMETHING YOU HAD DONE BACK -- YOU BELIEVE YOU
7 HAD DONE BACK IN 2009?

8 A. THAT WAS MY INTENTION TO THE BEST OF MY ABILITY, YES.

9 Q. AND NOW BRING UP PLAINTIFF'S EXHIBIT 661. YOU WERE
10 USING I THINK PAGES 30 -- 30 TO 58 OF THIS BOOK AT THE TOP,
11 28 PAGES; IS THAT CORRECT?

12 A. YES.

13 Q. AND I BELIEVE YOU TESTIFIED YESTERDAY THAT THERE WERE
14 134 NUMBERED PAGES IN THIS BOOK, WHICH BY MY CALCULATION IS
15 21 PERCENT OF THE BOOK?

16 A. I DON'T RECALL. I WOULD HAVE TO LOOK, BUT I BELIEVE
17 YOU.

18 Q. MY ONLY QUESTION IS, WHAT BENCHMARK DID YOU USE WHEN
19 COMPLETING THE FAIR USE CHECKLIST IN DETERMINING WHETHER A
20 SMALL PORTION OF THE WORK WAS BEING USED?

21 A. YES, MY INTENTION WAS LESS THAN 20 PERCENT.

22 Q. AT LEAST IN THIS CASE IT WAS SLIGHTLY OVER 21 PERCENT,
23 DID YOU CONSIDER 21 PERCENT TO BE A SMALL PORTION?

24 A. I, AT THE TIME, I BELIEVED THAT IT WAS LESS THAN 20
25 PERCENT.

1 Q. WHERE DID YOU GET THE 20 PERCENT NUMBER?

2 A. SO I HAVE BEEN AT GEORGIA STATE SINCE 1988 AND THAT IS
3 THE NUMBER I HAVE HEARD MENTIONED IN LOTS OF CIRCUMSTANCES.
4 AND IT IS JUST THE NUMBER I HAVE CARRIED AROUND SINCE THAT
5 TIME AS BEING A FAIR AMOUNT TO USE OUT OF AN ENTIRE WORK.

6 Q. IF YOU LOOK AT FACTOR FOUR ON EXHIBIT 656, YOU PUT
7 DOUBLE XS BY THE BOX FOR "MARKET," THAT USE, "STIMULATES
8 MARKET FOR ORIGINAL WORK," DO YOU SEE THAT?

9 A. YES.

10 Q. I TAKE IT THE MARKET YOU CONSIDERED WAS THE MARKET FOR
11 POTENTIAL SALES OF THE BOOK; IS THAT CORRECT?

12 A. THE MARKET FOR ME WOULD BE TEACHERS, LANGUAGE TEACHERS
13 WOULD BE THE MARKET FOR PURCHASING THIS WORK, YES.

14 Q. AND YOU DID NOT CONSIDER THE MARKET FOR LICENSING OR
15 PERMISSIONS FOR USE OF A PORTION OF THE WORK; IS THAT CORRECT?

16 A. MY THINKING WAS THE MARKET WAS THE POTENTIAL CONSUMERS,
17 AND THAT WOULD BE LANGUAGE TEACHERS, LIKELY STUDENTS TAKING MY
18 CLASS.

19 Q. FOR PURCHASES?

20 A. YES.

21 Q. YOU CHECKED, PUT DOUBLE X'S BY THE BOX, "NO SIMILAR
22 PRODUCT MARKETED BY THE COPYRIGHT HOLDER," CORRECT?

23 A. YES.

24 Q. AT LEAST THAT ONE YOU MEANT THE AUTHOR OF THE WORK
25 RATHER THAN THE PUBLISHER; IS THAT CORRECT?

1 A. YES.

2 Q. AND YOU DIDN'T CONTACT ANY PUBLISHERS TO DETERMINE
3 WHETHER THEY MARKETED SIMILAR WORKS; IS THAT CORRECT?

4 A. I'M NOT SURE I CAN SAY YES TO THAT ONLY IN THE SENSE
5 THAT I MEET PUBLISHERS' REPRESENTATIVES COMMONLY AT THE
6 CONFERENCES WHEN I GO TO THE BOOK EXHIBITS. WHENEVER I GO TO
7 A CONFERENCE, I AM LOOKING FOR THESE KINDS OF BOOKS. I AM
8 TALKING TO THE PUBLISHER REPRESENTATIVES, WE TALK ABOUT WHAT
9 IS AVAILABLE, WHAT IS UPCOMING, SO IN THAT CONTEXT I HAVE
10 CONNECTED WITH PUBLISHERS. IT IS THE PUBLISHER'S
11 REPRESENTATIVES THAT ARE SELLING BOOKS AT CONFERENCES.

12 Q. WHEN YOU COMPLETED THIS CHECKLIST, YOU WERE THINKING IN
13 TERMS OF THE AUTHOR RATHER THAN THE PUBLISHER AS YOU TESTIFIED
14 TO?

15 A. YES.

16 Q. ON NONE OF THE CHECKLIST 656, IS SIMPLY AN EXAMPLE, I
17 WILL REPRESENT TO YOU THAT THEY ARE ALL FILLED OUT
18 IDENTICALLY, YOU DID NOT PUT A DOUBLE X BY REPEATED OR
19 LONG-TERM USE THAT DEMONSTRABLY AFFECTS THE MARKET FOR THE
20 WORK; IS THAT CORRECT?

21 A. I'M SORRY, IS THAT ON THE RIGHT-HAND SIDE.

22 Q. YES, SIR, I'M SORRY. IT IS UNDER FACTOR FOUR.

23 A. I SEE THAT.

24 Q. YOU HAVE TAUGHT AT GEORGIA STATE SINCE 1988; IS THAT
25 CORRECT?

1 A. YES.

2 Q. AS IS REFLECTED ON YOUR SYLLABUS, I WILL SHOW IT TO
3 YOU ONLY IF NECESSARY, THAT HAVE YOU TAUGHT THE AL 8480
4 COURSE SINCE YOU BEGAN TEACHING AT GEORGIA STATE; IS THAT
5 CORRECT?

6 A. I DIDN'T TEACH IT THE FALL OF 1988 WHEN I STARTED. SO
7 I HAVE BEEN ESTIMATING, IT STARTED VERY SOON WHEN I JOINED
8 GEORGIA STATE. IT WAS PROBABLY THE SUMMER 1989 OR '90, IT
9 WAS VERY EARLY ON.

10 Q. IT IS NOT A BIG DEAL, BUT YOUR CV STATES COURSES
11 TAUGHT '88 TO 2004, ONE IS 8480. YOU AT LEAST STARTED
12 TEACHING THAT SHORTLY AFTER YOU JOINED THE FACULTY AT GEORGIA
13 STATE?

14 A. I CREATED THE COURSE, YES.

15 Q. AM I CORRECT THAT MARCH OF 2009 WAS NOT THE FIRST TIME
16 THAT YOU COMPILED A LIST OF READINGS THAT YOU HAD POSTED ON
17 ELECTRONIC RESERVE?

18 A. THAT I AM NOT SURE OF. IT MAY VERY WELL HAVE BEEN THE
19 FIRST TIME IN THE SENSE THAT ELECTRONIC RESERVES WAS
20 AVAILABLE. I SAW EASY ACCESSIBILITY. I'M NOT SURE, IT MAY
21 HAVE BEEN THE FIRST TIME.

22 THE COURT: WE NEED TO MOVE ON.

23 BY MR. KRUGMAN:

24 Q. YOU HAVE USED COURSEPACKS BEFORE IN YOUR CAREER AS A
25 HISTORY, CORRECT?

1 A. THAT IS A VERY BROAD QUESTION. COURSEPACKS, I MIGHT
2 NEED YOU TO DEFINE WHAT YOU MEAN BY "COURSEPACKS," BECAUSE I
3 HAVE SEVERAL CATEGORIES IN MIND FOR WHAT A COURSEPACK IS.

4 Q. LET ME ASK IT THIS WAY. IF YOU CAN TAKE A LOOK AT
5 YOUR DEPOSITION.

6 MS. QUICKER: OBJECTION. HE IS NOT BEING IMPEACHED.

7 THE COURT: I DON'T THINK HE IS SEEKING TO IMPEACH
8 HIM.

9 THE WITNESS: I AM LOOKING FOR THE DEPOSITION
10 ACTUALLY.

11 THE COURT: I DON'T SEE -- HERE THERE ARE TWO
12 PROBLEMS WITH THE QUESTION. ONE IS THE VERY BROAD TIME
13 FRAME. AND THE OTHER IS THAT, IF YOU ARE TALKING ABOUT
14 COURSEPACK THAT A STUDENT BUYS AT A BOOKSTORE, IT IS NOT
15 RELEVANT.

16 MR. KRUGMAN: WE RESPECTFULLY DISAGREE WITH YOUR
17 HONOR'S INTERPRETATION OF THAT. BUT LET ME ASK JUST A FEW
18 MORE QUESTIONS AND THEN I WILL BE DONE.

19 BY MR. KRUGMAN:

20 Q. IN THE PAST AS A PROFESSOR YOU HAVE WORKED WITH A PRINT
21 SHOP FACILITY THAT USED TO BE CALLED ALPHA GRAPHICS; IS THAT
22 CORRECT?

23 A. YES.

24 Q. AND IT IS NOW CALLED THE PRINT SHOP; IS THAT CORRECT?

25 A. YES.

1 Q. AND THERE WERE TIMES IN THE PAST THAT YOU USED THE
2 PRINT SHOP OR ALPHA GRAPHICS TO PROVIDE COURSE READING
3 MATERIALS TO STUDENTS IN CLASSES THAT YOU TAUGHT; IS THAT
4 CORRECT?

5 MS. QUICKER: OBJECTION.

6 THE COURT: SUSTAINED.

7 MR. KRUGMAN: I WILL MAKE MY PROFFER THAT IN THE PAST

8 --

9 THE COURT: WHAT DO YOU MEAN "IN THE PAST"?

10 MR. KRUGMAN: BEFORE ELECTRONIC RESERVES.

11 THE COURT: GIVE ME SOME YEARS. ARE YOU MAKING A
12 PROFFER NOW?

13 MR. KRUGMAN: IN THE 1990'S AND I BELIEVE LATER IF I
14 WERE ALLOWED TO EXAMINE THE WITNESS ON THIS ISSUE, THAT BEFORE
15 ELECTRONIC RESERVES WAS AVAILABLE, HE USED ALPHA GRAPHICS AND
16 THE PRINT SHOP TO CREATE -- TO PROVIDE COURSE READING
17 MATERIALS TO STUDENTS THAT HE TAUGHT. AND THE PROCESS THAT
18 HE WENT THROUGH AS A PROFESSOR WAS IDENTICAL TO THE PROCESS
19 THAT HE GOES THROUGH CURRENTLY WITH RESPECT TO POSTING
20 MATERIALS ON ELECTRONIC RESERVES. THAT HE WOULD LEAVE THE
21 MATERIALS WITH THEM, HE WOULD TAKE COPY TO THE PRINT SHOP.
22 THE PRINT SHOP --

23 THE COURT: I THINK YOUR PROFFER IS VERY BROAD. I
24 DON'T KNOW WHERE YOU ARE GOING WITH IT, WHETHER YOU ARE
25 TALKING ABOUT TRYING TO RAISE THE SPECTER THAT HE DIDN'T GET

1 PERMISSIONS TO HAVE THE COURSEPACKS PREPARED OR GEORGIA STATE
2 DIDN'T.

3 MR. KRUGMAN: NO. BACK THEN HIS TESTIMONY IS --

4 THE COURT: I THINK WHAT YOU ARE TRYING TO DO IS TO
5 DEVELOP YOUR DISPLACEMENT THEORY.

6 MR. KRUGMAN: THAT WOULD BE A FAIR STATEMENT, YOUR
7 HONOR.

8 THE COURT: I WANT TO KEEP THE FOCUS ON THE
9 INFRINGEMENTS THAT ARE INVOLVED IN OUR CASE. WE WILL TALK
10 SOME MORE ABOUT THIS LATER. I WILL SUSTAIN THIS OBJECTION.
11 YOU CAN'T GO INTO THIS ANYMORE. IF YOU WANT TO TALK LATER
12 ABOUT POSSIBLE PROFFER, WE CAN DO THAT.

13 MR. KRUGMAN: WE CAN DO THAT. AS WE HAVE DONE
14 BEFORE, WE HAVE DONE SOME, AT LEAST IN ONE CASE I AM SURE
15 MORE, SOME WRITTEN PROFFERS SO THE RECORD WILL BE CLEAR.

16 THE COURT: OKAY. SHALL THE WITNESS BE EXCUSED?

17 MR. KRUGMAN: I HAVE NO FURTHER QUESTIONS.

18 MS. QUICKER: YOUR HONOR, WE HAVE THREE MORE
19 QUESTIONS. FIRST, WE DON'T KNOW IF PLAINTIFFS TRIAL EXHIBIT
20 1005 WAS MOVED INTO EVIDENCE. WE WOULD LIKE TO MOVE THAT INTO
21 EVIDENCE.

22 THE COURT: IT IS ADMITTED.
23
24
25

1 REDIRECT EXAM

2 BY MS. QUICKER:

3 Q. GOOD MORNING, PROFESSOR MURPHY.

4 A. GOOD MORNING.

5 Q. OTHER THAN THE USE OF THE FOUR REQUIRED TEXTS, THREE
6 OF WHICH YOU HAD USED EXCERPTS ON ERES, DID YOU MAKE ANY USE
7 OF THOSE EXCERPTS IN YOUR CLASS IN MAYMESTER 2009?

8 A. THE EXCERPTS OF THE ONES THAT WERE ON ERESERVES?

9 Q. YES.

10 A. NO.

11 Q. AND OTHER THAN THE USE MADE OF THE FOUR REQUIRED
12 TEXTBOOKS, WHICH THREE OF WHICH YOU HAD EXCERPTED ON ERES BUT
13 THEN ULTIMATELY REQUIRED THE STUDENT TO PURCHASE, ARE YOU
14 AWARE OF ANY STUDENTS, ANY INSTANCE IN WHICH YOUR STUDENTS
15 USED IN THEIR COURSE MATERIALS THE EXCERPTED MATERIALS?

16 MR. KRUGMAN: OBJECTION. ASKED AND ANSWERED.

17 THE COURT: OVERRULED.

18 THE WITNESS: YOU ARE ASKING ME IF I AM AWARE THEY
19 USED THEM?

20 BY MS. QUICKER:

21 Q. IN YOUR COURSE WORK, MAYMESTER 2009 CLASS?

22 A. I AM NOT AWARE THAT THEY USED THEM. MY RECOLLECTION
23 IS THAT THEY DID NOT MAKE USE OF THAT MATERIAL.

24 Q. OTHER THAN INFORM YOUR CLASS THAT THERE WERE EXCERPTED
25 MATERIALS ON ERES IN THE BEGINNING OF YOUR MAYMESTER CLASS,

1 DID YOU DO ANYTHING ELSE WITH THOSE SUPPLEMENTAL READING
2 MATERIALS?

3 A. NO, I DID NOT.

4 Q. DO YOU RECALL SOME QUESTIONS FROM MR. KRUGMAN ABOUT
5 WHETHER OR NOT YOU HAD TESTIFIED ABOUT WHETHER THESE MATERIALS
6 THAT WERE ON ERES WERE GOING TO BE REQUIRED OR BE
7 SUPPLEMENTAL?

8 A. I REMEMBER AN EXCHANGE ALONG THOSE LINES.

9 Q. DO YOU REMEMBER SOME VIDEO BEING PLAYED FROM YOUR
10 DEPOSITION IN RELATION TO THAT TESTIMONY?

11 A. YES.

12 Q. I WOULD ASK THAT YOU TURN TO PAGE 53 OF YOUR
13 DEPOSITION.

14 A. OKAY.

15 Q. WOULD YOU PLEASE READ LINES 18 THROUGH 25?

16 MR. KRUGMAN: I OBJECT. I AM NOT CERTAIN THAT THIS
17 IS AN APPROPRIATE USE OF DEPOSITION TESTIMONY.

18 MS. QUICKER: IT IS PRIOR CONSISTENT STATEMENT, YOUR
19 HONOR. HE THROUGH --

20 THE COURT: I WILL ALLOW IT, GO AHEAD.

21 THE WITNESS: PAGE 53, LINES 18 THROUGH 25?

22 BY MS. QUICKER:

23 Q. YES.

24 A.

25 "WE NEED TO GO BACK TO MY EARLIER

1 TESTIMONY. WHEN I WAS PUTTING
2 THESE MATERIALS ON RESERVE, IT WAS
3 BEFORE THE COURSE WAS FINALIZED.
4 MY VISION WAS THAT THE COURSE,
5 THESE MATERIALS WOULD BE USED AS
6 SUPPLEMENTARY MATERIALS FOR WHATEVER
7 ELSE WE WERE DOING IN THE COURSE.
8 AND AS SUPPLEMENTARY MATERIALS, I
9 CONSIDERED THEM TO BE OF POTENTIAL
10 VALUE TO STUDENTS AND THEREFORE I
11 THOUGHT THE WORD IMPORTANT WAS
12 APPLICABLE."

13 MS. QUICKER: THANK YOU. NO FURTHER QUESTIONS.

14 THE COURT: YOU ARE EXCUSED, SIR.

15 THE WITNESS: THANK YOU, YOUR HONOR.

16 THE COURT: HOW ABOUT A FIFTEEN-MINUTE BREAK?

17 (WHEREUPON, A SHORT RECESS WAS HELD.)

18 THE COURT: WHAT IS NEXT?

19 MR. SCHAEZEL: PROFESSOR JOHN DUFFIELD, YOUR HONOR.

20 THE CLERK: RAISE YOUR RIGHT HAND.

21 JOHN DUFFIELD, HAVING BEEN FIRST DULY SWORN,
22 TESTIFIED AS FOLLOWS:

23 THE CLERK: BE SEATED AND STATE YOUR FULL NAME FOR
24 THE RECORD.

25 THE WITNESS: MY NAME IS JOHN STEWART DUFFIELD.

1 MS. MOFFIT: YOUR HONOR, MAY I PROCEED?

2 THE COURT: YOU MAY.

3 DIRECT EXAM

4 BY MS. MOFFIT:

5 Q. GOOD MORNING, PROFESSOR DUFFIELD. ARE YOU CURRENTLY A
6 PROFESSOR AT GEORGIA STATE?

7 A. CORRECT.

8 Q. DO YOU TEACH WITHIN ANY PARTICULAR DEPARTMENT AT
9 GEORGIA STATE?

10 A. I TEACH IN THE DEPARTMENT OF POLITICAL SCIENCE.

11 Q. HOW LONG HAVE YOU BEEN TEACHING AT GEORGIA STATE?

12 A. SINCE JANUARY 2002.

13 Q. WHAT TYPES OF COURSES DO YOU GENERALLY TEACH?

14 A. I TEACH BOTH GRADUATE AND UNDERGRADUATE COURSES. THEY
15 ARE GENERALLY IN THE AREA OF INTERNATIONAL POLITICS.

16 MS. MOFFIT: MAY I APPROACH, YOUR HONOR?

17 THE COURT: YOU MAY.

18 BY MS. MOFFIT:

19 Q. PROFESSOR DUFFIELD, IF YOU COULD TURN IN YOUR NOTEBOOK
20 TO THE TAB MARKED PTX 941, PLAINTIFF'S TRIAL EXHIBIT 941,
21 WHICH HAS ALREADY BEEN ADMITTED INTO EVIDENCE, YOUR HONOR.
22 COULD YOU DESCRIBE THIS DOCUMENT FOR US, PLEASE?

23 A. A VERY BRIEF REVIEW SUGGESTS IT IS A FAIRLY RECENT
24 VERSION OF MY CURRICULUM VITAE.

25 Q. DO YOU KNOW WHEN YOU PREPARED IT ROUGHLY?

1 A. ROUGHLY, LET ME JUST CHECK PUBLICATIONS. ROUGHLY IN
2 THE FALL OF 2010.

3 Q. IF YOU COULD TURN TO PAGE THREE OF YOUR CV THERE IS A
4 SECTION HERE ENTITLED "PUBLICATIONS."

5 A. YES.

6 Q. GENERALLY WHAT IS DESCRIBED HERE IN THIS SECTION?

7 A. WELL, THIS IS A LIST OF MY SCHOLARLY PUBLICATIONS,
8 INCLUDING BOOKS, JOURNAL ARTICLES, BOOK CHAPTERS, BOOK
9 REVIEWS, AND A FEW OTHER THINGS.

10 Q. THAT LIST OF PUBLICATIONS SCANS ALL THE WAY THROUGH
11 PAGE EIGHT; IS THAT CORRECT?

12 A. CORRECT.

13 Q. ROUGHLY HOW MANY PUBLICATIONS HAVE YOU AUTHORED OR
14 COAUTHORED AS A PROFESSOR OVER THE YEARS?

15 A. IF YOU LIMIT TO THE FIRST SEVERAL CATEGORIES, THE MORE
16 SIGNIFICANT ONES APPROXIMATELY 40 TO 50.

17 Q. HAVE YOU EVER AUTHORED ANY MATERIALS THAT WERE
18 PUBLISHED BY THE PLAINTIFFS CAMBRIDGE, OXFORD, OR SAGE?

19 A. YES.

20 Q. HAVE YOU EVER RECEIVED ANY ROYALTIES FOR ANY OF THE
21 WORKS THAT YOU HAVE PUBLISHED OVER THE YEARS AS A PROFESSOR?

22 A. YES.

23 Q. UNDER WHAT CIRCUMSTANCES HAVE YOU RECEIVED ROYALTIES?

24 A. WELL, I RECEIVED ROYALTIES IN THE FORM OF -- I BELIEVE
25 IT WAS ADVANCE ON ROYALTIES FOR THE PUBLICATION AT THE BOTTOM

1 OF PAGE THREE -- I'M SORRY, THE FIRST -- THE THIRD FROM THE
2 BOTTOM PUBLICATION TITLED "OVER A BARREL." AND I RECEIVED I
3 GUESS SORT OF AN ADVANCE ON ROYALTIES FOR THE EDITED VOLUME AT
4 THE SECOND FROM THE TOP ON PAGE FOUR, BUT THAT MONEY WAS USED
5 TO, I GUESS IT DEPENDS ON HOW YOU DEFINE RECEIVED, IT WAS
6 GIVEN IN ADVANCE THAT I COULD SERVE AS HONORARY AS CONTRIBUTOR
7 TO THAT VOLUME BY -- I BELIEVE IT WAS ADVANCE ON THE
8 ROYALTIES. I WOULD HAVE TO CHECK THE CONTRACT TO BE SURE.

9 Q. OTHER THAN THE TWO PUBLICATIONS YOU SPOKE OF, HAVE YOU
10 RECEIVED ANY ROYALTIES FROM ANY OF THE PUBLICATIONS YOU HAVE
11 AUTHORED WHILE BEING A PROFESSOR AT GEORGIA STATE?

12 A. I DON'T BELIEVE I HAVE RECEIVED ANY ROYALTIES ON ANY OF
13 THE OTHER PUBLICATIONS.

14 Q. AS AN AUTHOR OF OVER 40 PUBLICATIONS, HOW WOULD YOU
15 CHARACTERIZE HOW YOU TREAT THE COPYRIGHT RIGHTS OF OTHERS?

16 A. I BELIEVE I RESPECT THEM.

17 Q. DID YOU TEACH A COURSE CALLED MILITARY CONFLICT IN
18 INTERNATIONAL SECURITY POLS 8470 IN THE FALL OF 2009?

19 A. YES.

20 Q. WAS THAT A GRADUATE LEVEL COURSE OR UNDERGRADUATE LEVEL
21 COURSE?

22 A. GRADUATE LEVEL COURSE.

23 Q. ROUGHLY HOW MANY STUDENTS WERE IN THAT CLASS?

24 A. I BELIEVE THERE WERE SOMETHING JUST UNDER FIFTEEN.

25 Q. WOULD YOU TELL US GENERALLY WHAT THAT COURSE WAS ABOUT?

1 A. YES. THE PURPOSE OF THE COURSE WAS TO INTRODUCE
2 GRADUATE STUDENTS TO THE SCHOLARLY LITERATURE ON THE CAUSES OF
3 WAR AND INTERNATIONAL CONFLICT. AND TO A LESSER EXTENT
4 INTERNAL CONFLICTS AND THE LITERATURE ON EFFORTS STATES AND
5 OTHERS HAVE MADE TO ADDRESS THE PROBLEM OF INTERNATIONAL
6 MILITARIZED CONFLICT.

7 Q. WHAT TEACHING METHODS DID YOU USE IN YOUR COURSE TO
8 CONVEY THE SUBJECT MATTER OF THIS CLASS?

9 A. I WOULD ASSIGN A HANDFUL OF READINGS FOR THE STUDENTS
10 TO READ EACH WEEK IN PREPARATION FOR THE CLASS MEETINGS. AND
11 THEN DURING THE CLASS TIME, I WOULD OFTEN INTRODUCE THE
12 SUBJECT MATTER AND THEN LEAD A DISCUSSION WITH STUDENTS MAKING
13 VARIOUS TYPES OF CONTRIBUTIONS OF THE ASSIGNED READINGS.
14 COULD YOU JUST REPEAT THE QUESTION? I WANT TO MAKE SURE I
15 COVERED EVERYTHING.

16 Q. THE QUESTION WAS, GENERALLY WHAT TYPES OF TEACHING
17 METHODS DID YOU EMPLOY TO CONVEY THE SUBJECT MATTER OF THE
18 COURSE TO YOUR STUDENTS?

19 A. THE OTHER METHOD -- TEACHING METHOD WAS TO HAVE THE
20 STUDENTS DO WRITING ASSIGNMENTS THAT INVOLVE THEIR ENGAGEMENT
21 WITH THE READINGS AND SIMILAR READINGS.

22 Q. I BELIEVE YOU MENTIONED SOME DISCUSSIONS THAT YOU HAD
23 REGARDING THE READINGS YOU ASSIGNED?

24 A. YEAH, THE BULK OF CLASS TIME WAS -- WOULD HAVE BEEN
25 DEVOTED TO THE DISCUSSION OF EACH OF THE READINGS THAT WAS

1 REQUIRED OF THE STUDENTS.

2 Q. WERE ANY OF THE DISCUSSIONS STUDENT-LED DISCUSSIONS?

3 A. YES. THE WAY I OFTEN RUN THE CLASS IS HAVE ONE STUDENT
4 BE RESPONSIBLE FOR SUMMARIZING ONE OF THE READINGS. EACH OF
5 THE READINGS I ASSIGN A STUDENT TO SUMMARIZE, THE STUDENT
6 INTRODUCES THE READING AND SUMMARIZES THE READING AND
7 INITIATES THE CLASS DISCUSSION, AND THEN I CHIME IN TO HELP
8 MOVE THINGS ALONG.

9 Q. WHAT IS THE PURPOSE OF THE CLASS DISCUSSION THAT YOU
10 UNDERTAKE WITH RESPECT TO THE READINGS THAT YOU HAVE ASSIGNED
11 FOR A CLASS?

12 A. I THINK IT IS CRITICAL TO -- FOR THE UNDERSTANDING OF
13 THE READINGS AND WHERE THE READINGS FIT IN THE LARGER
14 LITERATURE. IF THE STUDENT JUST DOES READING, THEY ARE LESS
15 LIKELY TO UNDERSTAND THE KEY POINTS AND WON'T NECESSARILY SEE
16 THE CONNECTION BETWEEN PARTICULAR READING AND OTHER WORKS IN
17 THE LITERATURE.

18 Q. DID YOU PREPARE A SYLLABUS FOR THIS COURSE?

19 A. YES.

20 Q. IF YOU COULD TURN IN YOUR NOTEBOOK TO PLAINTIFF'S TRIAL
21 EXHIBIT NUMBER 528, WHICH HAS ALREADY BEEN ADMITTED INTO
22 EVIDENCE. IS THIS A SYLLABUS YOU PREPARED FOR THE 8470
23 COURSE?

24 A. IT SURE LOOKS LIKE IT.

25 Q. IF YOU COULD TURN TO THE PAGE MARKED 65706 OF THIS

1 SYLLABUS. THERE IS A SECTION THERE ENTITLED "SCHEDULE OF
2 ASSIGNMENTS AND CLASSES." DO YOU SEE THAT?

3 A. YES.

4 Q. COULD YOU DESCRIBE FOR US GENERALLY WHAT THAT SECTION
5 REFLECTS IN YOUR SYLLABUS?

6 A. WELL, THIS SECTION LAYS OUT THE ORGANIZATION OF THE
7 COURSE ON A WEEK-BY-WEEK BASIS. IT INDICATES WHAT TOPICS WE
8 WILL BE COVERING EACH WEEK AND PROVIDES A LIST OF THE REQUIRED
9 READINGS THAT I EXPECT THE STUDENTS TO DO BEFORE CLASS
10 DISCUSSION. AND I USUALLY, AT LEAST IN THIS CLASS AND SOME
11 OF MY OTHER ADVANCED UNDERGRAD, I OFTEN DO IN MY ADVANCED
12 GRADUATE CLASSES IS PROVIDE A LIST OF FURTHER READINGS THAT
13 THE STUDENTS CAN REFER TO EITHER IN PREPARATION FOR THE CLASS
14 OR AFTERWARDS TO DEEPEN THEIR UNDERSTANDING OF THE SUBJECT.

15 Q. ARE THE FURTHER READINGS YOU MENTIONED REQUIRED
16 READINGS?

17 A. NO.

18 Q. IS THERE ANY WAY TO DISTINGUISH WITHIN THE SECTION
19 SCHEDULED ASSIGNMENTS AND CLASSES WHICH READINGS WERE REQUIRED
20 READINGS AND WHICH WERE NOT?

21 A. USUALLY, I TRY TO INDICATE IT BY USING THE WORDS
22 "REQUIRED READINGS" AHEAD OF THE SECTION OF REQUIRED READINGS,
23 AND THEN SOMETHING THAT IS OTHER THAN THAT LIKE ADDITIONAL
24 READINGS, FURTHER READING, SUPPLEMENTARY READING AT THE
25 BEGINNING OF THE SECTION OF THESE READINGS.

1 Q. AT THE SECTION OF 65706 YOU HAVE HERE A SECTION
2 ENTITLED "REQUIRED READINGS."

3 A. CORRECT.

4 Q. WITH FOUR WORKS LISTED THERE, THOSE WOULD BE THE
5 REQUIRED WORKS; IS THAT RIGHT?

6 A. THOSE FOUR WERE THE REQUIRED WORKS.

7 Q. AND THEN FOR FURTHER READING LISTED HERE ON THIS
8 PARTICULAR PAGE, THE ONES LISTED AFTER THAT, THE LISTINGS
9 AFTER THAT WERE NOT REQUIRED?

10 A. CORRECT.

11 Q. COULD YOU DESCRIBE GENERALLY FOR US THE TYPES OF
12 READINGS YOU ASSIGNED FOR THIS COURSE?

13 A. WELL, THEY ARE TYPICALLY WORKS BY OTHER SCHOLARS AND
14 THEN OTHER THAN THAT, THAT THEY CORRESPOND TO THE TOPICS I
15 WISH TO COVER FROM WEEK TO WEEK.

16 Q. WERE THEY JOURNAL ARTICLES, BOOK EXCERPTS, TEXTBOOKS,
17 GENERALLY WHAT WAS THE NATURE OF THE READINGS YOU ASSIGNED?

18 A. IN THIS PARTICULAR COURSE?

19 Q. YES, IN THIS COURSE.

20 A. YES, I RECALL IN THIS PARTICULAR COURSE THE BULK OF
21 REQUIRED READINGS WERE JOURNAL ARTICLES AND A SMALL NUMBER OF
22 EXCERPTS FROM BOOKS.

23 Q. IF I COULD DIRECT YOUR ATTENTION TO THE TOP OF PAGE
24 GEORGIA STATE 65709 IN THE SAME EXHIBIT. THERE IS A READING
25 HERE BY HOLSTI FROM "BEHAVIOR, SOCIETY AND NUCLEAR WAR," DO

1 YOU SEE THAT?

2 A. YES.

3 Q. WHAT IS "BEHAVIOR, SOCIETY AND NUCLEAR WAR"? IS THAT
4 A BOOK?

5 A. THAT IS A BOOK.

6 Q. COULD YOU DESCRIBE GENERALLY THE NATURE OF THAT BOOK?

7 A. THAT IS AN EDITED VOLUME CONTAINING A HANDFUL OF
8 CHAPTERS BY DIFFERENT AUTHORS THAT ADDRESS DIFFERENT ASPECTS
9 OF THE OVERALL TOPIC OF THE BOOK.

10 Q. WHAT WAS THE OVERALL TOPIC OF THE BOOK?

11 A. WELL, RELATED TO THE TITLE, "BEHAVIOR, SOCIETY AND
12 NUCLEAR WAR," I CAN'T SAY FOR SURE. I KNOW ONE OF THE
13 THEMES IS THE CAUSES OF WAR, THE DETERMINANTS OF WAR,
14 PARTICULARLY NUCLEAR WAR.

15 Q. WHAT EXCERPTS DID YOU SPECIFICALLY ASSIGN FROM
16 "BEHAVIOR, SOCIETY, AND NUCLEAR WAR"?

17 A. I ASSIGNED THE PAGES THAT YOU SEE THERE ON THE
18 SYLLABUS, PAGES 8 THROUGH 15 AND 19 THROUGH 48, ALL FROM THE
19 CHAPTER BY O. HOLSTI, "CRISIS DECISION MAKING."

20 Q. DO YOU UNDERSTAND THE PLAINTIFFS HAVE ALLEGED USE OF
21 THIS PARTICULAR EXCERPT INFRINGES ONE OF THEIR COPYRIGHTS?

22 A. YES.

23 MS. MOFFIT: YOUR HONOR, MAY I APPROACH?

24 THE COURT: YES.

25

1 BY MS. MOFFIT:

2 Q. PROFESSOR DUFFIELD, I HAVE JUST HANDED PLAINTIFF'S
3 TRIAL EXHIBIT NUMBER 359 WHICH HAS ALREADY BEEN ADMITTED INTO
4 EVIDENCE. IS THIS A COPY OF THE EDITION OF THE BOOK,
5 "BEHAVIOR, SOCIETY AND NUCLEAR WAR" FROM WHICH YOU ASSIGNED
6 "CRISIS DECISION MAKING" EXCERPT?

7 A. I BELIEVE IT IS. I THINK THERE HAS ONLY BEEN ONE
8 EDITION AND THIS IS IT.

9 Q. I BELIEVE YOU INDICATED YOU HAD ASSIGNED PAGES 8
10 THROUGH 15 AND 19 THROUGH 48 OF THAT "CRISIS DECISION MAKING"
11 CHAPTER. IS THAT A PORTION OF THE CHAPTER IN THAT BOOK?

12 A. YES, THAT IS ONLY A PORTION OF THE CHAPTER.

13 Q. AND LOOKING AT THE PLAINTIFF'S EXHIBIT 359 IN THE
14 ACTUAL BOOK, COULD YOU TELL ME HOW MANY PAGES ARE IN THAT
15 CHAPTER?

16 A. IT LOOKS LIKE 76 PAGES.

17 Q. IT SPANS FROM WHAT PAGE TO WHAT PAGE?

18 A. PAGE 8 THROUGH 84.

19 Q. HOW LONG IS THE BOOK AS A WHOLE?

20 A. WELL, LOOKING AT THE LAST PAGE NUMBERED, LAST PAGE
21 NUMBER IS 401 PAGES, SO I WOULD DESCRIBE IT AS BEING 401
22 PAGES LONG.

23 Q. DO YOU KNOW WHAT PERCENTAGE OF THE BOOK YOU ASSIGNED
24 BASED ON THE PAGES YOU SELECTED FOR THIS PARTICULAR COURSE?

25 A. WELL, YOU WANT ME TO DO THE MATH?

1 Q. WOULD YOU SAY IT IS OVER TEN PERCENT OR UNDER TEN
2 PERCENT?

3 A. I WOULD SAY IT IS NO MORE THAN 10 PERCENT.

4 Q. WHY DID YOU ASSIGN ONLY A PORTION OF THE "CRISIS
5 DECISION MAKING" CHAPTER FROM THIS BOOK FOR THIS PARTICULAR
6 COURSE?

7 A. AS I RECALL, I ASSIGNED ONLY A PORTION FOR TWO
8 REASONS, ONE WAS THAT I, IN DETERMINING WHETHER I COULD
9 ASSIGN IT, I FELT I SHOULD LIMIT THE AMOUNT OF ASSIGNED PAGES
10 TO NO MORE THAN 10 PERCENT OF THE BOOK. AND I ALSO FELT THAT
11 THE PAGES THAT I DID NOT INCLUDE WERE NOT NECESSARY FOR THE
12 STUDENT TO UNDERSTAND THE MOST IMPORTANT PART OF THE CHAPTER.
13 SO I WAS ABLE TO ELIMINATE PARTS OF THE CHAPTER THAT ALLOWED
14 ME TO KEEP THE TOTAL ASSIGNMENT TO UNDER OR NO MORE THAN 10
15 PERCENT OF THE BOOK.

16 Q. DID YOU EXPLAIN THE "CRISIS DECISION MAKING" EXCERPT
17 FOR A PARTICULAR CLASS WITHIN THIS COURSE?

18 A. YES. IT WAS INTENDED TO BE READ AND DISCUSSED DURING
19 THE FOURTH WEEK OF THE CLASS.

20 Q. AND WHAT WAS THE SUBJECT MATTER OF THE CLASS THAT WAS
21 BEING TAUGHT DURING THE FOURTH WEEK?

22 A. THE TITLE OF THE WEEK IS HUMAN NATURE IN CONFLICT.
23 GENERALLY, THE PURPOSE OF THAT WEEK IS TO REVIEW EXPLANATIONS
24 OF THE CAUSES OF CONFLICT AND WAR THAT ARE ROOTED IN HUMAN
25 NATURE.

1 Q. WHY DID YOU SELECT THE "CRISIS DECISION MAKING" EXCERPT
2 FOR A READING ASSIGNMENT FOR THAT PARTICULAR DAY IN YOUR
3 CLASS?

4 A. I FELT THAT THIS CHAPTER PROVIDED A USEFUL DISCUSSION
5 OF AN IMPORTANT APPROACH TO THINKING ABOUT THE CONTRIBUTION OF
6 HUMAN NATURE TO THE CAUSES OF WAR, IN PARTICULAR THE EFFECT
7 OF CRISIS SITUATIONS, STRESS, SHORT TIME PERIODS ON
8 DECISION-MAKING.

9 Q. IF I COULD DIRECT YOUR ATTENTION BACK TO YOUR SYLLABUS,
10 WHICH WAS PLAINTIFF'S TRIAL EXHIBIT 598.

11 A. REPEAT THAT, PLEASE.

12 Q. TURN BACK TO YOUR SYLLABUS, I HAVE IT UP HERE ON THE
13 ELMO WHICH IS PLAINTIFF'S TRIAL EXHIBIT 598.

14 MR. LARSON: JUST FOR THE RECORD, 528.

15 MS. MOFFIT: OH, I'M SORRY, 528.

16 THE WITNESS: THE FIRST PAGE?

17 BY MS. MOFFIT:

18 Q. THE FIRST PAGE, YOU STATE HERE:

19 "THE SECOND PRINCIPLE PURPOSE OF THE
20 COURSE IS TO PROMOTE THE DEVELOPMENT
21 OF EACH STUDENT AS AN ACTIVE
22 SCHOLAR. TO THIS END, STUDENTS
23 WILL BE REQUIRED TO ENGAGE IN MANY
24 OF THE ACTIVITIES ASSOCIATED WITH
25 SCHOLARSHIP: CRITICALLY ANALYZING

1 THE WORK OF OTHER SCHOLARS."

2 WAS THIS "CRISIS DECISION MAKING" EXCERPT THAT YOU
3 ASSIGNED AS A READING ASSIGNMENT THIS DAY ONE OF THE WORKS
4 THAT YOUR STUDENTS CRITICALLY ANALYZED IN CLASS?

5 A. YES. I WOULD THINK THAT THAT PHRASE REFERS LARGELY,
6 IF NOT EXCLUSIVELY, TO ANALYZING THE REQUIRED READINGS WE
7 COVER IN THE COURSE.

8 Q. HOW DID YOU INTEND FOR YOUR STUDENTS TO ACCESS A
9 PORTION OF THE CRISIS DECISIONS EXCERPT?

10 A. AS I RECALL, I TRIED TO MAKE THAT READING AVAILABLE ON
11 THE UNIVERSITY LIBRARY ERESERVE SYSTEM.

12 Q. AND WHAT STEPS DID YOU UNDERTAKE TO REQUEST THAT THE
13 EXCERPT BE LOADED TO ERESERVES?

14 A. WELL, I DON'T RECALL IF OR WHAT THEY ARE EXACTLY NOW,
15 NOW THE SIMPLEST WAY TO DO IT, THE WAY I USUALLY DO IT IS TO
16 GO TO A WEB PAGE ON THE UNIVERSITY LIBRARY WEB PAGE THAT
17 EXPLAINED HOW TO PUT SOMETHING ON ERESERVES. IT HAS THE -- I
18 CAN'T REMEMBER THE EXACT SEQUENCE OF PAGES, IT HAS ONE PAGE
19 THAT REQUIRES YOU TO MAKE SURE THAT THE DESIRED RESERVE
20 COMPLIES WITH THE FAIR USE LAWS AND ASKS YOU TO FILL OUT A
21 FAIR USE CHECKLIST AND IN THE CASE THAT IT QUALIFIES, THERE IS
22 A SUBMISSION PAGE WHERE YOU PUT IN THE VARIOUS BIBLIOGRAPHICAL
23 DETAILS REQUIRED FOR THE LIBRARY TO IDENTIFY THE WORK AND MAKE
24 IT AVAILABLE.

25 Q. DID YOU IN FACT FILL OUT A FAIR USE CHECKLIST FOR THIS

1 PARTICULAR WORK FOR YOUR FALL 2009 COURSE?

2 A. I DID.

3 Q. IF YOU COULD TURN TO PLAINTIFFS' TRIAL EXHIBIT 563 IN
4 YOUR NOTEBOOK, WHICH HAS ALSO ALREADY BEEN ADMITTED IN
5 EVIDENCE TOO. IS THIS A COPY OF THE CHECKLIST YOU COMPLETED
6 FOR YOUR "CRISIS DECISION MAKING" EXCERPT FOR THE FALL 2009,
7 8470 COURSE?

8 A. I BELIEVE IT IS.

9 Q. WHEN DID YOU COMPLETE THIS CHECKLIST?

10 A. I BELIEVE I INDICATED IT, THE DATE INDICATED 8-23-09.

11 Q. IS THAT BEFORE YOU REQUESTED THE WORK BE LOADED TO
12 ERESERVE?

13 A. I DON'T KNOW FOR SURE, I ASSUME IT WAS, BUT I DON'T
14 KNOW FOR SURE.

15 Q. WHEN YOU COMPLETED THE CHECKLIST FOR THIS PARTICULAR
16 EXCERPT, DID YOU MAKE AN EFFORT TO CONDUCT A FAIR USE ANALYSIS
17 THOROUGHLY?

18 A. I MADE AN EFFORT TO CONDUCT THE ANALYSIS REQUIRED TO
19 FILL OUT THE CHECKLIST.

20 Q. WHY DID YOU COMPLETE THE CHECKLIST FOR THIS PARTICULAR
21 EXCERPT?

22 A. WELL, I BELIEVE THAT THE INSTRUCTIONS PROBABLY ON THE
23 WEBSITE FOR PLACING THINGS ON ERESERVES ASKED OR REQUIRED THAT
24 ONE FILL OUT THE CHECKLIST.

25 Q. DO YOU KNOW WHETHER THAT IS A REQUIREMENT OF THE

1 COPYRIGHT POLICY GOVERNING GEORGIA STATE?

2 A. I ASSUME IT IS, BUT I DON'T KNOW FOR SURE.

3 Q. BEFORE WE GET INTO THE SUBSTANCE OF THIS PARTICULAR
4 CHECKLIST, I HAVE A QUESTION FOR YOU GENERALLY ABOUT YOUR
5 PROCESS FOR FILLING OUT THE CHECKLIST AND CONDUCTING A FAIR
6 USE ANALYSIS. WHEN YOU GO THROUGH THE PROCESS OF ACTUALLY
7 IDENTIFYING POSSIBLE READINGS FOR YOUR COURSES, SUCH AS THE
8 8470 COURSE THAT YOU WANT TO LOAD TO ERES, ARE THERE ANY
9 PRELIMINARY CONSIDERATIONS THAT YOU TAKE INTO ACCOUNT BEFORE
10 DECIDING WHETHER TO CONDUCT A FAIR USE ANALYSIS USING A FAIR
11 USE CHECKLIST?

12 MR. LARSON: YOUR HONOR, I OBJECT TO THE QUESTION AS
13 VAGUE AS THE TIME PERIOD. WOULD OBJECT IF IT IS GETTING
14 CURRENT PRACTICE.

15 THE COURT: TIME PERIOD.

16 BY MS. MOFFIT:

17 Q. TIME PERIOD SINCE POST SPRING 2009?

18 MR. LARSON: OBJECTION. THAT INCLUDES PERIODS AFTER
19 2009.

20 THE COURT: SUSTAINED.

21 BY MS. MOFFIT:

22 Q. LET ME ASK YOU THEN IN THE FALL 2009 TIME FRAME, WHICH
23 IS WHEN YOU FILLED OUT THIS PARTICULAR CHECKLIST, YOU WERE
24 GOING ABOUT SELECTING OR IDENTIFYING POSSIBLE READINGS OR THE
25 COURSES THAT YOU WERE HAVING IN THE FALL OF 2009, 8470 IS

1 INCLUDED, WERE THERE ANY PRELIMINARY CONSIDERATIONS THAT YOU
2 WOULD TAKE INTO ACCOUNT PRIOR TO CONDUCTING A FAIR USE
3 ANALYSIS FOR THAT READING IN DECIDING WHETHER OR NOT YOU
4 WANTED TO USE THAT WORK FOR YOUR CLASS?

5 A. WELL, IT IS HARD TO RECALL EXACTLY WHAT I WAS THINKING
6 AND DID BACK THEN, BUT I AM PRETTY SURE I WOULD HAVE FIRST
7 MADE A ROUGH DETERMINATION OF WHETHER I FELT A WORK MET THE
8 CRITERION THAT I CARRIED AROUND IN MY HEAD FOR A LONG TIME NOW
9 THAT IT BE NO MORE THAN 10 PERCENT OF THE LARGER WORK IN WHICH
10 IT IS FOUND. ANOTHER CONSIDERATION, SORT OF PRELIMINARY
11 CONSIDERATION MIGHT BE -- MIGHT HAVE BEEN THAT I WOULDN'T USE
12 -- DISINCLINED TO USE AN UNPUBLISHED WORK, ALTHOUGH I DON'T
13 ACTUALLY RECALL CONSIDERING ANY AT THAT TIME, I DEFINITELY DID
14 CONSIDER SOME PUBLISHED WORKS AT THE TIME.

15 Q. IF YOU DEEM THAT THE READING YOU WERE CONSIDERING USING
16 FOR YOUR COURSE EXCEEDED THIS 10 PERCENT AMOUNT THAT YOU HAD
17 IN YOUR HEAD, WOULD YOU THEN GO ABOUT ACTUALLY COMPLETING A
18 CHECKLIST FOR THAT WORK?

19 A. PROBABLY NOT. I DON'T RECALL EVER HAVING COMPLETED A
20 CHECKLIST FOR A WORK THAT I DIDN'T FEEL MET THAT INTERNAL
21 PREREQUISITE.

22 Q. IF YOU CAN LOOK AT FACTOR ONE OF THE FAIR USE
23 CHECKLIST, PLAINTIFF'S TRIAL EXHIBIT 563, DID YOU REVIEW EACH
24 OF THE SAID FACTORS HERE UNDER FACTOR ONE?

25 A. I BELIEVE I CONSIDERED ALL OF THEM.

1 Q. AND UPON COMPLETING THIS SECTION FOR FACTOR ONE, DID
2 YOU REACH A CONCLUSION ABOUT WHETHER FACTOR ONE WEIGHED IN
3 FAVOR OF FAIR USE?

4 A. YES, I DID.

5 Q. WHAT WAS YOUR CONCLUSION?

6 A. THAT THE FACTOR WEIGHED IN FAVOR OF FAIR USE.

7 Q. HOW DID YOU REACH THAT ULTIMATE CONCLUSION?

8 A. I AGAIN IT IS HARD TO -- I CAN'T RECALL EXACTLY WHAT I
9 WAS THINKING, BUT I AM PRETTY SURE I REACHED THE CONCLUSION
10 BECAUSE I HAD CHECKED MORE BOXES ON THE LEFT SIDE --
11 LEFT-HAND COLUMN THAN I HAD ON THE RIGHT-HAND COLUMN.

12 Q. SPECIFICALLY WHICH OF THE SUBFACTORS DID YOU DEEM TO BE
13 RELEVANT FOR THIS PARTICULAR WORK THAT YOU WERE FILLING THE
14 CHECKLIST OUT FOR?

15 A. WHICH ONES DID I CHECK?

16 Q. WHICH ONES DID YOU SELECT?

17 A. WELL, I CHECKED OR SELECTED THREE, THE ONE FIRST THAT
18 I BELIEVE THAT THE PURPOSE WAS NONPROFIT EDUCATIONAL. THAT
19 IT WAS FOR TEACHING. AND THAT THE USE WAS NECESSARY TO
20 ACHIEVE MY INTENDED EDUCATIONAL PURPOSE.

21 Q. WHY DID YOU SELECT THAT THE USE WAS NECESSARY TO
22 ACHIEVE YOUR INTENDED EDUCATIONAL PURPOSE?

23 A. I PROBABLY SELECTED IT BECAUSE I THOUGHT THAT THIS
24 READING WOULD MAKE A VALUABLE CONTRIBUTION TO REACHING MY
25 STUDENTS ABOUT THE LITERATURE. I SUPPOSE ON SECOND THOUGHT

1 WHETHER IT WAS NECESSARY, ABSOLUTELY NECESSARY, I GUESS,
2 DEPENDS ON HOW YOU DEFINE NECESSARY, BUT IT SEEMED LIKE IT
3 WAS POTENTIALLY VERY USEFUL.

4 Q. AT THE TIME YOU FILLED OUT THE CHECKLIST IN THE FALL OF
5 2009, DID YOU BELIEVE THAT YOUR USE OF THIS WAS NECESSARY TO
6 ACHIEVE YOUR INTENDED EDUCATIONAL PURPOSE?

7 MR. LARSON: YOUR HONOR, I WILL OBJECT ON FOUNDATION
8 GROUND. I BELIEVE THE WITNESS HAS TESTIFIED HE DOESN'T
9 RECALL WHY HE FILLED OUT THE CHECKLIST, SAYING PROBABLY DID
10 THIS, PROBABLY DID THAT. I DON'T THINK THERE IS A FOUNDATION
11 FOR THE QUESTION.

12 THE COURT: OVERRULED.

13 THE WITNESS: COULD YOU REPEAT THE QUESTION, PLEASE?
14 BY MS. MOFFIT:

15 Q. DID YOU BELIEVE THAT AT THE TIME YOU FILLED OUT THIS
16 CHECKLIST IN THE FALL OF 2009, DID YOU BELIEVE THAT YOUR USE
17 OF THIS WORK WAS NECESSARY, THIS EXCERPT, TO ACHIEVE YOUR
18 EDUCATIONAL PURPOSE FOR THE CLASS FOR WHICH YOU ASSIGNED IT?

19 A. I AM PRETTY SURE I DID. I WOULDN'T HAVE CHECKED THAT
20 BOX IF I HADN'T THOUGHT SO.

21 Q. LET ME DIRECT YOUR ATTENTION TO FACTOR TWO WHICH IS ON
22 THE NEXT PAGE. DID YOU REMEMBER THE SUBFACTORS LISTED IN
23 FACTOR TWO WHEN FILLING OUT THIS CHECKLIST IN THE FALL OF
24 2009?

25 A. YES.

1 Q. UPON COMPLETING THE FACTOR TWO SECTION, DID YOU REACH A
2 CONCLUSION ABOUT WHETHER THAT FACTOR WEIGHED IN FAVOR OF FAIR
3 USE?

4 A. YES, I DID.

5 Q. WHAT WAS YOUR CONCLUSION?

6 A. I CONCLUDED THAT THE FACTOR DID WEIGH IN FAVOR OF FAIR
7 USE.

8 Q. AND WHY DID YOU CONCLUDE THAT YOUR -- THAT THAT FACTOR
9 TWO WEIGHED IN FAVOR OF FAIR USE?

10 A. AGAIN, I HAD CHECKED A PREPONDERANCE OF THE FACTORS
11 THAT WEIGHED IN FAVOR OF FAIR USE AND THAT WEIGHED AGAINST
12 FAIR USE AND CONCLUDED THAT ON THAT BASIS, OR SUBFACTORS,
13 OVERALL THE FACTORS WEIGHED IN FAVOR OF FAIR USE.

14 Q. YOU SELECTED PUBLISHED WORK?

15 A. YES.

16 Q. FACTUAL OR NONFICTION WORK?

17 A. YES.

18 Q. THE WORK WAS EITHER FACTUAL OR NONFICTION?

19 A. YES.

20 Q. IT WAS FACTUAL OR NONFICTION?

21 A. PLEASE REPEAT THE QUESTION.

22 Q. LET ME JUST ASK YOU THE GENERAL QUESTION. WITH
23 RESPECT TO THE BOOK "BEHAVIOR, SOCIETY AND NUCLEAR WAR," IS
24 THAT A FACTUAL OR NONFICTION BOOK?

25 A. I BELIEVE IT IS.

1 Q. WAS IT PUBLISHED?

2 A. I BELIEVE IT WAS -- YEAH, IT WAS.

3 Q. YOU ALSO SELECTED IMPORTANT TO EDUCATIONAL OBJECTIVES.
4 WHY DID YOU VIEW THIS BOOK AS BEING OR THE EXCERPT THAT YOU
5 USED IMPORTANT TO YOUR EDUCATIONAL OBJECTIVES?

6 A. BECAUSE I THOUGHT THAT IT OFFERED AN IMPORTANT
7 PERSPECTIVE ON THE CAUSES OF WAR THAT I WANTED TO INTRODUCE
8 THE STUDENTS TO.

9 Q. FOCUSING NOW ON FACTOR THREE, DID YOU REVIEW EACH OF
10 THE SUBFACTORS LISTED UNDER FACTOR THREE?

11 A. YES.

12 Q. AND DID YOU REACH A CONCLUSION WITH RESPECT TO FACTOR
13 THREE AND WHETHER IT WEIGHED IN FAVOR OF FAIR USE?

14 A. I DID.

15 Q. WHAT WAS THAT CONCLUSION?

16 A. I CONCLUDED THAT THE FACTOR WEIGHED IN FAVOR OF FAIR
17 USE.

18 Q. AND WHAT WERE THE SUBFACTORS THAT YOU CONSIDERED THAT
19 LED YOU TO BELIEVE THAT THIS FACTOR WEIGHED IN FAVOR OF FAIR
20 USE?

21 A. I AM PRETTY SURE I BELIEVE THAT A SMALL PORTION OF THE
22 WORK WAS BEING USED AND THAT THE AMOUNT TAKEN WAS NARROWLY
23 TAILORED TO MY EDUCATIONAL PURPOSE.

24 Q. AND WHY DID YOU BELIEVE THAT A SMALL PORTION OF THIS
25 WORK WAS BEING USED?

1 A. I HAVE, FOR A LONG TIME, CONSIDERED A PORTION OF UP TO
2 10 PERCENT OF A PUBLISHED BOOK TO BE A SMALL PORTION.

3 Q. AND WHY DID YOU SELECT THAT THE AMOUNT TAKEN WAS
4 NARROWLY TAILORED TO YOUR EDUCATIONAL PURPOSE?

5 A. BECAUSE THIS PARTICULAR WORK OFFERED A CLEAR, SUCCINCT
6 PRESENTATION OF A PARTICULAR THEORETICAL PERSPECTIVE ON THE
7 CAUSES OF WAR.

8 Q. AND WITH RESPECT TO THE AMOUNT THAT YOU ASSIGNED FOR
9 CLASS, THE EXCERPT THAT YOU ACTUALLY ASSIGNED, DID YOU TAKE
10 ONLY THAT WHICH WAS NECESSARY TO YOUR EDUCATIONAL PURPOSE?

11 A. I BELIEVE I DID. AGAIN, I ONLY USED WHAT I THOUGHT
12 WERE THE MOST USEFUL AND IMPORTANT COMPONENTS OF THE CHAPTER.

13 Q. WITH RESPECT TO THE EXCERPT THAT YOU ASSIGNED FROM THIS
14 BOOK, DID THAT EXCERPT GO TO THE HEART OF THE WORK OR WAS
15 THAT EXCERPT THE HEART OF THE WORK?

16 A. "BY THE WORK," TO WHAT ARE YOU REFERRING?

17 Q. THE BOOK, "BEHAVIOR, SOCIETY AND NUCLEAR WAR"?

18 A. I DID NOT, I DON'T THINK I REGARDED THE EXCERPT ITSELF
19 AS THE HEART OF THE BOOK.

20 Q. WAS THE EXCERPT THAT YOU ASSIGNED CENTRAL TO THE BOOK,
21 "BEHAVIOR, SOCIETY AND NUCLEAR WAR"?

22 A. I WOULDN'T REGARD IT AS AND PROBABLY DIDN'T AT THE TIME
23 REGARD IT AS CENTRAL BECAUSE YOU COULD HAVE PUBLISHED THIS
24 BOOK WITH ANOTHER CHAPTER ON A RANGE OF DIFFERENT RELATED
25 TOPICS AND IT STILL WOULD HAVE BEEN A GOOD BOOK.

1 Q. WITH RESPECT TO FACTOR FOUR, DID YOU REVIEW EACH OF
2 THE SUBFACTORS LISTED HERE UNDER FACTOR FOUR OF YOUR
3 CHECKLIST?

4 A. YES.

5 Q. AND UPON COMPLETING THIS SECTION OF THE CHECKLIST, DID
6 YOU REACH A CONCLUSION AS TO WHETHER FACTOR FOUR WEIGHED IN
7 FAVOR OF FAIR USE?

8 A. YES, I DID.

9 Q. WHAT WAS THAT CONCLUSION?

10 A. THAT IT WEIGHED IN FAVOR OF FAIR USE.

11 Q. WHAT WERE THE SUBFACTORS YOU CONSIDERED THAT LED YOU TO
12 CONCLUDE THAT THIS FACTOR WEIGHED IN FAVOR OF FAIR USE?

13 A. IN THIS CASE I FOUND FOUR SUBFACTORS THAT WEIGHED IN
14 FAVOR OF FAIR USE. THE FIRST WAS THAT I BELIEVE THAT
15 ASSIGNING THE WORK WOULD NOT HAVE A SIGNIFICANT EFFECT ON THE
16 MARKET OR POTENTIAL MARKET FOR THE BOOK.

17 Q. WHY IS THAT?

18 A. I FELT THAT -- I GUESS WHAT I HAD IN MIND AT THE TIME
19 WAS MY STUDENTS, THE STUDENTS WHO WOULD BE TAKING THE CLASS,
20 AND THAT BY ASSIGNING THIS CHAPTER IT WOULD NOT MAKE THEM ANY
21 LESS LIKELY TO PURCHASE A COPY OF THE ENTIRE BOOK. ONE REASON
22 BEING THAT THEY MIGHT NOT HAVE BEEN EXPOSED AT ALL TO THE BOOK
23 WITHOUT BEING REQUIRED TO READ THAT CHAPTER.

24 Q. YOU ALSO SELECTED "NO SIMILAR PRODUCT MARKETED BY THE
25 COPYRIGHT HOLDER," RIGHT?

1 A. YES, I DID.

2 Q. WHY DID YOU SELECT THAT SUBFACTOR?

3 A. I MUST HAVE BELIEVED OR WASN'T AWARE OF ANY BOOK OR I
4 WILL SAY AGAIN SINCE I WAS LOOKING FOR READINGS ON THE ORDER
5 OF LENGTH, ON THE ORDER OF JOURNAL ARTICLE OR BOOK CHAPTER, I
6 WASN'T AWARE OF ANY OTHER BOOK THAT MIGHT HAVE CONTAINED A
7 CHAPTER THAT WAS ON THE SAME TOPIC.

8 Q. YOU ALSO SELECTED "USER OWNED LAWFULLY ACQUIRED OR
9 PURCHASED COPY OF ORIGINAL WORK." WHY DID YOU --

10 A. YES.

11 Q. WHY DID YOU DO THAT?

12 A. BECAUSE I BELIEVED I LAWFULLY ACQUIRED, PURCHASED A
13 COPY OF THE WORK.

14 Q. YOU SELECTED "RESTRICTED ACCESS"?

15 A. YES.

16 Q. WHY IS THAT?

17 A. I BELIEVE THAT BY PUT PUTTING THE WORK ON ERESERVES,
18 THAT ACCESS WOULD BE RESTRICTED TO THE STUDENTS IN THE CLASS.

19 Q. AND WHAT WAS THE BASIS FOR YOUR BELIEF? IN OTHER WORDS,
20 FROM YOUR STANDPOINT, WHY WAS THE ACCESS RESTRICTED?

21 A. WELL, TO GAIN ACCESS TO ERESERVES, STUDENTS REQUIRE
22 PASSWORDS AND THERE IS A SEPARATE PASSWORD FOR EVERY CLASS,
23 AS I RECALL. AND SO ONLY THE STUDENTS WHO HAD ACCESS TO THE
24 PASSWORD WHICH I MADE AVAILABLE TO MY STUDENTS WOULD HAVE BEEN
25 ABLE TO ACCESS IT. I BELIEVE THAT IS THE WAY IT WAS AT THE

1 TIME. SO I ASSUME THAT NO OTHER STUDENTS WOULD BE ABLE TO
2 GET ACCESS.

3 Q. YOU ALSO SELECTED SEVERAL FACTORS ON THE RIGHT-HAND
4 SIDE UNDER WEIGHS AGAINST FAIR USE. COULD YOU EXPLAIN TO US
5 WHY YOU SELECTED WHICH FACTORS YOU SELECTED?

6 A. WELL, THE FIRST ONE I SELECTED WAS THAT "LICENSING OR
7 PERMISSION WAS REASONABLY AVAILABLE." I SELECTED THAT NOT
8 BECAUSE I KNEW FOR SURE, BUT MAYBE IT WAS MORE AN ASSUMPTION
9 THAT LICENSING OR PERMISSION WAS REASONABLY AVAILABLE. AND
10 GIVEN THAT IT SEEMED LIKELY TO ME, MAYBE ERRONEOUSLY THAT IT
11 WAS, I SHOULD CHECK IT.

12 Q. YOU ALSO SELECTED "NUMEROUS COPIES MADE OR
13 DISTRIBUTED," WHY DID YOU SELECT THAT?

14 A. I SELECTED THAT BECAUSE I BELIEVE AT THE TIME THERE
15 WOULD BE APPROXIMATELY TEN STUDENTS IN THE CLASS. THAT WAS
16 PROBABLY BEFORE THE ENROLLMENT WAS FULL OR FINALIZED, AND
17 THAT A NUMBER ON THAT ORDER WOULD BE, I CONSIDERED, NUMEROUS.

18 Q. AND YOU ALSO SELECTED REQUIRED CLASSROOM READING, WAS
19 THIS PARTICULAR EXCERPT THAT YOU ASSIGNED A CLASSROOM READING?

20 A. YES, IT WAS.

21 Q. ONCE YOU COMPLETED THE CHECKLIST FOR ALL FOUR FACTORS,
22 DID YOU ARRIVE AT AN OVERALL CONCLUSION WITH RESPECT TO
23 WHETHER THIS -- THE USE OF THIS EXCERPT WOULD BE A FAIR USE?

24 A. YES, I DID.

25 Q. YOUR CONCLUSION WAS WHAT?

1 A. THE FACTOR WEIGHED IN FAVOR OF FAIR USE.

2 Q. AFTER COMPLETING THE FAIR USE, WHAT DID YOU DO TO GET
3 YOUR EXCERPT LOADED TO ERESERVES?

4 A. WELL, I DON'T RECALL EXACTLY THE EXPERIENCE, BUT I
5 BELIEVE I WENT TO THE WEB PAGE, FILLED OUT THE FORM,
6 PROVIDED THE BIBLIOGRAPHICAL INFORMATION, AND SUBMITTED THAT
7 ONLINE.

8 Q. DID YOU INFORM THE LIBRARY THAT YOU BELIEVED THAT YOUR
9 USE OF THIS EXCERPT WOULD BE A FAIR USE BASED ON YOUR
10 COMPLETION OF THE CHECKLIST?

11 A. I BELIEVE I DID. I DON'T RECALL EXACTLY WHAT THE
12 LIBRARY WEB PAGE LOOKED LIKE AT THE TIME, BUT IT PROBABLY HAD
13 A PLACE WHERE YOU NEEDED TO CHECK THAT YOU HAD REVIEWED THE
14 FAIR USE CHECKLIST AND FOUND THAT THE WORK SATISFIED THE
15 CRITERIA.

16 Q. IF YOU COULD TURN IN YOUR NOTEBOOK TO DEFENDANT'S
17 EXHIBIT 503, I WANT TO ASK YOU IF YOU RECOGNIZE A DOCUMENT.

18 A. (WITNESS COMPLIES.)

19 IT LOOKS FAMILIAR. IT LOOKS LIKE E-MAILS I TYPICALLY GET
20 AFTER SUBMITTING REQUESTS FOR WORKS TO BE PUT ON ERESERVES.

21 Q. AND WHAT IS THE DATE OF THE EMAIL?

22 A. THE DATE, IT IS THE 28TH OF AUGUST 2009.

23 Q. DOES IT RELATE TO A REQUEST THAT YOU SUBMITTED FOR A
24 PARTICULAR COURSE?

25 A. IT LOOKS LIKE IT RELATES TO THE REQUEST I MADE OR ONE

1 OF THE REQUESTS I MADE AT LEAST FOR POLITICAL SCIENCE 8470,
2 MILITARY CONFLICT AND INTERNATIONAL SECURITY.

3 Q. IN THE FALL OF 2009?

4 A. YES.

5 Q. THAT IS A COURSE WE HAVE BEEN DISCUSSING TODAY?

6 A. YES.

7 Q. A FEW LINES DOWN THERE IS SOME INFORMATION HERE WITH
8 SOME BRACKET MARKS "JOHN DUFFIELD," SECTION CALLED "PERSONAL
9 INFORMATION, COURSE INFORMATION," AND SO ON. CAN YOU
10 DESCRIBE FOR ME GENERALLY WHAT IS CONTAINED IN THESE SECTIONS?

11 A. WELL, THE PERSONAL INFORMATION SECTION CONTAINS MY
12 NAME, MY DEPARTMENT AFFILIATION, MY OFFICE PHONE NUMBER, AND
13 MY UNIVERSITY EMAIL ADDRESS. THE COURSE INFORMATION CONTAINS
14 THE COURSE NAME, WHICH IS THE FLOOR, LETTER, SYMBOL THAT
15 INDICATES THE DEPARTMENT THE COURSE IS BEING TAUGHT IN, THE
16 COURSE NUMBER, AND THE SEMESTER FOR WHICH THE COURSE IS BEING
17 OFFERED.

18 Q. AND THE INFORMATION THAT IS CONTAINED HERE, IS THAT THE
19 INFORMATION YOU BELIEVE YOU SUBMITTED TO THE LIBRARY RELATING
20 TO THE WORKS YOU ARE REQUESTING TO BE LOADED TO ERES IN THE
21 FALL OF 2009 FOR THE 8470 COURSE?

22 A. YES.

23 Q. I BELIEVE YOU SAID THIS EMAIL IS THE TYPE OF EMAIL YOU
24 RECEIVE FROM THE LIBRARY UPON SUBMITTING REQUESTS TO THE
25 LIBRARY FOR WORKS TO BE LOADED TO ERESERVE?

1 A. I BELIEVE I ALWAYS GET AN EMAIL LIKE THAT.

2 MS. MOFFIT: YOUR HONOR, MOVE DEFENDANT'S 503 IN
3 EVIDENCE, TOO.

4 THE COURT: IT IS ADMITTED.

5 MR. LARSON: NO OBJECTION.

6 BY MS. MOFFIT:

7 Q. NOW THE FIRST ITEM LISTED IN THE ELECTRONIC BOOK
8 SECTION IS THE BOOK ENTITLED "BEHAVIOR, SOCIETY AND NUCLEAR
9 WAR," DO YOU SEE THAT?

10 A. YES.

11 Q. AND A FEW LINES UP FROM THERE THERE IS AN ENTRY
12 "COPYRIGHT STATUS" THAT FALLS UNDER FAIR USE -- UNDER THE FAIR
13 USE CHECKLIST YOU COMPLETED?

14 A. I SEE THAT.

15 Q. WHAT DOES THAT STATEMENT IN THIS DOCUMENT STATE TO YOU?

16 A. WELL, I ASSUME THAT IT INDICATES THAT I HAD CHECKED
17 THE BOX INDICATING THAT I BELIEVED THAT IT FELL UNDER -- THIS
18 PARTICULAR EXCERPT FELL UNDER FAIR USE ACCORDING TO THE
19 CHECKLIST.

20 Q. NOW, IF IT WERE TO BE DETERMINED THAT YOUR USE OF THE
21 "CRISIS DECISION MAKING" EXCERPT WAS NOT A FAIR USE, WOULD
22 YOU CONTINUE TO ASSIGN THIS EXCERPT AS A READING IN YOUR 8470
23 COURSE?

24 A. NO.

25 Q. WHAT WOULD YOU DO INSTEAD?

1 A. I DON'T KNOW FOR SURE WHAT I WOULD DO. SOME OF MY
2 OPTIONS WOULD BE TO -- PLEASE REPEAT THE PREVIOUS QUESTION,
3 NOT WHAT WOULD YOU DO INSTEAD, BUT THE ONE BEFORE THAT.

4 Q. IF IT WERE DETERMINED?

5 A. YEAH.

6 Q. IF IT WERE DETERMINED THAT YOUR USE OF THIS EXCERPT
7 WERE NOT A FAIR USE, WOULD YOU CONTINUE TO ASSIGN THE EXCERPT
8 AS A READING IN YOUR 8470 COURSE?

9 A. OKAY. LET ME CORRECT WHAT I SAID BEFORE. I MIGHT.
10 IT WOULD DEPEND ON WHAT MY OPTIONS WERE BECAUSE THERE ARE
11 OTHER WAYS OF MAKING IT AVAILABLE. IF I STILL FELT SOMETHING
12 WAS ESSENTIAL TO THE COURSE, I COULD HAVE A HARD COPY PUT ON
13 RESERVE IN THE LIBRARY, FOR EXAMPLE. SO I WOULD WANT TO
14 CONSIDER WHAT OTHER READINGS I MIGHT ASSIGN THAT WOULD MAKE A
15 SIMILAR CONTRIBUTION TO THE STUDENTS. AND IF I COULD
16 IDENTIFY ONE THAT WOULD PREFERABLY BE AVAILABLE, BE A JOURNAL
17 ARTICLE THAT WAS AVAILABLE THROUGH THE VARIOUS ELECTRONIC
18 DATABASES, I WOULD ASSIGN THAT OR POTENTIALLY ANOTHER BOOK
19 CHAPTER THAT DID MEET THE FAIR USE GUIDELINES. SO, I
20 WOULDN'T KNOW EXACTLY WHAT I WOULD DO. I WOULD HAVE A VARIETY
21 OF OPTIONS.

22 MS. MOFFIT: THANK YOU, PROFESSOR DUFFIELD.

23 YOUR HONOR, WE DON'T HAVE ANY FURTHER QUESTIONS AT THIS
24 TIME.

25 MR. LARSON: MAY I PROCEED, YOUR HONOR?

1 THE COURT: YOU MAY.

2 CROSS EXAM

3 BY MR. LARSON:

4 Q. PROFESSOR DUFFIELD, WELCOME. WE MET AT YOUR
5 DEPOSITION?

6 A. NICE TO SEE YOU AGAIN.

7 Q. YOU TOO. JUST A FEW QUESTIONS THIS MORNING.
8 YOU HAVE PUBLISHED EXTENSIVELY, CORRECT?

9 A. I HAVE PUBLISHED A LARGE NUMBER OF WORKS, I DON'T KNOW
10 WHAT YOU MEAN BY "EXTENSIVELY."

11 Q. I THINK YOU SAID 30 OR 40 PUBLICATIONS ON DIRECT,
12 CORRECT?

13 A. UH-HUH (AFFIRMATIVE RESPONSE).

14 Q. IS THAT CORRECT?

15 A. YES, YES, YES.

16 Q. THAT INCLUDES THREE BOOKS WITH STANFORD UNIVERSITY
17 PRESS, CORRECT?

18 A. THREE AUTHORED BOOKS.

19 Q. AND YOU HAVE PUBLISHED SEVERAL BOOK CHAPTERS IN BOOKS
20 PUBLISHED BY OXFORD UNIVERSITY PRESS, CORRECT?

21 A. YES.

22 Q. AND YOU BELIEVE THAT PUBLISHING HAS ENHANCED YOUR
23 REPUTATION AND STANDING IN YOUR FIELD, CORRECT?

24 A. YES.

25 Q. AND YOUR PUBLISHING ACTIVITIES HAVE ALSO INCREASED YOUR

1 CHANCES OF PROMOTION AT VARIOUS POINTS IN YOUR CAREER,
2 CORRECT?

3 A. YES.

4 Q. NOW, YOU HAVE ALSO SERVED ON VARIOUS PROMOTION AND
5 TENURE COMMITTEES DURING YOUR TIME AT GSU, CORRECT?

6 A. YES.

7 Q. YOUR ROLE ON THOSE COMMITTEES INVOLVE REVIEWING THE
8 DOSSIERS OF OTHER PROFESSORS UP FOR PROMOTION OR TENURE,
9 CORRECT?

10 A. YES.

11 Q. YOU WOULD AGREE, BASED ON THAT EXPERIENCE, THAT HAVING
12 PUBLISHED IS IMPORTANT TO A PROFESSOR SEEKING TO BE TENURED OR
13 PROMOTED, CORRECT?

14 A. AS A GENERAL RULE, THERE IS SOME FIELDS WHERE
15 PUBLISHING BOOKS AND ARTICLES ISN'T AS IMPORTANT, BUT IN MY
16 FIELD, CERTAINLY.

17 Q. SURE. THAT INCLUDES PUBLISHING BOOKS AS WELL AS
18 JOURNAL ARTICLES, CORRECT?

19 A. NOT NECESSARILY. THERE HAVE BEEN A NUMBER OF VERY
20 SUCCESSFUL POLITICAL SCIENTISTS NEVER PUBLISHED A BOOK.

21 Q. SOME FIELDS IT IS ACCEPTABLE TO JUST PUBLISH YOUR OWN
22 ARTICLES AND IN OTHERS IT IS BOOKS?

23 A. IT IS IN THE SUBJECT AREA.

24 Q. THE REPUTATION OF THE PUBLISHERS WITH WHOM THE
25 PROFESSOR HAS PUBLISHED IS A FACTOR THAT IS CONSIDERED WHEN

1 DETERMINING WHETHER THE CANDIDATE IS ACHIEVING A NATIONAL
2 REPUTATION WHEN SOMEONE IS UP FOR PROMOTION?

3 A. YES.

4 Q. YOU HAVE POSITIVE -- A POSITIVE IMPRESSION OF
5 REPUTATIONS OF CAMBRIDGE UNIVERSITY PRESS AND OXFORD
6 UNIVERSITY PRESS IN THAT RESPECT, CORRECT?

7 A. YES.

8 Q. AND AS YOU SAID, YOU YOURSELF HAVE PUBLISHED WITH
9 OXFORD PRESS?

10 A. YES.

11 Q. LET'S TALK ABOUT YOUR COURSE FROM THE FALL OF 2009
12 SEMESTER, POLI SCI 8470. THERE WAS NO BOOK ASSIGNED FOR
13 PURCHASE IN THAT COURSE; IS THAT RIGHT?

14 A. I BELIEVE NOT.

15 Q. ALL THE READINGS FOR THE CLASS WERE PROVIDED BY
16 ERESERVES POSTINGS OR ELECTRONIC JOURNALS?

17 A. YEAH. THE MAJORITY WERE JOURNAL ARTICLES AND THERE
18 WERE A HANDFUL OF ERESERVE POSTINGS.

19 Q. AND THE ERESERVE POSTINGS TENDED TO BE BOOK CHAPTERS;
20 IS THAT RIGHT?

21 A. THEY PROBABLY ALL WERE. I WOULD HAVE TO DOUBLE CHECK
22 TO MAKE SURE IF THAT WAS THE CASE.

23 Q. IF NOT BOOK CHAPTERS, WHAT WOULD THEY HAVE BEEN? IF YOU
24 WANT TO REFER TO PTX 528, WHICH IS THE SYLLABUS, FEEL FREE.

25 A. YEAH, I WOULD HAVE TO LOOK AT EACH WEEK'S REQUIRED

1 READINGS. THEY WERE PROBABLY ALL BOOK CHAPTERS OR PARTS OF
2 BOOK CHAPTERS IN THIS CASE.

3 Q. DO YOU REFER TO THEM AS CHAPTERS OR CALL THEM ARTICLES?
4 HOW WOULD YOU REFER TO THOSE?

5 A. I WOULD REFER TO THEM AS CHAPTERS.

6 Q. AND NO PAYMENT WAS MADE FOR THE BOOK CHAPTERS PLACED ON
7 RESERVES, CORRECT?

8 A. WELL, I MADE NO PAYMENT AND I NEVER HEARD OF A STUDENT
9 MAKING A PAYMENT. BEYOND THAT I CAN'T SAY.

10 Q. YOU ARE NOT AWARE FROM THE UNIVERSITY, FOR EXAMPLE,
11 MADE SOME SORT OF PAYMENT?

12 A. NO, I AM NOT.

13 Q. THE FIRST OBJECTIVE OF THE CLASS WAS TO INTRODUCE
14 STUDENTS TO THE LITERATURE IN POLITICAL SCIENCE ON VIOLENT
15 CONFLICT AND SECURITY; IS THAT RIGHT?

16 A. YES.

17 Q. AND THE CLASS MEETINGS CONSISTED OF DISCUSSION OF THE
18 ASSIGNED READINGS, CORRECT?

19 A. THAT WAS A LARGE PART OF WHAT WE SPENT THE TIME DOING.

20 Q. AND STUDENTS WERE EXPECTED TO READ ALL OF THE ASSIGNED
21 READINGS CAREFULLY AND THOUGHTFULLY PRIOR TO THE CLASS
22 MEETING, CORRECT?

23 A. IS THAT WHAT I SAID?

24 Q. YEAH. I WILL DIRECT YOU TO THE TOP OF THE SYLLABUS,
25 PAGE TWO, FIRST PARAGRAPH.

1 A. THAT SO --

2 Q. STUDENTS WEREN'T REQUIRED TO PAY FOR THOSE READINGS,
3 CORRECT?

4 A. I ASSUME THEY WERE ABLE TO ACCESS ALL OF THE JOURNAL
5 ARTICLES VIA THE ELECTRONIC JOURNAL DATABASE THE UNIVERSITY
6 SUBSCRIBES TO AND THE OTHER HANDFUL OF BOOK CHAPTERS THROUGH
7 ERESERVES. I HAVE NEVER KNOWN THEM TO HAVE TO PAY DIRECTLY
8 FOR ANY PARTICULAR READING, IF THAT IS YOUR QUESTION.

9 Q. SO THE JOURNALS ARE PAID THROUGH -- PAID FOR THROUGH A
10 SUBSCRIPTION WITH THE PUBLISHER THAT THE UNIVERSITY HOLDS, IS
11 THAT YOUR UNDERSTANDING?

12 A. THAT IS MY UNDERSTANDING.

13 Q. BUT THERE IS NO ADDITIONAL PAYMENT MADE BY THE STUDENTS
14 IN A CLASS WHO WANT TO ACCESS THOSE JOURNAL ARTICLES,
15 CORRECT?

16 A. NOT UNLESS IT IS FOLDED INTO THEIR TUITION OR
17 SOMETHING.

18 Q. AND I THINK, AS YOU SAID, THERE WAS NO PAYMENT BY THE
19 STUDENTS FOR THE ERESERVE CHAPTERS THAT WERE PLACED ON
20 ERESERVES, CORRECT?

21 A. NOT IN A DIRECT SENSE THAT I KNOW OF.

22 Q. SO FOR THE STUDENTS IN THE CLASS, THERE WAS NO MONEY
23 OUT OF POCKET FOR THE READINGS IN THE COURSE, CORRECT?

24 A. AGAIN, YEAH, ALONG THE LINES OF WHAT I JUST SAID.

25 Q. WHILE ON THAT TOPIC OF JOURNAL ARTICLES VERSUS THE

1 ERESERVES CHAPTERS, WAS THERE ANY DIFFERENCE IN TERMS OF YOUR
2 COURSE OBJECTIVES BETWEEN USING AN ARTICLE THAT APPEARED IN A
3 JOURNAL AND USING AN ARTICLE OR A CHAPTER THAT APPEARED IN A
4 BOOK?

5 A. I CAN'T THINK OF ANY DIFFERENCE IN OBJECTIVES THERE
6 FROM THE POINT OF VIEW OF INTRODUCING STUDENTS TO THE
7 LITERATURE, THEY ARE FUNCTIONALLY EQUIVALENT.

8 Q. CAN YOU THINK OF ANY REASON SITTING HERE WHY IT WOULD
9 BE APPROPRIATE FOR A PAYMENT TO BE MADE TO A JOURNAL PUBLISHER
10 FOR THE JOURNAL ARTICLES, BUT NOT A PAYMENT MADE FOR THE
11 CHAPTERS TAKEN FROM THE BOOKS THAT YOU USED?

12 A. I AM NOT SURE IN TERMS OF PAYMENT. I MEAN, I GUESS
13 IN GENERAL I WOULD THINK THAT AS A GENERAL PRINCIPLE OF
14 FAIRNESS THERE SHOULD BE COMPENSATION, BUT WHAT FORM THAT
15 WOULD TAKE, YOU KNOW, IS IT SUFFICIENT TO JUST BUY THE BOOK
16 AND PUT IN THE LIBRARY, OR WHAT? I DON'T KNOW.

17 Q. FAIR ENOUGH.

18 YOU MENTIONED THE HOLSTI CHAPTER YOU ASSIGNED IN WEEK
19 FOUR. YOU DESCRIBED IT AS A FULL DISCUSSION, THAT IT HAD
20 IMPORTANT PERSPECTIVE. IN FACT, IT IS TRUE, ISN'T IT, THAT
21 YOU DON'T KNOW OF ANY OTHER WORK THAT DISCUSSES THE SUBJECT
22 MATTER OF THAT CHAPTER AS WELL AND AS CONCISELY AS THAT
23 CHAPTER DOES?

24 A. WELL, AT THE TIME I SUPPOSE IT IS FAIR TO SAY WHEN YOU
25 ARE PUTTING TOGETHER A SYLLABUS, YOU DON'T EXHAUSTIVELY

1 REVIEW EVERY POSSIBLE READING YOU MIGHT INCLUDE. YOU START
2 WITH THINGS THAT YOU HAVE USED AND HAVE WORKED WITH IN THE
3 PAST, AND IF THEY THINK THEY ARE STILL GOING TO WORK, YOU KEEP
4 THEM ON. AND IF YOU HAVE A REASON TO BE CONCERNED OR YOU HAVE
5 SEEN SOMETHING THAT HAS DONE A BETTER JOB IN THE MEANTIME,
6 YOU MIGHT SUBSTITUTE THAT FOR SOMETHING ELSE. SO, I GUESS
7 IT WOULD BE FAIR TO SAY THAT AT THE TIME I WASN'T AWARE,
8 DIDN'T HAVE IN MY HEAD OR HADN'T IDENTIFIED SINCE I LAST
9 TAUGHT THE COURSE OR LAST LOOKED AT THE READING AND ANOTHER
10 WORK THAT I THOUGHT DID A BETTER JOB OF INTRODUCING THAT
11 PERSPECTIVE.

12 Q. LET ME TRY THE QUESTION AGAIN.

13 AT THE TIME YOU WEREN'T AWARE OF ANY OTHER WORK THAT
14 DISCUSSED THE SUBJECT MATTER OF THE HOLSTI CHAPTER AS WELL AS
15 AND AS CONCISELY AS THAT CHAPTER DISCUSSED IT, CORRECT?

16 A. THAT IS PROBABLY RIGHT, YES.

17 Q. LET'S TURN TO YOUR CHECKLIST WHICH IS PTX 563, JUST A
18 COUPLE OF PRELIMINARY QUESTIONS FIRST. YOU HAVE NO FORMAL
19 TRAINING IN COPYRIGHT LAW, CORRECT?

20 A. CORRECT.

21 Q. AND WITH RESPECT TO COPYRIGHT POLICY AND GSU, YOU TOOK
22 A SEMINAR AT SOME POINT SEVERAL YEARS AGO, BUT YOU CAN'T
23 RECALL PRECISELY WHEN, CORRECT?

24 A. CORRECT.

25 Q. AND YOU DON'T RECALL WHO LED THE SESSION OR THE

1 CONTENTS OF THE HANDOUT THAT WERE USED AT THAT SESSION,
2 CORRECT?

3 A. CORRECT. NOT IN ANY DETAIL.

4 Q. YOU DON'T RECALL WHETHER THE FAIR USE CHECKLISTS THAT
5 ARE NOW IN USE AND THAT WE SEE ON THE SCREEN WERE SHOWN TO YOU
6 AT THAT SEMINAR, CORRECT?

7 A. CORRECT.

8 Q. YOU HAVE NO RECOLLECTION OF RECEIVING ANY OTHER
9 TRAINING OUTSIDE OF THAT PARTICULAR SEMINAR RELATED TO THE
10 FAIR USE CHECKLIST, CORRECT?

11 A. CERTAINLY NOTHING LIKE A SEMINAR. I MEAN, THERE MAY
12 HAVE BEEN SOME E-MAILS OVER THE YEARS WITH INSTRUCTIONS AND
13 REMINDERS, BUT NOTHING GETTING TOGETHER WITH OTHER PEOPLE AND
14 BEING FORMALLY INSTRUCTED.

15 Q. YOU DON'T RECALL MAKING ANY SPECIFIC CHANGES IN YOUR
16 USE OF COURSE READING MATERIALS WITH YOUR STUDENTS AS A RESULT
17 OF THAT SEMINAR THAT YOU ATTENDED, CORRECT?

18 A. I DON'T RECALL. I COULD VERY WELL HAVE MADE SOME
19 CHANGES, IT IS JUST SORT OF ALL LOST IN THE HAZE.

20 Q. YOU DON'T RECALL MAKING ANY?

21 A. RIGHT.

22 Q. AS OF THE DATE OF YOUR DEPOSITION LAST MONTH, YOU
23 DIDN'T KNOW WHAT THE CURRENT COPYRIGHT POLICY AT GSU WAS,
24 CORRECT?

25 A. CERTAINLY NOT IN ANY DETAIL.

1 Q. I SHOWED YOU A COPY OF POLICY, YOU WEREN'T SURE WHETHER
2 OR NOT IT WAS ACTUALLY THE CURRENT POLICY, DO YOU RECALL
3 THAT?

4 A. YES.

5 Q. LET'S TALK ABOUT THE CHECKLIST. YOU TESTIFIED AT
6 LENGTH ON DIRECT ABOUT YOUR FILLING OUT OR WHAT YOU FILLED OUT
7 ON THIS CHECKLIST. DO YOU RECALL TESTIFYING AT YOUR
8 DEPOSITION IN APRIL THAT YOU COULDN'T RECALL WHAT YOU WERE
9 THINKING WHEN YOU CHECKED THE BOXES ON THIS CHECKLIST BACK IN
10 2009?

11 A. YEAH. I RECALL SAYING SOMETHING TO THAT EFFECT AT THE
12 DEPOSITION.

13 Q. SO THEN WHAT WAS THE BASIS FOR YOUR TESTIMONY TODAY AS
14 TO WHY YOU CHECKED THE PARTICULAR BOXES YOU CHECKED?

15 A. WELL, I CAN'T REMEMBER EXACTLY HOW THE QUESTIONS WERE
16 PUT TO ME EARLIER, BUT I BELIEVE THAT I HAVE CONSISTENTLY
17 EVALUATED THESE CHECKLISTS OVER TIME.

18 Q. SO YOUR APPROACH TENDS TO BE SIMILAR OVER THE TIME YOU
19 WERE SPEAKING AS TO THAT GENERAL APPROACH?

20 A. YES.

21 Q. FACTOR ONE YOU CHECKED "NONPROFIT EDUCATIONAL" -- CAN
22 YOU BLOW THAT UP? "NONPROFIT EDUCATIONAL, TEACHING, AND USE
23 IS NECESSARY TO ACHIEVE INTENDED EDUCATIONAL PURPOSE"; IS THAT
24 RIGHT?

25 A. YES.

1 Q. AND IN THE CONTEXT OF PLACING REQUIRED READINGS ON THE
2 RESERVE SYSTEM FOR YOUR STUDENTS, YOU CANNOT ENVISION ANY
3 SCENARIO WHERE YOU WOULD NOT CHECK ALL THREE OF THOSE BOXES,
4 CORRECT?

5 A. WELL, I WOULD DEFINITELY. I CAN'T IMAGINE A SCENARIO
6 WHERE I WOULDN'T CHECK THE FIRST ONE OR THE SECOND ONE. I
7 THINK ON FURTHER REFLECTION I AM WONDERING WHETHER EVERYTHING
8 I PUT WOULD MEET THE NECESSARY REQUIREMENT NOW.

9 MR. LARSON: YOUR HONOR, MAY I APPROACH?

10 THE COURT: YES.

11 BY MR. LARSON:

12 Q. PROFESSOR, YOU RECALL YOU WERE DEPOSED IN THE CASE,
13 CORRECT?

14 A. YES.

15 Q. AND I PLACED BEFORE YOU A TRANSCRIPT FROM YOUR
16 DEPOSITION THAT TOOK PLACE APRIL 14, 2011; IS THAT RIGHT?

17 A. I BELIEVE IT DID.

18 Q. I WILL DIRECT YOUR ATTENTION TO PAGE 59 -- I'M SORRY,
19 PAGE 61, LINE 6. WE WERE LOOKING AT FACTOR ONE IN
20 REFERENCING THESE THREE BOXES YOU CHECKED. I ASKED AT LINE
21 SIX:

22 "CAN YOU ENVISION ANY SCENARIO WHERE
23 WITH THE REQUIRED READING ON
24 RESERVE SYSTEM THAT YOU HAVE GIVEN
25 YOUR STUDENTS THAT YOU WOULDN'T

1 CHECK THOSE THREE BOXES?

2 ANSWER, NO."

3 WAS THAT TRUTHFUL TESTIMONY?

4 A. AT THE TIME I THINK IT WAS.

5 Q. OKAY. THANK YOU.

6 NOW IN YOUR EXPERIENCE IN FILLING OUT THE FAIR USE
7 CHECKLIST, YOU DON'T RECALL EVER CHECKING A BOX UNDER WEIGHS
8 AGAINST FAIR USE UNDER FACTOR ONE?

9 A. I DON'T RECALL EVER DOING THAT.

10 Q. LET'S LOOK AT FACTOR TWO. LOOKING AT FACTOR TWO, YOU
11 CHECKED "IMPORTANT TO EDUCATIONAL OBJECTIVES"; IS THAT
12 CORRECT? IT IS THE THIRD BOX THERE.

13 A. I DID.

14 Q. THAT IS THE SAME REASON YOU CHECKED "NECESSARY TO
15 EDUCATIONAL PURPOSE" UNDER FACTOR ONE, CORRECT?

16 A. WELL, I AM PRETTY SURE I SAW A SIMILARITY BETWEEN THE
17 TWO.

18 Q. OKAY. YOU CHECKED THE TWO FOR THE SAME REASON,
19 CORRECT?

20 A. I CAN'T THINK OF ANY DIFFERENCE, YET, SO, I WILL SAY
21 YES.

22 Q. YOU WOULD NEVER ASSIGN A READING TO YOUR STUDENTS THAT
23 WAS NOT IMPORTANT TO YOUR EDUCATIONAL OBJECTIVES, CORRECT?

24 A. YES.

25 Q. LOOK AT FACTOR THREE. YOU CHECKED ON THE LEFT-HAND

1 SIDE THE THIRD BOX DOWN, "AMOUNT TAKEN IS NARROWLY TAILORED
2 TO EDUCATIONAL PURPOSE," CORRECT?

3 A. CORRECT.

4 Q. AGAIN. IN THE CONTEXT OF PLACING REQUIRED READINGS OF
5 YOUR STUDENTS ON ERES, YOU CAN'T IMAGINE A SITUATION WHERE YOU
6 WOULDN'T CHECK THAT BOX, CORRECT?

7 A. CORRECT.

8 Q. AND IN ALL THE CHECKLISTS YOU FILLED OUT, YOU DON'T
9 RECALL EVER CHECKING A BOX IN THE WEIGHS AGAINST FAIR USE
10 COLUMN UNDER FACTOR TWO OR FACTOR THREE, CORRECT?

11 A. I DON'T RECALL EVER DOING THAT, CORRECT.

12 Q. LET'S LOOK AT FACTOR FOUR. NOW, JUST LOOKING AT THE
13 RIGHT-HAND SIDE AT FIRST HERE I BELIEVE YOU TESTIFIED ON
14 DIRECT THAT IT IS YOUR VIEW THAT TEN COPIES WOULD BE NUMEROUS;
15 IS THAT RIGHT?

16 A. YES.

17 Q. I SEE FACTOR FOUR HAS THREE CHECKS IN THE WEIGHS
18 AGAINST FAIR USE COLUMN; IS THAT CORRECT?

19 A. YES.

20 Q. YOUR GENERAL APPROACH TO FILLING OUT THE CHECKLIST IS
21 TO ERR ON THE CONSERVATIVE SIDE AND CHECK AS MANY CHECKS
22 AGAINST WEIGHS AGAINST FAIR USE SIDE AS YOU CAN POSSIBLY
23 IMAGINE; IS THAT CORRECT?

24 A. WELL, AS SEEMED REASONABLE, BUT THAT WOULD MAKE SURE
25 I DIDN'T OVERLOOK ANYTHING ON THE AGAINST FAIR USE SIDE.

1 Q. LET ME ASK THE QUESTION ONE MORE TIME. YOUR GENERAL
2 APPROACH, IS IT NOT, IS TO ERR ON THE CONSERVATIVE SIDE AND
3 TO CHECK AS MANY CHECKS UNDER THE WEIGHS AGAINST FAIR USE
4 COLUMN AS YOU COULD POSSIBLY IMAGINE; ISN'T THAT CORRECT?

5 A. IT IS PARTIALLY CORRECT.

6 Q. LET'S TAKE A LOOK AT YOUR DEPOSITION, PAGE 72. PLAY
7 THE CLIP FROM PAGE 72, PLEASE. IT IS 72, 22 TO 73, 14.
8 (WHEREUPON, THE VIDEOTAPED DEPOSITION WAS PLAYED.)

9 "Q. IF IT WERE FIVE STUDENTS IN THE
10 CLASS, WOULD YOU CONSIDER THAT
11 NUMEROUS?

12 A. IN GENERAL, I THINK MY APPROACH
13 HERE IS TO PUT DOWN AS MANY -- TO
14 ERR ON THE CONSERVATIVE SIDE AND TO
15 CHECK AS MANY ITEMS UNDER WEIGHS
16 AGAINST FAIR USE AS I COULD POSSIBLY
17 IMAGINE I MIGHT WANT TO CHECK RATHER
18 THAN MAKING ASSUMPTIONS THAT, YOU
19 KNOW, THREE IS NOT NUMEROUS AND
20 FIVE IS NOT NUMEROUS.

21 Q. AND WHY IS THAT?

22 A. BECAUSE I TAKE THE CONCERN ABOUT
23 FAIR USE SERIOUSLY AND WANT TO MAKE
24 SURE THAT WHAT I'M DOING FAIRLY,
25 CLEARLY CAN BE JUSTIFIED IN TERMS OF

1 THE VARIOUS FACTORS.

2 Q. AND WITH THAT APPROACH, IT
3 STILL CAME OUT UNDER FACTOR FOUR
4 THAT THERE WERE FOUR CHECKS ON THE
5 WEIGHS IN FAVOR OF FAIR USE SIDE AND
6 ONLY THREE ON THE WEIGHS AGAINST
7 FAIR USE SIDE; IS THAT RIGHT?

8 A. THAT LOOKS LIKE WHAT HAPPENED
9 HERE, YEAH."

10 (WHEREUPON, THE VIDEOTAPED DEPOSITION STOPPED.)

11 BY MR. KRUGMAN:

12 Q. WAS THAT YOUR TESTIMONY, PROFESSOR?

13 A. YES.

14 Q. EVEN WITH THE CONSERVATIVE APPROACH THAT YOU MENTIONED,
15 THE OVERALL CHECKLIST STILL HAD 12 CHECKS IN FAVOR OF FAIR USE
16 AND ONLY THREE AGAINST, CORRECT?

17 A. LET ME COUNT. THAT LOOKS CORRECT.

18 Q. YOU DON'T RECALL EVER FILLING OUT A FAIR USE CHECKLIST
19 THAT DIDN'T WEIGH IN FAVOR OF FAIR USE?

20 A. CORRECT.

21 Q. I THINK YOU MENTIONED THERE HAVE BEEN TIMES WHEN YOU
22 HAVE OPTED TO NOT USE THE WORK WHEN THE EXCERPT WAS OVER 10
23 PERCENT, CORRECT?

24 A. YES.

25 Q. AND IN THOSE SITUATIONS, YOU DIDN'T BOTHER GOING

1 THROUGH ALL, THE WHOLE CHECKLIST AFTER THAT, CORRECT?

2 A. THAT IS PROBABLY THE CASE.

3 Q. AND THAT 10 PERCENT TEST ISN'T SOMETHING IN THE
4 CHECKLIST, CORRECT?

5 A. CORRECT.

6 Q. NOW, I THINK YOU MENTIONED ON DIRECT THAT ONE OPTION
7 THAT YOU MIGHT CONSIDER FOR READING IF PERMISSION WERE
8 REQUIRED IS PLACING IT ON HARD COPY RESERVE, DO YOU RECALL
9 THAT?

10 A. YES.

11 Q. BUT IT IS TRUE, IS IT NOT, YOU HAVE A CONCERN THAT IF
12 THERE IS ONLY ONE COPY ON HARD COPY RESERVE, THAT A LARGE
13 NUMBER OF STUDENTS MIGHT HAVE TO SHARE THAT ONE COPY IN A
14 LIMITED TIME PERIOD; IS THAT RIGHT?

15 A. YES.

16 Q. WHEREAS WITH ERES, EVERY STUDENT IN THE CLASS CAN
17 ACCESS AN ELECTRONIC VERSION OF THE DOCUMENT, CORRECT?

18 A. YES.

19 Q. WITH ERES, EACH STUDENT CAN GET THEIR OWN PERSONAL
20 COPY, CORRECT?

21 A. WELL, EACH STUDENT HAS ACCESS TO THE PIECE.

22 Q. AND EACH STUDENT CAN PRINT IT OUT OR SAVE IT TO THEIR
23 COMPUTER; IS THAT RIGHT?

24 A. I ASSUME THEY CAN.

25 Q. AND TO YOUR KNOWLEDGE, CAN THEY THEN KEEP THAT COPY

1 PERMANENTLY, MEANING AFTER THE SEMESTER ENDS?

2 A. I ASSUME THEY CAN.

3 Q. THEY DON'T HAVE TO RETURN IT OR ANYTHING LIKE THAT TO
4 YOUR KNOWLEDGE, CORRECT?

5 A. I HAVE NEVER HEARD OF ANYTHING LIKE THAT.

6 Q. ANOTHER OPTION FOR USING THE COURSE MATERIAL WOULD BE
7 TO PLACE IT IN A COURSEPACK; IS THAT CORRECT?

8 A. YES.

9 Q. THAT IS SOMETHING YOU HAVE DONE IN THE PAST, CORRECT?

10 A. I HAVE DONE THAT IN MY SOME OF MY UNDERGRADUATE
11 CLASSES.

12 Q. AND THOSE COURSEPACKS INCLUDE BOOK CHAPTERS?

13 A. THEY COULD HAVE. I CAN'T THINK OF AN EXAMPLE OFF THE
14 TOP OF MY HEAD, BUT IT IS CERTAINLY POSSIBLE.

15 Q. AT A CERTAIN POINT YOU STOPPED USING COURSEPACKS; IS
16 THAT CORRECT?

17 A. YES.

18 Q. THAT WAS IN PART BECAUSE OF THE COST OF THE
19 COURSEPACKS?

20 A. WELL, NOT THE COST DIRECTLY, BUT THE EFFECT OF THE COST
21 THAT I FELT THAT I WAS CONCERNED THAT STUDENTS MIGHT HAVE BEEN
22 DETERRED FROM PURCHASING COURSEPACKS AND AS A RESULT NOT DOING
23 READINGS.

24 Q. AND DETERRED BECAUSE OF THE COST, CORRECT?

25 A. YES.

1 Q. THAT COST, TO YOUR UNDERSTANDING, INCLUDED LICENSING
2 MATERIAL TO THE MATERIALS IN THE COURSEPACK?

3 A. I ASSUME IT DID, BUT I NEVER WENT INTO THE DETAILS WITH
4 THE PRODUCERS OF THE COURSEPACK.

5 Q. YOU NO LONGER USE COURSEPACKS; IS THAT CORRECT?

6 A. I HAVEN'T IN A NUMBER OF YEARS.

7 Q. AND IS EXEMPLIFIED BY POLI SCI TIE 8470 WE ARE TALKING
8 ABOUT NOW, YOU NOW USE ERES TO DISTRIBUTE BOOK CHAPTERS; IS
9 THAT CORRECT?

10 A. THAT IS GENERALLY HOW I DO IT. I CAN'T THINK OF ANY
11 EXCEPTIONS.

12 Q. AND JUST ON THAT TOPIC, DOES IT MAKE ANY DIFFERENCE TO
13 YOU IN TERMS OF YOUR EDUCATIONAL OBJECTIVES IF THE STUDENT
14 GETS A CHAPTER IN A COURSEPACK AS OPPOSED TO GETTING THAT SAME
15 CHAPTER THROUGH ERESERVES?

16 A. AS LONG AS THE STUDENTS ARE ROUGHLY EQUALLY LIKELY TO
17 ACCESS IT, IT DOESN'T MAKE ANY DIFFERENCE.

18 Q. THANK YOU. I THINK YOU SAID ON DIRECT, JUST OUR LAST
19 TOPIC HERE BEFORE LUNCH, IF IT WERE DETERMINED THAT YOU
20 NEEDED TO SEEK PERMISSION TO USE SOMETHING ON ERES, THAT YOU
21 WOULD HAVE TO CONSIDER YOUR OPTIONS AS TO WHAT YOU WOULD DO IN
22 THAT SITUATION, IS THAT ROUGHLY ACCURATE?

23 A. PLEASE RESTATE THE QUESTION.

24 Q. YEAH, I WANT TO MAKE SURE I UNDERSTOOD WHAT YOU WERE
25 SAYING. IF IT WERE DETERMINED THAT YOUR ERES POSTINGS WERE

1 WITHOUT PERMISSION, THEY WEREN'T FAIR USE, I THINK YOU SAID
2 YOU WOULD HAVE TO CONSIDER YOUR OPTIONS ABOUT WHAT TO DO,
3 CORRECT?

4 A. YES.

5 Q. ONE YOU SAID MIGHT BE TO PLACE IT ON HARD COPY RESERVE?

6 A. YES, DESPITE, NOTWITHSTANDING THE LESS ATTRACTIVE
7 ASPECTS OF THAT.

8 Q. AND I THINK ANOTHER OPTION YOU SAID WOULD BE TO LOOK
9 FOR SOME OTHER CHAPTERS THAT MIGHT, YOU KNOW, FIT THE BILL
10 RATHER THAN THE CHAPTER YOU WANTED TO USE?

11 A. OR ARTICLES.

12 Q. NOW, IF IT WERE POSSIBLE A PERMISSION FEE WOULD BE
13 PAID AND CHARGED DIRECTLY TO STUDENTS THROUGH THEIR SCHOOL
14 ACCOUNT OR SOMETHING LIKE THAT, YOU WOULD NOT OBJECT IN
15 PRINCIPLE TO DOING SO, CORRECT?

16 A. NOT IN PRINCIPLE.

17 Q. IT WOULD DEPEND ON THE FEE?

18 A. IT WOULD DEPEND ON THE FEE, THE EASE OF ACCESS, AND
19 OTHER PRACTICAL CONSIDERATIONS THAT OVERALL, AGAIN, WHAT
20 EFFECT IT WOULD HAVE ON THE LIKELIHOOD THAT THEY WOULD ACCESS
21 THE MATERIAL.

22 Q. NOW PLAINTIFFS HAVE CALCULATED HERE, I WILL REPRESENT
23 TO YOU, THAT THE COST FOR THE HOLSTI CHAPTER WE HAVE BEEN
24 TALKING ABOUT HERE WOULD BE \$4.56 PER STUDENT TO LICENSE THAT
25 CHAPTER. WITH THAT FIGURE IN MIND, IS YOUR ANSWER THE SAME?

1 IN OTHER WORDS, WOULD YOU OBJECT IN PRINCIPLE TO STUDENTS
2 PAYING \$4.56 FOR THAT HOLSTI CHAPTER?

3 A. I WOULD PREFER TO HAVE A BETTER SENSE OF THE STUDENT
4 PERSPECTIVE ON THAT BEFORE ANSWERING THE QUESTION.

5 Q. BUT YOU WOULD CONSIDER IT IF THE STUDENTS WERE --

6 A. YES.

7 Q. AND I TAKE IT THEN IF THERE WERE A FUND PROVIDED BY THE
8 UNIVERSITY TO COVER PERMISSION FEES OF THIS SORT THAT YOU
9 WOULDN'T OBJECT IN PRINCIPLE TO TAPPING INTO A FUND LIKE THAT
10 TO PROVIDE THE READING TO YOUR STUDENTS, CORRECT?

11 A. THAT MIGHT BE ONE GOOD WAY TO SOLVE THE PROBLEM.

12 MR. LARSON: I HAVE NO MORE QUESTIONS, YOUR HONOR.

13 THE COURT: SHALL THE WITNESS BE EXCUSED?

14 MS. MOFFIT: I HAVE A FEW BRIEF QUESTIONS, YOUR
15 HONOR.

16 THE COURT: VERY QUICKLY.

17 REDIRECT EXAM

18 BY MS. MOFFIT:

19 Q. PROFESSOR DUFFIELD, HAVE YOU EVER USED COURSEPACKS FOR
20 YOUR POLI SCI 8470 COURSE?

21 A. I DON'T RECALL DOING SO. I DON'T THINK I EVER HAVE.

22 Q. NOW, MR. LARSON DIRECTED YOUR ATTENTION TO FACTOR TWO
23 AND FACTOR THREE IN YOUR CHECKLIST. AND I BELIEVE MADE THE
24 POINT THAT YOU HAVE NEVER FILLED OUT A CHECKLIST FOR OR NEVER
25 MARKED ANY OF THE BOXES ON THE RIGHT HAND SIDE FOR FACTOR TWO

1 AND FACTOR THREE, CORRECT, FOR ANY OF THE WORKS YOU HAVE
2 ASSIGNED?

3 A. I DON'T RECALL EVER DOING SO. I THINK THE TYPES OF
4 WORK I ASSIGN WOULD NOT REQUIRE CHECKING ANY OF THOSE BOXES.

5 Q. AND YOU WERE SAYING THE TYPES OF WORKS THAT YOU
6 ASSIGNED WOULDN'T REQUIRE SELECTING THESE BOXES, ARE YOU
7 REFERRING TO THE TYPES OF WORKS YOU ASSIGN FOR YOUR COURSES
8 YOU TEACH AT GEORGIA STATE?

9 A. WELL, I AM THINKING OF THIS COURSE IN PARTICULAR OR
10 MAYBE SIMILAR GRADUATE COURSES.

11 Q. SO, FOR EXAMPLE, YOU DON'T ASSIGN HIGHLY CREATIVE WORKS
12 AS READINGS FOR YOUR STUDENTS TO READ FOR YOUR CLASSES; IS
13 THAT CORRECT?

14 MR. LARSON: OBJECTION, LEADING.

15 THE WITNESS: CERTAINLY NOT DESCRIBED AS THE EXAMPLES
16 HERE.

17 THE COURT: JUST A MOMENT.

18 MR. LARSON: OBJECTION, LEADING.

19 THE COURT: SUSTAINED.

20 BY MS. MOFFIT:

21 Q. HAVE YOU EVER FILLED OUT A CHECKLIST, PROFESSOR
22 DUFFIELD, FOR READING YOU HAVE ASSIGNED IN YOUR CLASS THAT WAS
23 HIGHLY CREATIVE WORK?

24 A. I DON'T THINK I HAVE. I DON'T RECALL.

25 Q. IS IT YOUR PRACTICE, PROFESSOR DUFFIELD, TO ASSIGN

1 CONSUMABLE WORKS AS READINGS TO YOUR STUDENTS IN YOUR POLI SCI
2 COURSES?

3 A. NOT AS SUGGESTED BY THE WORDS, WORKBOOKS, AND TEXTS.

4 MS. MOFFIT: NO FURTHER QUESTIONS.

5 THE COURT: YOU ARE EXCUSED, SIR. THANK YOU. WE
6 WILL BE IN RECESS FOR LUNCH UNTIL 1:30.

7 (WHEREUPON, A LUNCH RECESS WAS HELD.)

8 THE COURT: YOU MAY PROCEED.

9 MR. SCHAEZEL: OUR NEXT WITNESS, YOUR HONOR, WILL BE
10 MS. LAURA BURTLE.

11 THE CLERK: RAISE YOUR RIGHT HAND TO BE SWORN,
12 PLEASE.

13 LAURA BURTLE, HAVING BEEN FIRST DULY SWORN,
14 TESTIFIED AS FOLLOWS:

15 THE CLERK: BE SEATED AND STATE YOUR FULL NAME FOR
16 THE RECORD AND SPELL YOUR LAST NAME PLEASE.

17 THE WITNESS: LAURA GENEVA BURTLE, B-U-R-T-L-E.

18 THE COURT: YOU MAY PROCEED, MS. MOFFITT.

19 DIRECT EXAM

20 BY MS. MOFFIT:

21 Q. HOW LONG HAVE YOU BEEN EMPLOYED BY GEORGIA STATE?

22 A. I HAVE BEEN THERE SINCE 1994.

23 Q. AND WHAT IS YOUR CURRENT TITLE?

24 A. I'M AN ASSOCIATE DEAN RESPONSIBLE FOR SPECIAL
25 COLLECTIONS AND DIGITAL LIBRARY SERVICES.

1 Q. COULD YOU WALK US THROUGH -- WELL, LET ME ASK YOU.
2 SINCE STARTING WITH GEORGIA STATE IN 1994, HAVE YOU ALWAYS
3 BEEN EMPLOYED BY THE LIBRARY AT GEORGIA STATE?

4 A. YES.

5 Q. COULD YOU WALK US THROUGH GENERALLY YOUR EMPLOYMENT
6 HISTORY AS YOU HAVE PROGRESSED THROUGH THE RANKS AT GEORGIA
7 STATE?

8 A. I STARTED OFF AS A REFERENCE AND SYSTEMS LIBRARIAN. I
9 WAS THEN IN CHARGE OF INSTRUCTION. I WAS THEN DEPARTMENT
10 HEAD FOR INFORMATION SERVICES, WHICH WAS THE REFERENCE AREA.
11 THEN I MOVED INTO AN ASSOCIATE UNIVERSITY LIBRARIAN POSITION
12 OVER TECHNICAL SERVICES AND DIGITAL LIBRARY SERVICES. I WAS
13 THEN ASSOCIATE UNIVERSITY LIBRARIAN OVER LEARNING COMMONS,
14 LEARNING AND TECHNOLOGY SPACES, AND DIGITAL LIBRARY SERVICES.
15 AND NOW I AM RESPONSIBLE FOR SPECIAL COLLECTIONS AND DIGITAL
16 LIBRARY SERVICES.

17 Q. HOW LONG HAVE YOU BEEN THE DEAN, THE ASSOCIATE DEAN
18 FOR THE SPECIAL COLLECTIONS AND TECHNOLOGY SERVICES?

19 A. SINCE MAY 2010.

20 Q. AND BEFORE THAT YOU WERE THE ASSOCIATE LIBRARIAN FOR
21 LEARNING AND TECHNOLOGY SERVICES?

22 A. RIGHT.

23 Q. AND YOU HAD THAT POSITION IN 2009; IS THAT CORRECT?

24 A. THAT'S CORRECT.

25 Q. WHAT WERE YOUR RESPONSIBILITIES IN 2009 AS ASSOCIATE

1 LIBRARIAN FOR LEARNING AND TECHNOLOGY SERVICES?

2 A. I WAS RESPONSIBLE FOR ACCESSING MEDIA SERVICES, WHICH
3 INCLUDES RESERVES FOR THE LEARNING COMMONS, WHICH INCLUDES THE
4 REFERENCE DESK FOR INSTRUCTION, TRAINING IN THE LIBRARY, AND
5 CREATIVE SERVICES IN THE LIBRARY AND DIGITAL LIBRARY SERVICES,
6 WHICH IS WHAT I HAVE BEEN IN SYSTEMS AND THINGS LIKE THAT.

7 Q. YOU MENTIONED ACCESS AND MEDIA SERVICES DEPARTMENT IN
8 YOUR ANSWER AND THAT THEY WERE RESPONSIBLE FOR RESERVES, WHAT
9 DO YOU MEAN BY RESERVES?

10 A. THEY WERE RESPONSIBLE FOR ALL RESERVES, BOTH PRINT
11 RESERVES AND ELECTRONIC RESERVES.

12 Q. WHAT OTHER RESPONSIBILITIES DID THAT DEPARTMENT HAVE IN
13 2009?

14 A. RESPONSIBLE FOR CIRCULATION, CHECKOUT THE BOOKS TO
15 PEOPLE. ALSO RESPONSIBLE FOR MEDIA CENTER, SO FOR THE DVD,
16 CD, ALBUMS.

17 Q. AT SOME POINT IN TIME DID YOU BECOME AWARE THAT THE
18 UNIVERSITY SYSTEM OF GEORGIA ROLLED OUT A NEW COPYRIGHT
19 POLICY?

20 A. YES.

21 Q. WHAT IS YOUR UNDERSTANDING AS TO WHEN THIS NEW
22 COPYRIGHT POLICY WAS ROLLED OUT?

23 A. IT WAS ROLLED OUT IN EARLY 2009.

24 Q. DID YOU BECOME FAMILIAR WITH THE NEW COPYRIGHT POLICY
25 IN EARLY 2009?

1 A. YES.

2 Q. HOW DID YOU BECOME FAMILIAR WITH THE NEW POLICY?

3 A. MY SUPERVISOR WAS ON THE COMMITTEE THAT DEVELOPED THE
4 NEW POLICY.

5 Q. WHO IS YOUR SUPERVISOR?

6 A. NANCY SEAMANS.

7 Q. SHE WAS YOUR SUPERVISOR AT THE TIME IN 2009?

8 A. YES.

9 Q. WERE THERE OTHER WAYS IN WHICH YOU BECAME FAMILIAR WITH
10 THE NEW COPYRIGHT POLICY?

11 A. WELL, ONCE IT WAS IN DRAFT FORM, DEAN SEAMANS GAVE ME
12 A PASSWORD SO I COULD SEE THE PASSWORD OF IT, SEE HOW IT WAS
13 BEING DEVELOPED. THEN ONCE IT WAS MADE OFFICIAL, I WAS
14 IMMEDIATELY FAMILIAR WITH IT, LOOKED AT IT, YES, SIR.

15 Q. DID YOU READ THE NEW COPYRIGHT POLICY ONCE IT WAS
16 ROLLED OUT IN 2009?

17 A. YES.

18 Q. ONCE IT WAS IMPLEMENTED, DID YOU RECEIVE ANY TRAINING
19 REGARDING THE NEW POLICY?

20 A. YES.

21 Q. HOW SOON AFTER THE NEW POLICY WAS IMPLEMENTED DID YOU
22 RECEIVE THIS TRAINING?

23 A. AS SOON AS IT WAS SET UP, TRAINING WAS IMPLEMENTED, SO
24 WITHIN A COUPLE OF WEEKS.

25 Q. WHO SPECIFICALLY PROVIDED THAT TRAINING?

1 A. CYNTHIA HALL IN UNIVERSITY LEGAL.

2 Q. SHE IS IN THE LEGAL DEPARTMENT?

3 A. SHE WAS.

4 Q. HOW LONG ROUGHLY DID THAT TRAINING SESSION LAST?

5 A. I BELIEVE IT WAS A COUPLE OF HOURS.

6 Q. WHO ATTENDED THAT TRAINING?

7 A. MUCH OF THE LIBRARY STAFF, A NUMBER OF THE LIBRARIANS
8 ATTENDED, AS WELL AS EVERYBODY IN THE CIRCULATION ACCESS
9 SERVICES RESERVES DEPARTMENT ATTENDED AS WELL.

10 Q. ROUGHLY, HOW MANY PEOPLE WOULD YOU SAY ATTENDED THAT
11 TRAINING?

12 A. APPROXIMATELY 40, 45, SOMETHING LIKE THAT.

13 Q. AND, GENERALLY, WHAT WAS THE SUBJECT MATTER THAT WAS
14 COVERED DURING THIS TRAINING SESSION?

15 A. THE BULK OF THE TRAINING WAS ABOUT THE NEW POLICY, SO
16 WE WENT THROUGH THE POLICY IN DETAIL, ALL THE DIFFERENT
17 PIECES OF IT, AND SPECIAL ATTENTION WITH THE RESERVES,
18 ELECTRONIC RESERVE SECTION AND FAIR USE CHECKLIST.

19 Q. DID YOU DISCUSS OTHER COPYRIGHT RELATED CONCEPTS DURING
20 THAT TRAINING?

21 A. THERE WAS SOME DISCUSSION OF THE T-CHAT. THERE WAS
22 SOME CONCERN THAT FACULTY WOULD COME TO US WITH QUESTIONS AND
23 WE NEEDED TO AT LEAST KNOW ABOUT OTHER THINGS THAT AFFECT
24 TEACHING.

25 Q. SINCE RECEIVING THAT INITIAL TRAINING AFTER THE POLICY

1 WAS ROLLED OUT IN 2009, HAVE YOU HAD ANY FOLLOW-UP TRAINING
2 ABOUT THE NEW COPYRIGHT POLICY?

3 A. YES.

4 MS. SINGER: OBJECTION TO THE EXTENT IT IS OUTSIDE
5 THE 2009 TIME PERIOD. I OBJECT TO ANY TESTIMONY --

6 MS. MOFFIT: I BELIEVE A FEW DAYS AGO YOU HAD A
7 RULING WITH RESPECT TO 2009 TIME FRAME SUGGESTED THE 2009 TIME
8 FRAME WASN'T LIMITED, WHILE IT MAY HAVE RELATED TO
9 INFRINGEMENT, IT DIDN'T APPLY TO ALL ASPECTS OF THE CASE.

10 THE COURT: I THINK THAT IS TRUE, BUT WHAT I CAN'T
11 TELL AT THIS POINT IS WHETHER ANY SUBSEQUENT TRAINING SHE
12 MIGHT HAVE HAD WOULD BE RELEVANT IN SOME RESPECT TO SOMETHING
13 SHE WOULD BE TESTIFYING ABOUT TODAY. AT THIS POINT IT ISN'T
14 CLEAR TO ME THAT THAT IS WHERE THIS IS GOING.

15 MS. SINGER: SHOULD BE.

16 THE COURT: I THINK COUNSEL IS CORRECT. I THINK
17 COUNSEL IS GENERALLY CORRECT. WE NEED TO STAY WITHIN THE
18 TIME FRAME THAT WE HAVE ALL BEEN TALKING ABOUT.

19 MS. MOFFIT: OKAY. THEN I WILL REPHRASE MY
20 QUESTION.

21 BY MS. MOFFIT:

22 Q. SINCE RECEIVING THE INITIAL TRAINING THAT YOU WERE
23 DISCUSSING, AFTER THE POLICY WAS ROLLED OUT, DID YOU HAVE
24 ANY FOLLOW-UP TRAINING WITHIN THE 2009 TIME FRAME RELATING TO
25 THE NEW COPYRIGHT POLICY?

1 A. TRAINING IS TO ME A FORMAL SETTING. WE HAVE CERTAINLY
2 HAD MANY FOLLOW-UP MEETINGS TO TALK ABOUT HOW WE ARE GOING TO
3 REVISE OUR PROCESSES, OUR FORMS, THE WAY WE HANDLE REQUESTS.
4 MANY OF THOSE DID INVOLVE LEGAL BECAUSE WE WANTED TO MAKE SURE
5 WE WERE ABIDING BY THE POLICY. THEY WEREN'T FORMAL TRAINING,
6 CERTAINLY TALKED ABOUT IT QUITE A BIT AFTER THAT, YES.

7 Q. WHAT PROCESSES AND FORMS WERE YOU REFERRING TO IN YOUR
8 ANSWER WITH RESPECT TO THE DISCUSSIONS THAT YOU WERE HAVING
9 ABOUT THE NEW COPYRIGHT POLICY?

10 A. WELL, THE ERES SYSTEM ITSELF IS NOT RUN BY THE
11 LIBRARY, IT IS THE SUBMITTAL FORMS THAT FACULTY USE TO SUBMIT
12 TO REQUEST SOMETHING TO BE PUT ON THE LIBRARY SERVER. WE HAD
13 TO REINCORPORATE THAT TO MAKE SURE THE INSTRUCTOR COULD CHECK
14 UNDER WHAT CRITERIA THE RESERVE ITEM WAS VALID TO PUT ON THE
15 SYSTEM. THEY NEEDED TO DO A FAIR USE ANALYSIS IF THERE
16 WASN'T A LICENSE OR DIDN'T KNOW COPYRIGHT, AND THEY NEEDED TO
17 INDICATE THAT THEY HAD FOUND USE TO BE FAIR IF THEY WERE
18 REQUESTING IT TO PUT ON AS A DIGITIZED COPY ON RESERVE.

19 Q. FOCUSING AGAIN ON THE 2009 TIME FRAME, DID YOU HAVE ANY
20 MEETINGS OR DISCUSSIONS WITH ANYONE IN THE DEPARTMENTS THAT
21 REPORT TO YOU REGARDING THE NEW COPYRIGHT POLICY?

22 A. YES. AT THAT TIME ACCESS MEDIA SERVICES DID REPORT TO
23 ME AS WELL AS DIGITAL LIBRARY SERVICES. IT WAS WITH THOSE TWO
24 GROUPS AS WELL AS WITH LEGAL THAT ALL OF THOSE FORMS WERE
25 REVISED AND OUR PROCESSES REVISED, AS WELL.

1 Q. HOW FREQUENTLY WOULD YOU SAY YOU HAD THOSE TYPES OF
2 MEETINGS AND DISCUSSIONS IN THE 2009 TIME FRAME WITH YOUR
3 DEPARTMENTS THAT REPORTED TO YOU?

4 A. THEY WERE PRETTY REGULAR. WHEN WE WERE REVISING THE
5 FORMS AND PROCESSES PROBABLY AT LEAST WEEKLY AFTER THEY WERE
6 IN PLACE, PROBABLY EVERY COUPLE OF WEEKS WE WOULD TOUCH BASE
7 AND CHECK AND SEE HOW THINGS WERE GOING, SO, REGULARLY.

8 Q. AND IN 2009, IF YOU HAD QUESTIONS REGARDING THE NEW
9 COPYRIGHT POLICY AND ITS IMPLEMENTATION, WITH WHOM WOULD YOU
10 CONSULT REGARDING THOSE QUESTIONS?

11 A. I THINK I WOULD HAVE CONTACTED LEGAL.

12 Q. WHAT WAS YOUR ROLE WITH RESPECT TO ERESERVE SYSTEM IN
13 THE 2009 TIME FRAME?

14 A. THE AREA THAT ACTUALLY MANAGES THE SYSTEM REPORTED UP
15 TO ME.

16 Q. AS A RESULT OF YOUR ROLE AND RESPONSIBILITY OVER THAT
17 GROUP, DO YOU HAVE AN UNDERSTANDING OF HOW THE ERESERVES
18 SYSTEM WAS ADMINISTERED AND USED AT GEORGIA STATE IN THE 2009
19 TIME FRAME?

20 A. YES.

21 Q. HOW DID THE PROFESSORS GENERALLY USE THE ERES SYSTEM IN
22 THE 2009 TIME FRAME?

23 A. THEY USED THE SYSTEM TO MAKE READINGS AVAILABLE TO
24 THEIR STUDENTS. THEY WOULD MAKE REQUESTS THROUGH THE
25 LIBRARY. THEY COULD MAKE REQUESTS FOR A PIECE OF BOOK TO BE

1 DIGITIZED AND PUT ON RESERVE. ALSO MAKE REQUESTS FOR LINKS
2 TO LICENSED JOURNAL ARTICLES OR BOOKS PUT ON ERESERVE. HAVE
3 A FULL BOOK PUT ON PRINT RESERVE, WE DID IT ON ERES SYSTEM SO
4 THE STUDENTS COULD FIND IT.

5 Q. OTHER TYPES OF MATERIALS OTHER THAN READING EXCERPTS,
6 FOR EXAMPLE, THAT A PHOTOGRAPH REQUEST BE LOADED TO ERES IN
7 THE 2009 TIME FRAME?

8 A. QUITE A NUMBER OF PROFESSORS WOULD PUT THEIR OWN CLASS
9 NOTES OR OLD EXAMS FOR THEIR STUDENTS TO USE ON IT AS WELL.

10 Q. HOW WAS ACCESS TO ERES RESTRICTED?

11 A. FOR A DOCUMENT TO BE ACCESSED, IT HAS TO BE ON A COURSE
12 PAGE. THE COURSE PAGE HAS A VISIBILITY PERIOD. SO FOR THAT
13 PERIOD, A PASSWORD IS GENERATED BY THE SYSTEM THAT THE LIBRARY
14 GIVES TO THE INSTRUCTOR OF THAT SECTION. SO ONLY THE
15 STUDENTS IN THAT SECTION GET THAT PASSWORD AND THEY ACCESS IT
16 THAT WAY.

17 Q. HOW DID THE SYSTEM GENERATE THESE PASSWORDS?

18 A. RANDOMLY GENERATES THEM.

19 Q. WHAT TYPE OF PASSWORD WAS IT?

20 A. A NONSENSE LETTERS, NUMBERS, I THINK SIX CHARACTERS.

21 Q. ONCE THE COURSE WAS COMPLETED AT THE END OF A SEMESTER,
22 DID THE STUDENTS OR PROFESSOR OF THAT COURSE CONTINUE TO HAVE
23 ACCESS TO THE COURSE PAGES IN THE ERESERVES?

24 A. NO.

25 Q. WHAT HAPPENED TO THOSE MATERIALS, THOSE COURSE PAGES

1 THAT WERE NO LONGER ACCESSIBLE?

2 A. ONCE THEY ARE NO LONGER ACCESSIBLE, THEY WENT INTO
3 ARCHIVE.

4 Q. WHAT DOES THIS ARCHIVE CONTAIN?

5 A. RIGHT NOW IT CONTAINS EVERYTHING THAT HAS BEEN ON
6 RESERVES FOR YEARS. I HAVEN'T BEEN ABLE TO PURGE IT DUE TO
7 THIS LITIGATION.

8 Q. WHEN YOU SAY YOU "HAVEN'T BEEN ABLE TO PURGE IT DUE TO
9 THE LITIGATION" --

10 A. THERE WAS A DISCOVERY ORDER THAT DID NOT ALLOW ME TO
11 DELETE ANYTHING IN THAT SYSTEM.

12 Q. NOW WOULD YOU AGREE THE NEW COPYRIGHT POLICY REQUIRES
13 THE PROFESSOR TO COMPLETE A FAIR USE ANALYSIS FOR MATERIALS
14 THEY WANT TO SUBMIT TO ERES?

15 MS. SINGER: OBJECTION, LEADING.

16 THE COURT: SUSTAINED.

17 BY MS. MOFFIT:

18 Q. WHAT DOES THE COPYRIGHT POLICY, THE NEW COPYRIGHT
19 POLICY THAT HAS BEEN IMPLEMENTED TO GEORGIA STATE, REQUIRE OF
20 THE PROFESSOR BEFORE THEY SUBMIT MATERIALS OR REQUEST THAT
21 MATERIALS BE LOADED TO THE ERESERVES SYSTEM?

22 A. THE POLICY REQUIRES THEY DO A FAIR USE ANALYSIS.

23 Q. UNDER THE POLICY, DOES THE LIBRARY REVIEW EACH
24 PROFESSOR'S FAIR USE ANALYSIS FOR A PARTICULAR READING THAT HE
25 OR SHE WANTS LOADED TO ERESERVES?

1 A. NO.

2 Q. WHY NOT?

3 A. THE LIBRARY DOES NOT KNOW WHAT THE USE OF THE MATERIAL
4 IS. THAT IS SOMETHING THE PROFESSOR KNOWS BEST. THEY KNOW
5 THE IMPORTANCE, HOW THEY WILL USE THE MATERIAL, THE LIBRARY
6 DOES NOT KNOW THAT.

7 Q. DOES THAT MEAN THE LIBRARY WILL AUTOMATICALLY OR IN THE
8 2009 TIME FRAME DOES THAT MEAN THE LIBRARY WOULD AUTOMATICALLY
9 LOAD A READING IN TO ERESERVE FOR THE PHOTOGRAPH ONCE IT
10 RECEIVED THE PROFESSOR'S REQUEST INDICATING THAT HE OR SHE HAD
11 CONDUCTED A FAIR USE ANALYSIS?

12 A. I WOULDN'T SAY AUTOMATICALLY. I MEAN, THEY WOULD
13 LOOK AND SEE IF THIS FELT LIKE IT FELL WITHIN THE NORM OF THE
14 THINGS THAT WERE ON RESERVE. IF THERE WAS SOMETHING THAT WAS
15 A LARGE PORTION OR IT WAS A NOVEL OR SOMETHING THAT WAS
16 OUTSIDE WHAT THE NORM WAS FOR ERESERVES, THEY WOULD FLAG THAT
17 AND FOLLOW UP WITH EITHER THE PROFESSOR OR LEGAL TO SEE IF
18 THERE NEEDED TO BE FURTHER DISCUSSION OF THE ANALYSIS.

19 WE ALSO WILL CHECK IF IT IS SOMETHING NEW GOING ON RESERVE
20 THAT IS A BOOK, WE WILL CHECK TO SEE IF WE HAVE A LICENSED
21 COPY OF THE BOOK. WE HAVE A NUMBER OF ELECTRONIC BOOKINGS,
22 WE WOULD CHECK THAT BEFORE WE DIGITIZED ANYTHING.

23 Q. IN YOUR RESPONSE YOU WERE SAYING "THEY WOULD," THEY
24 WOULD CHECK TO SEE IF THINGS WERE OUT OF THE NORM, WHO IS
25 "THEY"?

1 A. THE LIBRARY RESERVE STAFF.

2 Q. WHAT WERE THE TYPES OF THINGS THAT THE LIBRARY RESERVE
3 STAFF WOULD REVIEW OR CONSIDER TO DETERMINE WHETHER OR NOT A
4 PARTICULAR REQUEST THAT SOMETHING BE LOADED TO ERES WAS OUT OF
5 THE NORM?

6 A. MAJOR THINGS THAT WOULD COME UP FOR THEM WAS IT WAS A
7 VERY LONG EXCERPT, IT WAS FROM A NOVEL, BASICALLY, OR PROSE
8 OF SOME SORT. ALSO, IF AN INSTRUCTOR IS CONTINUALLY ASKING
9 THEM A LOT OF QUESTIONS, DOESN'T REALLY SEEM TO UNDERSTAND
10 THE ANALYSIS THEY ARE DOING, IT IS UNCERTAIN ABOUT WHAT THEY
11 ARE DOING, THAT IS SOMETHING WHERE THEY WILL FOLLOW UP AND
12 REFER THEM TO LEGAL FOR FURTHER GUIDANCE ON HOW TO DO THE
13 ANALYSIS.

14 Q. AND WHAT WOULD HAPPEN IN THOSE CIRCUMSTANCES WHEN A
15 LIBRARY RESERVE DESK DECIDED OR DETERMINED THAT SOMETHING MAY
16 BE NOT QUITE IN THE NORM WITH RESPECT TO A PARTICULAR REQUEST
17 THAT SOMETHING BE LOADED TO ERES?

18 MS. SINGER: YOUR HONOR, I WOULD OBJECT. FIRST OF
19 ALL, I WANT TO MAKE SURE WE ARE STILL IN 2009, BUT ALSO THESE
20 ARE HYPOTHETICALS WE ARE GETTING IN TO WHAT OTHER PEOPLE MIGHT
21 HAVE DONE.

22 THE COURT: WHAT IS YOUR TIME FRAME?

23 MS. MOFFIT: TIME FRAME IS INTENDED TO -- LIMITED TO
24 2009 TIME FRAME.

25 THE COURT: OVERRULED.

1 THE WITNESS: ASK THE QUESTION AGAIN.

2 BY MS. MOFFIT:

3 Q. BACK IN 2009, WHAT WOULD HAPPEN IN THOSE
4 CIRCUMSTANCES? WHAT DID THE LIBRARY DO IN THOSE CIRCUMSTANCES
5 WHEN IT DETERMINED THAT SOMETHING WAS OUT OF THE NORM WITH
6 RESPECT TO A PARTICULAR ERES REQUEST?

7 A. WELL, INITIALLY, WHEN THE POLICY WAS FIRST IN PLACE AND
8 THE FACULTY WERE FIGURING IT OUT, WE WOULD -- THEY WOULD CALL
9 ME AND I WOULD REFER THEM TO LEGAL. AFTER THAT HAPPENED A
10 COUPLE OF TIMES THEY STARTED REFERRING PEOPLE TO LEGAL
11 DIRECTLY.

12 Q. DO YOU RECALL EVER HAVING BEEN CONTACTED BY YOUR STAFF
13 SINCE THE NEW POLICY WAS IMPLEMENTED IN 2009? FOCUSING ON THE
14 2009 TIME FRAME, LET ME REPHRASE THE QUESTION. FOCUSING ON
15 THE 2009 TIME FRAME, DO YOU RECALL EVER HAVING BEEN CONTACTED
16 BY YOUR STAFF REGARDING A POTENTIAL ISSUE THAT SEEMED TO BE
17 OUT OF THE NORM WITH RESPECT TO AN ERES REQUEST?

18 A. I CAN THINK OF ONE SPECIFIC EXAMPLE IS THAT --

19 Q. WHAT IS THAT EXAMPLE YOU CAN THINK OF?

20 MS. SINGER: OBJECTION TO THE EXTENT THESE ARE
21 OUTSIDE THE WORKS AT ISSUE HERE.

22 THE COURT: OVERRULED.

23 THE WITNESS: IT WAS A BIG PIECE OF A BOOK. IT WAS
24 A HUGE EXCERPT, MOST OF THE BOOK.

25

1 BY MS. MOFFITT:

2 Q. AND IN THAT SITUATION, WHAT DID YOU DO WITH RESPECT TO
3 THAT PARTICULAR ISSUE?

4 A. I ASKED LEGAL TO CONTACT THE FACULTY MEMBER AND DISCUSS
5 THEIR DETERMINATION THAT IT WAS FAIR USE TO PUT THAT ON
6 RESERVE.

7 Q. NOW, IF THE LIBRARY IS NEEDED TO SCAN PARTICULAR
8 EXCERPTS OF A BOOK, WHAT PORTION OF THE BOOK DOES THE LIBRARY
9 SCAN FOR LOADING TO ERESERVES?

10 A. WELL, IT SCANS THE PORTION, THE EXCERPT THAT THE
11 INSTRUCTOR HAS REQUESTED, AS WELL AS THE TITLE PAGE AND THE
12 COPYRIGHT PAGE.

13 Q. ONCE A DOCUMENT IS SCANNED AND LOADED IN TO ERES, HOW
14 IS THAT DOCUMENT MADE ACCESSIBLE TO ERES USERS?

15 A. THE DOCUMENT HAS TO BE PUT ON A COURSE PAGE SO THE PAGE
16 IS FOR A PARTICULAR COURSE, PARTICULAR SEMESTER. AND ONCE
17 IT IS PUT ON THAT PAGE AND IT HAS BEEN MADE VISIBLE AND THE
18 DATE VISIBILITY FIELDS WHICH DEFINE THE SEMESTER, THE
19 PASSWORD IS GIVEN TO THE INSTRUCTOR, WHO THEN GIVES IT TO THE
20 STUDENTS, AND THEN THEY CAN USE THAT PASSWORD TO ACCESS THE
21 DOCUMENTS.

22 Q. IN THE 2009 TIME FRAME, WOULD THE ERES DOCUMENT BE
23 ACCESSIBLE TO STUDENTS IN A COURSE IF THE DOCUMENT WAS NOT
24 ASSOCIATED WITH THE GENERAL COURSE PAGE?

25 A. NO, IT HAS TO BE ON A COURSE PAGE. HAS TO BE ON THE

1 COURSE PAGE THAT THEY HAVE THE PASSWORD FOR.

2 Q. TO WHAT EXTENT DOES THE ERES SYSTEM HAVE THE ABILITY TO
3 TRACK THE NUMBER OF TIMES A DOCUMENT HAS BEEN ACCESSED BY ERES
4 USERS?

5 A. THERE IS A HIT COUNT REPORT THAT THE SYSTEM CAN
6 GENERATE THAT WILL TRACK THE NUMBER OF TIMES A DOCUMENT -- A
7 LINK TO THE DOCUMENT HAS BEEN CLICKED ON.

8 Q. AND SPECIFICALLY, DO YOU KNOW HOW THE ERES SYSTEM
9 TRACKS THE NUMBER OF TIMES THE DOCUMENT HAS BEEN ACCESSED IN
10 THIS SYSTEM?

11 A. I DON'T KNOW THE TECHNOLOGY, BUT IT IS A CLICK ON THE
12 ACTUAL DOCUMENT LINK, NOT ON THE COURSE PAGE, BUT ON THE
13 DOCUMENT ITSELF.

14 MS. MOFFIT: YOUR HONOR, MAY I APPROACH?

15 THE COURT: YOU MAY.

16 BY MS. MOFFIT:

17 Q. MS. BURTLE, IN YOUR NOTEBOOK THAT I HAVE HANDED YOU,
18 THERE ARE THREE DOCUMENTS LABELED JOINT EXHIBIT -- JOINT
19 TRIAL EXHIBIT ONE, JOINT TRIAL EXHIBIT TWO AND JOINT TRIAL
20 EXHIBIT THREE. CAN YOU TELL US WHAT JOINT TRIAL EXHIBIT ONE
21 IS?

22 A. IT IS A HIT COUNT REPORT FOR MAYMESTER 2009.

23 Q. AND WHAT IS JOINT TRIAL EXHIBIT TWO?

24 A. IT IS A HIT COUNT REPORT FOR SUMMER 2009.

25 Q. AND JOINT TRIAL EXHIBIT THREE?

1 A. IT IS A HIT COUNT REPORT FOR FALL 2009.

2 Q. NOW, EACH OF THESE DOCUMENTS HAVE COLUMNS GOING ACROSS
3 THE TOP ENTITLED, "DOCUMENT, COURSE RESERVE PAGE, DATE
4 RANGE, HIT COUNT AND PERCENT OF TOTAL," DO YOU SEE THAT?

5 A. WE ARE.

6 Q. CAN YOU EXPLAIN TO US WHAT THE "DOCUMENT" COLUMN
7 INDICATES?

8 A. "DOCUMENT" COLUMN IS A LIST OF THE ACTUAL READING. SO
9 IN SOME CASES, THAT SECOND ONE DOWN IT IS ACTUALLY THE WHOLE
10 BOOK, THAT IS A BOOK ON PRINT RESERVE, ITS CALL NUMBERS ARE
11 THERE. SECOND IS A JOURNAL ARTICLE. FURTHER DOWN THERE IS AN
12 EXCERPT FROM A CAMBRIDGE COMPANION, SO IT IS WHATEVER THE
13 ACTUAL READING IS.

14 Q. WHEN YOU SAY THE "ACTUAL READING," IS THAT THE READING
15 THAT HAS BEEN LOADED TO ERESERVES?

16 A. YES, THE READING INSTRUCTOR REQUESTED AND PUT ON
17 RESERVES.

18 Q. IN THE CASE OF JOINT EXHIBIT ONE, WHICH IS WHAT WE ARE
19 LOOKING AT, THAT IS THE DOCUMENT THAT IS IN ERESERVES FOR
20 MAYMESTER 2009?

21 A. YES.

22 Q. WHAT ABOUT THE COLUMN MARKED "COURSE RESERVE PAGE,"
23 WHAT DOES IT REFLECT?

24 A. THE PAGE THE DOCUMENT WAS MADE ACCESSIBLE FROM. A
25 STUDENT WOULD GO TO COURSE PAGE FOR THEIR COURSE, THAT IS

1 WHERE THAT DOCUMENT WOULD BE LISTED.

2 Q. AND "DATE RANGE," WHAT DOES THAT COLUMN REFLECT?

3 A. THAT IS THE DATE FOR THE HIT COUNT REPORT. SO IT WAS
4 LOOKING FOR HITS DURING THAT RANGE AND THAT RANGE IS
5 MAYMESTER.

6 Q. SO, FOR EXAMPLE, ON THE FIRST CELL ON THE FIRST PAGE OF
7 JOINT TRIAL EXHIBIT ONE, DATE RANGE MAY 10, 2009 THROUGH
8 JUNE 8, 2009, THE REPORT IDENTIFIED THE HITS THAT OCCURRED
9 FOR THAT DOCUMENT WITHIN THAT TIME PERIOD?

10 A. CORRECT.

11 Q. WHAT ABOUT "HIT COUNT," WHAT DOES THAT COLUMN REFLECT?

12 A. THAT IS THE NUMBER OF TIMES THAT DOCUMENT WAS ACCESSED
13 DURING THAT TIME PERIOD.

14 THE COURT: WOULD IT BE CORRECT THAT THE UPLOAD DOES
15 NOT COUNT AS A HIT?

16 THE WITNESS: THE UPLOAD IS NOT A HIT. CHECKING TO
17 SEE IF IT WAS CORRECTLY UPLOAD IS A HIT.

18 BY MS. MOFFIT:

19 Q. "PERCENT OF TOTAL," WHAT DOES THAT COLUMN REFLECT?

20 A. THAT IS FOR ALL OF THE HITS DURING THAT TIME PERIOD,
21 WHAT PERCENT OF THE TOTAL THAT PARTICULAR DOCUMENT REPRESENTS.

22 Q. NOW JOINT TRIAL EXHIBIT TWO AND THREE HAVE SIMILAR --

23 THE COURT: JUST TO MAKE SURE I UNDERSTAND. LIKE
24 THAT .02 PERCENT, THAT IS THE PERCENTAGE OF HITS REPRESENTED
25 BY THE HITS TO THE BROWN DOCUMENT OUT OF THE TOTAL OF ALL

1 DOCUMENTS THAT WERE HIT UPON?

2 THE WITNESS: HIT UPON DURING THAT TIME PERIOD, YES.

3 THE COURT: ALL RIGHT.

4 BY MS. MOFFIT:

5 Q. NOW, THE JOINT TRIAL EXHIBITS TWO AND THREE HAVE
6 COLUMNS THAT ARE LABELED EXACTLY THE SAME; IS THAT CORRECT?

7 A. YES.

8 Q. AND DO THE COLUMNS IN THOSE EXHIBITS, ARE THEY THE
9 SAME? DO THEY INDICATE THE SAME INFORMATION AS YOU JUST
10 DESCRIBED WITH RESPECT TO JOINT TRIAL EXHIBIT ONE?

11 A. YES.

12 Q. AND BASED ON YOUR RULES AND RESPONSIBILITIES IN 2009
13 WITH RESPECT TO THE ERES SYSTEM, ARE YOU FAMILIAR WITH THE
14 HIT COUNT REPORTS IN REVIEWING THE HIT COUNT REPORTS IN THE
15 CONTEXT OF YOUR ROLE?

16 A. YES. IN THE CONTEXT OF MY ROLE AND THE CONTEXT OF
17 THIS LITIGATION, PARTICULARLY.

18 MS. MOFFIT: YOUR HONOR, WE MOVE INTO EVIDENCE JOINT
19 TRIAL EXHIBITS 1, 2 AND 3.

20 MS. SINGER: I THINK THEY ARE ALREADY IN. OBVIOUSLY
21 WE HAVE NO OBJECTION.

22 THE CLERK: THEY ARE.

23 THE COURT: APPARENTLY THEY ARE IN.

24 MS. MOFFIT: SORRY. I DIDN'T SEE THAT.

25

1 BY MS. MOFFIT:

2 Q. BASED ON YOUR EXPERIENCE WITH THE ERES SYSTEM, WHAT
3 DOES A RELATIVELY LOW NUMBER OF HIT COUNTS SUGGEST TO YOU
4 ABOUT HOW FREQUENTLY A DOCUMENT WAS ACCESSED IN ERESERVES?

5 A. WELL, LOW NUMBER OF HITS MEANS IT WAS NOT FREQUENTLY
6 ACCESSED.

7 Q. SO, LET ME DIRECT YOUR ATTENTION THEN PERHAPS TO A
8 SPECIFIC EXAMPLE IN THIS REPORT. IF YOU LOOK AT PAGE 42 OF
9 JOINT TRIAL EXHIBIT 1, THERE IS AN ENTRY ON THIS PARTICULAR
10 PAGE FOR A WORK ENTITLED "NEWSPAPERS," IT IS THIRD FROM THE
11 TOP.

12 A. I SEE IT.

13 Q. CAN YOU EXPLAIN TO US WHAT APPEARS IN THIS ROW FOR THAT
14 THIRD ITEM IN THIS REPORT ON THIS PAGE?

15 A. UNDER DOCUMENTS DESCRIBING WHAT THE READING IS, SO IT
16 IS A SELECTION FROM A BOOK CALLED "NEWSPAPERS" BY GRUNDY,
17 PUBLISHED BY OXFORD, PAGES 30 TO 58. THE NEXT COLUMN OVER
18 IT SHOWS THE CLASS, THE COURSE PAGE THAT IT WAS ON, SO THE
19 COURSE THAT IT WAS ASSOCIATED WITH WHICH WAS COURSE BY MURPHY
20 LINGUISTICS, 8480. THE NEXT COLUMN IS DATE RANGE THAT THE
21 HITS WERE DONE DURING, SO THE MAYMESTER. NUMBER OF HITS
22 WHICH IS THREE FOR THAT ONE AND THREE IS .06 PERCENT OF THE
23 TOTAL HITS FOR THAT TIME PERIOD.

24 Q. WHAT DOES THIS HIT COUNT OF THREE SUGGEST TO YOU WITH
25 RESPECT TO THE DOCUMENT THAT WAS ACCESSED?

1 A. WELL, IT WASN'T ACCESSED MUCH. WHEN THE LIBRARY STAFF
2 PUTS IT ON THE COURSE PAGE, THEY ALWAYS CLICK ON IT TO MAKE
3 SURE IT IS THE RIGHT DOCUMENT AND EVERYTHING LOADED CORRECTLY,
4 THAT WILL BE ONE. ANY TIME IT CLICKS ON ITS COUNT, IT
5 DOESN'T KNOW WHO IS CLICKING ON IT. ONCE THE COURSE PAGE IS
6 SET UP, THEY SEND IT TO THE PROFESSOR TO MAKE SURE, SO THE
7 PROFESSOR CAN REVIEW IT. THEY USUALLY CLICK ON THINGS, SO
8 THAT IS TWO. DURING THIS TIME PERIOD, ALL OF THE LAWYERS IN
9 THIS ROOM I THINK HAD ACCESS TO THE SYSTEM AND IN MANAGER ROLE
10 SO THEY COULD LOOK WHAT WAS ON THERE, THAT COULD BE A THIRD
11 HIT. IT COULD BE ONE STUDENT LOOKED AT IT, IT COULD BE A
12 STAFF MEMBER LOOKED ON IT AGAIN, I CAN'T SAY FOR CERTAIN, BUT
13 IT IS A VERY LOW NUMBER.

14 MS. SINGER: I MOVE TO STRIKE ALL OF THAT AS
15 SPECULATION, YOUR HONOR.

16 MS. MOFFIT: BASED ON YOUR EXPERIENCE IN THE LIBRARY
17 WORKING AND REVIEWING THESE HIT REPORTS --

18 THE COURT: I THINK ALL THE WITNESS IS DOING IS
19 EXPLAINING THE VARIOUS CATEGORIES OF USERS THAT COULD BE IN
20 THAT, I THINK IT IS FAIR AND RESPONSIVE. I WILL OVERRULE
21 THE OBJECTION AND THE MOTION.

22 MS. MOFFIT: THANK YOU, YOUR HONOR.

23 BY MS. MOFFIT:

24 Q. BASED ON YOUR EXPERIENCE REVIEWING THESE TYPES OF
25 REPORTS AND DEALING WITH THE ERES SYSTEM, DOES A HIT COUNT OF

1 THREE SUGGEST TO YOU ANYTHING ABOUT WHETHER STUDENTS OF THIS
2 COURSE LIKELY ACCESS THIS PARTICULAR DOCUMENT?

3 A. IT IS UNLIKELY.

4 MS. SINGER: OBJECTION, LACK OF FOUNDATION.

5 THE COURT: OVERRULED.

6 THE WITNESS: UNLIKELY.

7 BY MS. MOFFIT:

8 Q. BASED ON YOUR EXPERIENCE WITH ERES SYSTEM AND YOUR
9 REVIEW OF HIT COUNTS LIKE IN JOINT TRIAL EXHIBITS 1, 2 AND 3,
10 DO YOU HAVE A VIEW ABOUT THE NUMBER OF STUDENTS THAT ACCESS
11 ERES MATERIALS GENERALLY COMPARED TO THE STUDENTS THAT ARE
12 ACTUALLY ENROLLED IN A GIVEN CASE?

13 MS. SINGER: OBJECTION, LACK OF FOUNDATION.

14 THE COURT: LET ME HEAR THE QUESTION AGAIN.

15 BY MS. MOFFIT:

16 Q. BASED ON YOUR EXPERIENCE WITH THE ERES SYSTEM AND YOUR
17 EXPERIENCE REVIEWING REPORTS LIKE JOINT TRIAL EXHIBIT 1, 2
18 AND 3, THE HIT COUNT REPORTS, DO YOU HAVE A VIEW ABOUT THE
19 NUMBER OF STUDENTS THAT ACCESS ERES MATERIALS GENERALLY AS
20 COMPARED TO THE NUMBER OF STUDENTS THAT MIGHT BE ENROLLED IN A
21 CLASS?

22 MS. SINGER: I DON'T THINK THERE IS ANY EVIDENCE
23 ABOUT WHAT SHE KNOWS ABOUT HOW MANY STUDENTS ARE ENROLLED IN
24 ANY PARTICULAR CLASS.

25 THE COURT: THE QUESTION IS SO GENERAL I WILL

1 SUSTAIN THE OBJECTION.

2 BY MS. MOFFIT:

3 Q. BASED ON YOUR EXPERIENCE WITH ERES AND HIT COUNT
4 REPORTS, HOW OFTEN DO STUDENTS ACCESS MATERIALS POSTED IN
5 ERESERVES IN THE 2009 TIME FRAME?

6 MS. SINGER: SAME OBJECTION, YOUR HONOR.

7 THE COURT: I WILL ALLOW IT.

8 THE WITNESS: I AM GOING TO SAY I CAN'T SAY HOW OFTEN
9 STUDENTS ACCESS IT AS A WHOLE, I CAN SAY MANY DOCUMENTS ARE
10 ALMOST NEVER ACCESSED BY STUDENTS. SO, IF THERE ARE A
11 HUNDRED DOCUMENTS ON A REPORT, THERE COULD BE 50 OF THEM THAT
12 HAVE ONE, TWO COUNTS, HIT COUNTS, MANY DOCUMENTS ARE NOT
13 ACCESSED.

14 BY MS. MOFFITT:

15 Q. IN ERESERVES?

16 A. IN ERESERVES.

17 MS. MOFFIT: ONE MOMENT, YOUR HONOR.

18 BY MS. MOFFIT:

19 Q. YOU HAD MENTIONED EARLIER IN THE 2009 TIME FRAME YOU
20 WERE RESPONSIBLE FOR THE DEPARTMENT CALLED ACCESS AND MEDIA
21 SERVICES?

22 A. YES.

23 Q. THAT GROUP WAS RESPONSIBLE FOR THE RESERVE SYSTEM?

24 A. YES.

25 Q. HOW MANY STAFF WERE EMPLOYED IN THAT DEPARTMENT IN THE

1 2009 TIME FRAME?

2 A. IN THE ENTIRE DEPARTMENT PROBABLY TEN TO 12. THERE
3 WERE ABOUT THREE WHO WERE RESPONSIBLE FOR RESERVES.

4 Q. HOW MANY OF THOSE IN THE 2009 TIME FRAME OF THE PEOPLE
5 WHO WORKED FOR YOU IN THAT GROUP, HOW MANY WERE RESPONSIBLE
6 DIRECTLY FOR ADMINISTERING THE ERESERVE SYSTEM?

7 A. WELL, THERE IS ONE WHO IS RESPONSIBLE FOR ADMINISTERING
8 IT AND TWO WHO WORK WITH THEM.

9 Q. ARE THERE OTHERS WHO ARE RESPONSIBLE FOR THE ERESERVE
10 SYSTEM WITHIN THAT GROUP IN THE 2009 TIME FRAME?

11 A. THE DEPARTMENT WOULD BE RESPONSIBLE AS A DIRECT WHO
12 REPORT TO HER, BUT OTHERWISE NO.

13 Q. DID SHE HAVE ANY INDIVIDUALS WORKING FOR HER IN THAT
14 GROUP THAT WORKED WITH ERESERVE SYSTEM?

15 A. YES.

16 Q. AND HOW MANY OF THE INDIVIDUALS WHO WORKED FOR HER --
17 WELL, WHAT WAS HER NAME?

18 A. DANITA HAMPTON.

19 Q. HOW MANY PEOPLE WORKED WITH DANITA HAMPTON IN THE 2009
20 TIME FRAME WHO WERE RESPONSIBLE FOR MAKING SURE THAT THE
21 ERESERVE SYSTEM WAS RUNNING PROPERLY AND MAKING SURE MATERIALS
22 WERE LOADED TO ERESERVES DURING THAT TIME FRAME?

23 A. THERE ARE THREE WHO ARE RESPONSIBLE FOR ALL OF THE
24 RESERVES, SO ONE OF THEM SPENT MOST OF HIS TIME WORKING WITH
25 PRINT RESERVES AND TWO OF THEM MORE ELECTRONIC RESERVES, BUT

1 THEY ALL DO WHATEVER NEEDS TO BE DONE.

2 Q. WHO WERE THE TWO INDIVIDUALS RESPONSIBLE FOR THE
3 ELECTRONIC RESERVES?

4 A. DENISE DINDEL AND MALEA CARLISLE.

5 Q. EARLIER TALKING ABOUT IMPLEMENTATION OF NEW COPYRIGHT
6 POLICY, YOU HAD INDICATED, I BELIEVE, THERE WERE MEETINGS AND
7 DISCUSSIONS ABOUT THE PROCESSES THAT NEEDED TO BE PUT IN PLACE
8 WITH RESPECT TO ERESERVE SYSTEM; IS THAT CORRECT?

9 A. YES.

10 Q. WHAT WAS YOUR ROLE IN CONNECTION WITH THE DEVISING OF
11 THOSE PROCESSES THAT WERE BEING PUT IN PLACE IN THE 2009 TIME
12 FRAME FOR THE ERESERVE SYSTEM?

13 A. THAT WAS MY ROLE. I WAS THE LEAD ON THAT AND PUT THE
14 TEAM TOGETHER TO DO IT.

15 Q. DID YOU ASSIST IN THE REVISION OF THE WEBSITE SCREENS,
16 THE LIBRARY RESERVE WEBSITE SCREENS THAT WOULD HELP IMPLEMENT
17 THE POLICY WITH RESPECT TO THE ELECTRONIC RESERVE SYSTEM?

18 A. YES.

19 MS. SINGER: OBJECTION, LEADING.

20 THE COURT: SUSTAINED.

21 BY MS. MOFFIT:

22 Q. CAN YOU DESCRIBE FOR US WHAT YOUR ROLE WAS WITH RESPECT
23 TO, IF YOU HAD ONE IN 2009, WITH RESPECT TO REVISING DESIGN
24 OF THE ERESERVE SCREENS AS IT RELATED TO THE NEW COPYRIGHT
25 POLICY?

1 A. SEEING THE NEW POLICY, I SAW THAT WE NEEDED TO MAKE
2 SURE THAT PEOPLE PUTTING THINGS ON RESERVES WERE DOING A FAIR
3 USE ANALYSIS OR DETERMINING BY ANOTHER MEANS THAT THE ITEM WAS
4 ELIGIBLE TO BE PUT ON RESERVES. I WAS RESPONSIBLE FOR
5 DETERMINING WHETHER WE SHOULD HAVE THE FOUR RADIO BUTTONS OR
6 FIVE RADIO BUTTONS, DEPENDING ON THE PAGE WHERE THE PERSON
7 SUBMITTING THE DOCUMENT FOR PUTTING ON RESERVE INDICATES WHY
8 IT CAN BE PUT ON RESERVE, WE HAVE A LICENSE ON IT, I DID A
9 FAIR USE ANALYSIS, FOUND THE USE TO BE FAIR, I OWN THE
10 COPYRIGHT WHEN IT IS COURSE AND NOTES AND THINGS, I CAME UP
11 WITH THAT.

12 Q. AND CAN YOU DESCRIBE FOR US GENERALLY THE PROCESS THAT
13 WAS UNDERTAKEN TO CHANGE THE ERESERVE SYSTEM SO AS TO
14 EFFECTUATE THE NEW COPYRIGHT POLICY IN 2009?

15 A. I HAD CONSULTATION WITH THE RESERVE STAFF AND WITH
16 LEGAL DEVELOPED A SKETCH OF WHAT WE WANTED IT TO DO AND THE
17 PEOPLE WHO ACTUALLY DID THE PROGRAMMING ALSO REPORT TO ME SO I
18 TASKED THEM WITH DOING IT.

19 Q. IF I COULD DIRECT YOUR ATTENTION TO DEFENDANT'S EXHIBIT
20 160 IN YOUR NOTEBOOK. DO YOU RECOGNIZE DEFENDANT'S EXHIBIT
21 160?

22 A. YES.

23 Q. CAN YOU DESCRIBE FOR US, GENERALLY, WHAT IS THIS?

24 A. THIS IS THE 2009 VERSION OF OUR REQUEST FORM FOR
25 PUTTING THINGS ON RESERVES.

1 Q. WERE YOU INVOLVED IN THE DEVELOPMENT AND DESIGN OF THIS
2 REQUEST FORM?

3 A. YES.

4 Q. WHO ELSE WAS INVOLVED IN THE DEVELOPMENT AND DESIGN OF
5 THE REQUEST FORM?

6 A. THE RESERVE STAFF AND THEIR SUPERVISOR, DANITA,
7 LEGAL, THE WEB DEVELOPMENT LIBRARY.

8 Q. HOW LONG DID IT TAKE YOU TO REVISE AND IMPLEMENT THE
9 WEB SCREEN SO AS TO EFFECTUATE THE NEW COPYRIGHT POLICY?

10 A. I DON'T RECALL EXACTLY. WE HAD IT IN PLACE BY THE
11 BEGINNING OF SUMMER, SO BY THE END OF SPRING SEMESTER WE HAD
12 ALL OF THIS IN PLACE.

13 Q. YOU HAD INDICATED THAT THERE WAS A SCREEN WITH RADIO
14 BUTTONS THAT PROMPTED A PROFESSOR TO INDICATE WHAT HIS USE WAS
15 FOR A PARTICULAR WORK; IS THAT CORRECT?

16 A. YES.

17 Q. IS THAT SCREEN ANYWHERE WITHIN THIS DEFENDANT'S EXHIBIT
18 160 THAT YOU ARE REFERRING TO?

19 A. YES.

20 Q. COULD YOU DESCRIBE FOR US SPECIFICALLY WHICH SCREEN?

21 A. WELL, THIS SCREEN TELLS THEM THE OPTIONS THEY ARE GOING
22 TO HAVE TO CHOOSE FROM. AND THEN WHEN THEY GET TO --

23 Q. CAN YOU TELL US WHERE EXACTLY YOU ARE REFERRING TO?

24 A. ONE THROUGH FOUR TELLS THEM THAT THEY NEED TO SEE IF WE
25 LICENSE IT, THEY NEED TO SEE IF IT IS PUBLIC DOMAIN. NEITHER

1 OF THOSE ARE TRUE, THEY NEED TO DO A FAIR USE ANALYSIS TO SEE
2 IF IT IS FAIR USE TO PUT ON RESERVE. IF NONE OF THOSE APPLY,
3 THEY NEED TO GET PERMISSION FROM THE COPYRIGHT HOLDER AND THEY
4 HAVE TO SAY I AGREE BEFORE THEY CAN ACTUALLY GET TO THE PLACE
5 WHERE THEY PUT IN WHAT THEY WANT.

6 Q. DOES THE LIBRARY RESERVE STAFF PERFORM ANY OF THE STEPS
7 ONE, TWO, THREE, OR FOUR AS WELL AS THE PROFESSOR?

8 A. LIBRARY IS HAPPY TO HELP WITH ONE, TWO, FOUR -- NOT
9 REALLY FOUR. IF THEY WANT TO KNOW WHO THE PUBLISHER IS, WE
10 WILL TELL THEM. BUT ONE AND TWO CERTAINLY. WE DON'T HELP
11 WITH THREE. IF THEY NEED HELP, WE REFER THEM TO LEGAL.

12 Q. OKAY. WITH RESPECT TO THE PAGE THAT INCLUDED THE
13 RADIO BUTTONS THAT YOU WERE REFERRING TO EARLIER IN YOUR
14 TESTIMONY, COULD YOU IDENTIFY FOR US SPECIFICALLY WHICH PAGE
15 YOU WERE REFERENCING?

16 A. YOU CAN FIND IT ON ELECTRONIC ARTICLE PAGE OF
17 ELECTRONIC BOOK PAGE, THIRD AND FOURTH FROM THE BACK OF THAT
18 PACKET.

19 Q. ELECTRONIC ARTICLE PAGE, IS THAT THE PAGE THAT CONTAINS
20 AT THE TOP OF THE SCREEN "ELECTRONIC COLON ARTICLE"?

21 A. YES.

22 Q. AND WHAT IS THE PURPOSE OF THAT PAGE?

23 A. IF THE INSTRUCTOR WANTS TO PUT AN ARTICLE ON RESERVE
24 FROM A JOURNAL.

25 Q. WHAT WOULD THE PROFESSOR DO?

1 A. I'M SORRY?

2 Q. YOU WERE SAYING IF A PROFESSOR WANTED TO LOAD AN
3 ARTICLE TO ERESERVES, WHAT WOULD --

4 A. THEY WOULD FILL OUT THIS FORM.

5 WOULD YOU LIKE ME TO GO THROUGH THE PIECES OF THE FORM?

6 Q. DESCRIBE FOR US GENERALLY WHAT THE PROFESSOR WOULD NEED
7 TO DO IN ORDER TO DO THAT.

8 A. THEY WOULD NEED TO INDICATE IF THE LIBRARY OWNS IT.
9 IN MANY CASES, MOST CASES THE LIBRARY LICENSES A JOURNAL
10 ARTICLE SO THAT WOULD BE THE FIRST RADIO BUTTON THERE. BUT
11 THEY NEED TO INDICATE IF WE OWN IT. WE HAVE A DROP-OFF BOX.
12 IF WE DON'T OWN IT, THEY WILL BRING US A PERSONAL COPY WHICH
13 RARELY HAPPENS FOR JOURNALS. THEN THE NEXT SECTION IS THEY
14 HAVE TO INDICATE BY THOSE RADIO BUTTONS BY WHAT RATIONALE THIS
15 CAN BE PUT ON RESERVE, WE LICENSE IT, IT IS FAIR USE, IT IS
16 IN PUBLIC DOMAIN. THEN THEY NEED TO GIVE US BIBLIOGRAPHIC
17 INFORMATION ABOUT THE ARTICLE.

18 Q. YOU ALSO MENTIONED THE ELECTRONIC BOOK PAGE.

19 A. YES.

20 Q. WAS THE PAGE YOU WERE REFERRING TO A PAGE THAT HAS
21 "ELECTRONIC COLON BOOK" AT THE TOP OF THE FORM?

22 A. YES.

23 Q. AND FOR WHAT PURPOSE WOULD A PROFESSOR USE THIS
24 PARTICULAR PAGE IN THE ERESERVE SYSTEM?

25 A. THIS IS USED IF THEY WANT TO PUT AN EXCERPT OF A BOOK

1 ON ELECTRONIC RESERVE.

2 Q. AND SPECIFICALLY WHAT WOULD THE PROFESSOR BE REQUIRED
3 TO SUBMIT WITH RESPECT TO THAT REQUEST?

4 A. THEY NEED TO INDICATE IF WE OWN, IF THEY OWN IT, IF WE
5 THE LIBRARY. IF THEY DON'T, THEY WILL BRING IT TO US, OUR OWN
6 PERSONAL COPY. THEY NEED TO INDICATE UNDER WHAT RATIONALE IT
7 IS ELIGIBLY PUT ON ELECTRONIC RESERVES, SO WE LICENSE IT. WE
8 DO LICENSE A NUMBER OF BOOKS, COULD BE A LICENSED ITEM.
9 COULD FALL UNDER FAIR USE, COULD BE IN PUBLIC DOMAIN OR THEY
10 COULD HAVE PERMISSION. THEY HAVE TO INDICATE THAT AND GIVE US
11 BIBLIOGRAPHIC INFORMATION.

12 Q. AND YOU ALSO INDICATED EARLIER IN YOUR TESTIMONY, I
13 BELIEVE, THAT A PROFESSOR COULD USE THE ELECTRONIC RESERVE
14 SYSTEM FOR PURPOSES OF REQUESTING THAT A WORK BE PUT ON PRINT
15 RESERVE?

16 A. THAT'S CORRECT. IN THIS FORUM 2009 VERSION, IT IS
17 MISLABELED ELECTRONIC RESERVE FORM, I THINK IT IS MORE
18 GENERIC. YOU LOOK AT THE TABS AT THE TOP OF THAT PAGE, YOU
19 WILL SEE ONE THAT SAYS "PRINT COLON BOOK." THEY WOULD USE
20 THAT IF THEY WANT TO PUT THE ENTIRE BOOK ON RESERVE AND PRINT
21 FORMAT BEHIND THE DESK.

22 Q. "PRINT COLON BOOK" TAB IS THE FIRST TAB LISTED ON THE
23 WEB FORM?

24 A. CORRECT.

25 Q. IN THE ERESERVES, IF A PROFESSOR HAD LOADED -- IN 2009,

1 IF A PROFESSOR HAD REQUESTED THAT A BOOK BE PROVIDED OR MADE
2 AVAILABLE IN PRINT RESERVE, WHAT WOULD A USER SEE IN THE
3 ERESERVE SYSTEM WITH RESPECT TO THE PRINT RESERVE INFORMATION?

4 A. THERE WILL BE A DOCUMENT LINK JUST LIKE THERE IS FOR
5 EVERYTHING ELSE. WHEN THEY CLICK ON IT, IT WILL TAKE THEM TO
6 THE RECORD FOR THE BOOK IN OUR CATALOGUE AND THAT WAY WE CAN
7 GET THE CALL NUMBER AND SEE IF IT IS CHECKED OUT.

8 Q. IS THERE A PARTICULAR FORM THEY WOULD CHECKOUT WITH
9 RESPECT TO PARTICULAR REQUESTS THEY MADE WITH REFERENCE TO
10 BOOKS THEY WANTED?

11 A. THE PROFESSOR?

12 Q. YES.

13 A. THEY WOULD USE THE FORM UNDERNEATH THAT TAB.

14 Q. CAN YOU IDENTIFY THAT TAB IN DEFENDANT'S EXHIBIT 160?

15 A. IT IS CALLED "PRINT COLON BOOK." IT IS KIND OF IN THE
16 MIDDLE.

17 Q. THE INFORMATION THE PROFESSOR HAS TO SUPPLY WITH
18 RESPECT TO A PRINT RESERVE?

19 A. IF WE OWN IT OR PUT THEIR OWN COPY ON RESERVE AND HAVE
20 BIBLIOGRAPHIC INFORMATION AND CHECKOUT PERIOD THEY WANT FOR
21 THE BOOK.

22 Q. CHECKOUT PERIOD RELATES TO WHAT?

23 A. HOW LONG THEY WANT STUDENTS TO BE ABLE TO CHECK IT OUT.
24 GENERALLY A LARGE CLASS, A LOT OF PEOPLE CHECKING IT OUT,
25 MAKE IT A SHORTER CHECKOUT TIME SO OTHER PEOPLE CAN HAVE

1 ACCESS.

2 Q. HOW DOES THE LIBRARY KNOW A PROFESSOR HAS DONE A FAIR
3 USE ANALYSIS IN CONNECTION WITH ANY REQUEST FORM?

4 A. THEY DO IT ON THE FORM. WE TRUST THEY ARE TELLING THE
5 TRUTH.

6 Q. SPECIFICALLY WHERE WOULD THEY INDICATE THAT ON THE FORM
7 LOOKING AT ONE OF THE WEB PAGES?

8 A. WITH THE RADIO BUTTON.

9 Q. FOR EXAMPLE, LOOK AT "ELECTRONIC COLON BOOK" FORM.

10 A. SO THE OPTIONS -- ONE OF THE OPTIONS IS IT FALLS UNDER
11 FAIR USE, ACCORDING TO THE FAIR USE CHECKLIST I COMPLETED. IF
12 THEY CLICK ON THAT, WE DON'T QUESTION WHETHER THEY DID IT,
13 THAT IS INDICATING THEY DID.

14 Q. IF YOU CLICK ON THE FAIR USE CHECKLIST, WITHIN THAT
15 RADIO BUTTON IN THE TEXT THERE, FAIR USE CHECKLIST APPEARS,
16 CORRECT?

17 A. YES, IT IS A HYPERLINK TO THE FAIR USE CHECKLIST ON
18 THE BOARD OF REGENTS SITE.

19 Q. WHAT WOULD HAPPEN IF THEY CLICKED ON THAT HYPERLINK?

20 A. IT WOULD TAKE THEM TO THE CHECKLIST, TAKES THEM TO
21 INTRODUCTION, THEY HAVE TO DO ANOTHER CLICK TO GET THE
22 CHECKLIST.

23 Q. I'M SORRY?

24 A. THERE IS A PAGE OF ABOUT DOING FAIR USE ANALYSIS THAT
25 ACTUALLY LINKS TO THAT PAGE. THEY HAVE TO CLICK ON ANOTHER

1 LINK ON THAT PAGE.

2 Q. IS THAT INITIAL PAGE YOU WERE JUST REFERENCING, DOES
3 THAT APPEAR ANYWHERE?

4 A. IT IS PART OF THE BOARD OF REGENTS POLICY.

5 Q. DOES THAT PAGE APPEAR ANYWHERE ON DEFENDANT'S 160 THAT
6 YOU CAN POINT US TO?

7 A. I CAN'T SAY FOR CERTAINTY THAT IT IS ONE OF THESE
8 PAGES.

9 MS. MOFFIT: NO FURTHER QUESTIONS, YOUR HONOR.

10 CROSS EXAM

11 BY MS. SINGER:

12 Q. GOOD AFTERNOON, MS. BURTLE. THE SYSTEM IS PASSWORD
13 PROTECTED YOU JUST TESTIFIED?

14 A. YES.

15 Q. SO THE LAWYERS OR THE GENERAL PUBLIC, YOU CAN'T ACCESS
16 THE ERES SYSTEM WITHOUT MAKING SPECIAL ARRANGEMENTS, RIGHT?

17 A. THAT'S CORRECT.

18 Q. AND THE HIT COUNT REPORTS WE JUST LOOKED AT JX 1, JX 2,
19 JX 3, THOSE WERE THINGS THAT WERE PROVIDED TO THE LAWYERS AS
20 PART OF LITIGATION, CORRECT?

21 A. YES.

22 Q. SO THE PUBLISHERS LAWYERS DIDN'T ACTUALLY HAVE ACCESS
23 TO THE SYSTEM, RIGHT?

24 A. I WAS ASKED TO PROVIDE A PASSWORD FOR -- I BELIEVE FOR
25 BOTH SIDES, CERTAINLY FOR THE DEFENSE SIDE. I BELIEVE FOR

1 BOTH SIDES, I CAN'T SWEAR TO THAT.

2 Q. AND WHEN WAS THAT PASSWORD PROVIDED THEN?

3 A. I DON'T REMEMBER, PROBABLY 2009, 2008, 2009.

4 Q. AND YOU DON'T KNOW -- IF I REPRESENTED TO YOU THAT THE
5 PLAINTIFFS' LAWYERS, PUBLISHER LAWYERS NEVER HAD ACCESS, YOU
6 WOULD HAVE NO REASON TO KNOW ANY DIFFERENTLY, RIGHT?

7 A. I THINK THAT I GAVE THEM ACCESS, BUT I DON'T HAVE A
8 SOLID MEMORY OF THAT, NO.

9 Q. NOW YOU MENTIONED AT THE END OF THE ACADEMIC TERM,
10 PUTTING ASIDE SAVING THINGS FOR LITIGATION, THEY GO TO THE
11 ARCHIVE, THEY WILL BE DELETED AT SOME POINT AT THE END OF THE
12 SEMESTER OR THE END OF THE TERM?

13 A. THEY WILL GO TO ARCHIVE, YES.

14 Q. AND STUDENTS AT THE END OF TERM, THEY DON'T HAVE TO
15 RETURN THEIR COPY OF THINGS THEY HAVE DOWNLOADED OFF ERES,
16 RIGHT?

17 A. I WOULD HAVE NO WAY OF KNOWING IF THEY DOWNLOADED OFF
18 ANYTHING ON ERES, NO, WE DON'T MAKE THEM.

19 Q. YOU DON'T COLLECT COPIES BACK OR ANYTHING?

20 A. NO, WE PROVIDE ELECTRONIC COPY, THAT IS ALL WE WORRY
21 ABOUT.

22 Q. AND SO IF THE STUDENT HAD PRINTED IT, FOR EXAMPLE, YOU
23 ARE NOT GOING TO TRY TO GET IT BACK FROM THE STUDENT, THE
24 STUDENT WOULD JUST HAVE IT, RIGHT?

25 A. YES.

1 Q. MS. BURTLE, YOU ARE AWARE THAT THE ERES SOFTWARE HAS
2 SOME COPYRIGHT FEATURES THAT GSU DOESN'T ACTUALLY USE, RIGHT?

3 A. YES.

4 Q. AND IN THE 2009 TIME FRAME, PROFESSORS WERE LIMITED TO
5 50 ITEMS THAT THEY COULD UPLOAD TO THEIR ERES PAGE?

6 A. YES.

7 Q. PROFESSORS DON'T HAVE ANY ABILITY TO ADD, REMOVE, OR
8 CHANGE THEIR ERES PAGE, ONLY THE LIBRARY CAN DO THAT?

9 A. THAT'S CORRECT.

10 Q. THE GSU LIBRARY HAS VERY FEW HARD COPY RESERVES; ISN'T
11 THAT TRUE?

12 A. I DON'T KNOW HOW YOU WOULD DEFINE "VERY FEW." IT IS
13 ABOUT 12 RANGES, TWELVE SHELVES.

14 Q. I AM GOING BACK TO 2009 HERE, REMEMBER I TOOK YOUR
15 DEPOSITION IN 2009?

16 A. UH-HUH (AFFIRMATIVE RESPONSE). I REMEMBER THAT. I
17 CANNOT VISUALIZE IN MY HEAD HOW MANY BOOKS WERE ON THE
18 SHELVES.

19 Q. I THINK AT THAT TIME, WE CAN TAKE A LOOK AT YOUR
20 DEPOSITION IF YOU LIKE, AT THAT TIME YOU TOLD ME THE NUMBER OF
21 BOOKS OR PHYSICAL RESERVE WAS IN THE NEIGHBORHOOD OF 100 OR
22 200, WANT TO TAKE A LOOK AT YOUR DEPOSITION?

23 A. I BELIEVE YOU.

24 Q. AND I THINK YOU TOLD ME ALSO THE NUMBER, I DON'T THINK
25 I KNOW, YOU TOLD ME THE NUMBER OF GSU PROFESSORS WHO USE ERES

1 HAVE INCREASED BY THE TIME YOU HAVE BEEN AT GSU, THIS IS IN
2 2009?

3 A. I DON'T RECALL THAT, BUT I TRUST IT IF THAT IS WHAT I
4 SAID AT THE TIME.

5 Q. IS THAT TRUE, THE NUMBER OF PROFESSORS HAD INCREASED UP
6 TO 2009?

7 A. I THINK IT IS LIKELY, YES.

8 Q. IN 2009, THE GSU LIBRARY BUDGET WAS ABOUT 11 MILLION
9 DOLLARS?

10 A. THAT SOUNDS RIGHT.

11 Q. AND ABOUT HALF OF THAT WAS THE MATERIALS BUDGET, ABOUT
12 FOUR OR FIVE MILLION?

13 A. YES.

14 Q. ABOUT HALF OF THAT FOUR OR FIVE MILLION, APPROXIMATELY,
15 WAS FOR LICENSING OF DATABASES AND ELECTRONIC JOURNALS?

16 A. I BELIEVE SO, YES.

17 Q. AND SOME OF THOSE LICENSE DATABASES OR ELECTRONIC
18 JOURNALS, SOME OF THOSE WERE USED ON ERES?

19 A. YES.

20 Q. AND IN 2009, THOUGH, ABOUT 40 OR 50 PERCENT OF THE
21 POSTED MATERIALS ON THE ERES SYSTEM WERE NOT FROM THE LICENSED
22 DATA BASES OR THE ELECTRONIC JOURNALS, APPROXIMATELY?

23 A. I DON'T RECALL EVER DOING THAT ANALYSIS.

24 Q. WELL, LET'S TAKE A LOOK AT YOUR DEPOSITION.

25 MS. SINGER: YOUR HONOR, MAY I APPROACH?

1 THE COURT: YES.

2 BY MS. SINGER:

3 Q. LET'S TAKE A LOOK AT PAGE 28. STARTING AT -- ARE YOU
4 THERE?

5 A. YES.

6 Q. LINE 12 I ASKED YOU:

7 "DO YOU HAVE A SENSE OF HOW MUCH ON
8 THE ERESERVE SYSTEM IS NOT LICENSED
9 DATABASES OR ELECTRONIC JOURNALS?
10 ANSWER, I WOULD ESTIMATE 40 TO 50
11 PERCENT, BUT I DON'T KNOW. I DON'T
12 KNOW THE EXACT NUMBER."

13 DO YOU SEE THAT?

14 A. YES.

15 Q. MS. BURTLE, IT WAS YOUR POSITION IN 2009 THAT AS LONG
16 AS A PROFESSOR DID -- FILLED OUT THE FAIR USE CHECKLIST FOR
17 EACH ONE AND DID A CASE-BY-CASE ANALYSIS, IF EVERY PROFESSOR
18 DETERMINED THAT EVERY WORK ON THE ERES SYSTEM WAS DETERMINED
19 TO BE FAIR USE, IT DIDN'T MATTER IF NOBODY ENDED UP BUYING A
20 TEXTBOOK EVER AGAIN BECAUSE EVERY SINGLE PROFESSOR HAD
21 DETERMINED IT TO BE FAIR USE, ISN'T IT?

22 A. I AM SORRY, I DIDN'T FOLLOW THAT.

23 Q. LET'S TAKE A LOOK AT YOUR DEPOSITION, IT IS PAGE 189.

24 MS. MOFFIT: OBJECT FOR THE USE OF THE DEPOSITION
25 TESTIMONY, THERE IS NO QUESTION PENDING. I WOULD LIKE TO

1 SHOW WHY WE ARE RESORTING TO DEPOSITION TESTIMONY.

2 THE COURT: COUNSEL IS CORRECT.

3 BY MS. SINGER:

4 Q. ALL RIGHT. IT IS YOUR POSITION, ISN'T IT, THAT AS
5 LONG AS A PROFESSOR DETERMINES THAT EACH COPYRIGHTED WORK
6 POSTED ON ERES IS DETERMINED TO BE FAIR USE, IT DOESN'T
7 MATTER IF NOBODY ENDS UP BUYING THE TEXTBOOK EVER AGAIN
8 BECAUSE EVERY SINGLE INDIVIDUAL PERSON HAS DETERMINED IT TO BE
9 FAIR USE?

10 A. A PROFESSOR MAY DETERMINE THAT EVERY READING THAT HE
11 WANTS HIS STUDENTS TO LOOK AT, IT DOES FALL UNDER FAIR USE
12 WHEN HE DOES THE ANALYSIS. IT MAY NOT REQUIRE THEM TO BUY A
13 TEXTBOOK. I WILL NOT GENERALIZE THAT NOBODY EVER BUYS A
14 TEXTBOOK AGAIN.

15 Q. WE WERE LOOKING AT THE EFFECT ON THE MARKET. AND I
16 ASKED YOU WHETHER AS LONG AS THE PROFESSOR DETERMINED IT TO BE
17 FAIR USE, IF THE PROFESSORS DETERMINED THAT EVERYTHING THEY
18 WANTED THEIR STUDENTS TO LOOK AT WAS FAIR USE, IT WOULDN'T
19 MATTER IF NOBODY EVER BOUGHT A TEXTBOOK AGAIN?

20 A. IF EVERY PROFESSOR IN THE WORLD?

21 Q. NO, JUST AT GSU?

22 A. SO GSU BOOKSTORE CLOSES DOWN? I THINK THAT IS HIGHLY
23 UNLIKELY. I'M SORRY, I AM NOT FOLLOWING. YOU KNOW, DOING
24 THE MARKET ANALYSIS IS NOT SOMETHING I KNOW THE MARKET. I
25 THINK I HAD PROBLEMS ANSWERING THE QUESTION WHEN YOU DEPOSED

1 ME. I DON'T KNOW THE MARKET IN A HYPOTHETICAL AREA.

2 Q. LET'S TAKE A LOOK AT DX 160, WHICH IS WHAT WE WERE JUST
3 LOOKING AT, SHOULD BE IN YOUR BINDER THERE.

4 IF WE LOOK AT THE FIRST PAGE THERE, NUMBER THREE, IT SAYS:

5 "USE THE BOARD OF REGENTS FAIR USE
6 CHECKLIST TO DETERMINE IF YOUR USE
7 OF THE ITEM FOR COURSE IS CONSIDERED
8 FAIR USE. PRINT AND SAVE A COPY OF
9 THE COMPLETED CHECK LIST FOR YOUR
10 RECORDS."

11 DO YOU SEE THAT?

12 A. YES.

13 Q. IT IS POSSIBLE, ISN'T IT, TO FILL OUT, TO MAKE A
14 REQUEST TO ERES WITHOUT ACTUALLY PRINTING AND SAVING A COPY OF
15 THE COMPLETED CHECKLIST, RIGHT?

16 A. I HAVE NO IDEA BUT THE PROFESSOR DOES. THEY TELL ME
17 THEY HAVE DONE THAT, THAT IS ALL I CAN SAY.

18 Q. MY QUESTION IS A LITTLE DIFFERENT. IT IS POSSIBLE TO
19 MAKE YOUR REQUEST ON ERES WITHOUT ACTUALLY PRINTING OUT AND
20 SAVING A COPY OF THE CHECKLIST, RIGHT?

21 A. YEAH, IF YOU ARE WILLING TO LIE.

22 Q. IN FACT, IT IS POSSIBLE TO MAKE A REQUEST ABOUT
23 ACTUALLY FILLING OUT THE CHECKLIST PHYSICALLY, RIGHT? YOU
24 COULD FILL IT OUT MENTALLY?

25 A. SURE.

1 Q. AND DO THIS, RIGHT?

2 A. UH-HUH (AFFIRMATIVE RESPONSE).

3 Q. AND, IN FACT, IT IS ACTUALLY POSSIBLE TO MAKE THE
4 REQUEST WITHOUT EVEN LOOKING AT THE CHECKLIST, ISN'T IT?

5 MS. MOFFIT: OBJECTION, YOUR HONOR, ASSUMES FACTS.

6 THE COURT: OVERRULED.

7 THE WITNESS: YES, POSSIBLE AGAIN AS LONG AS YOU ARE
8 WILLING TO LIE. WE GENERALLY TRUST OUR COLLEAGUES, SO.

9 BY MS. SINGER:

10 Q. IF A PROFESSOR DIDN'T ACTUALLY PRINTOUT AND RETAIN THE
11 CHECKLIST, THEY WOULD HAVE VIOLATED THE POLICY?

12 A. YES. WELL, ACTUALLY LET ME STEP BACK. I CAN'T SAY
13 WITH CERTAINTY THAT THE POLICY SAYS YOU HAVE TO PRINTOUT AND
14 SAVE THE CHECKLIST. OUR FORM SAYS THAT. I AM NOT SURE THAT
15 USG POLICY SAYS THAT. I CAN'T SAY ONE WAY OR THE OTHER.

16 Q. I THINK YOU TESTIFIED ON DIRECT THAT YOU WERE
17 RESPONSIBLE -- YOU OR YOUR GROUP OF PEOPLE WHO REPORTED TO YOU
18 WERE RESPONSIBLE FOR CREATING DX 160, RIGHT?

19 A. YES.

20 Q. YOU CREATED THAT IN ACCORDANCE WITH YOUR UNDERSTANDING
21 OF WHAT THE POLICY WAS?

22 A. YES.

23 Q. LET'S TAKE A LOOK IF WE COULD OF JX 1, THE BIG JOINT
24 FILING. IF YOU LOOK AT THIS FIRST PAGE HERE, TAKE A LOOK
25 AT, I DON'T KNOW, THE THIRD, FOURTH, FIFTH ENTRY IN THE

1 MIDDLE COLUMN, YOU SEE IT IS SUMMER 2010, SUMMER 2007,
2 SPRING 2008, DO YOU SEE THAT? AND SOME OF THESE COURSES WERE
3 ACTUALLY LOADED UP FOR PURPOSES OF THIS LAWSUIT AS PART OF
4 THIS REPORT, WEREN'T THEY, OR ACCESSED AS PART OF THIS
5 LAWSUIT?

6 A. YES.

7 Q. SO THE FACT THAT THERE WAS ONE HIT BETWEEN MAY 10TH,
8 2009 AND JUNE 8TH, 2009, IF THERE IS ONE HIT, TWO HITS FOR
9 COURSES THAT WEREN'T ACTUALLY OFFERED IN THIS TIME PERIOD,
10 THAT DOESN'T ACTUALLY TELL US ANYTHING ABOUT HOW MANY PEOPLE
11 ACCESSED THE READING AT THE TIME THE COURSE WAS GOING ON,
12 DOES IT?

13 A. NO.

14 MS. SINGER: ONE MOMENT.

15 BY MS. SINGER:

16 Q. IF WE COULD GO BACK TO A MOMENT TO DX 160. NUMBER
17 FOUR WAS IF NONE OF THE ABOVE OPTIONS APPLY, AND THAT WAS THE
18 LIBRARY HAS THE ELECTRONIC JOURNAL OR IT WAS PUBLIC DOMAIN OR
19 IT WAS FAIR USE, IF NONE OF THOSE APPLY, THEY OBTAIN
20 PERMISSION, THAT WOULD BE INSTRUCTOR USING OBTAIN, GETTING
21 PERMISSION FROM THE COPYRIGHT HOLDER, GENERALLY THE PUBLISHER,
22 THESE PERMISSIONS CAN COME, THEY DON'T COME DIRECTLY FROM THE
23 PUBLISHER, THEY COULD COME FROM COPYRIGHT CLEARANCE CENTER,
24 RIGHT?

25 A. YES.

1 Q. IN FACT, THE ERES SOFTWARE HAS PROVISIONS IN IT THAT
2 YOU COULD CLEAR THINGS DIRECTLY THROUGH COPYRIGHT CLEARANCE
3 CENTER AUTOMATICALLY THROUGH THE SOFTWARE, CORRECT?

4 A. THAT'S RIGHT. SINCE THE LIBRARY DOES NOT TAKE
5 RESPONSIBILITY FOR OBTAINING PERMISSION FOR INDIVIDUAL
6 COURSES, WE DON'T USE THAT SYSTEM.

7 MS. SINGER: NO FURTHER QUESTIONS, YOUR HONOR.

8 THE COURT: SHALL THE WITNESS BE EXCUSED?

9 MS. MOFFIT: TWO BRIEF QUESTIONS, YOUR HONOR.

10 REDIRECT EXAM

11 BY MS. MOFFIT:

12 Q. MS. BURTLE, WAS THERE A TIME DURING WHICH PUBLISHERS
13 HAD ACCESS TO THE ERESERVES SYSTEM TO YOUR KNOWLEDGE?

14 A. PUBLISHERS?

15 Q. YES.

16 A. I DON'T KNOW OF A TIME THAT THEY DID, NO.

17 Q. WHO WOULD KNOW, WITHIN THE LIBRARY, WHO WOULD KNOW MORE
18 DETAILS AND INFORMATION ABOUT THE BUDGETS ASSOCIATED WITH THE
19 LIBRARY?

20 A. DR. SEAMANS.

21 Q. MS. SINGER ALSO ASKED YOU A QUESTION ABOUT MATERIAL
22 BEING CLEARED THROUGH THIS CCC IN CONNECTION WITH ERESERVE
23 PAGE, DO YOU RECALL THAT?

24 A. YES.

25 Q. DO YOU KNOW HOW MUCH MATERIAL CAN BE CLEARED BY THE CCC

1 IN CONNECTION WITH THE ERESERVES SYSTEM?

2 A. I DON'T HAVE FIRSTHAND KNOWLEDGE OF THAT. I HAVE READ
3 REPORTS THAT INDICATE 30, 40, 50 PERCENT, BUT I DON'T KNOW
4 FIRSTHAND, NO.

5 MS. SINGER: I WOULD OBJECT. ANYTHING IS HEARSAY AT
6 THAT POINT. I MOVE TO STRIKE.

7 MS. MOFFIT: STATE OF MIND IN TERMS OF YOUR OPINION
8 AS TO HOW MUCH CAN BE CLEARED.

9 THE COURT: OVERRULE THE MOTION.

10 MS. MOFFIT: THANK YOU, YOUR HONOR.

11 NO FURTHER QUESTIONS.

12 THE COURT: YOU ARE EXCUSED, THANK YOU.

13 MR. SCHAEZEL: YOUR HONOR, WE WOULD LIKE TO READ IN
14 THE DISCOVERY DEPOSITION OF MS. DEBRA MARINIELLO, WHO WAS A
15 30(B)6 DESIGNEE OF COPYRIGHT CLEARANCE CENTER. AND MR.
16 WARENZAK WILL BE INTERROGATOR AND MS. MOFFITT WILL STAND IN
17 THE SHOES OF MS. MARINIELLO. I BELIEVE THAT WITH DEFENDANT'S
18 PERMISSION WE ARE GOING TO READ, YOU KNOW, FOR BOTH SIDES IN
19 EFFECT.

20 THE COURT: WILL YOU BE GOING STRAIGHT THROUGH
21 DEPOSITION? DO I NEED TO RULE ON ANY OBJECTIONS?

22 MR. SCHAEZEL: I DON'T BELIEVE.

23 MS. SINGER: I THINK FORM OBJECTIONS.

24 MR. SCHAEZEL: IT IS JUST TO FORM. I BELIEVE THE
25 ANSWER IS, NO.

1 MR. WARENZAK: PAGE FOUR STARTING AT LINE FIVE.
2 GOOD MORNING. THIS WILL BE THE RULE 30(B)6 DEPOSITION OF THE
3 COPYRIGHT CLEARANCE CENTER, INCORPORATED, TAKEN PURSUANT TO
4 SUBPOENA. AND THAT ENDS AT LINE 8 ON PAGE 4. THE NEXT LINE
5 WOULD BE AT PAGE 8, STARTING AT LINE 22.

6 EXAM

7 BY MR. WARENZAK:

8 Q. WHAT DOCUMENTS DID YOU REVIEW?

9 MR. RICH: I WILL INSTRUCT HER NOT TO ANSWER, THAT IS
10 WORK PRODUCT.

11 THE COURT: LET ME STOP YOU FOR JUST A MOMENT. WHO
12 IS THE DEPONENT NOW?

13 MR. WARENZAK: 30(B)6.

14 THE COURT: DEBRA MARINIELLO.

15 MR. WARENZAK: 30(B)6 FOR COPYRIGHT CLEARANCE CENTER.

16 THE COURT: WHAT DOES SHE DO FOR THEM? TELL ME WHO
17 SHE IS. WILL SHE BE GOING OVER THAT?

18 MR. WARENZAK: YES.

19 THE COURT: IN THE PART YOU WILL BE READING IN?

20 MR. WARENZAK: YES, YOUR HONOR.

21 BY MR. WARENZAK:

22 Q. I WILL START AGAIN AT PAGE 8, LINE 22.

23 WHAT DOCUMENTS DID YOU REVIEW?

24 MR. RICH: I WILL INSTRUCT HER NOT TO ANSWER, THAT IS
25 WORK PRODUCT.

1 MR. WARENZAK: ARE YOU INSTRUCTING THE WITNESS NOT TO
2 ANSWER WHAT DOCUMENTS SHE HAS REVIEWED?

3 MR. RICH: I AM.

4 MR. WARENZAK: PAGE NINE, LINE FOUR. STARTING PAGE
5 NINE, LINE 20.

6 LIKE TO MARK THIS AS DEFENDANT'S EXHIBIT 68. I BELIEVE
7 IT IS WHERE WE LEFT OFF.

8 YOUR HONOR, THIS IS EXHIBIT 68. THAT LAST PORTION
9 WAS AT LINE 22 ON PAGE NINE. I AM NOW ON PAGE TEN, LINE
10 EIGHT.

11 BY MR. WARENZAK:

12 Q. WHAT WE HAVE MARKED AS DEFENDANT'S EXHIBIT 68 HAS BEEN
13 PLACED BEFORE YOU. DO YOU RECOGNIZE THIS DOCUMENT? THAT IS
14 LINE TEN. GOING TO LINE 13. I HAVE SEEN THIS DOCUMENT AS
15 PART -- I'M SORRY?

16 A. I HAVE SEEN THIS DOCUMENT AS PART OF MY PREPARATION.
17 YES, I HAVE. I HAVE SEEN THIS DOCUMENT IN PREPARATION.

18 Q. AND THAT IS LINE 16 ON PAGE TEN. I AM NOW MOVING TO
19 PAGE 11, LINE SEVEN.

20 IF YOU WOULDN'T MIND FLIPPING TO SCHEDULE A ATTACHED TO
21 THIS DOCUMENT. I BELIEVE IT IS ACTUALLY THE LAST THREE
22 PAGES.

23 A. YES.

24 Q. ABOUT HALFWAY DOWN THE PAGE THERE IS A SECTION B THAT
25 READS "TOPICS FOR EXAMINATION"?

1 A. YES.

2 Q. JUST TO CONFIRM, HAVE YOU REVIEWED THIS LIST OF
3 TOPICS?

4 A. I HAVE.

5 Q. DO YOU UNDERSTAND THAT YOU HAVE BEEN DESIGNATED BY THE
6 COPYRIGHT CLEARANCE CENTER AS A CORPORATE REPRESENTATIVE TO
7 PROVIDE KNOWLEDGEABLE TESTIMONY ON THE COPYRIGHT CLEARANCE
8 CENTER'S BEHALF?

9 A. YES.

10 Q. AND THAT THAT TESTIMONY IS TO COVER THE TOPICS LISTED
11 IN EXHIBIT 68?

12 A. YES.

13 Q. ARE YOU PREPARED TO TESTIFY AS TO THOSE TOPICS TODAY?

14 A. TO THE BEST OF MY ABILITY, YES.

15 Q. THANK YOU. THAT IS PAGE 12 LINE FIVE. I'M ON PAGE
16 13, LINE 19.

17 CAN YOU WALK ME JUST VERY BRIEFLY THROUGH THE EDUCATION
18 THAT YOU HAVE HAD SINCE HIGH SCHOOL?

19 A. I GRADUATED IN 1992 FROM THE UNIVERSITY -- FROM
20 MONTCLAIR STATE UNIVERSITY WITH A BACHELOR OF ARTS IN
21 PSYCHOLOGY.

22 Q. HAVE YOU ANY POSTGRADUATE EDUCATION?

23 A. I HAVE NOT.

24 Q. THAT IS LINE THREE ON PAGE 14. I AM NOW MOVING TO
25 LINE TEN ON PAGE 14.

1 HAVE YOU HAD ANY OTHER TRAINING IN THE FIELD OF COPYRIGHT
2 OTHER THAN LEGAL TRAINING?

3 A. I UNDERSTAND IT FROM A BUSINESS PERSPECTIVE, FROM
4 WORKING WITH COPYRIGHT CLEARANCE CENTER.

5 Q. AND THAT IS THROUGH LINE 15 ON PAGE 14. I AM NOW
6 MOVING TO PAGE 15, LINE TWO, THIS IS THE PLAINTIFFS'S
7 DESIGNATION.

8 HAVE YOU ATTENDED ANY SEMINARS ON COPYRIGHT LAW?

9 A. SOME.

10 Q. CAN YOU DESCRIBE SOME OF THOSE SEMINARS FOR ME?

11 A. BASICS OF COPYRIGHT LAW, COPYRIGHT 101, COPYRIGHT IN
12 THE DIGITAL AGE. A LOT OF IT AROUND WORKING WITH ACADEMIC --
13 IN THE ACADEMIC COMMUNITY.

14 Q. WHO LED SOME OF THESE SEMINARS THAT YOU ARE REFERRING
15 TO?

16 A. SOME WERE LED BY FRED HABER, OTHERS WERE LED BY OUR
17 MANAGER OF EDUCATION AT COPYRIGHT CLEARANCE CENTER. MAY HAVE
18 BEEN ONE OR TWO OTHERS THAT I HAVE ATTENDED OUTSIDE OF
19 COPYRIGHT CLEARANCE CENTER AT SOME COPYRIGHT EVENTS.

20 Q. THAT IS LINE 19, I AM NOW MOVING BACK TO THE
21 DEFENDANT'S DESIGNATION LINE 20.

22 ARE YOU PRESENTLY EMPLOYED?

23 A. I AM.

24 Q. WHO IS YOUR EMPLOYER?

25 A. COPYRIGHT CLEARANCE CENTER.

1 Q. HOW LONG HAVE YOU BEEN EMPLOYED BY THE CCC?

2 A. THIRTEEN YEARS.

3 Q. WHAT IS YOUR JOB TITLE AT CCC?

4 A. THE DIRECTOR OF RIGHTS HOLDER RELATIONS AND INVENTORY
5 STRATEGY.

6 Q. THAT IS LINE FIVE ON PAGE 16. I AM NOW MOVING TO LINE
7 NINE.

8 WHAT ARE YOUR DUTIES AND RESPONSIBILITIES IN THAT
9 POSITION?

10 A. IN THAT POSITION I AM RESPONSIBLE FOR IDENTIFYING THE
11 RIGHTS AND THE TITLES THAT WE NEED TO DRAW INTO OUR LICENSING
12 SERVICES TO MEET THE NEEDS OF OUR CONTENT USERS. AND I AM
13 ALSO RESPONSIBLE FOR A SALES GROUP WHO IS TALKING WITH OUR
14 RIGHTS HOLDER AND ACTUALLY DRAWING THEM INTO OUR LICENSING
15 SERVICE PROGRAMS.

16 Q. AND THAT IS LINE 18 ON PAGE 16. THAT IS THE END OF THE
17 DEFENDANT'S DESIGNATIONS ON THAT PAGE.

18 I AM STARTING LINE 19 AND THIS STARTING WITH ANOTHER
19 PLAINTIFF'S DESIGNATIONS.

20 WHAT DO YOU DO TO IDENTIFY THESE RIGHTS AND TITLES THAT
21 NEED TO BE DRAWN INTO CCC LICENSING PROGRAMS?

22 A. WE TALK TO OUR CUSTOMERS, UNDERSTAND WHAT TITLES THEY
23 ARE INTERESTED IN HAVING REUSE RIGHTS FOR THAT THEY DON'T HAVE
24 REUS RIGHTS FOR TODAY.

25 WE GO OUTSIDE OF OUR ORGANIZATION AND WE LOOK AT A

1 DIFFERENT CONTENT RESOURCES, SO DIFFERENT SUBSCRIPTIONS AND
2 DATABASES OF CONTENT THAT OUR CUSTOMERS HAVE DATA ACCESS TO.
3 IDENTIFY THOSE -- IDENTIFY WHETHER OR NOT WE ALREADY HAVE THE
4 RIGHTS TO THOSE PIECES OF CONTENTS. IF WE DON'T HAVE THE
5 RIGHTS TO THOSE PIECES OF CONTENT, THOSE ARE RIGHTS WE WILL
6 ATTEMPT TO SECURE.

7 Q. IN YOUR ANSWER YOU USED THE TERM "REUSE RIGHTS"?

8 A. YES.

9 Q. AND THAT ENDS THE PLAINTIFF'S DESIGNATION. ON LINE 14
10 OF PAGE 17.

11 THE COURT: LET ME INTERRUPT YOU JUST A SECOND. I
12 DON'T THINK IT MATTERS WHO DESIGNATED, COULD YOU JUST SAY GO
13 TO LINE SUCH AND SUCH?

14 MR. WARENZAK: OKAY. WILL DO, YOUR HONOR.
15 BY MR. WARENZAK:

16 Q. CAN YOU EXPLAIN TO ME WHAT YOU MEAN BY "REUSE RIGHTS"?

17 A. "REUSE RIGHTS" IN OUR LANGUAGE IS ANOTHER TERM FOR
18 LICENSING. IT IS REALLY THE ABILITY FOR CONTENT USER TO
19 REUSE, TO MAKE ADDITIONAL USE OF THAT PIECE OF CONTENT TO
20 REUSE IT IN SOME FORM.

21 Q. AND THAT ENDS AT LINE 22 ON PAGE 17. START AT PAGE 18
22 LINE THREE.

23 CAN YOU DESCRIBE IN A LITTLE MORE DETAIL WHAT SORT OF WORK
24 YOU DO WITH YOUR SALES GROUP?

25 A. THAT GROUP IS REALLY RESPONSIBLE FOR TALKING WITH OUR

1 RIGHTS HOLDERS AND DESCRIBING TO THEM OUR LICENSING SERVICES.
2 AND ASKING THEM TO PROVIDE US WITH THE RIGHTS THAT WE CAN
3 CONVEY ON THEIR BEHALF TO OUR LICENSING CUSTOMERS.

4 Q. THAT IS LINE 11 ON PAGE 18. I AM NOW GOING TO PAGE
5 20, LINE 23.

6 PRIOR TO YOUR CURRENT POSITION, WHAT JOB TITLES DID YOU
7 HOLD AT CCC?

8 A. IN REVERSE ORDER?

9 Q. WHATEVER IS MOST CONVENIENT TO YOU.

10 A. JUST PRIOR TO THIS POSITION, I WAS THE DIRECTOR OF
11 BUSINESS OPERATIONS. PRIOR TO THAT, I WAS THE DIRECTOR OF
12 TRANSACTIONAL PRODUCTS AND SERVICES. PRIOR TO THAT, I WAS
13 THE MANAGER OF BUSINESS SERVICES. PRIOR TO THAT, I WAS THE
14 BUSINESS MANAGER. PRIOR TO THAT, I WAS THE CUSTOMER
15 RELATIONS COORDINATOR. PRIOR TO THAT, I WAS A CUSTOMER
16 RELATIONS SUPERVISOR. AND PRIOR TO THAT, I WAS CUSTOMER
17 SERVICE REPRESENTATIVE.

18 Q. CAN YOU BRIEFLY DESCRIBE FOR ME WHAT YOUR DUTIES WERE
19 AS THE DIRECTOR OF BUSINESS OPERATIONS?

20 A. AS DIRECTOR OF BUSINESS OPERATIONS, I WAS RESPONSIBLE
21 FOR CUSTOMER RELATIONS DEPARTMENT, SO DEVELOPING OUR SERVICE
22 STRATEGIES, AND OVERSEEING THE DIRECTION OF OUR CUSTOMER
23 SERVICE GROUP. I WAS RESPONSIBLE FOR PROFESSIONAL SERVICES
24 GROUP. IT WAS A NEWLY FORMED PROFESSIONAL SERVICES WORK
25 GROUP.

1 I WAS RESPONSIBLE FOR THE OPERATIONS ADMINISTRATIVE GROUP
2 WHICH MANAGED THE CREATION OF ALL OF OUR ANNUAL LICENSES.
3 AND I WAS RESPONSIBLE FOR LAUNCHING OUR INVENTORY STRATEGY
4 TEAM. AND I WAS RESPONSIBLE FOR SOME AMOUNT OF PRODUCT.

5 Q. WHAT IS THE PROFESSIONAL SERVICES GROUP?

6 A. THE PROFESSIONAL SERVICES GROUP IS REALLY A GROUP THAT
7 WAS WORKING TO HELP US IMPLEMENT A PARTICULAR PIECE OF
8 SOFTWARE WE HAD CREATED FOR OUR CORPORATE LICENSES.

9 Q. DO YOU CURRENTLY SERVE ON ANY COMMITTEES AT CCC?

10 A. NO, ASIDE FROM OUR LEADERSHIP TEAM.

11 Q. WHAT IS THE LEADERSHIP TEAM?

12 A. OUR LEADERSHIP TEAM IS OUR EXECUTIVE TEAM, DIRECTORS
13 AND ALL MANAGERS WITHIN THE ORGANIZATION.

14 Q. WERE YOU EMPLOYED PRIOR TO WORKING AT CCC?

15 A. I WAS.

16 Q. WHAT WAS THE LAST JOB YOU HELD BEFORE WORKING AT CCC?

17 A. I WORKED FOR SONY ELECTRONICS.

18 Q. WHAT DID YOU DO THERE?

19 A. I WAS THE EXECUTIVE CUSTOMER RELATIONS MEMBER, STAFF
20 MEMBER.

21 Q. THAT IS LINE 8 ON PAGE 23. I AM NOW MOVING SAME PAGE
22 LINE 18.

23 IS CCC A MEMBER OF ANY TRADE ORGANIZATIONS?

24 A. WE ARE, YES.

25 Q. WHAT ARE SOME OF THOSE ORGANIZATIONS?

1 A. WE ARE MEMBERS OF THE AMERICAN LIBRARY ASSOCIATION,
2 SOCIETY FOR SCHOLARLY PUBLISHING, I AM SURE THERE ARE MANY
3 MORE. WE ARE -- I JUST CAN'T THINK OF THE NAME OF THEM. WE
4 SIT ON STANDARDS COMMITTEES, ISO COMMITTEES FOR DEVELOPMENT
5 OF DATA STANDARDS AND LICENSING STANDARDS. WE ARE PART OF
6 THE IFRO ORGANIZATION AND I AM SURE THERE ARE MORE. I JUST
7 CAN'T NAME THEM ALL.

8 Q. IN THE COURSE OF YOUR WORK FOR THE CCC, DO YOU WORK
9 WITH ANY OF THOSE ORGANIZATIONS THAT YOU JUST LISTED?

10 A. IN SOME CAPACITY. I HAVE ATTENDED TRADE SHOWS AND
11 CONFERENCES RELATING TO THOSE ORGANIZATIONS.

12 Q. AND THAT IS LINE 13 ON PAGE 24. I AM NOW MOVING TO
13 LINE 18 ON THE SAME PAGE.

14 DOES THE CCC HAVE A PUBLISHER'S ADVISORY COMMITTEE?

15 A. YES, WE DO.

16 Q. WHAT IS THAT COMMITTEE?

17 A. THAT IS A GROUP OF PUBLISHERS THAT WE BRING TOGETHER
18 ONCE A YEAR TO HELP TO GUIDE US IN TERMS OF NEW LICENSING
19 SERVICES THAT WE ARE CREATING. WE USE THEM AS A SOUNDING
20 BOARD AS WE ARE DEVELOPING NEW SERVICES FOR RIGHTS HOLDERS AND
21 FOR CONTENT USERS.

22 Q. THAT IS LINE 4 ON PAGE 25. I AM NOW MOVING TO LINE 14
23 ON THE SAME PAGE.

24 AT A VERY HIGH LEVEL, WHAT IS THE CCC?

25 A. COPYRIGHT CLEARANCE CENTER IS A NOT-FOR-PROFIT

1 ORGANIZATION. WE'RE THE REPRODUCTION RIGHTS ORGANIZATION FOR
2 THE U.S. IN ESSENCE, WE ARE A LICENSING AGENCY. WE
3 LICENSE THE REUSE OF COPYRIGHTED CONDUCT IN THE ECONOMIC
4 SETTING FOR ECONOMIC USES AS WELL AS FOR CORPORATE USES AND
5 GENERAL PURPOSES USES AS WELL.

6 Q. IS CCC WORK LIMITED TO THE UNITED STATES?

7 A. NO.

8 Q. IN WHAT WAY DOES CCC WORK OUTSIDE THE UNITED STATES?

9 A. WE HAVE RELATIONSHIPS WITH PUBLISHERS OUTSIDE THE
10 UNITED STATES. WE HAVE LICENSEES THAT EXIST OUTSIDE OF THE
11 UNITED STATES. WE ALSO HAVE RELATIONSHIPS WITHOUT
12 REPRODUCTION RIGHTS, ORGANIZATIONS AROUND THE WORLD.

13 Q. IS THE COPYRIGHT CLEARANCE CENTER A CORPORATION?

14 A. WE ARE INCORPORATED.

15 Q. DOES THE CCC HAVE ANY COMPETITORS?

16 A. WE ARE THE ONLY REPRODUCTION RIGHTS ORGANIZATION IN THE
17 U.S.

18 Q. SO DOES THE CCC HAVE ANY COMPETITORS IN SELLING REUSED
19 RIGHTS IN THE UNITED STATES?

20 A. THERE ARE OTHER ORGANIZATIONS THAT MANAGE REUSED RIGHTS
21 AS A PORTION OF THEIR BUSINESS. BUT WE ARE THE WORLD'S
22 LARGEST LICENSING ORGANIZATION AND THE ONLY ORGANIZATION WHOSE
23 SOLE PURPOSE IS TO MANAGE THOSE RIGHTS, CREATE LICENSING
24 SERVICES, AND DISTRIBUTE ROYALTY PAYMENTS OFF TO RIGHT
25 HOLDERS.

1 Q. THAT IS LINE THREE ON PAGE 27. I AM NOW MOVING TO
2 PAGE 28 LINE TWO.

3 DID I UNDERSTAND CORRECTLY FROM YOUR PRIOR TESTIMONY THAT
4 THIS CCC IS THE WORLD'S LARGEST LICENSING ORGANIZATION?

5 A. IN TERMS OF LICENSING, WE DISTRIBUTE THE LARGEST AMOUNT
6 OF ROYALTY PAYMENT BACK FOR TEXT LICENSE.

7 Q. FOR WHAT TYPE OF LICENSING?

8 A. TEXT LICENSING.

9 Q. WHAT DO YOU MEAN BY "TEXT LICENSING"?

10 A. WRITTEN WORKS, BOOKS, JOURNALS, SERIALS.

11 Q. THAT IS LINE 12 ON PAGE 28. I AM NOW MOVING TO LINE
12 24 ON THE SAME PAGE.

13 DOES CCC HAVE A HEADQUARTERS OFFICE?

14 A. YES.

15 Q. WHERE IS THAT LOCATED?

16 A. IN DANVERS, MASSACHUSETTS.

17 Q. DOES CCC HAVE ANY OTHER OFFICES?

18 AND THAT IS LINE FOUR ON PAGE 29. I MOVE TO LINE EIGHT ON
19 PAGE 29.

20 HOW MANY EMPLOYEES WORK FOR CCC?

21 A. APPROXIMATELY 230.

22 Q. THAT IS LINE NINE ON PAGE 29. I AM NOW MOVING TO PAGE
23 31, LINE FOUR.

24 GENERALLY, CAN YOU DESCRIBE TO ME HOW THE CCC IS
25 ORGANIZED?

1 A. CERTAINLY. WE ARE ORGANIZED BY DEPARTMENTS, WORK
2 GROUPS WITHIN DEPARTMENTS. THERE IS -- WOULD YOU LIKE ME TO
3 EXPLAIN THE DEPARTMENTS?

4 Q. PLEASE.

5 A. WE HAVE A MARKETING DEPARTMENT, OPERATIONS DEPARTMENT,
6 INFORMATION TECHNOLOGY, LEGAL DEPARTMENT, HUMAN RESOURCES
7 DEPARTMENT, AND A LICENSING DEPARTMENT. LICENSING AND
8 BUSINESS DEVELOPMENT.

9 Q. AND THAT IS LINE 15 ON PAGE 31. I AM MOVING TO LINE
10 19.

11 WHAT DOES THE OPERATIONS DEPARTMENT DO?

12 A. THE OPERATIONS DEPARTMENT REALLY MANAGES A LOT OF OUR
13 DATA RELATIONSHIPS. SO IT IS WITHIN THAT DEPARTMENT WE HAVE
14 A WORK GROUP OF DATA SYSTEMS AND SERVICES THAT MANAGES ALL OF
15 OUR DATA ASSETS. THEY MANAGE ALL OF OUR ORDER ENTRY FOR OUR
16 PERMISSION ORDERS. THEY MANAGE ALL OF OUR RIGHTS AND RIGHTS
17 HOLDERS AGREEMENTS.

18 THE CUSTOMER RELATIONS AGREEMENT IS PARTS OF OPERATIONS.
19 PROFESSIONAL SERVICES GROUP IS PART OF OPERATIONS. THERE IS
20 A PROJECT OFFICE. THERE IS AN EDUCATIONAL GROUP THAT IS
21 RESPONSIBLE FOR CREATING EDUCATIONAL EVENTS OUTSIDE OF CCC.

22 Q. THAT IS LINE 11 ON PAGE 32. I AM NOW MOVING TO LINE
23 14 ON THE SAME PAGE.

24 WHAT DOES THE LICENSING AND BUSINESS DEVELOPMENT
25 DEPARTMENT DO?

1 A. LICENSING AND BUSINESS DEVELOPMENT REALLY HOUSES OUR
2 SALES GROUP, BOTH SALES TO LICENSES, SO AS WE ARE SELLING
3 ANNUAL LICENSES, PAY PER USE LICENSES, AND ALSO SALES TO
4 RIGHTS HOLDERS. THAT IS ALSO OUR BUSINESS DEVELOPMENT GROUP.

5 Q. THAT IS LINE 21 ON PAGE 32. I AM MOVING TO PAGE 33
6 LINE ONE.

7 DOES CCC SELL SOMETHING TO RIGHTS HOLDERS?

8 A. WE CONSIDER IT A SALES TEAM. WE CONSIDER IT SELLING
9 OUR SERVICES TO OUR RIGHT HOLDERS.

10 Q. THAT IS LINE FIVE ON PAGE 33. NOW MOVING TO PAGE 35.
11 LINE THREE.

12 WHAT COMMUNICATIONS HAS THE CCC HAD WITH THE ASSOCIATION
13 OF AMERICAN PUBLISHERS?

14 A. I KNOW THAT COPYRIGHT CLEARANCE CENTER HAS SPOKEN WITH
15 AAP AND WE HAVE PROVIDED SOME RESEARCH TO AAP REGARDING THE
16 WORKS. I KNOW WE HAVE SPOKEN ABOUT THE PROGRESSION OF THE
17 LITIGATION.

18 Q. THAT IS LINE TEN ON PAGE 35. MOVING TO LINE 18 ON THE
19 SAME PAGE.

20 WHO AT THE CCC WAS PARTY TO THOSE CONVERSATIONS?

21 A. I KNOW THAT FRED HABER HAS BEEN PART OF THOSE
22 CONVERSATIONS, TRACY ARMSTRONG, I BELIEVE CAROL KENNEDY.
23 TO MY KNOWLEDGE THAT IS ALL.

24 Q. WHAT IS MS. ARMSTRONG'S POSITION?

25 A. TRACY ARMSTRONG IS OUR PRESIDENT AND CEO.

1 Q. WHAT IS MS. KENNEDY'S POSITION?

2 A. CAROL'S POSITION IS MANAGER OF COPYRIGHT COMPLIANCE.

3 Q. THAT IS LINE FIVE ON PAGE 36. I AM MOVING TO PAGE 37
4 LINE TEN.

5 AND TO THE BEST OF YOUR KNOWLEDGE, WHAT RESEARCH DID
6 MS. KENNEDY CONDUCT REGARDING THE WORKS AT ISSUE?

7 A. MY UNDERSTANDING IS THAT CAROL HAD EVALUATED SOME
8 PUBLICLY AVAILABLE WEBSITES AT GEORGIA STATE TO IDENTIFY
9 CONTENT THAT WAS BEING USED UNDER ELECTRONIC RESERVES AND
10 OTHER ELECTRONIC POSTINGS. SHE WAS ABLE TO IDENTIFY THOSE
11 TITLES. IDENTIFY WHETHER OR NOT WE HAD LICENSED ANY OF THOSE
12 TITLES THROUGH COPYRIGHT CLEARANCE CENTER. SHE AGGREGATED
13 THAT RESEARCH AND SENT THAT OVER TO AAP AND OUR COUNSEL.

14 Q. DO YOU KNOW IF MS. KENNEDY WAS GIVEN INSTRUCTIONS TO
15 PERFORM THAT RESEARCH?

16 A. SHE DID PERFORM THAT RESEARCH IN CONJUNCTION WITH OUR
17 LEGAL COUNSEL.

18 Q. DID ANY INSTRUCTIONS TO PERFORM THAT RESEARCH COME FROM
19 OUTSIDE OF THE CCC?

20 A. MY UNDERSTANDING IS THAT WE WERE ASKED BY THE
21 ASSOCIATION OF AMERICAN PUBLISHERS TO IDENTIFY AREAS OF
22 POSSIBLE OF PATTERNS OF POSSIBLE REUSE OF UNLICENSED CONTENT.
23 SO THROUGH THAT DIRECTION, CAROL HAD DONE A BROAD SWEEP OF
24 USE OF ELECTRONIC CONTENT AND HAD IDENTIFIED SOME WORKS THAT
25 WERE BEING USED WITHOUT LICENSE UNDER GEORGIA STATE AND THAT

1 IS THE REMAINING RESEARCH -- CONTINUED FROM THERE.

2 Q. THAT IS LINE 17 ON PAGE 38. NOW ON PAGE 39 LINE ONE.

3 AND DO YOU KNOW TO WHOM AT THE CCC THAT REQUEST WAS
4 DIRECTED BY AAP?

5 A. I BELIEVE THAT REQUEST WAS DIRECTED TO TRACY ARMSTRONG.

6 Q. THAT IS LINE FOUR ON PAGE 39. I AM NOW ON LINE 15 OF
7 THE SAME PAGE.

8 DO YOU KNOW WHAT WEBSITES MS. KENNEDY REVIEWED IN
9 CONNECTION WITH HER RESEARCH REGARDING GEORGIA STATE
10 UNIVERSITY?

11 A. I BELIEVE SHE WAS REVIEWING THEIR ERESERVE SYSTEM,
12 WHICH WAS PUBLICLY AVAILABLE AT THE TIME. I DON'T KNOW THE
13 EXACT URL, THOUGH.

14 Q. THAT IS LINE 21 ON PAGE 39. I AM NOW ON PAGE 40,
15 LINE THREE.

16 WHAT DO YOU MEAN WHEN YOU SAY THAT THE GEORGIA STATE
17 UNIVERSITY WEBSITE THAT SHE VISITED WAS "PUBLICLY AVAILABLE"?

18 A. MEANING THERE WAS NO AUTHENTICATION REQUIREMENTS. SHE
19 DIDN'T HAVE TO LOG IN WITH PASSWORD OR ANYTHING. SHE WAS
20 JUST ABLE TO GO TO THE PUBLICLY AVAILABLE WEBSITE AND IDENTIFY
21 TITLES WITHOUT HAVING TO LOG IN, WITHOUT HAVING TO GO THROUGH
22 A FIREWALL, OR ANY OTHER TYPE OF AUTHENTICATION.

23 Q. DO YOU KNOW WHETHER MS. KENNEDY HAD TO REPRESENT SHE
24 WAS AFFILIATED WITH GEORGIA STATE UNIVERSITY TO BE ABLE TO
25 ACCESS THAT WEBSITE?

1 A. BECAUSE THERE WAS NO AUTHENTICATION, I DON'T BELIEVE
2 SHE HAD TO IDENTIFY HERSELF AT ALL.

3 Q. APPROXIMATELY WHEN DID MS. KENNEDY CONDUCT THIS
4 RESEARCH REGARDING GEORGIA STATE UNIVERSITY?

5 A. I ACTUALLY DON'T KNOW THAT. SOME TIME WITHIN THE LAST
6 12 MONTHS, TO MY BEST KNOWLEDGE.

7 Q. DO YOU KNOW WHY MS. KENNEDY INCLUDED GEORGIA STATE
8 UNIVERSITY AMONG THE UNIVERSITY THAT SHE EXAMINED IN THE
9 COURSE OF HER RESEARCH?

10 A. AS I SAID, SHE WAS LOOKING FOR PATTERNS OF REUSE, OF
11 UNLICENSED REUSE. MY UNDERSTANDING IS SHE LOOKED AT A BROAD
12 SWATH OF INSTITUTIONS OF WHICH GEORGIA STATE WAS ONE.

13 Q. DO YOU KNOW WHY GEORGIA STATE WAS ONE OF THAT BROAD
14 SWATH?

15 A. I DON'T THINK THERE WAS ANY PARTICULAR REASON.

16 Q. DO YOU KNOW IF ANYONE ASSISTED MS. KENNEDY IN THE
17 COURSE OF HER RESEARCH REGARDING GEORGIA STATE UNIVERSITY?

18 A. I DON'T BELIEVE SO.

19 Q. I BELIEVE YOU TESTIFIED EARLIER THAT MS. KENNEDY
20 CONDUCTED HER RESEARCH AND SENT IT TO THE AAP; IS THAT
21 CORRECT? AND THAT IS LINE 21 ON PAGE 41. I AM NOW ON PAGE
22 44 LINE SIX.

23 DO YOU KNOW WHO IS PAYING MR. RICH TO REPRESENT YOU AT
24 THIS DEPOSITION TODAY?

25 A. I DON'T KNOW SPECIFICALLY WHO IS PAYING.

1 Q. DO YOU KNOW GENERALLY WHO IS PAYING?

2 A. I DO KNOW. I BELIEVE THAT IT IS BEING JOINTLY PAID
3 FOR BETWEEN THE AAP AND COPYRIGHT CLEARANCE CENTER.

4 Q. DO YOU KNOW IF THE CCC HAS AGREED TO PAY ANY OTHER
5 LEGAL FEES IN CONNECTION WITH THIS LAWSUIT?

6 A. IT IS MY UNDERSTANDING THAT THE AAP AND COPYRIGHT
7 CLEARANCE CENTER ARE JOINTLY FUNDING THE RESEARCH, THEY ARE
8 SHARING THE COST EVENLY.

9 Q. WHEN YOU SAY "SHARING THE COST," WHOSE COST ARE YOU
10 REFERRING TO?

11 A. THE COST OF THE LITIGATION. I DON'T KNOW SPECIFICALLY
12 WHAT THOSE COSTS ARE.

13 Q. ARE YOU REFERRING TO CCC'S COST?

14 A. THE COST OF THE LITIGATION, WHATEVER THOSE COSTS ARE.

15 Q. WOULD THAT INCLUDE COSTS INCURRED BY CCC?

16 A. I ASSUME IT DOES.

17 Q. WOULD THAT INCLUDE COSTS INCURRED BY THE PLAINTIFFS?

18 A. I AM ACTUALLY NOT PARTY TO EXACTLY WHAT THAT AGREEMENT
19 IS, SO UNFORTUNATELY I CAN'T ANSWER SPECIFICALLY.

20 Q. AND THAT IS LINE 11 ON PAGE 45. I AM NOW ON LINE 16
21 OF THE SAME PAGE.

22 TO YOUR KNOWLEDGE, IS THE CCC PROVIDING ANY FINANCIAL
23 ASSISTANCE TO THE PLAINTIFFS IN CONNECTION WITH THIS LAWSUIT?

24 A. THE ONLY FUNDING THAT I KNOW OF IS THE FUNDING THAT I
25 JUST SPOKE OF, JUST SHARING THE COST OF THE LITIGATION. I

1 DON'T HAVE A FULL UNDERSTANDING OF WHAT THOSE COSTS ARE,
2 WHOSE COSTS THOSE ARE.

3 Q. DO YOU KNOW IF CCC HAS ACTUALLY MADE ANY PAYMENTS TO
4 COVER THOSE COSTS TO DATE?

5 A. I DON'T KNOW THAT SPECIFICALLY.

6 Q. AND THAT IS LINE 2 ON PAGE 46. I AM ON PAGE 47 LINE
7 16.

8 AGAIN, WITHOUT ATTEMPTING TO INVADE THE ATTORNEY-CLIENT
9 PRIVILEGE THAT MR. RICH HAS REFERENCED TODAY, WHAT
10 CONVERSATIONS HAS CCC HAD WITH ATTORNEYS AT THE WEIL GOTSHAL
11 LAW FIRM REGARDING THIS LAWSUIT?

12 MR. RICH: INSTRUCTION NOT THE ANSWER. THERE WOULD
13 BE NO SUCH CONVERSATION THAT WOULD NOT BE PRIVILEGED.

14 Q. HAS CCC HAD ANY COMMUNICATIONS WITH ANYONE AT GEORGIA
15 STATE UNIVERSITY? AND THAT IS LINE ONE ON PAGE 48. NOW
16 MOVING TO LINE EIGHT ON THE SAME PAGE.

17 WHEN DID CCC FIRST LEARN OF THE ALLEGED INFRINGEMENT BY
18 GSU OF THE WORKS AT ISSUE?

19 A. WHEN WE CREATED THE RESEARCH WE IDENTIFIED, AS I
20 MENTIONED EARLIER, A SERIES OF TITLES THAT WERE UNLICENSED,
21 THAT WERE NOT LICENSED THROUGH COPYRIGHT CLEARANCE CENTER.
22 SO, WE PASSED THAT INFORMATION ALONG.

23 Q. CAN YOU DESCRIBE TO ME IN A LITTLE MORE DETAIL WHAT
24 MS. KENNEDY DID WHEN SHE IDENTIFIED THESE WORKS AT ISSUE AT
25 GEORGIA STATE UNIVERSITY?

1 A. MY UNDERSTANDING IS THAT CAROL WAS ABLE TO GO TO THEIR
2 WEBSITE AND ACTUALLY SEARCH FOR TITLES THAT WERE UNDER
3 PARTICULAR COURSES, IDENTIFY SPECIFIC TITLES. SHE WAS ABLE
4 TO THEN LOOK FOR THOSE TITLES WITHIN OUR PERMISSIONING SYSTEM
5 AT COPYRIGHT CLEARANCE CENTER TO SEE IF THOSE TITLES HAD BEEN
6 LICENSED THROUGH GEORGIA STATE.

7 SHE WAS NOT ABLE TO IDENTIFY ANY RECORD OF LICENSING FOR
8 THOSE PARTICULAR TITLES BY GEORGIA STATE. OR BY OTHER -- IF
9 THERE WERE OTHER INSTITUTIONS, AGAIN, THAT RESEARCH WAS
10 CONDUCTED ON MULTIPLE INSTITUTIONS. BUT WE WERE SPEAKING
11 SPECIFICALLY OF GEORGIA STATE AND THAT IS MY UNDERSTANDING.

12 Q. DO YOU KNOW IF MS. KENNEDY MADE ANY ATTEMPT TO
13 DETERMINE WHETHER THE USE BY GEORGIA STATE UNIVERSITY OF ANY
14 OF THOSE WORKS AT ISSUE CONSTITUTED A FAIR USE?

15 A. IT IS NOT OUR PLACE OR OUR POSITION TO IDENTIFY WHETHER
16 OR NOT WORKS ARE COVERED UNDER FAIR USE, SO WE WERE ASKED TO
17 CONDUCT SOME RESEARCH TO IDENTIFY PATTERNS OF WORKS THAT WERE
18 NOT LICENSED. WE DID JUST THAT. WE ARE NOT IN THE HABIT OF
19 EVALUATING WORKS FOR FAIR USE, FOR A FAIR USE DETERMINATION.
20 SO, NO, THAT WAS NOT PART OF THE RESEARCH THAT WAS CONDUCTED.

21 Q. WAS FAIR USE ANALYSIS EVER DISCUSSED AS A POSSIBLE PART
22 OF THAT RESEARCH?

23 A. AGAIN, IT IS NOT -- IT IS NOT A POLICY OR PRACTICE OF
24 COPYRIGHT CLEARANCE CENTER TO ATTEMPT TO IDENTIFY WHETHER OR
25 NOT SOMETHING WAS COVERED UNDER FAIR USE. FAIR USE IS SO

1 PARTICULAR TO THE CIRCUMSTANCES IN WHICH THAT CONTENT WAS
2 BEING USED. SINCE WE WEREN'T PART OF THAT CIRCUMSTANCE, WE
3 CERTAINLY WOULDN'T HAVE BEEN ABLE TO EVEN ATTEMPT TO NOR WOULD
4 WE HAVE UNDER NORMAL PRACTICE.

5 Q. AND THAT IS LINE 13 ON PAGE 50. I AM NOW MOVING TO
6 PAGE 51, LINE 21.

7 HOW WOULD YOU DESCRIBE CCC'S RELATIONSHIP WITH THE AAP?
8 THAT IS LINE 22. I AM GOING TO PAGE 52 LINE ONE?

9 A. WE HAVE HAD A LONG-STANDING RELATIONSHIP WITH AAP. WE
10 HAVE WORKED WITH THEM AS A TRADE ASSOCIATION. WE HAVE
11 RELATIONSHIPS WITH MANY OF THEIR MEMBERS, SO I BELIEVE WE HAVE
12 A VERY GOOD RELATIONSHIP WITH AAP.

13 Q. THAT IS LINE SIX ON PAGE 52. I AM NOW ON LINE 22 OF
14 THE SAME PAGE.

15 HAS THE CCC EVER DONE ANYTHING TO ENFORCE COPYRIGHTS HELD
16 BY ANY PARTY?

17 A. WELL, WE DON'T DIRECTLY AS COPYRIGHT CLEARANCE CENTER.
18 BUT WE WILL WORK WITH PUBLISHERS. IF A PUBLISHER CONTACTS US
19 AND IDENTIFIES A CONCERN THAT THEY HAVE THAT THEIR CONTENT MAY
20 BE -- THAT THEIR CONTENT MAY BE BEING USED WITHOUT A LICENSE,
21 THEN WE WILL WORK WITH THAT PUBLISHER. WE CAN CONDUCT SOME
22 RESEARCH FOR THEM AND HELP THEM IDENTIFY THOSE PATTERNS. BUT
23 WE OURSELVES HAVE NOT ACTUALLY DRIVEN A PARTICULAR LITIGATION
24 OR ACTUALLY LITIGATED UNDER OUR OWN NAME.

25 Q. WHEN YOU SAY "WORK WITH PUBLISHERS," COULD YOU TELL ME

1 A LITTLE BIT MORE ABOUT WHAT THE CCC MIGHT DO TO WORK WITH
2 PUBLISHERS IN THE CONTEXT OF ENFORCING THE PUBLISHERS
3 COPYRIGHTS?

4 A. REALLY JUST EXPANDING ON WHAT I WAS DOING EARLIER. IF
5 THE PUBLISHER WERE TO CONTACT US AND IDENTIFY A PARTICULAR
6 CONCERN THEY HAD ABOUT POTENTIAL INFRINGEMENT, THEY MIGHT SAY
7 A PARTICULAR ORGANIZATION, INSTITUTION, WHATEVER THE CASE
8 MAY BE THAT THEY ARE CONCERNED USING THEIR CONTENT WITHOUT A
9 LICENSE. SO THEY WOULD ASK US TO DO SOME RESEARCH AND
10 IDENTIFY WHETHER OR NOT THAT CONTENT WAS LICENSED THROUGH
11 COPYRIGHT CLEARANCE CENTER. AND WE WOULD LET THEM KNOW
12 WHETHER OR NOT THAT CONTENT WAS LICENSED THROUGH OUR
13 PERMISSION SERVICES. AND WE WOULD PASS THAT INFORMATION
14 ALONG.

15 Q. DO PUBLISHERS FREQUENTLY APPROACH CCC SEEKING THAT KIND
16 OF ASSISTANCE?

17 A. IT HAPPENS WITH SOME REGULARITY.

18 Q. THAT IS LINE NINE ON PAGE 54. I'M ON PAGE 55, LINE
19 20.

20 CAN YOU RECALL THE NAMES OF ANY OF THOSE ALLEGED
21 INFRINGERS IN ANY OF THOSE LAWSUITS?

22 A. THOSE LAWSUITS WERE PRIMARILY COPY SHOPS.

23 Q. ANYTHING OTHER THAN COPY SHOPS?

24 A. THEY WERE MOSTLY COPY SHOPS. THERE WERE OTHERS IN THE
25 LAST FIVE YEARS, LET'S SEE, YES, IN THE ACADEMIC COMMUNITY.

1 REALLY ONLY COPY SHOPS I CAN THINK OF.

2 Q. I WOULD LIKE TO MARK THIS AS DEFENDANT'S EXHIBIT 69.
3 THAT IS ON PAGE 56, LINE EIGHT. I AM NOW MOVING TO PAGE 60,
4 LINE 13.

5 THE COURT: WHAT IS THAT THAT IS UP ON THE SCREEN?
6 I CAN'T READ IT.

7 MR. WARENZAK: YOUR HONOR, THIS SEEMS TO BE A
8 DOCUMENT FROM THE CCC THAT WAS USED IN HER DEPOSITION.

9 I AM GOING TO BE TURNING TO A PAGE THAT WILL CLARIFY
10 WHY WE ARE PUTTING THIS IN HERE.

11 THE COURT: ALL RIGHT.

12 BY MR. WARENZAK:

13 Q. THIS IS PAGE FOUR. I AM AT PAGE 60, LINE 13.

14 I WOULD LIKE THEN TO DIRECT YOUR ATTENTION TO THE
15 FOLLOWING PARAGRAPH, THE SECOND SENTENCE AS I READ IT STATES:

16 "ALTHOUGH WE ARE NOT A LAW FIRM AND
17 CANNOT REPRESENT INDIVIDUALS OR
18 GROUPS OF RIGHTS HOLDERS IN
19 INFRINGEMENT MATTERS, WE ARE IN A
20 POSITION TO COORDINATE AND
21 STREAMLINE THE ADMINISTRATIVE
22 PROCESS RELATING TO THESE MATTERS AS
23 APPROPRIATE."

24 IS THIS AN ACCURATE READING OF THAT SENTENCE?

25 A. YES.

1 Q. TO THE BEST OF YOUR KNOWLEDGE, WHAT DOES THE CCC MEAN
2 IN STATING COORDINATE AND STREAMLINE THE ADMINISTRATIVE
3 PROCESS RELATING TO THESE MATTERS AS APPROPRIATE?

4 A. TO THE BEST OF MY KNOWLEDGE, THAT REALLY SPEAKS TO THE
5 RESEARCH WE SPOKE OF EARLIER, THE FACT WE HAVE A CENTRALIZED
6 LICENSING DATABASE. IT IS EASIER FOR US ONCE WORKS ARE
7 IDENTIFIED TO ACTUALLY IDENTIFY WHETHER OR NOT THEY HAVE BEEN
8 LICENSED THROUGH COPYRIGHT CLEARANCE CENTER.

9 Q. AND THAT IS LINE 11 OF PAGE 61. WE ARE NOW ON PAGE
10 63, LINE ONE.

11 I WOULD LIKE TO GET A SENSE OF WHAT PRODUCTS AND SERVICES
12 THE CCC OFFERS TO RIGHTS HOLDERS AND TO OTHER CUSTOMERS. CAN
13 YOU DESCRIBE TO ME BROADLY THE SPECIFIC PRODUCTS AND SERVICES
14 THAT CCC OFFERS?

15 A. CERTAINLY. WE OFFER LICENSING SERVICES REALLY IN TWO
16 WAYS. OFFER ANNUAL SUBSCRIPTION STYLE LICENSE FOR BOTH
17 CORPORATE AND THE ACADEMIC MARKETS. AND WE ALSO OFFER PAY PER
18 USE LICENSING, ALSO IN THE CORPORATE AND ACADEMIC MARKETS.
19 AND THERE ARE REALLY A SERIES OF PRODUCTS THAT WE OFFER WITHIN
20 BOTH OF THOSE CATEGORIES.

21 WOULD YOU LIKE ME TO TALK SPECIFICALLY ABOUT THE PROGRAMS?

22 Q. YES, PLEASE.

23 A. UNDER OUR SUBSCRIPTION LICENSING SERVICES, AGAIN, WE
24 OFFER A PRODUCT IN THE CORPORATE MARKET THAT REALLY WE HAVE
25 HAD IN PLACE FOR OVER 25 YEARS. IT IS AN ANNUAL LICENSING

1 SERVICE. IT COVERS BOTH PRINT AND DIGITAL USES, PRIMARILY
2 FOR INTERNAL USES WITHIN THE ORGANIZATION. WE OFFER VERY
3 MUCH THE SAME MODEL TO ACADEMIC INSTITUTIONS. IT IS A FAIRLY
4 NEW PRODUCT FOR US. WE LAUNCHED THAT PRODUCT ABOUT
5 TWO-AND-A-HALF YEARS AGO, BUT IT REALLY RESTS ON VERY MUCH THE
6 SAME PREMISE. IT IS A SUBSCRIPTION STYLE LICENSE. COVERS
7 THE PRINT AND DIGITAL USES OF DIFFERENT TYPES OF USES ACROSS
8 THE ACADEMIC CAMPUS.

9 AND THEN ON THE PAY PER USE LICENSING, AGAIN, THEY BOTH
10 SPAN THE CORPORATE AND ACADEMIC MARKETS. FOR THE CORPORATE
11 COMMUNITY, WE OFFER REALLY THREE SERVICES: HOURLY
12 PUBLICATION LICENSING SERVICE, WHICH ALLOWS CONTENT USERS TO
13 PUBLISH CONTENT INTO A NEW FORM, INTO A BOOK, INTO A
14 JOURNAL, INTO A CORPORATE NEWSLETTER, PRESENTATION, THINGS
15 LIKE THAT. WE OFFER DIGITAL PERMISSION SERVICE, WHICH
16 ALLOWS CONTENT USERS TO DIGITALLY POST CONTENT OR DIGITALLY
17 TRANSMIT CONTENT VIA EMAIL OR POSTING TO INTERNET SITE,
18 INTRANET SIGNATURE OR EXTRA NET SITE.

19 WE ALSO OFFER A KIND OF GENERAL SERVICE THAT WE CALL THE
20 TRANSACTIONAL REPORTING SERVICE. UNDER THE SCOPE OF THAT
21 SERVICE, CONTENT USERS CAN PHOTOCOPY AND DISTRIBUTE PHYSICAL
22 COPIES OF A PIECE OF CONTENT. AND THAT SERVICE REALLY IS
23 USED BOTH IN THE CORPORATE, ALSO FOR GENERAL USE, ALSO
24 ACADEMIC USES FOR ACADEMIC LIBRARIES.

25 ALSO MOVING INTO THE ACADEMIC MARKET, WE AGAIN OFFER PAY

1 PER USE SERVICES. WE OFFER TWO PRIMARY SERVICES, ONE IS THE
2 ACADEMIC PERMISSION SERVICE, WHICH LARGELY COVERS REUSE OF
3 CONTENTS INTO COURSEPACK AND CLASSROOM HANDOUTS. THAT IS
4 LARGELY PRINT USE. IT IS JUST FOR PRINT USES.

5 THE ELECTRONIC COURSE CONTENT SERVICE REALLY IS A DIGITAL
6 COMPLEMENT AND IT ALLOWS ACADEMIC COMPLEMENT USERS TO POST
7 MATERIALS FOR ELECTRONIC RESERVES, COURSE MANAGEMENT SYSTEM
8 POSTINGS, FACULTY INTRANET SITES, BUT IT IS FOR COURSE
9 CONTENT.

10 AND THAT IS LARGELY -- WE ALSO OFFER ACTUALLY AN
11 IMPORTANT CONTENT LICENSING SERVICE CALLED RIGHTSLINK, WHICH
12 EXPANDS MARKET. IT IS A PAY PER USE SERVICE, A SERVICE
13 WHERE WE PROVIDE CONTENT. AND IT IS -- AGAIN IT IS WHAT WE
14 CONSIDER TO BE A POINT OF CONTENT LICENSING SOLUTION WHERE
15 IT'S PERMISSIONS EXCLUSION THAT ACTUALLY SITS ON THE CONTENT
16 ON A PUBLISHER'S WEBSITE. CONTENT USER WILL COME TO A
17 PARTICULAR PUBLISHER'S WEBSITE, IDENTIFY A PIECE OF CONTENT
18 THEY ARE INTERESTED IN EITHER DISTRIBUTING OR GETTING A
19 REPRINT OF, AND WE CAN MANAGE THAT TRANSACTION FOR THAT RIGHTS
20 HOLDER IN A HIGHLY AUTOMATED AND CUSTOMIZED WAY.

21 Q. ANNUAL SUBSCRIPTION SERVICE LICENSE?

22 A. WE CALL IT THE ANNUAL COPYRIGHT LICENSE. THERE IS ONE
23 FOR CORPORATIONS AND ONE FOR ACADEMIC INSTITUTIONS.

24 Q. SPEAKING OF THE ANNUAL COPYRIGHT LICENSE IN THE
25 ACADEMIC SETTING, I THINK YOU SAID THAT THAT WAS A RELATIVELY

1 NEW SERVICE?

2 A. YES, IT IS.

3 Q. WHEN DID CCC BEGIN OFFERING THAT LICENSE?

4 A. WE FIRST LAUNCHED THAT IN APRIL OF 2007.

5 Q. WHAT PROMPTED CCC TO BEGIN OFFERING THIS LICENSE IN
6 APRIL OF 2007?

7 A. WELL, IT WAS REALLY BASED ON HOW CONTENT USE HAS
8 CHANGED OVER TIME IN THE ACADEMIC COMMUNITY. MANY MOONS AGO,
9 SEVERAL YEARS AGO, REALLY, IN THE ACADEMIC COMMUNITY, CONTENT
10 WAS MANAGED REALLY IN THE LIBRARY OR IN THE COPY SHOP FOR
11 COURSEPACKS. CONTENT WAS MANAGED REALLY SOLELY WITHIN THOSE
12 TWO AREAS OF THE INSTITUTION. THOSE TWO AREAS OF THE
13 INSTITUTION UNDERSTOOD HOW AND WHEN TO GET PERMISSION. THEY
14 UNDERSTOOD THE PROCESS.

15 BUT REALLY WHAT HAS HAPPENED OVER THE COURSE OF TIME IS
16 THAT CONTENT USE HAS REALLY BEEN DISSEMINATED ACROSS THE
17 INSTITUTION, FACULTY MEMBERS ARE MANAGING THEIR OWN CONTENTS,
18 TEACHING ASSISTANTS ARE HELPING THEM MANAGE THAT CONTENT.
19 ADMINISTRATORS ARE MANAGING AND DISTRIBUTING CONTENT ACROSS
20 THE INSTITUTION. AND THE CHALLENGE FOR THE INSTITUTION IS
21 REALLY MANAGING ALL OF THAT CONTENT AND ENSURING THAT THEY ARE
22 COMPLIANT WITH THEIR OWN COPYRIGHT POLICIES. THAT GETS
23 HARDER AND HARDER TO DO AS MORE AND MORE PEOPLE ARE TOUCHING
24 CONTENT. THIS IS A PROBLEM REALLY, A CHALLENGE IN THE
25 CORPORATE ARENA, AS WELL. SO AS THAT CONTENT IS REALLY

1 BEING DISSEMINATED ACROSS THE INSTITUTION, IT IS HARDER FOR
2 PAY PER USE LICENSING TO CONTINUE TO BE THE ONLY SOLUTION FOR
3 THESE INSTITUTIONS.

4 SO WE CREATED THE SUBSCRIPTION STYLE LICENSE, WHICH REALLY
5 COVERS THE FULL BREATH OF THE INSTITUTION, COMPLIMENTS OUR
6 PAPER USE LICENSES, AND GIVES THE INSTITUTION MORE FLEXIBILITY
7 AND THE ABILITY TO SHARE THAT CONTENT IN A WAY THAT THEY NEED,
8 IN THE TIMELY MANNER THAT THEY NEED, JUST BY IDENTIFYING
9 WHETHER OR NOT A PARTICULAR TITLE IS COVERED IN THE SCOPE OF
10 THEIR LICENSE, INSTEAD OF HAVING TO PLACE A PERMISSION ORDER,
11 TRACK THE PERMISSION REQUEST, PAY FOR THE INVOICE, THINGS
12 LIKE THAT.

13 SO IT IS A MORE STREAMLINED MODEL. IT WORKS IN
14 COMPLEMENT WITH OUR PAY PER USE LICENSES. AND JUST GIVES A
15 BROADER SENSE OF COVERAGE FOR THE INSTITUTION.

16 Q. DOES IT GIVE A BROADER SENSE OF COVERAGE BY GRANTING A
17 BROADER LICENSE?

18 MR. RICH: YOU MEAN IN TERMS OF SCOPE OF RIGHTS
19 GRANTS?

20 MR. SHEESLEY: I AM TRYING TO UNDERSTAND WHAT THE
21 WITNESS MEANT BY "BROADER COVERAGE."

22 THE WITNESS: IT REALLY DOES TWO THINGS. IT IS A
23 BROAD SET OF RIGHTS. IT COVERS NOT ONLY EDUCATIONAL USES,
24 THE COURSEPACKS WE TALKED ABOUT, ELECTRONIC RESERVES, COURSE
25 MANAGEMENT SYSTEMS POSTINGS THAT WE TALKED ABOUT EARLIER. IT

1 ALSO COVERS THE RESEARCH THAT IS CONDUCTED, RECOGNIZED BY THE
2 INSTITUTION. SO RESEARCHERS WITHIN THE INSTITUTION WHO ARE
3 USING THE INSTITUTIONS RESOURCES, THAT RESEARCH IS ALSO
4 COVERED. THE USE OF THAT CONTENT OF THAT RESEARCH IS ALSO
5 COVERED UNDER THE SCOPE OF THE LICENSE.

6 ADMINISTRATIVE USES OF CONTENT. SO AS LET'S SAY A PROVOST
7 OR ACADEMIC DIRECTORS ARE DISSEMINATING CONTENT ACROSS THE
8 INSTITUTIONS WITH FACULTY MEMBERS OR ADDITIONAL
9 ADMINISTRATORS, THE CONTACT IN THOSE COMMUNICATIONS CAN ALSO
10 BE COVERED UNDER THE LICENSE. BROAD SET OF THESE RULES. IT
11 IS ALSO A SINGLE SET OF REUSE RULES WHICH MAKES IT THAT MUCH
12 EASIER FOR THE INSTITUTION TO KIND OF MANAGE THE RIGHTS THEY
13 HAVE FOR THE CONTENT THEY NEED TO USE.

14 Q. WHAT CONTENT IS COVERED BY THE ANNUAL COPYRIGHT
15 LICENSE?

16 A. THERE ARE ABOUT NINE MILLION TITLES THAT ARE COVERED
17 UNDER THE SCOPE OF THE LICENSE. ABOUT A MILLION AND A HALF
18 OF THOSE TITLES HAVE BOTH PRINT AND DIGITAL RIGHTS ASSIGNED TO
19 THEM. AND ABOUT SEVEN AND A HALF MILLION OF THE REMAINING
20 TITLES, WE REALLY ONLY HAVE THE ABILITY TO CONVEY PRINT RIGHTS
21 ON THOSE PARTICULAR TITLES BECAUSE WE GET THOSE RIGHTS FROM
22 OUR PARTNER REPRODUCTION RIGHTS ORGANIZATIONS AROUND THE
23 WORLD. AND THEY ONLY HAVE PRINT RIGHTS, THEY CAN ONLY
24 CONVEY TO US PRINT RIGHTS THAT WE CAN THEN CONVEY TO OUR
25 LICENSING SERVICES.

1 SO THAT IS REALLY THE BROAD SPECTRUM OF THE WORKS THAT ARE
2 COVERED.

3 Q. WITH THE ANNUAL COPYRIGHT LICENSE THAT CCC MAKES VIABLE
4 TO ANY NUMBER OF SUBSCRIBERS, IS THE CONTENT MADE AVAILABLE
5 UNIFORM ACROSS ALL THOSE SUBSCRIBERS?

6 A. IN TERMS OF UNDERSTANDING WHAT CONTENT IS COVERED UNDER
7 THE SCOPE OF THE LICENSE?

8 Q. RIGHT.

9 A. YES. ANY CONTENT USER CAN COME RIGHT TO OUR WEBSITE,
10 "COPYRIGHT.COM," VERY SIMPLE SEARCH TOOL. IDENTIFY THE TITLE
11 THEY ARE INTERESTED IN AND THERE IS LITERALLY A CHECK MARK
12 THAT SAYS, "COVERED" UNDER THE SCOPE OF YOUR LICENSE. SO IT
13 IS A VERY SIMPLE TOOL. AND, YES, IT IS AVAILABLE TO ANY OF
14 OUR CONTENT USERS.

15 Q. CAN POTENTIAL SUBSCRIBERS TO THE ANNUAL COPYRIGHT
16 LICENSE PICK AND CHOOSE AMONG THE CONTENT THAT THEY WANT TO
17 HAVE INCLUDED IN THAT LICENSE?

18 A. WHAT WE UNDERSTAND, CERTAINLY, ABOUT THE ACADEMIC
19 COMMUNITY, THEY HAVE SUCH A BROAD SET OF REUSE NEEDS AND THE
20 REUSE NEEDS CHANGE ON A REGULAR BASIS; SOMETIMES FROM YEAR TO
21 YEAR, FROM SEMESTER TO SEMESTER. SO THEY REALLY NEED THIS
22 BROAD SET OF CONTENT RANGE. WE HAVE A REPERTORY OF WORKS AS
23 A FULL SET OF WORKS. SO NO THEY CAN'T PICK THE PARTICULAR
24 TITLES THEY WANT UNDER THE PARTICULAR LICENSE.

25 Q. DOES THE CATALOGUE OF RIGHTS AVAILABLE THROUGH THE

1 ANNUAL COPYRIGHT LICENSE INCLUDE BOOKS?

2 A. YES.

3 Q. DOES IT INCLUDE JOURNALS?

4 A. YES, IT DOES.

5 Q. HOW DID THE CCC DECIDE WHICH CONTENT TO MAKE AVAILABLE
6 THROUGH THE ANNUAL COPYRIGHT LICENSE?

7 A. WELL, IF WE THINK EARLIER ABOUT THE CONVERSATION WE
8 HAD ABOUT MY ROLE AND WHAT I CONSIDER, WHAT WE CONSIDER
9 INVENTORY STRATEGY, WHAT WE HAVE DONE IS WE HAVE TALKED TO
10 ACADEMIC INSTITUTIONS OVER THE COURSE OF THE TIME THAT WE WERE
11 CREATING THIS LICENSE. WE WERE TALKING TO ACADEMIC
12 INSTITUTIONS, DIFFERENT TYPES OF INSTITUTIONS ABOUT THEIR
13 CONTENT NEEDS. SO JUST THROUGH TALKING WITH THEM AND
14 UNDERSTANDING THEIR CONTENT NEEDS, WE ALSO LOOK BACK AT OUR
15 PAY PER USE ORDERS IN THE ACADEMIC PERMISSION SERVICE AND
16 ACADEMIC COURSE CONTENT SERVICE TO UNDERSTAND THE TYPES OF
17 CONTENT THAT ACADEMIC INSTITUTIONS ARE REQUESTING PERMISSION
18 FOR TODAY. AND THEN AGAIN WE GO OUTSIDE OUR ORGANIZATION AND
19 WE LOOK AT THE CONTENT RESOURCES THAT THESE INSTITUTIONS HAVE
20 AVAILABLE TO THEM. AND WE DRAW ALL OF THAT TOGETHER AND
21 PRIORITIZE THEM AND THAT IS REALLY HOW WE IDENTIFIED THE
22 TITLES WE NEED TO DRAW UNDER THE SCOPE OF THIS LICENSE.

23 Q. WOULD YOU SAY IT IS DEMAND DRIVEN?

24 A. YES, ABSOLUTELY.

25 Q. HOW MANY PUBLISHERS CURRENTLY MAKE WORKS AVAILABLE

1 THROUGH THE ANNUAL COPYRIGHT LICENSE?

2 A. WELL OVER 500.

3 Q. DOES THAT INCLUDE THE PLAINTIFFS IN THIS LITIGATION?

4 A. SOME BUT NOT ALL. SAGE IS PARTICIPATING IN THE
5 ACADEMIC LICENSE. I BELIEVE THAT OXFORD UNIVERSITY PRESS IS
6 PARTICIPATING WITH THEIR JOURNALS, BUT NOT WITH THEIR BOOKS
7 AT THIS POINT IN TIME. AND CAMBRIDGE UNIVERSITY PRESS HAS
8 NOT YET PARTICIPATED.

9 Q. THAT IS LINE 16, PAGE 74. I AM NOW ON PAGE 76, LINE
10 16.

11 HOW MANY CURRENT SUBSCRIBERS DOES CCC CURRENTLY HAVE FOR
12 THE ANNUAL COPYRIGHT LICENSE?

13 A. THERE ARE 43 INSTITUTIONS PARTICIPATING.

14 Q. ARE THOSE ALL ACADEMIC INSTITUTIONS?

15 A. YES. THEY ARE ALL ACADEMIC INSTITUTIONS.

16 Q. HOW MANY CORPORATE SUBSCRIBERS ARE THERE FOR THAT
17 LICENSE?

18 A. THERE ARE CORPORATE SUBSCRIBERS FOR THE CORPORATE
19 LICENSE. THERE REALLY ARE TWO SEPARATE LICENSES, SO UNDER
20 THE ACADEMIC LICENSE THERE ARE JUST THOSE 43. UNDER THE
21 CORPORATE LICENSE, THAT IS A DIFFERENT SET OF ORGANIZATIONS.

22 MR. RICH: OFF THE RECORD.

23 (WHEREUPON AN OFF-THE-RECORD DISCUSSION WAS HELD.)

24 Q. I WOULD JUST LIKE THE RECORD TO REFLECT AS WE JUST
25 DISCUSSED OFF THE RECORD THAT MY UNDERSTANDING IS THAT THE

1 WITNESS'S DISCUSSION OF ANNUAL COPYRIGHT LICENSE TO THIS POINT
2 IN THE DEPOSITION HAS BEEN FOCUSED ON THE ACADEMIC ANNUAL
3 COPYRIGHT LICENSE, NOT THE SET OF CORPORATE USERS.

4 A. YES, THAT'S TRUE.

5 Q. THAT IS LINE 18 ON PAGE 77. NOW MOVING TO PAGE 78,
6 LINE 14.

7 THE COURT: LET ME STOP YOU FOR JUST A MINUTE, TIME
8 HAS GOTTEN AWAY FROM US. LET'S TAKE A FIFTEEN-MINUTE BREAK.
9 (WHEREUPON, A SHORT RECESS WAS HELD.)

10 THE COURT: YOU MAY PROCEED.

11 MR. WARENZAK: I BELIEVE WE LEFT OFF ON PAGE 78,
12 LINE 15. I HAD JUST PLACED EXHIBIT 70 ON THE ELMO. I AM
13 NOW MOVING TO LINE 23.

14 BY MR. WARENZAK:

15 Q. DO YOU RECOGNIZE THIS DOCUMENT?

16 A. I RECOGNIZE THIS AS -- I HAVE SEEN THIS LIST AS PART
17 OF MY PREPARATION, SO THE ANSWER TO THAT WOULD BE, YES.
18 AND I UNDERSTAND THIS TO BE A LIST OF OUR -- THE ANNUAL
19 LICENSEES UNDER THE ACADEMIC ANNUAL COPYRIGHT LICENSE.

20 Q. THIS IS A DOCUMENT DATED MARCH 2, 2009; IS THAT
21 CORRECT?

22 A. YES, I SEE THAT.

23 Q. SO WOULD YOU CHARACTERIZE THIS AS A CURRENT LIST OF
24 SUBSCRIBERS?

25 A. WE HAVE ADDED ADDITIONAL SCHOOLS SINCE MARCH, PROBABLY

1 THREE OR FOUR SINCE THAT TIME.

2 Q. DO YOU RECALL WHAT THOSE THREE OR FOUR ADDITIONAL
3 SCHOOLS ARE?

4 A. I DON'T REMEMBER ALL OF THEM. THE MOST NOTABLE WOULD
5 BE THE UNIVERSITY OF TEXAS SYSTEM. YOU MIGHT ACTUALLY SEE ON
6 HERE SOMEWHERE THERE WAS THE UNIVERSITY OF TEXAS. THE
7 UNIVERSITY OF TEXAS AT AUSTIN, PROBABLY TEN OR 12 DOWN, HAD
8 SIGNED A LICENSE ABOUT A YEAR AGO. AND NOW THE REST OF THE
9 UNIVERSITY OF TEXAS SYSTEM HAS JOINED ON.

10 Q. AND THAT IS LINE 24 ON PAGE 79. I AM NOW ON PAGE 84,
11 LINE 12.

12 DOES CCC CHARGE A ROYALTY TO INSTITUTIONS IN CONNECTION
13 WITH THE ANNUAL COPYRIGHT LICENSE?

14 A. WE CHARGE A LICENSING FEE, YES, WHICH INCLUDES THE
15 ROYALTY FEE, YES.

16 Q. HOW IS THAT LICENSING FEE DETERMINED?

17 A. THERE IS A VERY ROBUST PRICING MODEL THAT WE HAVE
18 DEVELOPED FOR THE ACADEMIC LICENSE. IT IS REALLY DRIVEN
19 LARGELY BY TWO FACTORS. IT IS DRIVEN BY THE KEARNEY
20 CLASSIFICATION OF THE INSTITUTION THAT HELPS US TO UNDERSTAND
21 THE KIND OF CONTENT THAT ARE USED WITHIN THOSE TYPES OF
22 INSTITUTIONS.

23 SO THE HIGHER LEVEL KEARNEY CLASSIFICATIONS, GRADUATE
24 PROFESSIONAL, DOCTORATE LEVEL TYPES OF SCHOOLS WILL TYPICALLY
25 USE A LOT OF SCIENTIFIC, TECHNICAL, OR MEDICAL CONTENT. AND

1 THOSE ARE TYPICALLY THE MORE HIGHLY VALUED CONTENT, MORE
2 HIGHLY PRICED CONTENT.

3 OTHER INSTITUTIONS LIKE LET'S SAY COMMUNITY COLLEGE OR
4 SOME BACHELOR'S DEGREE GRANTING INSTITUTIONS MIGHT USE A
5 BROADER SET OF CONTENT, MORE HUMANITIES STYLE, LESS
6 SCIENTIFIC AND MEDICAL CONTENT. BECAUSE OF THAT MIX OF
7 CONTENT THEY WOULD -- THEIR LICENSE PRICE WOULD TYPICALLY BE
8 LOWER.

9 THE OTHER FACTORS THAT WE TAKE INTO CONSIDERATION IS THE
10 FULL-TIME EQUIVALENT OF STUDENTS.

11 SO THE PRICING MODEL IS BASED ON THE SLIDING SCALE. SO
12 JUST AS A FOR INSTANCE, THE HIGHER LEVEL OF GRADUATE
13 PROFESSIONAL INSTITUTIONS WOULD HAVE THE HIGHEST PRICE AND THE
14 COMMUNITY COLLEGES WHO HAVE THAT VERY BROAD SET OF NEEDS AND A
15 LOT OF STUDENTS WOULD REALLY HAVE THE LOWEST PER STUDENT FEE.
16 SO WE AGAIN, IT IS DRIVEN BY THOSE TWO FACTORS, BUT IT IS A
17 PER STUDENT FEE. ASSIGNED TO ALL OF THE -- THAT IS CALCULATED
18 OVER ALL OF THE FULL-TIME EQUIVALENT STUDENTS AT THE
19 INSTITUTION.

20 Q. DO YOU KNOW WHAT THE HIGHEST FEE IS THAT CCC HAS
21 CHARGED TO AN INSTITUTION FOR THE ANNUAL COPYRIGHT LICENSE?

22 MR. RICH: ALL IN OR PER STUDENT?

23 MR. SHEESLEY: ALL IN.

24 THE WITNESS: I BELIEVE AS CHARGED TO DATE, I
25 BELIEVE IT IS LAUREATE EDUCATION, THE \$85,000.

1 Q. THAT IS LINE 14 OF PAGE 86. I AM NOW ON PAGE 86, LINE
2 14.

3 DOES THE CCC MAKE ANY CHARGE TO PUBLISHERS FOR MAKING
4 CONTENT AVAILABLE THROUGH THE ANNUAL COPYRIGHT LICENSE?

5 A. WE DO. WE RETAIN A PERCENTAGE OF THE ROYALTY FEE.

6 Q. AND WHAT PERCENTAGE OF THE ROYALTY FEE DOES CCC RETAIN?

7 A. I BELIEVE IT IS 25 PERCENT.

8 Q. AND THAT IS LINE 21 ON PAGE 87. I AM NOW ON LINE 5 OF
9 PAGE 88.

10 IS THAT 25 PERCENT WITHHOLDING CONSTANT ACROSS ALL THE
11 PUBLISHERS THAT MAKE CONTENT AVAILABLE THROUGH THE ANNUAL
12 COPYRIGHT LICENSE?

13 A. YES, IT IS. IT IS CONSTANT ACROSS ALL PUBLISHERS.

14 Q. DOES THE CCC COLLECT ANY OTHER FEES IN CONNECTION WITH
15 THE ANNUAL COPYRIGHT LICENSE TO ACADEMIC INSTITUTIONS?

16 A. I BELIEVE THERE IS ALSO AN ADMINISTRATIVE FEE FOR THE
17 ACADEMIC INSTITUTION. AND I BELIEVE THAT FEE IS 10 PERCENT
18 FOR THE FIRST YEAR.

19 Q. IS THAT 10 PERCENT OF THE LICENSING FEE?

20 A. YES, EXACTLY.

21 Q. AND THAT IS 10 PERCENT ADDED ON TOP OF THE LICENSING
22 FEE?

23 A. IN ADDITION, THAT IS TRUE.

24 Q. THAT IS LINE 23 ON PAGE 88. I AM NOW ON LINE 18 OF
25 PAGE 89.

1 IF A SUBSCRIBER TO THE ANNUAL COPYRIGHT LICENSE FOR
2 ACADEMIC INSTITUTIONS WOULD AGAIN LIKE PERMISSIONS FOR CONTENT
3 THAT IS OUTSIDE OF THE SCOPE OF THAT ANNUAL COPYRIGHT LICENSE,
4 CAN THE CCC IN SOME CASES PROVIDE THAT PERMISSION IF THE CCC
5 HAS THE ABILITY TO PROVIDE THAT PERMISSION?

6 A. THEY CAN USE OUR PAY PER USE SERVICES, WHICH ARE THE
7 ACADEMIC PERMISSION SERVICE AND THE ELECTRONIC COURSE CONTENT
8 SERVICE.

9 Q. AND THAT IS LINE 3 ON PAGE 90. I AM NOW AT LINE 14 ON
10 PAGE 90.

11 A. EVEN IF WE DON'T HAVE THE RIGHTS ON THOSE PAY PER USE
12 SERVICES AT THAT POINT IN TIME, WE WILL SOLICIT RIGHTS. WE
13 WILL ASK RIGHTS HOLDERS FOR THOSE RIGHTS ON BEHALF OF THE
14 CUSTOMER FOR THAT PAY PER USE PROCESS. THAT IS SOMETHING WE
15 CALL A SPECIAL ORDER. SO EVEN IF WE CAN'T INSTANTLY GRANT
16 PERMISSION UNDER THE SCOPE OF OUR PAY PER USE LICENSES, WE
17 WILL ATTEMPT TO GET THAT PERMISSION FOR THAT USE FOR THAT
18 CONTENT USER.

19 Q. WHEN YOU ATTEMPT TO GET THAT USE FOR THAT USER, WOULD
20 THAT BE COVERED BY THE ANNUAL COPYRIGHT LICENSE?

21 A. WE WOULD DO BOTH. WE WOULD WORK TO GET IT COVERED
22 UNDER THE SCOPE OF THE ANNUAL COPYRIGHT LICENSE. WE WOULD
23 ALSO ATTEMPT TO GET PERMISSION FOR THAT ONE OFF PERMISSION
24 REQUEST AND THEN WE WOULD ALSO ATTEMPT TO GET THOSE RIGHTS
25 WITHIN OUR PAY PER USE SERVICES.

1 REALLY, AGAIN, JUST GOING BACK TO WHAT YOU MENTIONED
2 EARLIER, IT IS REALLY ABOUT DEMAND. IF THE CONTENT USER IS
3 INTERESTED IN HAVING RIGHTS FOR THAT PARTICULAR PIECE OF
4 CONTENT, WE WANT TO OBTAIN THE BROADEST SET OF RIGHTS THAT WE
5 CAN TO MEET THAT NEED.

6 Q. IF THAT USER, GOING BACK TO THE EXAMPLE I STATED, CAN'T
7 OBTAIN RIGHTS TO A PARTICULAR PIECE OF CONTENT THROUGH THE
8 ANNUAL COPYRIGHT LICENSE AND HAS TO GO THROUGH A PAY PER USE
9 SERVICE THROUGH THE CCC, WOULD THEIR STATUS TO SUBSCRIBER OF
10 ANNUAL COPYRIGHT LICENSE MAKE THEM ELIGIBLE FOR ANY DISCOUNT
11 OFF OF CCC'S TYPICAL FEES ASSOCIATED WITH A PAY PER USE
12 PERMISSION?

13 A. NOT CURRENTLY, NO.

14 Q. AND THAT IS LINE 24 ON PAGE 91. I AM NOW ON PAGE 92,
15 LINE FIVE. I WOULD LIKE TO MARK THIS AS EXHIBIT 71. THAT
16 IS LINE 6 ON PAGE 92. I AM NOW MOVING TO LINE 13 ON THE SAME
17 PAGE.

18 DO YOU RECOGNIZE THIS DOCUMENT?

19 A. I DO. I RECOGNIZE THIS AS THE LICENSE FOR CONTENT
20 USERS FOR ANNUAL COPYRIGHT LICENSE FOR ACADEMIC INSTITUTIONS.

21 Q. IS THIS A STANDARD FORM AGREEMENT THAT ALL SUBSCRIBERS
22 TO THIS LICENSE MUST ENTER INTO?

23 A. YES.

24 Q. I WOULD LIKE -- I WOULD LIKE TO THEN TURN AWAY FROM
25 THE ANNUAL COPYRIGHT LICENSE THAT WE DISCUSSED AND TALK ABOUT

1 SOME OF THE PAY PER USE SERVICES THAT YOU IDENTIFIED EARLIER.

2 A. CERTAINLY.

3 Q. I BELIEVE THE FIRST ONE YOU TALKED ABOUT WAS THE
4 ACADEMIC PERMISSION SERVICE?

5 A. YES.

6 Q. IS THAT SOMETIMES REFERRED TO AS APS?

7 A. YES, IT IS.

8 Q. WHAT IS THE PURPOSE OF THAT SERVICE?

9 A. THE PURPOSE OF THAT SERVICE IS TO PROVIDE LICENSES TO
10 ACADEMIC CONTENT USERS PRIMARILY FOR COURSEPACKS AND CLASSROOM
11 HANDOUTS, PRINT USES ON THE ACADEMIC CAMPUS.

12 Q. AND WHEN DID CCC BEGIN OFFERING THE APS?

13 A. IN 1991.

14 Q. DO YOU KNOW WHY CCC CHOSE TO BEGIN OFFERING THE APS AT
15 THAT TIME?

16 A. I WASN'T THERE AT THE TIME. BUT MY UNDERSTANDING IS
17 THAT POST THE KINKO'S CASE, AS WELL AS THE MICHIGAN DOCUMENTS
18 SUPPLY CASE, IT WAS UNDERSTOOD AT THAT POINT IN TIME THAT THE
19 CREATION OF COURSEPACKS, THE BINDING TOGETHER COPYRIGHTED
20 CONTENT FOR THE USE OF COURSEPACKS REQUIRED COPYRIGHT
21 PERMISSION. AND PRIOR TO THAT TIME IT WAS REALLY NO EASY WAY
22 FOR THAT TO HAPPEN. THERE WAS NO EASY WAY FOR CONTENT USERS
23 TO GET PERMISSION IN A COLLECTIVE KIND OF WAY. IF THEY WERE
24 GETTING PERMISSION, THEY WERE GOING TO MULTIPLE RIGHTS USERS
25 DIRECTLY ATTEMPTING TO TRACK DOWN THE RIGHT PERSON.

1 PUBLISHERS AT THE TIME WEREN'T PARTICULARLY WELL ORGANIZED
2 AROUND COPYRIGHT PERMISSIONS AT THE TIME. SO IT WAS VERY,
3 VERY DIFFICULT FOR ACADEMIC INSTITUTIONS TO ATTEMPT TO OBTAIN
4 PERMISSION FOR THOSE KINDS OF USES. AND SO WE CREATED A
5 LICENSING SERVICE THAT REALLY BEGAN TO CENTRALIZE THE ABILITY
6 FOR USERS TO OBTAIN PERMISSION FOR MULTIPLE WORKS, MULTIPLE
7 RIGHTS HOLDERS, AND MANAGE IT ALL IN ONE PLACE.

8 Q. I BELIEVE YOU TESTIFIED EARLIER THAT THE RIGHTS
9 AVAILABLE UNDER THE APS ARE FOR PRINT REPRODUCTION?

10 A. YES.

11 Q. THAT IS CORRECT?

12 A. YES.

13 Q. ARE THERE ANY OTHER RIGHTS AVAILABLE THROUGH APS?

14 A. NO.

15 Q. WHAT TYPES OF CONTENT ARE AVAILABLE THROUGH APS?

16 A. IT IS A VERY BROAD SET OF CONTENT: BOOKS, JOURNALS,
17 THERE ARE BLOGS AVAILABLE, OTHER ELECTRONIC RESERVES. NO,
18 THAT IS NOT UNDER APS. I WOULD SAY BLOGS, LARGELY TEXT
19 CONTENT AT THAT POINT IN TIME. BUT MOSTLY BOOKS AND
20 JOURNALS.

21 Q. HOW MANY PUBLISHERS CURRENTLY MAKE CONTENT AVAILABLE
22 THROUGH APS?

23 A. I DON'T KNOW THE EXACT NUMBER, BUT IT IS IN THE
24 THOUSANDS.

25 Q. WOULD YOU PUT IT IN LESS THAN 10,000 OR MORE THAN

1 10,000?

2 A. I WOULD SAY PROBABLY RIGHT AROUND 10,000 BECAUSE
3 PUBLISHERS ARE WORLDWIDE, NOT ONLY U.S. BASED PUBLISHING
4 ORGANIZATIONS, BUT ALSO PUBLISHERS BASED OUTSIDE OF THE U.S.
5 AND AGAIN WE ALSO ARE ABLE TO DRAW INTO THE ACADEMIC
6 PERMISSION SERVICE RIGHTS HOLDERS WHO ARE PARTICIPATING
7 THROUGH A PARTNER REPRODUCTION RIGHTS ORGANIZATIONS. SO WE
8 ARE ABLE TO SERVICE THOSE RIGHTS AS WELL. SO THERE REALLY
9 ARE THOUSANDS OF THOUSANDS OF PUBLISHERS THAT WE CAN SERVICE
10 THROUGH THIS PARTICULAR PROGRAM.

11 Q. DO YOU KNOW IF ANY OF THE NAMED PLAINTIFFS MADE CONTENT
12 AVAILABLE THROUGH APS?

13 A. THEY ALL DID.

14 Q. AND THAT IS LINE 7 ON PAGE 96. I AM NOW MOVING TO
15 LINE 15 ON THE SAME PAGE. TO YOUR KNOWLEDGE, HAVE ANY OF THE
16 NAMED PLAINTIFFS PLACED ANY RESTRICTION ON THE TYPES OF
17 CONTENT THAT THEY WILL MAKE AVAILABLE THROUGH APS?

18 A. THERE ARE SOME TITLES THAT THEY DON'T MAKE AVAILABLE
19 THROUGH APS, SO THEY HAVE SETS OF TITLES THAT THEY WILL --
20 THAT THEY HAVE ACCESS TO CONVEY RIGHTS ON THEIR BEHALF. AND
21 THERE ARE OTHER TITLES THAT THEY HAVE NOT ALLOWED US TO CONVEY
22 RIGHTS. THERE ARE OTHER TITLES THAT THEY ARE ASKING US TO
23 CONTENT THEM ON THE CUSTOMER'S BEHALF BECAUSE THEY NEED TO
24 EVALUATE A PARTICULAR PERMISSION REQUEST BEFORE THEY CAN
25 ACTUALLY MAKE A BUSINESS DECISION AS TO WHETHER OR NOT THEY

1 CAN GRANT PERMISSION. SO REALLY ALL OF THOSE PUBLISHERS HAVE
2 WORKS IN EACH ONE OF THOSE STATES.

3 Q. HOW MANY INDIVIDUAL WORKS, APPROXIMATELY, AGAIN, ARE
4 AVAILABLE THROUGH APS?

5 A. THROUGH APS, ABOUT TEN MILLION.

6 Q. THAT IS LINE 12 ON PAGE 97. I AM NOW MOVING TO LINE
7 24 ON THE SAME PAGE.

8 DOES CCC TARGET ANY PARTICULAR CLASS OF CUSTOMER FOR THE
9 APS?

10 A. NO, THE ACADEMIC PERMISSION SERVICE IS AVAILABLE TO
11 ANY ACADEMIC INSTITUTION OF HIGHER EDUCATION. WE DO LARGELY
12 TARGET HIGHER ED, COLLEGES AND UNIVERSITIES. BUT WITHIN
13 THAT SCOPE IT IS REALLY AVAILABLE TO ANY ACADEMIC INSTITUTION.

14 Q. AND THAT IS LINE 7 ON PAGE 98. I AM NOW MOVING TO
15 LINE 6 ON PAGE 99.

16 HOW MANY REQUESTERS SEEK PERMISSION THROUGH APS IN A
17 TYPICAL YEAR?

18 A. HOW MANY REQUESTERS?

19 MR. RICH: CAN I CLARIFY THE QUESTION? YOU MEAN BY
20 INSTITUTION OR BY NUMBERS OF REQUESTS?

21 Q. I MEAN BY NUMBERS OF REQUESTS.

22 A. THANK YOU VERY MUCH. SO WE RECEIVE CLOSE TO 300,000
23 -- I'M SORRY, IN THE ACADEMIC PERMISSION SERVICE?

24 Q. CORRECT?

25 A. ABOUT 250,000 REQUESTS FOR PERMISSION UNDER THE

1 ACADEMIC PERMISSION SERVICE.

2 Q. THAT IS GENERALLY ON AN ANNUAL BASIS?

3 A. YES.

4 Q. AMONG THOSE 250,000, COULD THOSE BE MULTIPLE REQUESTS
5 FROM THE SAME REQUESTER?

6 A. THEY CAN BE, DEFINITELY.

7 Q. DO YOU HAVE ANY IDEA HOW MANY UNIQUE REQUESTERS SEEK
8 PERMISSIONS THROUGH APS IN A GIVEN YEAR?

9 A. I DON'T KNOW HOW MANY INDIVIDUAL REQUESTERS. I DO KNOW
10 WE RECEIVE PERMISSION REQUESTS FROM ABOUT 85,000 INSTITUTIONS
11 ANNUALLY. BUT THERE ARE MULTIPLE USERS WITHIN EACH
12 INSTITUTION, SO THERE ARE THOUSANDS OF INDIVIDUAL REQUESTERS.

13 Q. IN A VERY HIGH LEVEL SENSE, IF A REQUESTER REQUESTS
14 CONTENT THAT'S AVAILABLE THROUGH APS AND WOULD LIKE TO RECEIVE
15 PERMISSION THROUGH CCC FOR THAT CONTENT, HOW WOULD THEY DO
16 THAT?

17 A. THEY COULD ACTUALLY DO THAT THROUGH MULTIPLE CHANNELS.
18 MOST OF OUR PERMISSION ORDERS COME FROM OUR WEBSITE,
19 COPYRIGHT.COM. WE HAVE A STRONG E-COMMERCE PRESENCE WHERE A
20 CUSTOMER CAN EITHER WRITE FROM THE HOME PAGE OR FROM OUR
21 SEARCH CAPABILITY IDENTIFY A PARTICULAR TITLE. THEY CAN SEE
22 WHAT THE PERMISSIONS ARE THAT ARE AVAILABLE FOR THAT
23 PARTICULAR TITLE, EITHER ACROSS ALL OF OUR PROGRAMS OR JUST
24 FOR OUR ACADEMIC PROGRAMS. THEN THEY CAN CLICK ON A SINGLE
25 BUTTON, GIVE US SOME ADDITIONAL INFORMATION, LIKE WHAT IS

1 THE NAME OF THE INSTITUTION, THE COURSE, SOME INFORMATION
2 ABOUT THE COURSE, SOME INFORMATION ABOUT THE PARTICULAR WORK
3 THAT THEY ARE INTERESTED IN USING, PLACE THAT PERMISSION
4 ORDER.

5 THERE IS A VERY SIMPLE CHECKOUT PROCESS, A VERY STANDARD
6 SORT OF SHOPPING CART TYPE OF CHECKOUT PROCESS. THEY CAN
7 GIVE US THEIR CREDIT CARD NUMBER IF THEY LIKE OR RECEIVE AN
8 INVOICE NUMBER. AGAIN SOME VERY STANDARD E-COMMERCE MODELS.
9 THEY CAN GET PERMISSION RIGHT THEN AND THERE.

10 Q. IF THE DECISION IS MADE BY CCC TO GIVE THAT REQUESTER
11 PERMISSION IN RESPONSE TO A REQUEST THAT COMES THROUGH THE
12 WEBSITE, FOR EXAMPLE, HOW DOES THE REQUESTER RECEIVE CCC'S
13 DECISION?

14 A. IT IS NOT ACTUALLY CCC'S DECISION. WE ARE CONVEYING THE
15 RIGHTS THAT A RIGHTS HOLDER HAS ALLOWED US TO CONVEY BASED ON
16 OUR RELATIONSHIP WITH THE RIGHTS HOLDER AND BASED ON AN
17 AGREEMENT WE HAVE IN PLACE WITH THAT RIGHTS HOLDER. SO WHAT
18 WE ARE IN FACT PASSING ALONG TO OUR USER IS THE RIGHT THAT THE
19 RIGHTS HOLDER HAS TO CONVEY THROUGH US AS A CHANNEL FOR THEM.
20 BUT A CONTENT USER WILL RECEIVE AN ORDER CONFIRMATION FROM US,
21 AN EMAIL, AND THEN IT CAN ACTUALLY GO BACK TO THEIR SET OF
22 ORDER AND THEIR ORDER HISTORY ON OUR WEBSITE, THEY CAN MANAGE
23 THOSE ORDERS. SO THEY CAN CANCEL, THEY CAN ACTUALLY
24 DUPLICATE ORDERS IF THEY WANT TO. THERE ARE SOME INSTANCES
25 WHEN WE, AS I MENTIONED EARLIER, NEED TO CONTACT A RIGHTS

1 HOLDER ON BEHALF OF THE CUSTOMER, MAYBE WE CAN'T GIVE
2 PERMISSION INSTANTLY. IN THOSE INSTANCES, WHEN WE WOULD GO
3 OUT TO THE RIGHTS HOLDER AND ASK PERMISSION ON BEHALF OF THE
4 CUSTOMER, THE CUSTOMER CAN TRACK THAT PROGRESS RIGHT ON OUR
5 WEBSITE AND THEY CAN SEE THE STATUS AS IT CHANGES OVER TIME.
6 AND WE WILL ADVISE THEM WHEN WE GET PERMISSION. AND ACTUALLY
7 OVER THE COURSE OF OUR CONTACTING THE RIGHTS HOLDER, WE WOULD
8 BE IN CONTACT WITH THE CUSTOMER VIA EMAIL. WHEN WE RECEIVE
9 PERMISSION, WE WILL CONTACT THE CUSTOMER AGAIN AND LET THEM
10 KNOW WE HAVE RECEIVED PERMISSION, THREAD THEM BACK TO OUR
11 WEBSITE SO THEY CAN SEE WHAT THAT PERMISSION IS AND WHAT THE
12 ROYALTY FEE IS. THEY CAN MODIFY THEIR ORDERS AT ANY TIME UP
13 UNTIL THE TIME THAT THE ORDER IS INVOICED.

14 Q. WHAT PERCENTAGE OF THE REQUEST FOR PERMISSION THAT CCC
15 RECEIVES THROUGH APS CAN BE GRANTED INSTANTANEOUSLY?

16 A. INSTANTANEOUSLY? ABOUT 85 PERCENT OF OUR PERMISSION
17 ORDERS ARE GRANTED INSTANTANEOUSLY.

18 Q. HOW LONG DOES IT TAKE FOR A DETERMINATION TO BE MADE AS
19 TO WHETHER OR NOT TO GRANT THE REMAINING 15 PERCENT OF
20 REQUESTS?

21 A. IT REALLY DEPENDS ON THE PUBLISHER BECAUSE WE ARE
22 CONTACTING THEM WITH THAT CONTENT USERS REQUEST. BUT ON
23 AVERAGE IT IS ABOUT TWO WEEKS. IT COULD BE MUCH LESS. SOME
24 PUBLISHERS RESPOND TO US WITHIN A DAY OR LESS. SOME CAN TAKE
25 LONGER. BUT ON AVERAGE, WE GENERALLY SEE A RESPONSE RATE

1 WITHIN ABOUT TWO WEEKS.

2 Q. IN THE COURSE OF PLACING AN ORDER FOR PERMISSIONS
3 THROUGH THE CCC WEBSITE, DOES A REQUESTER HAVE TO ENTER INTO
4 ANY SORT OF AGREEMENT WITH CCC PRIOR TO RECEIVING PERMISSIONS?

5 A. THEY HAVE TO ACCEPT SOME TERMS AND CONDITIONS OF THE
6 PRODUCTS. BUT THERE IS NO AGREEMENT THAT THEY HAVE TO HAVE
7 IN PLACE. SO THERE IS NO KIND OF PRIOR REGISTRATION THAT HAS
8 TO HAPPEN IN ORDER FOR THEM TO BEGIN TO PLACE PERMISSION
9 ORDERS WITH COPYRIGHT CLEARANCE CENTER.

10 DURING THE COURSE OF PLACING THAT ORDER, WE ASK THEM TO
11 ACCEPT SOME GENERAL TERMS AND CONDITIONS OF THE PRODUCT. THE
12 RIGHTS HOLDER MAY HAVE SOME ADDITIONAL TERMS AND CONDITIONS
13 THAT THEY WANTED ADDED ON TO THAT PARTICULAR REQUEST. AND SO
14 WE ASK THAT THE CUSTOMER REVIEW THOSE AND ACCEPT THOSE TERMS
15 AND CONDITIONS AFTER COMPLETING THEIR PERMISSION ORDER.

16 Q. THOSE TERMS AND CONDITIONS ARE VISIBLE ON THE COMPUTER
17 SCREEN TO THE REQUESTER IN THE COURSE OF PLACING THIS ORDER?

18 A. YES, ABSOLUTELY.

19 Q. AND SOME OF THOSE TERMS AND CONDITIONS ARE UNIFORM
20 ACROSS ALL REQUESTS THROUGH APS?

21 A. YES.

22 Q. AND SOME OF THOSE, AGAIN, JUST SO I UNDERSTAND, SOME
23 OF THOSE TERMS AND CONDITIONS ARE SPECIFIC TO THE CONTENT
24 BEING REQUESTED?

25 A. YES, EXACTLY.

1 Q. DOES CCC CHARGE ANY LICENSING FEES IN CONNECTION WITH
2 THE APS?

3 A. THERE IS A SERVICE CHARGE, THREE DOLLARS PER GRANTED
4 TRANSACTION. BUT IF AN ORDER IS NOT GRANTED, IS NOT GRANTED
5 BY THE RIGHTS HOLDER, OR EVEN IF IT IS GRANTED AND THE
6 CUSTOMER CANCELS THAT PARTICULAR ORDER, THEN THERE IS NO FEE.

7 Q. AND WHEN CCC CONVEYS A GRANT OF PERMISSION TO CONTENT
8 THROUGH APS TO A REQUESTER, ARE THERE ANY OTHER CHARGES TO
9 THE REQUESTER AT THAT TIME?

10 A. NO. AT THAT TIME IT IS JUST THE CALCULATED ROYALTY
11 FEE THAT COMES DIRECTLY FROM THE RIGHTS HOLDER AND THE SERVICE
12 CHARGE OF THREE DOLLARS.

13 Q. SO ANY ROYALTY FEE CHARGED THE REQUESTER THROUGH APS IS
14 DETERMINED BY THE PUBLISHER?

15 A. YES.

16 Q. AND DOES CCC COLLECT THAT ROYALTY FEE ON THE
17 PUBLISHER'S BEHALF?

18 A. WE DO. AT THE TIME THAT WE ESTABLISH A RELATIONSHIP
19 WITH OUR RIGHTS HOLDERS, THEY WILL GIVE US ROYALTY FEES THAT
20 WE CAN CONVEY ON THEIR BEHALF. WE STORE THOSE IN OUR SYSTEM.
21 AND AS PERMISSION ORDERS COME THROUGH, WE ARE ABLE TO
22 AUTOMATICALLY CALCULATE THOSE ROYALTY FEES AND MAKE THEM
23 AVAILABLE TO CUSTOMERS.

24 Q. THAT IS LINE 18, PAGE 106. I AM NOW MOVING TO PAGE 107,
25 LINE 14.

1 SO IN ADDITION TO THE SERVICE CHARGE THAT YOU IDENTIFIED
2 AND THE ROYALTY DETERMINED BY THE PUBLISHER, DOES CCC COLLECT
3 ANY OTHER FEES FROM REQUESTERS IN CONNECTION WITH APS?

4 A. WE DON'T COLLECT ANY ADDITIONAL FEES. THE ROYALTY FEE
5 AND THE SERVICE CHARGE ARE THE ONLY FEES THAT WE COLLECT.

6 Q. DO YOU KNOW HOW PUBLISHERS CALCULATE THE ROYALTY THAT
7 IS TO BE CHARGED IN CONNECTION WITH GRANTS OF PERMISSION
8 THROUGH APS?

9 A. IT IS LARGELY BASED ON THEIR OWN BUSINESS RULES AS TO
10 HOW THEY PRICE FOR PERMISSIONINGS AND THEIR OWN PERMISSIONS
11 PROCESSING SYSTEMS.

12 Q. ARE THOSE GENERALLY ON A PER PAGE BASIS?

13 A. GENERALLY ON A PER PAGE BASIS.

14 Q. AND THAT IS LINE 7 ON PAGE 108. I AM NOW MOVING TO
15 LINE 24 ON THE SAME PAGE.

16 IS THERE A TYPICAL PER PAGE ROYALTY FEE THAT THE RIGHTS
17 HOLDERS ASKS CCC TO COLLECT?

18 MR. RICH: OBJECTION TO FORM.

19 Q. YOU CAN ANSWER TO THE EXTENT YOU CAN.

20 A. THERE IS A VERY BROAD RANGE BECAUSE OF DIFFERENT TYPES
21 OF PUBLISHERS. AND, AGAIN, AUTHORS AS WELL. SO THERE
22 REALLY IS A VERY, VERY BROAD RANGE OF DIFFERENT WAYS THAT
23 RIGHTS HOLDERS CAN PRICE. BUT ON AVERAGE, AND THIS IS AT A
24 VERY HIGH LEVEL, BUT ON AVERAGE, IN OUR EXPERIENCE, WE HAVE
25 SEEN RIGHTS HOLDERS IN THE ACADEMIC COMMUNITY FOR PAY PER USE

1 LICENSING GENERALLY CHARGING SOMEWHERE BETWEEN SAY 12 AND 18
2 CENTS A PAGE, PER PAGE PER COPY.

3 BUT AGAIN THERE ARE SOME PUBLISHERS EVEN WHO DON'T CHARGE
4 A ROYALTY FEE AT ALL BECAUSE THEY WANT TO MAKE THEIR CONTENT
5 AVAILABLE FOR REUSE, BUT THEY DON'T ACTUALLY WANT TO COLLECT A
6 PARTICULAR LICENSING FEE.

7 Q. THAT IS LINE 21 ON PAGE 109. I AM NOW ON PAGE 112,
8 LINE 19.

9 IF A REQUEST THAT CCC RECEIVES FOR CONTENT PERMISSIONS
10 THROUGH APS CANNOT BE GRANTED BY CCC, WHAT RESPONSE DOES THE
11 REQUESTER RECEIVE TO HIS OR HER REQUEST?

12 A. WELL, IF WE ARE NOT ABLE TO CONVEY THOSE RIGHTS,
13 BECAUSE AGAIN IT IS NOT COPYRIGHT CLEARANCE CENTER'S DECISION,
14 BUT IF WE ARE NOT ABLE TO CONVEY THOSE RIGHTS, THEN THE
15 CUSTOMER WILL RECEIVE AN EMAIL RESPONSE AGAIN DRIVING THEM
16 BACK COPYRIGHT.COM. AND THEY WILL ACTUALLY RECEIVE THE
17 FAIRLY DETAILED RESPONSE AS TO WHY WE WEREN'T ABLE TO CONVEY
18 THOSE RIGHTS.

19 IN SOME INSTANCES THE RIGHTS HOLDER IS ASKING US TO DIRECT
20 THE CUSTOMER TO THEM. IN THAT CASE WE WOULD PROVIDE CONTACT
21 INFORMATION FOR THE RIGHTS HOLDER. SO WE NOT ONLY ATTEMPT TO
22 GIVE THEM THE EXPLANATION, BUT ALSO DIRECT THEM ADDITIONALLY
23 SO THEY CAN OBTAIN THOSE RIGHTS IF THEY STILL NEED TO.

24 Q. THAT IS LINE 14 ON PAGE 113. I AM NOW ON PAGE 114,
25 LINE TWO.

1 WHAT OTHER MODE OF COMMUNICATION CAN A REQUESTER USE WITH
2 CCC TO REQUEST PERMISSION THROUGH APS?

3 A. THERE ARE MULTIPLE WAYS THAT A CONTENT USER CAN REQUEST
4 PERMISSION. WHILE THE MAJORITY OF OUR ORDERS COME THROUGH
5 COPYRIGHT.COM, WE ALSO SERVICE OUR RIGHTS LICENSING THROUGH A
6 SERIES OF THIRD-PARTY APPLICATIONS. SO SOME INDUSTRY, I
7 CAN'T GET THE WORD OUT, SOME OF THE LARGER ELECTRONIC RESERVE
8 MANAGEMENT SYSTEMS THAT ARE HOSTED WITHIN LIBRARIES, DOCUTEXT
9 ERES AS A FOR INSTANCE, ACTUALLY HAS A RIGHTS LICENSING
10 COMPONENT THAT TALKS DIRECTLY TO OUR RIGHTS LICENSING SYSTEM.

11 SO A CONTENT USER, A LIBRARIAN IN THE LIBRARY WHO HAPPENS
12 TO HAVE DOCUTEXT ERES CAN ACTUALLY MANAGE NOT ONLY THEIR
13 ELECTRONIC RESERVE POSTINGS WITHIN THAT SYSTEM, BUT ALSO CAN
14 MANAGE THEIR PERMISSIONS FOR THOSE POSTINGS. SO THEY DON'T
15 HAVE TO DO THEIR WORK IN ERES AND COME OUT AND GO TO
16 COPYRIGHT.COM TO TRACK THEIR PERMISSIONS. THEY CAN ACTUALLY
17 PLACE A PERMISSION ORDER DIRECTLY THROUGH ERES THROUGH WITHIN
18 THE ERES INTERFACE.

19 IT TALKS DIRECTLY TO OUR RIGHTS LICENSING SYSTEM, PLACES
20 THE ORDER IN OUR ORDER MANAGEMENT SYSTEM, PASSES BACK THE
21 PERMISSIONS IN ROYALTY FEES DIRECTLY INTO THEIR INTERFACE, AND
22 THEY CAN MANAGE ALL OF THOSE PERMISSION REQUESTS DIRECTLY
23 THROUGH THAT APPLICATION. THERE ARE MULTIPLE APPLICATIONS
24 THAT WE HAVE THAT -- SORRY. THERE ARE MULTIPLE APPLICATIONS
25 THAT WE HAVE THAT KIND OF CAPABILITY THROUGH. SO THAT IS

1 PROBABLY THE SECOND REALLY WIDEST USED -- MOST WIDELY USED
2 CHANNEL.

3 BUT HONESTLY, WE PROCESS PAPER ORDER, PAPER REQUEST
4 FORMS TODAY, WHICH WE STILL DO. BUT THERE ARE SOME
5 CUSTOMERS WHO WILL STILL CONTINUE TO SEND US A PAPER REQUEST
6 FORM. WE WILL MANUALLY ENTER IT INTO OUR DATABASE AND TRACK
7 THOSE PERMISSION REQUESTS FOR THEM. IF WE MANUALLY ENTER IT
8 INTO OUR SYSTEM, THEY WILL RECEIVE A PAPER CONFIRMATION, AN
9 ORDER CONFIRMATION FROM US THAT HAS ALL OF THE DETAILS OF
10 THEIR LICENSE. THEY CAN RECEIVE THAT VIA FAX OR WE WILL EVEN
11 MAIL IT TO THEM IF THEY LIKE. THERE ARE SOME THAT WE STILL DO
12 THAT FOR. REALLY THERE IS A VERY BROAD RANGE OF WAYS THAT
13 CONTENT USERS CAN ACCESS CCC'S RIGHTS LICENSING SYSTEM.

14 Q. CAN A CONTENT USER REQUEST PERMISSION OVER THE
15 TELEPHONE?

16 A. THEY CAN CALL US WITH A REQUEST AND INSTEAD OF ACTUALLY
17 HAVING US TAKE THE ORDER OVER THE PHONE, OUR CUSTOMER
18 RELATIONS STAFF WILL ACTUALLY WORK WITH THEM TO HAVE THEM
19 PLACE THE ORDER RIGHT ON COPYRIGHT.COM. SO THEY WILL
20 ACTUALLY WALK THEM THROUGH THE PROCESS OF PLACING THE ORDER
21 BECAUSE IT IS REALLY THE MOST EFFICIENT WAY FOR THEM TO BE
22 PLACING THOSE ORDERS, EITHER DIRECTLY THROUGH THE SYSTEMS THAT
23 THEY ARE USING ON A DAY-TO-DAY BASIS OR RIGHT THROUGH
24 COPYRIGHT.COM. THERE ARE JUST SUCH AUTOMATED SYSTEMS. WE
25 WILL ACTUALLY WALK THEM THROUGH THAT PROCESS AND GIVE THEM

1 THAT EDUCATION SO THEY CAN USE THAT TOOL GOING FORWARD.

2 Q. I WOULD LIKE TO MOVE ON FROM THE APS AND TALK ABOUT
3 ANOTHER ONE OF THE PAY PER USE LICENSES THAT YOU HAD MENTIONED
4 EARLIER. I BELIEVE YOU USED THE ACRONYM ECCS?

5 A. YES.

6 Q. WHAT IS THAT, CAN YOU REMIND ME?

7 A. ELECTRONIC COURSE CONTENT SERVICE.

8 Q. CAN YOU TELL ME WHAT RIGHTS ARE AVAILABLE THROUGH ECCS?

9 A. THE ELECTRONIC COURSE CONTENT SERVICE IS REALLY THE
10 ELECTRONIC COMPLEMENT TO THE ACADEMIC PERMISSION SERVICE. SO
11 THROUGH THAT SERVICE WE ALLOW LICENSING FOR REALLY POSTING TO
12 ELECTRONIC RESERVE SYSTEMS, POSTING TO COURSE MANAGEMENT
13 SYSTEMS LIKE BLACKBOARD, WEB CT, OTHER DIFFERENT -- ANY
14 COURSE MANAGEMENT SYSTEM, REALLY.

15 OTHER TYPES OF ELECTRONIC POSTINGS FOR AS LONG AS IT IS
16 FOR A COURSE CONTENT, IF A FACULTY MEMBER MANAGES THEIR
17 COURSE CONTENT ON THEIR OWN INTRANET SITE. THEN THE
18 ELECTRONIC COURSE CONTENT SERVICE CAN PROVIDE LICENSING FOR
19 THAT AS WELL.

20 Q. WHEN DID CCC BEGIN OFFERING THE ECCS?

21 A. WE FIRST STARTED LICENSING ELECTRONIC COURSE CONTENT, I
22 BELIEVE, IN 1997.

23 Q. THAT IS LINE SIX ON PAGE 118. I AM NOW ON PAGE 119,
24 LINE TWO.

25 WHAT YEAR WAS THAT PUBLIC LAUNCHED?

1 A. I BELIEVE IT WAS 1998.

2 Q. WHAT PROMPTED CCC TO BEGIN LICENSING OR CONVEYING
3 PERMISSION FOR DIGITAL CONTENT?

4 A. WELL, THAT WAS REALLY WHEN LIBRARIES WERE FIRST
5 STARTING TO CREATE THEIR ELECTRONIC RESERVE PROGRAMS.
6 ERESERVES WAS REALLY IN ITS INFANCY IN THE MID TO LATE
7 NINETIES, AND THIS WAS SOMETHING THAT THEY WERE REALLY
8 STRUGGLING WITH. LIBRARIES WANTED TO BE MORE EFFICIENT IN
9 THEIR USE OF CONTENT. THEY WANTED TO USE MORE ELECTRONIC
10 CONTENT AND THEY KNEW THEY NEEDED TO LICENSE THAT CONTENT.
11 AND AGAIN THERE WAS NO CENTRALIZED MECHANISM FOR IT.

12 SO AS THEY WERE REALLY STRUGGLING WITH KIND OF HOW TO
13 CREATE THEIR OWN PROGRAMS, THEY WERE ASKING COPYRIGHT
14 CLEARANCE CENTER BECAUSE THEY HAD RELATIONSHIPS WITH US OVER
15 THE YEARS. SO THEY WERE REALLY ASKING US FOR SOME
16 ASSISTANCE, FOR SOME RESOURCES, FOR SOME GUIDANCE. AND
17 UNDERSTANDING THERE WAS A NEED, WE CREATED THIS SERVICE TO
18 HELP THEM MANAGE THOSE RIGHTS.

19 Q. DID RIGHTS HOLDERS EXPRESS TO THE CCC THE NEED FOR THIS
20 KIND OF SERVICE, AS WELL?

21 A. IT WAS BECOMING A CHALLENGE FOR RIGHTS HOLDERS AS WELL
22 BECAUSE THEY HADN'T REALLY LAID A GOOD FOUNDATION YET AND HOW
23 TO DEAL WITH THOSE ELECTRONIC PUBLISHING STRATEGIES AND HOW TO
24 DEAL WITH ELECTRONIC USES. THEY DIDN'T HAVE A MODEL IN PLACE
25 YET. SO THEY WERE -- IT WAS A LITTLE BIT OF CATCH AS CATCH

1 CAN. THEY WERE WORKING IT OUT AS THEY WERE GOING ALONG.

2 YES, THEY WERE ALSO SAYING TO US, WE ARE GETTING THESE
3 REQUESTS FROM ALL OF THESE DIFFERENT INSTITUTIONS, AND THAT
4 IS A BURDEN FOR US, CAN YOU HELP US TO STREAMLINE THIS, CAN
5 YOU HELP US TO MANAGE THIS PROCESS. AND THAT IS WHAT WE DO.

6 Q. HOW MANY RIGHTS HOLDERS CURRENTLY MAKE WORK AVAILABLE
7 THROUGH ECCS?

8 A. THERE ARE THOUSANDS. ALTHOUGH THERE ARE NOT AS MANY
9 RIGHTS HOLDERS IN THE ELECTRONIC COURSE CONTENT SERVICE TO
10 DATE AS THERE ARE IN ACADEMIC PERMISSIONS SERVICE.

11 Q. DO ANY OF THE NAMED PLAINTIFFS MAKE CONTENT AVAILABLE
12 THROUGH ECCS?

13 A. THEY DO. AGAIN, IT IS VERY MUCH LIKE THE WAYS THAT
14 THEY MAKE CONTENT AVAILABLE THROUGH THE ACADEMIC PERMISSION
15 SERVICE. THEY HAVE SETS OF TITLES THAT WE CAN AUTOMATICALLY
16 GRANT PERMISSION FOR, THAT WE CAN AUTOMATICALLY CONVEY THOSE
17 RIGHTS FOR. OTHERS THAT THEY WOULD WANT US TO CONTACT THEM
18 ON, AND OTHERS THAT THEY HAVE SAID THAT WE JUST CAN'T GRANT
19 PERMISSION FOR, EITHER BECAUSE THEY DON'T HAVE THE RIGHTS OR
20 THEY WOULD WANT TO OBTAIN THE ABILITY TO MANAGE THOSE RIGHTS
21 THEMSELVES.

22 Q. APPROXIMATELY HOW MANY INDIVIDUAL WORKS ARE AVAILABLE
23 THROUGH ECCS?

24 A. I THINK BY NOW WE PROBABLY HAVE CLOSE TO 700,000
25 INDIVIDUAL WORKS THAT ARE LICENSED UNDER ECCS. IT IS A

1 NUMBER THAT CHANGES ALMOST DAILY.

2 Q. ARE THE WORKS AT ISSUE IN THIS CASE AMONG THOSE
3 700,000?

4 A. AGAIN, I DON'T KNOW IT SPECIFICALLY. I CAN ONLY
5 ASSUME THAT, BASED ON THE RELATIONSHIPS I KNOW WE HAVE WITH
6 THESE RIGHTS HOLDERS, THAT SOME NUMBER OF THE WORKS MAY BE
7 COVERED UNDER THOSE LICENSES. I HAVEN'T LOOKED AT THEM SO I
8 DON'T KNOW SPECIFICALLY.

9 Q. DOES CCC TARGET THE ECCS SERVICE AT ANY PARTICULAR TYPE
10 OF CUSTOMER OR REQUESTER?

11 A. AGAIN, IT TARGETS ACADEMIC INSTITUTIONS OF HIGHER
12 EDUCATION, SO VERY MUCH LIKE THE ACADEMIC PERMISSION SERVICE.
13 OUR CUSTOMERS IN THAT AREA ARE TYPICALLY LIBRARIANS, SO THERE
14 ARE MORE ELECTRONIC RESERVE LIBRARIANS, THOSE ARE LARGELY THE
15 AUDIENCE WE ARE TALKING TO. BUT WE ARE ALSO TALKING TO
16 FACULTY MEMBERS BECAUSE THEY ARE POSTING AND MANAGING THEIR
17 OWN CONTENT. BUT LARGELY THE LICENSING FOR THIS PARTICULAR
18 SERVICE IS USUALLY MANAGED WITHIN THE LIBRARY. SO THAT IS
19 TYPICALLY OUR TARGET AUDIENCE, ALTHOUGH WE WILL TALK TO
20 OBVIOUSLY ANY INSTITUTION, U.S. INSTITUTION CAN USE THIS
21 SERVICE.

22 Q. DOES CCC EVER RECEIVE REQUESTS FROM STUDENTS FOR
23 PERMISSION THROUGH ECCS?

24 A. NOT THAT I AM AWARE OF. IT IS NOT A SERVICE THAT
25 WOULD BE TARGETED TOWARD STUDENTS, SO IT REALLY IS FOR COURSE

1 CONTENT THAT IS GOING TO BE MADE AVAILABLE TO STUDENTS AND
2 THAT LICENSING WILL NEED TO HAPPEN PRIOR TO THAT CONTENT BEING
3 AVAILABLE TO THEM.

4 Q. JUST SO I UNDERSTAND, THE RIGHT THAT A REQUESTER WOULD
5 RECEIVE THROUGH ECCS ARE TO POST THIS WORK TO SAY IN
6 ELECTRONIC RESERVE WEBSITE OR A COURSE WEBSITE OR A SIMILAR
7 SITE; IS THAT CORRECT?

8 A. YES, THAT IS TRUE.

9 Q. ARE THERE ANY OTHER RIGHTS THAT A REQUESTER COULD
10 RECEIVE THROUGH ECCS?

11 A. THEY COULD PUT A COURSE -- THEY COULD PUT COURSE
12 CONTENT ON TO SOME OTHER ELECTRONIC MEDIUM, CD-ROM IF THEY
13 WANTED TO. E-COURSEPACKS, IF YOU WOULD CONSIDER THAT, IT IS
14 KIND OF ANOTHER TERM, ALTHOUGH IT IS KIND OF LARGELY IN THE
15 SAME REALM. YOU MIGHT SEE THE TERMS E-COURSEPACK IN
16 CONJUNCTION WITH ERESERVES.

17 THE BROAD NATURE OF IT IS REALLY ABOUT COURSE CONTENT USED
18 IN A DIGITAL FORM WITHIN THE ACADEMIC INSTITUTION IN A SECURE
19 FORM. AND THE DIFFERENT USES KIND OF EVOLVE OVER TIME. THE
20 DIFFERENT PRACTICAL USES.

21 Q. IN A TYPICAL YEAR, HOW MANY REQUESTS OR PERMISSIONS
22 DOES CCC RECEIVE THROUGH ECCS?

23 A. I THINK GENERALLY ABOUT 50,000 REQUESTS ANNUALLY,
24 MAYBE A LITTLE BIT HIGHER NOW. BUT IT IS LESS THAN 100,000
25 REQUESTS.

1 Q. DO YOU KNOW HOW MANY UNIQUE INDIVIDUALS REQUESTING
2 CONTENT ARE MAKING THOSE 50 TO A HUNDRED THOUSAND REQUESTS?

3 A. I DON'T. IT IS THE SAME. IT WOULD REALLY BE THE
4 SAME RESPONSE I GAVE YOU EARLIER FOR THE ACADEMIC PERMISSION
5 SERVICE. IT IS REALLY A BROAD SET OF INSTITUTIONS, HUNDREDS
6 OF INSTITUTIONS. AND WITHIN EACH OF THOSE INSTITUTIONS, IT
7 COULD BE MULTIPLE CONTENT REQUESTERS, CONTENT USERS.

8 Q. OF THOSE 50 TO A HUNDRED THOUSAND REQUESTS FOR
9 PERMISSIONS THROUGH ECCS, DO YOU KNOW APPROXIMATELY WHAT
10 PERCENTAGE OF THOSE REQUESTS WERE ULTIMATELY GRANTED?

11 A. WERE ULTIMATELY GRANTED? I AM JUST THINKING. I
12 BELIEVE THE NUMBER -- I BELIEVE AT THIS POINT IT IS ABOUT 70
13 PERCENT OF OUR ORDERS ARE ACTUALLY GRANTED.

14 Q. THINKING BACK JUST FOR THIS QUESTION TO THE APS, DO
15 YOU KNOW WHAT PERCENTAGE OF REQUESTS THAT CCC RECEIVES IN A
16 TYPICAL YEAR THROUGH APS ARE ULTIMATELY GRANTED?

17 A. IN THE ACADEMIC PERMISSION SERVICE?

18 Q. YES.

19 A. CLOSER TO 85 TO 90 PERCENT.

20 Q. DO YOU KNOW WHY THERE IS A DIFFERENCE IN THE RATE IN
21 WHICH THOSE REQUESTS ARE ULTIMATELY GRANTED BETWEEN THE APS
22 AND ECCS?

23 A. THERE ARE REALLY MULTIPLE REASONS, I BELIEVE. THIS IS
24 REALLY JUST BASED ON MY EXPERIENCE, BUT, ONE, THE ACADEMIC
25 PERMISSION SERVICE HAS BEEN IN PLACE FOR 17 YEARS, SO

1 RIGHTSHOLDERS HAVE BECOME MUCH MORE FAMILIAR WITH IT OVER
2 TIME, MUCH MORE COMFORTABLE WITH THE WAY IT OPERATES. THE
3 ELECTRONIC COURSE CONSENT SERVICE IS A NEWER SERVICE, ALBEIT
4 IT IS TEN YEARS OLD, BUT A NEWER SERVICE. SO WE ARE STILL
5 BUILDING UP INVENTORY FOR THAT PROGRAM. AGAIN GOING BACK TO
6 WHAT I DO FOR A LIVING CURRENTLY. SO STILL BUILDING UP THAT
7 INVENTORY.

8 BUT SOME OF THE CHALLENGES THAT PUBLISHERS FACE, AGAIN,
9 BASED ON MY EXPERIENCE, IS REALLY THE DIFFERENCE BETWEEN THE
10 RIGHTS THAT THEY HAVE TO CONVEY FOR PRINT AND DIGITAL USES.
11 NOT ALL PUBLISHERS BELIEVE THAT, BASED ON THE CONTRACT THAT
12 THEY HAVE WITH THEIR AUTHORS, LET'S SAY, THAT THEY HAVE THE
13 ABILITY TO CONVEY RIGHTS FOR DIGITAL USES. THEY HAVE --
14 THAT IS PROBABLY THE BIGGEST REASON.

15 OTHER RIGHTS HOLDERS ARE -- ANY TIME THEIR CONTENT CAN BE
16 USED ELECTRONICALLY, IT IS CONCERNING BECAUSE ANY TIME CONTENT
17 CAN BE DISSEMINATED ELECTRONICALLY, THEN IT IS MORE FREELY
18 AVAILABLE AND THAT IS A CHALLENGING CONCEPT FOR SOME
19 PUBLISHERS TO KIND OF GRAPPLE WITH. SO NOT ALL OF THE
20 PUBLISHERS WHO ARE PARTICIPATING IN OUR PRINT PROGRAMS IN THE
21 ACADEMIC PERMISSION SERVICE ARE PARTICIPATING IN THE
22 ELECTRONIC COURSE CONTENT SERVICE. IT IS REALLY LARGELY FOR
23 THOSE TWO REASONS.

24 Q. AND THAT IS LINE FIVE ON PAGE 127. I AM NOW MOVING TO
25 LINE EIGHT ON THE SAME PAGE.

1 DOES CCC DO ANYTHING TO ADDRESS RIGHTS HOLDERS' CONCERNS
2 ABOUT THE FREE AVAILABILITY OF DIGITAL CONTENT?

3 A. REALLY ONE OF THE BIGGEST THINGS THAT I BELIEVE, IN MY
4 OPINION, THAT I BELIEVE WE DO IS WE HAVE A VERY STRONG
5 EDUCATIONAL MISSION THAT REALLY STARTED IN THE ACADEMIC
6 COMMUNITY AND CONTINUES TODAY. WE HAVE AN EDUCATIONAL
7 DEPARTMENT. I MENTIONED IT EARLIER AS PART OF OUR OPERATIONS
8 DEPARTMENT. AND IT IS A GROUP OF PEOPLE WHO ORGANIZE
9 EDUCATIONAL EVENTS. WE HAVE A MANAGER OF EDUCATION AND SHE
10 IS ON THE ROAD 50, 60 PERCENT OF THE TIME, AND SHE IS OUT
11 TALKING TO ACADEMIC INSTITUTIONS. WE PERFORM REGIONAL
12 WORKSHOPS. WE WORK DIRECTLY WITH A PARTICULAR ACADEMIC
13 INSTITUTION. WE WILL EVEN DO MONTHLY WEBINARS, QUARTERLY
14 WEBINARS. IT IS REALLY ABOUT COPYRIGHT IN GENERAL. IT IS
15 ABOUT LICENSING AND ABOUT THE TOOLS AND RESOURCES THAT CAN BE
16 AVAILABLE TO ACADEMIC INSTITUTIONS TO HELP THEM MANAGE THAT
17 CONTENT AND HELP THEM MANAGE THOSE RIGHTS AND MANAGE THOSE
18 DAY-TO-DAY CHALLENGES. THAT IS SOMETHING THAT IS REALLY
19 COMFORTING TO RIGHTS HOLDERS BECAUSE THEY BELIEVE LIKE -- I
20 JUST LOST MY PLACE, SORRY.

21 Q. LINE TEN.

22 A. THAT IS SOMETHING THAT IS REALLY COMFORTING TO RIGHTS
23 HOLDERS BECAUSE THEY FEEL LIKE THEN THERE IS A BASELINE
24 UNDERSTANDING OF WHAT IS THE BEST WAY TO MANAGE CONTENT ON THE
25 ACADEMIC CAMPUS. SO I BELIEVE THAT IS REALLY ONE OF THE

1 THINGS THAT WE DO.

2 WE ALSO PROVIDE THEM WITH VERY ROBUST SETS OF USAGE
3 INFORMATION IN OUR PAY PER USE PROGRAMS BECAUSE WE ARE
4 CAPTURING SUCH DETAILED LEVEL USAGE INFORMATION FROM OUR
5 CUSTOMERS WE ARE ABLE TO PASS ALONG A SUBSET OF THAT TO OUR
6 RIGHTS HOLDERS THAT GIVES THEM A VERY GOOD UNDERSTANDING ABOUT
7 HOW THEIR CONTENT IS BEING USED.

8 SO THAT IS SOMETHING ELSE THAT IS VERY MEANINGFUL TO THEM.
9 AND IT IS USEFUL TO THEM IN A VARIETY OF WAYS AND VERY
10 MEANINGFUL TO THEM IN TERMS OF UNDERSTANDING AND FEELING SOME
11 LEVEL OF COMFORT ABOUT HOW THEIR CONTENT IS BEING USED.

12 Q. IN CONDUCTING THE EDUCATIONAL ACTIVITIES THAT YOU JUST
13 DISCUSSED FOR RIGHTS HOLDERS, DOES CCC EVER DISCUSS COPYRIGHT
14 INFRINGEMENT LITIGATION WITH RIGHTS HOLDERS?

15 A. I DON'T BELIEVE WE DO. CERTAINLY NOT SPECIFICALLY.

16 Q. DO ANY OF THOSE EDUCATIONAL ACTIVITIES CARRIED OUT BY
17 CCC ADDRESS FAIR USE?

18 A. I THINK I MENTIONED EARLIER THAT WE DON'T ATTEMPT TO
19 MAKE A FAIR USE DETERMINATION. THAT IS NOT PART OF OUR
20 POLICY OR PART OF OUR PRACTICE. SO OUR LICENSING SERVICES
21 CERTAINLY ARE -- LICENSING SERVICES ARE ABOVE AND BEYOND WHAT
22 AN INSTITUTION HAS DETERMINED TO BE THEIR FAIR USE TOLERANCE.

23 Q. SO THE EDUCATIONAL ACTIVITIES WOULDN'T ADDRESS FAIR
24 USE?

25 A. I AM SORRY, I THINK THAT WAS A SLIGHTLY DIFFERENT

1 QUESTION. THE EDUCATIONAL ACTIVITIES DISCUSS FAIR USE AND
2 DISCUSS THE FAIR USE FACTORS AND DISCUSS HOW THEY MAY BE
3 APPLIED AS PART OF A LARGER SET OF COMPLIANCE RESOURCES. SO
4 WE CAN TALK WITH ACADEMIC INSTITUTIONS ABOUT HOW TO CREATE A
5 CULTURE OF COMPLIANCE AND PROVIDE TO THEM A SERIES OF TOOLS
6 THAT CAN HELP THEM CREATE THAT, THEIR COPYRIGHT POLICIES IN A
7 SENSE OF THEIR OWN FAIR USE TOLERANCES. AND REALLY CREATE
8 THAT CULTURE THEMSELVES.

9 SO, YES, WE WILL TALK ABOUT FAIR USE, CERTAINLY AS A
10 CONCEPT AS WE ARE TALKING ABOUT COPYRIGHT LAW AS A CONCEPT,
11 BUT AT NO POINT DO WE MAKE A DETERMINATION OF WHAT ACTUALLY
12 FALLS UNDER FAIR USE.

13 Q. GOING BACK NOW TO TALKING ABOUT THE ECCS AGAIN, WHICH
14 WE WERE DISCUSSING EARLIER. LET'S TAKE THE EXAMPLE OF A
15 FACULTY MEMBER WHO FINDS AN ARTICLE FOR WHICH RIGHTS ARE
16 AVAILABLE THROUGH CCC AND THAT FACULTY MEMBER WOULD LIKE TO
17 POST THAT ARTICLE TO SAY A COURSE WEBSITE. HOW WOULD THAT
18 FACULTY MEMBER OBTAIN PERMISSIONS THROUGH THE CCC TO DO THAT?

19 A. IN EXACTLY THE SAME METHOD THEY WOULD FOR THE ACADEMIC
20 PERMISSION SERVICE. SO, THROUGH COPYRIGHT.COM, THAT SAME
21 METHODOLOGY. THEY CAN ALSO PLACE THEIR PERMISSION REQUESTS
22 -- WELL FACULTY MEMBER WOULDN'T HAVE ACCESS TO THE ELECTRONIC
23 RESERVE SYSTEM -- BUT THE ELECTRONIC COURSE CONTENT SERVICE
24 CAN BE SERVICED THROUGH THOSE ELECTRONIC RESERVE SYSTEMS THAT
25 I MENTIONED EARLIER. ALL OF THE SAME CHANNELS THAT EXIST FOR

1 ANY ONE OF OUR LICENSING SERVICES ARE UBIQUITOUS, THEY EXIST
2 FOR ALL OF OUR LICENSING SERVICES.

3 Q. IS CCC'S REVIEW OF THOSE REQUESTS THROUGH ECCS IN ANY
4 WAY DIFFERENT FROM THE REVIEW THAT CCC PERFORMS FOR A REQUEST
5 THAT COMES IN THROUGH APS?

6 A. NO DIFFERENCE.

7 Q. IS THERE ANY DIFFERENCE IN THE SPEED WITH WHICH CCC
8 MAKES A DETERMINATION AS TO WHETHER OR NOT IT CAN CONVEY
9 RIGHTS TO A WORK THROUGH ECCS VERSUS APS?

10 A. THE DETERMINATION IS EXACTLY THE SAME. THERE ARE THE
11 SAME PROCESSES THAT EXIST. THERE MAY BE DIFFERENT RIGHTS
12 HOLDERS, THERE MAY BE DIFFERENT WORKS THAT ARE USED. BUT
13 THE SAME EXACT PROCESS EXISTS WHERE THERE ARE SOME NUMBER OF
14 ORDERS THAT WE CAN INSTANTLY PERMISSION BASED ON THE RIGHTS
15 THAT WE KNOW OF AND THE RELATIONSHIPS WE HAVE IN PLACE WITH
16 RIGHTS HOLDERS. THERE ARE SOME NUMBERS OF ORDERS THAT WE
17 NEED TO PROCESS IS WHAT WE CALL SPECIAL ORDERS WHERE WE NEED
18 TO CONTACT THE RIGHTS HOLDER ON THE CUSTOMER'S BEHALF. BUT
19 THE PROCESS IS EXACTLY THE SAME.

20 Q. DOES CCC CHARGE A LICENSING FEE THROUGH ECCS?

21 A. WE CHARGE THE ROYALTY FEE, WHICH AGAIN IS SET BY THE
22 RIGHTS HOLDERS. THE SAME PARAMETERS THAT THEY CAN SET
23 THROUGH THE ACADEMIC PERMISSION SERVICE. AND THERE IS STILL
24 THAT THREE DOLLAR SERVICE FEE FOR GRANTED, NONWITHDRAWN OR
25 NONCANCELLED FOR ALL GRANTED ITEMS.

1 Q. FOR ANY GIVEN WORKS, DO RIGHTS HOLDERS CHARGE THE SAME
2 ROYALTY THROUGH ECCS VERSUS THROUGH APS?

3 A. AGAIN, THE WAY RIGHTS HOLDERS CHARGE, THERE IS A VERY,
4 VERY BROAD SPECTRUM OF HOW RIGHTS HOLDERS CHARGE THROUGH
5 EITHER ONE OF THESE SERVICES. SOME RIGHTS HOLDERS CHARGE
6 EXACTLY THE SAME FOR BOTH PRINT AND DIGITAL SERVICES BECAUSE
7 THEIR ASSUMPTIONS ARE IT IS THE SAME CONTENT USER, POTENTIALLY
8 THE SAME STUDENTS ARE ACCESSING THAT CONTENT. OTHER RIGHTS
9 HOLDERS VIEW IT SLIGHTLY DIFFERENTLY AND THEY MAY CHARGE A
10 SLIGHTLY HIGHER PER PAGE RATE, LET'S SAY, FOR ELECTRONIC USES
11 BECAUSE THEY CONSIDER THAT TO BE A MORE HIGHLY VALUED USE OF
12 THEIR CONTENT. SO THEY MAY CHARGE A MORE SLIGHTLY HIGHER
13 RATE.

14 Q. AND THEN IN CONSIDERING THE ROYALTIES THAT CCC COLLECTS
15 IN CONNECTION WITH ECCS, DOES CCC WITHHOLD SOME PORTION OF
16 THOSE ROYALTIES FROM THE PUBLISHERS AS WELL?

17 A. IT IS THE SAME MODEL THAT WE TALKED ABOUT FOR THE
18 ACADEMIC PERMISSION SERVICE. IT IS A STANDARD 15 PERCENT OF
19 THE CALCULATED ROYALTY FEE AND THEN AN ADDITIONAL FIFTEEN
20 PERCENT FOR ANY ORDERS THAT WE NEED TO MANAGE WITH THAT
21 SPECIAL ORDER PROCESS THAT I MENTIONED EARLIER.

22 Q. OTHER THAN THE SERVICE CHARGE THAT WE DISCUSSED AND THE
23 ROYALTIES DETERMINED BY THE PUBLISHERS AND THIS PORTION OF THE
24 ROYALTY THAT IS WITHHELD BY CCC, ARE THERE ANY OTHER CHARGES
25 OR FEES GENERATED BY PERMISSION THROUGH ECCS?

1 A. THERE ARE NO ADDITIONAL FEES THAT WE CHARGE ASIDE FROM
2 THE ROYALTY FEE AND THE SERVICE CHARGE.

3 Q. WE TALKED ABOUT THIS IN THE CONTEXT OF APS, BUT JUST
4 TO SEE IF IT PLAYS OUT ANY DIFFERENTLY AGAIN IN THE CONTEXT OF
5 ECCS.

6 IF CCC DETERMINES THAT IT'S UNABLE TO CONVEY RIGHTS FROM A
7 PARTICULAR CONTENT REQUESTED THROUGH ECCS, HOW IS THAT
8 COMMUNICATED TO THE REQUESTER?

9 A. RIGHTS ARE COMMUNICATED TO THE REQUESTER IN THE SAME
10 FASHION THAT THEY ARE COMMUNICATED FOR THE ACADEMIC PERMISSION
11 SERVICE. SO THE CUSTOMER PLACES AN ORDER ON COPYRIGHT.COM,
12 GET AN EMAIL RESPONSE DRIVING THEM BACK TO COPYRIGHT.COM TO
13 VIEW AND THEN MANAGE THEIR ORDER. OR IF THEY ARE PLACING AN
14 ORDER THROUGH A THIRD-PARTY SYSTEM RIGHT FROM THEIR DESKTOP OR
15 RIGHT FROM WITHIN THEIR OWN WORK FLOW, THEN THEIR RESPONSES
16 WILL ACTUALLY COME DIRECTLY RIGHT INTO THAT APPLICATION.

17 IF IT IS A PAPER REQUEST FORM, AGAIN, THEY WILL RECEIVE AN
18 ORDER CONFIRMATION FROM US THAT DETAILS OUT THE LICENSE THAT
19 WE WERE PROVIDING TO THEM.

20 Q. DOES CCC BELIEVE THAT THE ECCS SERVICE IS COMMERCIALY
21 SUCCESSFUL?

22 MR. RICH: OBJECTION TO THE FORM.

23 Q. YOU CAN ANSWER IF YOU UNDERSTAND.

24 A. HOW DO YOU DEFINE COMMERCIALY SUCCESSFUL?

25 Q. IS CCC PLEASED WITH THE NUMBER OF REQUESTS COMING IN

1 THROUGH ECCS?

2 A. WE BELIEVE IT IS STILL A GROWING PROGRAM, SO, YES.
3 DO WE BELIEVE THAT IT IS VIABLE, THAT IT IS A SUCCESSFUL
4 PROGRAM? YES, WE BELIEVE IT IS STILL GROWING. AND IT HAS
5 MORE ROOM TO GROW. BUT, YES, WE DO BELIEVE IT IS A
6 SUCCESS.

7 Q. I BELIEVE IN ONE OF YOUR EARLIER ANSWERS TODAY YOU MADE
8 A REFERENCE TO USAGE INFORMATION --

9 A. YES.

10 Q. -- THAT CCC IS ABLE TO PROVIDE TO RIGHTS HOLDERS. CAN
11 YOU TELL ME SOME MORE INFORMATION ABOUT USAGE INFORMATION CCC
12 PROVIDES TO RIGHTS HOLDERS IN CONNECTION WITH PAY PER VIEW
13 SERVICES?

14 A. WHEN A RIGHTS HOLDER RECEIVES A PAYMENT DISTRIBUTION
15 FROM US, THEY RECEIVE WHAT IN ESSENCE AMOUNTS TO BACKUP
16 INFORMATION, DETAILED LEVEL INFORMATION THAT KIND OF DESCRIBES
17 WHAT IS INCLUDED IN THAT PAYMENT.

18 SO THEY WILL RECEIVE FROM US A SUMMARY LEVEL, TITLE LEVEL
19 INFORMATION THAT IN ESSENCE SAY FOR THIS TITLE, REPRESENTS
20 THIS DOLLAR AMOUNT. AND ALL OF THE TITLES THAT REALLY ROLL UP
21 INTO THIS TOTAL PAYMENT.

22 AND THEN WE PROVIDE THEM WITH TITLE USAGE INFORMATION. SO
23 WE PROVIDE THEM WITH INFORMATION ABOUT THE BIBLIOGRAPHIC
24 CONTENT FROM THE PARTICULAR WORK, THE TITLE, THE STANDARD
25 NUMBER, THE CHAPTER ARTICLE BEING REQUESTED, IF THE CUSTOMER

1 PROVIDED IT TO US, THE NUMBER OF STUDENTS THAT IT WAS
2 DISTRIBUTED TO OR MADE AVAILABLE TO.

3 THE PAGE RANGE THAT THE CUSTOMER REQUESTED, INFORMATION
4 ABOUT THE COURSE, SO THE COURSE NAME, THE COURSE NUMBER,
5 WHERE THE CONTENT WAS ACTUALLY BEING USED.

6 Q. HOW FREQUENTLY DOES CCC PROVIDE THAT SORT OF DATA TO
7 RIGHTS HOLDERS?

8 A. WE DISTRIBUTE QUARTERLY TO OUR RIGHTS HOLDERS AND THEY
9 RECEIVE THAT USAGE INFORMATION WITH EACH QUARTERLY
10 DISTRIBUTION.

11 Q. ARE THERE ANY OTHER REPORTS THAT CCC PROVIDES TO RIGHTS
12 HOLDERS, PERHAPS COVERING A LONGER TIME PERIOD?

13 A. RIGHTS HOLDERS ACTUALLY CAN COME TO A WEBSITE THAT WE
14 HAVE CREATED. IT IS A PORTAL ACTUALLY WE HAVE CREATED FOR
15 RIGHTS HOLDERS THAT WE CALL RIGHTS CENTRAL. AND THEY CAN
16 COME TO THAT SITE AND ACTUALLY GENERATE THEIR OWN REPORTS.
17 THEY CAN GENERATE CUSTOMER REPORTS OVER ANY PERIOD OF TIME.
18 THEY CAN SEE HOW A PARTICULAR TITLE IS PERFORMING IN A
19 PARTICULAR PROGRAM. THEY CAN SEE HOW A TITLE IS PERFORMING
20 ACROSS ALL PROGRAMS FOR ANY PERIOD OF TIME. THEY CAN SEE
21 USAGE INFORMATION OVER A PERIOD OF TIME, THINGS LIKE THAT.

22 IT IS A VERY ROBUST SITE THAT ALLOWS THEM TO REALLY MANAGE
23 THEIR RELATIONSHIP WITH COPYRIGHT CLEARANCE CENTER SO THEY CAN
24 UNDERSTAND THEIR LEVEL OF PARTICIPATION WITH US, THINGS LIKE
25 THAT. IT IS REALLY A NICE TOOL FOR THEM JUST TO MANAGE THEIR

1 RELATIONSHIP WITH US.

2 Q. I WOULD LIKE TO MARK THIS AS DEFENDANT'S EXHIBIT 72.
3 AND THAT IS LINE 19 ON PAGE 138. I AM ON TO LINE 23 OF THE
4 SAME PAGE.

5 MS. MARINIELLO, YOU HAVE BEEN HANDED WHAT HAS BEEN MARKED
6 AS DEFENDANT'S EXHIBIT 72. IT IS A DOCUMENT STARTING WITH
7 BATES NUMBER CCC 00017. DO YOU RECOGNIZE THIS DOCUMENT? AND
8 TAKE A MOMENT TO LOOK IT OVER.

9 A. I BELIEVE IT IS A DOCUMENT I SAW, I BELIEVE, IN
10 PREPARATION OF THE DEPOSITION, THAT IS MY UNDERSTANDING.

11 Q. DO YOU KNOW WHAT THIS DOCUMENT IS?

12 A. IT LOOKS TO BE A SET OF ORDER INFORMATION IN OUR
13 ACADEMIC PROGRAMS INCLUDING OUR FOREIGN PROGRAM WHICH WE
14 DIDN'T TALK ABOUT EARLIER BUT CAN. ORDERS THAT GO AS FAR
15 BACK AS 2004. I BELIEVE THESE ARE ORDERS FOR THE PLAINTIFF
16 PUBLISHERS, THAT IS MY CURRENT UNDERSTANDING.

17 Q. I WOULD LIKE TO ASK YOU SOME QUESTIONS, TO THE BEST OF
18 YOUR KNOWLEDGE, ABOUT THIS DOCUMENT TO UNDERSTAND WHAT IS ON
19 HERE. I UNDERSTAND FROM YOUR ANSWERS THAT YOU HAVE A LIMITED
20 KNOWLEDGE OF THE DOCUMENT, BUT ANSWER AS BEST YOU CAN.

21 A. YES.

22 Q. BEGINNING ON PAGE FOUR OF THE DOCUMENT, THERE IS A
23 COLUMN WITH THE HEADING "TITLE"?

24 A. YES.

25 Q. DO YOU RECOGNIZE THE INFORMATION THAT IS IN THIS CELL,

1 IN THIS COLUMN?

2 A. IT LOOKS LIKE THE BIBLIOGRAPHIC TITLE OF A PARTICULAR
3 WORK.

4 Q. DO YOU UNDERSTAND THAT THIS TITLE IS ONE OF THE WORKS
5 THAT IS AT ISSUE IN THIS LITIGATION?

6 A. I RECOGNIZE IT AS ONE OF THE TITLES.

7 Q. THEN ON THE FOLLOWING PAGE, PAGE FIVE, THERE IS A
8 COLUMN WITH A HEADING CHAPTER, "ARTICLE." WHAT DO YOU
9 UNDERSTAND TO BE PRESENTED IN THAT COLUMN?

10 A. THIS IS CUSTOMER-SUPPLIED INFORMATION. THERE IS A
11 CHAPTER ARTICLE FIELD IN ALL OF OUR CUSTOMER FACING ORDER
12 PROCESSING SYSTEMS, AND THEY CAN -- IN THAT FIELD THEY CAN
13 ENTER THE CHAPTER OR THE ARTICLE NAME OF THE PIECE OF CONTENT
14 THAT THEY ARE USING.

15 IT LOOKS TO ME LIKE THIS IS THE CUSTOMER-SUPPLIED
16 INFORMATION REGARDING THE CHAPTER ARTICLE THAT THEY WERE USING
17 FOR THIS PARTICULAR SET OF ORDERS.

18 Q. WHY DOES THE CCC REQUEST THAT THE CUSTOMER SUPPLY THE
19 CHAPTER ARTICLE INFORMATION?

20 A. ONE OF THE REASONS WE CAPTURE THAT INFORMATION IS IF WE
21 NEED TO REQUEST PERMISSION DIRECTLY FROM THE RIGHTS HOLDER, WE
22 NEED TO CAPTURE ENOUGH INFORMATION FROM THE CONTENT USER FOR
23 THE RIGHTS HOLDER IN ORDER TO MAKE A GOOD BUSINESS DECISION.
24 AND SOMETIMES THE RIGHTS HOLDERS NEED TO KNOW THE PARTICULAR
25 PAGE RANGE AND THE PARTICULAR CHAPTER ARTICLE THAT IS BEING

1 REQUESTED SO THEY CAN GO BACK TO THEIR WORK AND DETERMINE
2 WHETHER OR NOT THEY ACTUALLY HAVE THE RIGHTS FOR THAT PIECE OF
3 CONTENT. SO THAT IS REALLY THE PRIMARY REASON WHY WE COLLECT
4 THAT.

5 Q. THAT IS LINE 18 ON PAGE 141. I AM NOW AT LINE 23 ON
6 THE SAME PAGE.

7 GOING BACK THEN TO THE START OF PAGE ONE OF THE DOCUMENT,
8 THE VERY FIRST COLUMN STARTING ON THE LEFT HAS THE TITLE
9 "PRODUCT" IN THE HEADER. WHAT DO YOU UNDERSTAND TO BE
10 REPRESENTED IN THE CELLS IN THAT COLUMN?

11 A. THESE ARE REALLY ACADEMIC PROGRAMS, OUR ACADEMIC
12 LICENSING SERVICES. SO THE APS STAND FOR ACADEMIC PERMISSION
13 SERVICE. ECCS STANDS FOR THE ELECTRONIC COURSE CONTENT
14 SERVICE THAT WE TALKED ABOUT EARLIER.

15 ONE OTHER I SEE REFERENCED HER IS OUR FOREIGN
16 AUTHORIZATION SERVICE, WHICH IS A DIFFERENT KIND OF SERVICE.

17 REALLY WHAT THIS REPRESENTS HERE IS USAGE OF A SET OF
18 WORKS THAT IS USED OUTSIDE OF THE U.S., BUT COME FROM A
19 COUNTRY WHERE THERE IS ANOTHER REPRODUCTION RIGHTS
20 ORGANIZATION WHO COLLECTS USAGE INFORMATION. THEY PASS THAT
21 USAGE INFORMATION ON TO US ALONG WITH THE ASSOCIATED ROYALTY
22 FEES AND THEN WE PASS ALONG THOSE ROYALTY FEES TO U.S. RIGHTS
23 HOLDERS. SO THIS IS NOT A LICENSING SERVICE THAT WE OFFER,
24 BUT IT IS A SERVICE THAT WE RECEIVE ROYALTIES THROUGH. BUT
25 IT IS LARGELY ACADEMIC USES JUST BECAUSE OF THE NATURE OF THE

1 USE OF THOSE COUNTRIES. I CAN ONLY IMAGINE THAT IS WHY IT
2 ENDED UP ON THIS LIST.

3 Q. THE THIRD COLUMN WHICH BEARS THE HEADING "CUSTOMER,"
4 WHAT DO YOU UNDERSTAND TO BE REPRESENTED IN THE CELLS IN THAT
5 COLUMN?

6 A. THE CUSTOMER, IT LOOKS TO BE THE ACCOUNT NAME, THE NAME
7 ON THE ACCOUNT AS IT IS IDENTIFIED IN OUR INTERNAL SYSTEMS.
8 THAT IS WHAT I UNDERSTAND IT TO BE.

9 Q. THAT WOULD BE THE PERSON OR ENTITY THAT IS REQUESTING
10 PERMISSIONS?

11 A. EXACTLY.

12 Q. ON PAGE TWO THEN OF THE DOCUMENT, THE SECOND COLUMN HAS
13 THE HEADING "ORDER DETAIL STATUS."

14 A. YES.

15 Q. AND THAT IS LINE 18 ON PAGE 146. I AM NOW ON PAGE
16 153, LINE 5.

17 MS. MARINIELLO, BEFORE WE TOOK OUR BREAK FOR LUNCH, WE
18 WERE LOOKING AT EXHIBIT 72, I THINK WE WERE ON PAGE FIVE. IF
19 WE COULD FLIP BACK TO THAT AND CONTINUE ON, PLEASE. THE
20 SECOND COLUMN ON THAT PAGE IS ENTITLED TRANSACTION AMOUNT?

21 A. YES.

22 Q. CAN YOU TELL ME WHAT THE TRANSACTION AMOUNT IS?

23 A. THE TRANSACTION AMOUNT IS THE FULL LICENSE AMOUNT THAT
24 WAS DEVELOPED FOR THE USER FOR THAT PARTICULAR PERMISSION
25 REQUEST. SO THAT INCLUDES BOTH CALCULATED ROYALTY FEE AND

1 THEIR THREE DOLLAR SERVICE CHARGE.

2 Q. AND THAT IS THE AMOUNT THAT THE REQUESTING USER WOULD
3 ACTUALLY PAY?

4 A. WOULD BE CHARGED, YES, EXACTLY.

5 Q. AND THE NEXT COLUMN, WHICH IS HEADED "ROYALTY," WHAT
6 IS CONTAINED IN THAT COLUMN?

7 A. THAT IS SIMPLY THE CALCULATED ROYALTY CHARGE.

8 Q. AND THE NEXT COLUMN IS ENTITLED "ROYALTY PAYABLE," WHAT
9 IS "ROYALTY PAYABLE"?

10 A. THE "ROYALTY PAYABLE" IS THE AMOUNT OF ROYALTY THAT WE
11 WOULD BE DISTRIBUTING TO THE RIGHTS HOLDER. THE DIFFERENCE
12 IS THE SERVICE CHARGE THAT CCC WOULD RETAIN.

13 Q. SO THE ROYALTY IS THE ROYALTY PAYABLE LESS THE SERVICE
14 CHARGE RETAINED BY CCC?

15 A. THE ROYALTY PAYABLE -- LET ME SAY THIS IN MY OWN WORDS.
16 THE ROYALTY PAYABLE IS WHAT WE WOULD PAY THE RIGHTS HOLDER.
17 THE ROYALTY IS THE TOTAL CALCULATED ROYALTY AMOUNT. THE
18 DIFFERENCE BETWEEN THE TWO WOULD BE THAT FIFTEEN PERCENT OR
19 THAT THIRTY PERCENT THAT WE TALKED ABOUT IF THERE WAS ANY
20 ADDITIONAL SERVICE CHARGE BECAUSE OF A SPECIAL ORDER. SO
21 THAT IS THE SERVICE CHARGE THAT CCC RETAINS FROM THE ROYALTY
22 FEE.

23 Q. TURNING THEN TO PAGE SIX, THE NEXT PAGE. THE FIRST
24 COLUMN IS TITLED "RIGHTS HOLDER SERVICE CHARGE." WHAT IS THE
25 "RIGHTS HOLDER SERVICE CHARGE"?

1 A. THAT IS THE PERCENTAGE THAT WE RETAINED OF THE TOTAL
2 CALCULATED ROYALTY FEE.

3 Q. AND THE FOLLOWING COLUMN, "CUSTOMER SERVICE CHARGE,"
4 WHAT IS THE "CUSTOMER SERVICE CHARGE"?

5 A. THAT IS THE THREE DOLLAR SERVICE FEE THAT WE PLACE ON
6 TOP OF ANY GRANTED PERMISSION REQUEST TO THE CONTENT USER.

7 Q. THE THIRD COLUMN THEN IS "TYPE OF CUSTOMER SERVICE
8 CHARGE DISCOUNT," WHAT DOES THAT DESCRIBE?

9 A. THIS IS JUST A DISCOUNT THAT WE CAN APPLY TO THE
10 SERVICE CHARGE, JUST TO THE LICENSEE, THE CUSTOMER FACING
11 SERVICE CHARGE. THIS IS JUST BASED ON RELATIONSHIP WITH THAT
12 PARTICULAR CUSTOMER.

13 Q. WHAT ARE SOME OF THE REASONS THAT CCC HAS PROVIDED THAT
14 DISCOUNT TO CUSTOMERS?

15 A. FOR A LARGE CUSTOMER, IT IS A PRETTY TYPICAL BUSINESS
16 PRACTICE OF OFFERING A DISCOUNT FOR CUSTOMERS WHO PLACE BULK
17 ORDERS. SOME OF OUR LARGER CUSTOMERS WILL RECEIVE A DISCOUNT
18 ON US SIMPLY ON THE SERVICE CHARGE.

19 Q. THAT IS ON LINE TWO ON PAGE 156. I AM NOW ON PAGE
20 159, LINE 11.

21 TURNING THEN TO PAGE SEVEN OF THE DOCUMENT, THERE IS A
22 COLUMN TITLED "NUMBER OF COPIES."

23 A. YES.

24 Q. THIS MAY BE OBVIOUS, BUT WHAT DO WE UNDERSTAND THAT
25 COLUMN TO REFLECT?

1 A. THIS IS SOME CUSTOMER SUPPLIED INFORMATION. THIS IS
2 THE NUMBER OF COPIES THAT THEY ARE REQUESTING TO USE OF THAT
3 PARTICULAR PIECE OF CONTENT.

4 Q. IT APPEARS THE WORD "NULL" APPEARS IN SOME OF THE CELLS
5 IN THAT NUMBER OF COPIES COLUMN. WHY WOULD "NULL" APPEAR IN
6 THOSE CELLS TO YOUR BEST UNDERSTANDING?

7 A. IN MOST OF THE INSTANCES WHERE YOU SEE "NULL," THERE IS
8 A NUMBER OF COPIES COLUMN. IF YOU LOOK RIGHT NEXT TO IT,
9 THERE IS A NUMBER OF STUDENTS COLUMN.

10 WHAT I AM SEEING HERE WHEN I LOOK AT THIS, IT MAKES MORE
11 SENSE TO ME THAN IT DOES TO YOU BECAUSE I UNDERSTAND THE WAY
12 WE ORGANIZE DATA. BUT WHAT YOU ARE REALLY LOOKING AT HERE IS
13 A SERIES OF FIELDS ACROSS MULTIPLE PRODUCTS. THE NUMBER OF
14 COPIES FIELD MIGHT BE NULL, IF YOU GO OVER TO THE NUMBER OF
15 STUDENTS FIELD YOU WILL ACTUALLY SEE A NUMBER THERE, NOT IN
16 ALL INSTANCES THOUGH. BUT IN MOST INSTANCES, IF YOU GO TO
17 THE SECOND NULL UNDER NUMBER OF COPIES, THERE IS A SEVEN UNDER
18 NUMBER OF STUDENTS. ALL THAT MEANS IS THAT ORDER WAS AN
19 ORDER FOR THE ELECTRONIC COURSE CONTENT SERVICE, NOT FOR THE
20 ACADEMIC PERMISSION SERVICE.

21 THE COURT: I SEE. EXCUSE ME, GO AHEAD. I THOUGHT
22 YOU WERE FINISHED WITH THAT SENTENCE, GO AHEAD.

23 THE WITNESS: THE NUMBER OF COPIES COLUMN REFERS TO
24 THE ACADEMIC PERMISSION SERVICE, WHEREAS THE NUMBER OF
25 STUDENTS COLUMN REFERS TO THE ELECTRONIC COURSE CONTENT

1 SERVICE. REMEMBER, IF YOU GO BACK TO THE VERY BEGINNING OF
2 THIS, THAT PRODUCT, THIS IS REALLY ACROSS MULTIPLE PRODUCTS.

3 THE COURT: HOW MUCH MORE HAVE YOU GOT TO GO?

4 MR. WARENZAK: WE HAVE ABOUT, I WANT TO SAY, 60
5 PAGES, YOUR HONOR.

6 THE COURT: I THINK WE BETTER QUIT FOR THE EVENING.

7 MR. KRUGMAN: JUST ONE POINT. I DON'T KNOW IF IT WAS
8 MADE THAT THIS DEPOSITION WAS -- TESTIMONY WAS TAKEN ON JUNE
9 30TH OF 2009 TO PUT IT IN CONTEXT.

10 THE COURT: THANK YOU. GOOD NIGHT. HAVE A NICE
11 EVENING.

12 *** END OF REQUESTED TRANSCRIPT ***

13 * * * * *

14 CERTIFICATE OF REPORTER

15 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
16 MY STENOGRAPHIC NOTES IN THE ABOVE-ENTITLED MATTER.

21 S/DEBRA R. BULL, RPR, CRR

JUNE 29, 2011
DATE

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