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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 2, 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 XII

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12 COURT REPORTER:

DEBRA R. BULL, RPR, CRR  
UNITED STATES COURT REPORTER  
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75 SPRING STREET, SW  
ATLANTA, GA 30303

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STENOTYPE/COMPUTER-AIDED TRANSCRIPTION

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1 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.  
2 HOW ARE YOU?

3 MR. SCHAEZEL: WITH THE COURT'S PERMISSION, WE HAVE  
4 SEVERAL WITNESS ISSUES THIS MORNING. IF I MIGHT BE EXCUSED  
5 OUTSIDE THE COURTROOM TO ADDRESS THOSE. I WILL BE BACK  
6 BEFORE THE CONCLUSION.

7 THE COURT: ALL RIGHT. THANK YOU.

8 MR. WARENZAK: JUST TO REMIND THE COURT, WE ARE ON  
9 PAGE 161 AND WE ARE LOOKING AT EXHIBIT 72, PAGE 7. I AM  
10 STARTING AT LINE 6.

11 EXAM CONTINUED

12 BY MR. WARENZAK:

13 Q. IF I UNDERSTAND YOU CORRECTLY, TYPICALLY IF THIS LINE  
14 IN THE SPREADSHEET WERE REFLECTING AN APS LICENSE, THERE  
15 WOULD BE DATA IN THE NUMBER OF COPIES COLUMN. BUT IF IT WAS  
16 IN THE ECCS LICENSE, THERE WOULD BE DATA IN THE NUMBER OF  
17 STUDENTS COLUMN?

18 A. EXACTLY.

19 Q. AND THAT IS LINE 12 ON PAGE 161. I AM NOW MOVING TO  
20 PAGE 162, LINE ONE.

21 THE FOURTH COLUMN ON THAT PAGE IS "CIRCULATION WITH PARENS  
22 RLS" UNDERNEATH IT. DO YOU KNOW WHAT THE RLS REFERS TO?

23 A. I DO.

24 Q. WHAT DOES THAT REFER TO?

25 A. THAT IS THE REPUBLICATION LICENSING SERVICE. THAT IS

1 A DIFFERENT PAY PER USE SERVICES. THAT DOESN'T SERVE THE  
2 ACADEMIC MARKET. WE TALKED ABOUT THAT EARLIER TODAY.

3 Q. THE COLUMN AFTER THAT IS TITLED "PAGE RANGES."

4 A. YES.

5 Q. WHAT DO YOU UNDERSTAND THAT TO REFER TO?

6 A. THAT IS THE PAGE RANGES. IT'S A CUSTOMER-SUPPLIED  
7 FIELD. AND IN THAT FIELD THE CUSTOMER CAN TELL US THE PAGE  
8 RANGES OF THE PIECE OF CONTENT THAT THEY ARE REQUESTING TO  
9 USE.

10 Q. ARE CUSTOMERS REQUIRED TO PROVIDE THAT INFORMATION TO  
11 CCC WHEN SUBMITTING A REQUEST?

12 A. THEY HAVE TO GIVE US THE FIRST AND LAST PAGE. THEY  
13 HAVE TO EITHER GIVE US THE PAGE RANGE OR THE FIRST AND LAST  
14 PAGE. AND WE, IN ESSENCE, WILL CALCULATE THE OTHER FOR THEM.

15 Q. AND THAT FIRST AND LAST PAGES IDENTIFIED BY THE  
16 CUSTOMER WOULD BE REFLECTED IN THE FOLLOWING TWO COLUMNS ON  
17 THE DOCUMENT; IS THAT CORRECT?

18 A. YES, THAT IS MY UNDERSTANDING FROM LOOKING AT THIS  
19 INFORMATION.

20 Q. AND THAT IS PAGE 163, LINE NINE. I AM NOW ON PAGE  
21 167, LINE 12.

22 I WOULD ALSO LIKE TO TALK BRIEFLY ABOUT RIGHTSLINK, WHICH  
23 YOU REFERENCED EARLIER TODAY. HOW LONG HAS CCC BEEN OFFERING  
24 RIGHTSLINK?

25 A. I BELIEVE WE STARTED TO OFFER RIGHTSLINK IN 1999 OR

1 2000.

2 Q. WHAT LEAD CCC TO OFFER RIGHTSLINK?

3 A. AT THAT POINT IN TIME RIGHTS HOLDERS WERE --  
4 PUBLISHERS, REALLY, WERE JUST BEGINNING TO EVOLVE THEIR OWN  
5 DIGITAL PUBLISHING STRATEGIES. THEY WERE STARTING TO PUBLISH  
6 MORE AND MORE CONTENT ONLINE, NEWSPAPERS, THE WALL STREET  
7 JOURNAL, NEW YORK TIMES, WERE REALLY STARTING TO CREATE AN  
8 ONLINE PRESENCE. SO THEY WERE RECOGNIZING, AS THEY WERE  
9 CREATING THIS PRESENCE, THEY WANTED TO CREATE THE ABILITY TO  
10 HAVE THAT CONTENT BE LICENSABLE. AND MANY OF THESE RIGHTS  
11 HOLDERS IN SPECIFIC ALREADY HAD RELATIONSHIPS WITH CCC.

12 SO REALLY JOINTLY WITH RIGHTS HOLDERS WHO HAD THIS ONLINE  
13 PRESENCE, WE DEVELOPED THIS POINT OF CONTENT LICENSING  
14 SOLUTION THAT IS HIGHLY CUSTOMIZABLE TO THE PARTICULAR  
15 PUBLISHER'S LICENSING RULES, AND REALLY ALLOWS US TO CREATE A  
16 VERY STREAMLINED LICENSING EXPERIENCE FOR THE CONTENT USER  
17 BUT FOR THE RIGHTS HOLDER USE VERY CUSTOMIZED BUSINESS RULES  
18 IN TERMS OF HOW THAT TRANSACTION IS MANAGED.

19 SO WE ARE ABLE TO MANAGE NOT ONLY PERMISSIONS TRANSACTIONS  
20 AT THE POINT OF CONTENT, BUT WE ARE ALSO ABLE TO MANAGE  
21 REPRINT REQUESTS.

22 SO WORKING IN CONJUNCTION WITH THE PRINTER, WE ARE ABLE TO  
23 MANAGE THE PROCESS OF, AS A CONTENT USER LANDS ON A PIECE OF  
24 CONTENT AND SAYS, WELL, I WOULD LIKE TO DISTRIBUTE THIS  
25 CONTENT OR I WOULD LIKE TO GET A REPRINT OF THIS CONTENT,

1 THEY CLICK ON A LITTLE BUTTON, UP POPS A MINI APPLICATION  
2 WITHOUT LEAVING THE PUBLISHER WEBSITE, THEY CAN ENTER A FEW  
3 PIECES OF KEY INFORMATION AND ACTUALLY MANAGES THAT  
4 TRANSACTION AUTOMATICALLY. IT CAPTURES BASIC INFORMATION  
5 ABOUT HOW THEY WANT TO RECEIVE A REPRINT, AS A FOR INSTANCE,  
6 BUNDLES ALL OF THAT INFORMATION TOGETHER, PUSHES IT OVER TO  
7 THE REPRINT VENDOR, AND THE REPRINT VENDOR THEN FULFILLS THE  
8 REPRINT REQUEST.

9 Q. WHAT TYPES OF CONTENT ARE AVAILABLE THROUGH  
10 RIGHTSLINKS?

11 A. IT IS MOSTLY ONLINE CONTENT. RIGHT NOW IT IS MOSTLY  
12 ONLINE JOURNAL CONTENT AND NEWS CONTENT. WE ALSO DO WORK  
13 WITH SEVERAL BOOK PUBLISHERS WHO HAVE AN ONLINE PRESENCE FOR  
14 THEIR BOOK CONTENT. IT IS AT THIS POINT IN TIME MOSTLY  
15 JOURNAL CONTENT AND NEWSPAPER CONTENT.

16 Q. DOES CCC PERFORM ANY SORT OF REVIEW WHEN A REQUEST  
17 COMES IN THROUGH RIGHTSLINK PRIOR TO MAKING A DETERMINATION AS  
18 TO WHETHER OR NOT TO CONVEY THE RIGHTS REQUESTED?

19 A. CCC DOES NOT. THE MAJORITY OF THOSE ORDERS REALLY  
20 HAPPEN IN A VERY LIGHTS-OUT FASHION. THEY HAPPEN  
21 AUTOMATICALLY. THEY ARE PROCESSED BY THE SYSTEM, BY THE  
22 DATABASE. IF THERE IS ANY REVIEW THAT NEEDS TO HAPPEN, ANY  
23 PERMISSION REQUEST, THAT IS ACTUALLY SENT OFF DIRECTLY TO THE  
24 RIGHTS HOLDERS, AND IN AUTOMATED FASHION SO THEY CAN REVIEW  
25 THE PERMISSION REQUEST AND THEN RESPOND BACK TO CONTENT USER.

1 Q. AND THAT IS LINE 15 ON PAGE 170. I AM NOW ON PAGE  
2 172, LINE ONE.

3 SPEAKING BROADLY ACROSS THE DIFFERENT LICENSING SYSTEMS WE  
4 HAVE DISCUSSED TODAY, IN WHAT CIRCUMSTANCES DOES THE CCC  
5 CONVEY DENIALS OF THE REQUESTED PERMISSIONS?

6 A. IN WHAT CIRCUMSTANCES?

7 Q. YES.

8 A. WELL, WE WOULD BE CONVEYING THE RIGHTS HOLDERS  
9 BUSINESS RULES, THEIR DENIALS OF THE PERMISSION REQUEST.

10 BUT THE CIRCUMSTANCES UNDER WHICH THOSE -- ANY ITEM MIGHT  
11 BE DENIED, SOME EXAMPLES MIGHT BE EXACTLY WHAT WE WERE JUST  
12 TALKING ABOUT, SOMETHING THAT A CUSTOMER -- A PIECE OF THE  
13 CONTENT THAT THE CUSTOMER IS REQUESTING TO USE, RIGHTS HOLDERS  
14 MAY NOT HAVE THE RIGHTS FOR. AND THAT HAPPENS FAIRLY OFTEN.  
15 CERTAINLY WITH BOOK PUBLISHERS WHO HAVE CONTRACTS WITH THEIR  
16 AUTHORS AND THEY ARE NOT ENTIRELY SURE WHAT THOSE RIGHTS ARE,  
17 SO THEY WOULD WANT TO REVIEW THOSE ORDERS AS THEY ARE COMING  
18 THROUGH. SO THERE ARE SOME RIGHTS ISSUES.

19 OCCASIONALLY RIGHTS HOLDERS WILL ALSO HAVE A TOLERANCE SET  
20 WHERE THEY WOULD ONLY ALLOW UP TO A CERTAIN AMOUNT OF THE  
21 PARTICULAR PIECE OF CONTENT TO BE REUSED. AND IF THE  
22 CUSTOMER REQUESTS TO USE MORE THAN THAT TOLERANCE, THEN THAT  
23 PARTICULAR REQUEST WOULD BE DENIED. SO SOME RIGHTS HOLDERS,  
24 ACADEMIC BOOK PUBLISHERS, FOR INSTANCE, SOME BOOK PUBLISHERS,  
25 IN GENERAL, AS A FOR INSTANCE, MAY HAVE A LIMIT OF NO MORE

1 THAN 25 PERCENT OF A WORK TO BE USED IN INSTANCES LIKE THAT.  
2 IF THEY ADVISE US OF THOSE BUSINESS RULES, WE CAN HELP THEM TO  
3 MANAGE THOSE BUSINESS RULES WITH PERMISSION REQUESTS THAT COME  
4 IN.

5 Q. IS THAT AMOUNT YOU REFERENCE, THE 25 PERCENT OF A GIVEN  
6 WORK, A COMMON RESTRICTION THAT RIGHTS HOLDERS SEEK TO APPLY?

7 A. IT IS PROBABLY A SMALL NUMBER OF PUBLISHERS, BUT THERE  
8 ARE SOME OF THE LARGER PUBLISHERS.

9 Q. DO YOU SEE SOME RIGHTS HOLDERS USING A DIFFERENT  
10 PERCENTAGE AMOUNT?

11 A. SOME MAY. SOME MAY. IN MY EXPERIENCE, I HAVE SEEN  
12 LIMITS OF TOLERANCE OF 20 PERCENT, I HAVE SEEN TOLERANCE OF  
13 30 PERCENT, THINGS LIKE THAT.

14 Q. DO RIGHTS HOLDERS EVER PLACE A PAGE NUMBER LIMIT?

15 A. IT IS USUALLY AT THE PERCENTAGE OF A PARTICULAR WORK.  
16 INSTEAD OF SAYING FOR EACH INDIVIDUAL WORK YOU CAN ONLY USE --  
17 THEY SAY 20 PERCENT OF THE WORK, WHETHER IT IS A 400-PAGE WORK  
18 OR A 200-PAGE WORK. IN MY EXPERIENCE AT LEAST THAT IS  
19 GENERALLY HOW WE HAVE SEEN THESE TOLERANCES SET.

20 Q. THAT IS PAGE 174, LINE 12. NOW MOVING TO LINE 23 OF  
21 THE SAME PAGE.

22 WHEN A RIGHTS HOLDERS PROVIDES SAY A 25 PERCENT TOLERANCE  
23 IN CONNECTION WITH GRANTING PERMISSIONS, DO THEY INSTRUCT CCC  
24 THAT THAT 25 PERCENT IS TO BE CALCULATED BASED ON THE TOTAL  
25 NUMBER OF PAGES IN THE CONTENT AT ISSUE?

1 A. YES, EXACTLY.

2 Q. HAS A RIGHTS HOLDERS EVER INSTRUCTED CCC, AGAIN USING  
3 THAT SAME EXAMPLE, THE 25 PERCENT IS TO BE CALCULATED BASED ON  
4 SOME SMALLER PORTION OF THE OVERALL WORK AT ISSUE?

5 A. IN MY EXPERIENCE, I HAVE NEVER SEEN THAT EXAMPLE.

6 Q. THAT IS LINE 11 ON PAGE 175. I AM NOW ON PAGE 177,  
7 LINE 3.

8 HAVE RIGHTS HOLDERS EVER REQUESTED THAT CCC PROVIDE A CAP  
9 ON SAY THE NUMBER OF COPIES OF A PARTICULAR WORK THAT ONE  
10 REQUESTER CAN RECEIVE THROUGH CCC?

11 A. I HAVE SEEN A TOLERANCE OF A NUMBER OF THE COPIES. IT  
12 IS RARE. I HAVE SEEN THE NUMBER -- A TOLERANCE AT THAT  
13 LEVEL, YES.

14 Q. HAVE RIGHTS HOLDERS EVER REQUESTED THAT WORKS WHICH ARE  
15 PERMISSIONED THROUGH CCC ARE PASSWORD PROTECTED BY THE  
16 REQUESTER AFTER RECEIPT?

17 A. THOSE ARE NOT BUSINESS RULES THAT WE WOULD MANAGE  
18 PUBLISHER TO PUBLISHER. UNDER THE TERMS AND CONDITIONS OF  
19 OUR PROGRAMS, THOUGH, FOR SOME, FOR THE ELECTRONIC COURSE  
20 CONTENT SERVICE AS A FOR INSTANCE, THE GENERAL TERMS AND  
21 CONDITIONS OF THAT PARTICULAR PROGRAM, WHICH APPLIES TO ALL OF  
22 OUR CONTENT USERS, THE TERMS DO REQUIRE THAT THE CONTENT BE  
23 PROTECTED IN SOME WAY, PASSWORD PROTECTED, OR SOME KIND OF  
24 EVEN IP LEVEL AUTHENTICATION BE REQUIRED BEFORE BEING ABLE TO  
25 ACCESS THAT CONTENT. SO THAT IS NOT A PUBLISHER'S SPECIFIC

1 BUSINESS RULE, THAT IS ACTUALLY A BUSINESS RULE THAT WE APPLY  
2 AT THE PRODUCT LEVEL AND IT'S CONSISTENT ACROSS ALL CUSTOMERS.

3 Q. AND I DON'T HAVE THE TEXT OF THAT ACTUAL RULE IN FRONT  
4 OF ME, SO HELP ME IF I TRY TO UNDERSTAND IT. IS THAT RULE  
5 THAT THE CONTENT THAT IS LICENSED THROUGH ECCS HAS TO BE  
6 PASSWORD PROTECTED OR AUTHENTICATED PROTECTED BY  
7 AUTHENTICATION IN SOME WAY?

8 A. YES.

9 Q. IS THERE ANY LIMITATION ON HOW MANY PEOPLE OR WHAT  
10 CLASS OF PEOPLE MAY HAVE ACCESS TO THE PASSWORD?

11 A. NOT IN THE GENERAL TERMS AND CONDITIONS, NOT AT ALL.  
12 IF THE PUBLISHER WANTS TO SET A TOLERANCE ON THE NUMBER OF  
13 COPIES OR THE NUMBER OF STUDENTS WHO CAN VIEW, THEY CAN DO  
14 THAT THROUGH US AND THAT CAN BE SET AT THE PUBLISHER LEVEL  
15 GOING BACK TO THAT SET OF TOLERANCES THAT WE WERE JUST TALKING  
16 ABOUT EARLIER. BUT WE DON'T DO THAT IN THE GENERAL TERMS AND  
17 CONDITIONS OF THE PRODUCTS.

18 Q. IN YOUR EXPERIENCE, DO PUBLISHERS SET THOSE SORTS OF  
19 LIMITS ON SAY THE NUMBER OF STUDENTS WHO WOULD HAVE A PASSWORD  
20 AND BE ABLE TO ACCESS CONTENT LICENSE THROUGH ECCS?

21 A. I ACTUALLY DON'T KNOW OF ANY PUBLISHERS IN THE  
22 ELECTRONIC COURSE CONTENT SERVICE THAT USE THAT TOLERANCE.

23 Q. THAT IS LINE NINE ON PAGE 179. NOW ON PAGE 183, LINE  
24 22.

25 DOES THE CCC HAVE ANY WRITTEN POLICIES REGARDING FAIR USE?

1 A. IN TERMS OF PROVIDING FAIR USE GUIDANCE TO CUSTOMERS?

2 Q. LET'S BEGIN WITH INTERNALLY. SO, LET'S SAY FOR  
3 DOCUMENTS FOR CCC'S INTERNAL USE ONLY, DOES CCC HAVE ANY  
4 WRITTEN POLICIES REGARDING FAIR USE?

5 A. IN TERMS OF CONTENT USE WITHIN COPYRIGHT CLEARANCE  
6 CENTER, WE ARE ACTUALLY A LICENSE HOLDER OF OUR OWN LICENSE.  
7 SO WE ARE ACTUALLY, AS YOU CAN IMAGINE, VERY CONSCIOUS ABOUT  
8 CONTENT USE WITHIN THE ORGANIZATION. SO IF WE ARE GOING TO  
9 SHARE COPIES, WE EITHER ENSURE THAT IT IS COVERED UNDER THE  
10 SCOPE OF OUR ANNUAL LICENSE OR WE WILL ACTUALLY PLACE A  
11 TRANSACTION ORDER FOR OURSELVES TO ENSURE THAT WE HAVE  
12 PERMISSION.

13 Q. AND THEN LOOKING EXTERNALLY, DOES CCC HAVE ANY WRITTEN  
14 POLICIES REGARDING FAIR USE, EITHER FOR DISTRIBUTION TO  
15 CUSTOMERS OR TO INFORM CCC'S COMMUNICATIONS WITH CUSTOMERS?

16 A. IT IS A DIFFICULT QUESTION TO ANSWER BECAUSE WHEN WE  
17 ARE COMMUNICATING WITH OUR CUSTOMERS, BECAUSE THIS IS A  
18 CORPORATE ENVIRONMENT, WE WOULD BE OBTAINING PERMISSION. SO  
19 IF WE WERE GOING TO BE SHARING CONTENT, WE WOULD BE OBTAINING  
20 PERMISSION EITHER UNDER THE SCOPE OF OUR LICENSE OR THROUGH  
21 OUR TRANSACTIONAL PRODUCTS.

22 Q. I WOULD LIKE TO SHOW THE WITNESS WHAT HAS BEEN  
23 PREVIOUSLY MARKED AS EXHIBIT 14A AT ANOTHER DEPOSITION.

24 MS. MARINIELLO, YOU HAVE IN FRONT OF YOU DEFENDANT'S  
25 EXHIBIT 14A. ARE YOU FAMILIAR WITH THIS DOCUMENT?

1 A. I HAVE SEEN THIS AS PART OF MY PREPARATION AND I CAN  
2 TELL YOU THAT IT LOOKS TO BE A PRINTOUT FROM A SET OF  
3 RESOURCES THAT WE HAD CREATED SEVERAL YEARS AGO CALLED "THE  
4 CAMPUS GUIDE TO COPYRIGHT COMPLIANCE." IT IS ONE OF THE  
5 RESOURCES THAT WE HAVE CREATED AS A PART OF THAT SET OF TOOLS.

6 Q. DO YOU KNOW WHO PREPARED IT?

7 A. THERE WAS A SMALL TEAM WHO ACTUALLY HAD WORKED ON  
8 CREATING "THE CAMPUS GUIDE TO COPYRIGHT COMPLIANCE." AND I  
9 AM QUITE SURE THAT SEVERAL MEMBERS OF THAT TEAM WORKED ON THIS  
10 PARTICULAR PIECE.

11 Q. WERE THE MEMBERS OF THAT TEAM CCC EMPLOYEES?

12 A. THEY WERE WHO WORKED ON THIS. LET ME BE CLEAR. THERE  
13 WAS A TEAM INTERNAL TO CCC WHO WAS WORKING TO DRAW TOGETHER  
14 AND CREATE SOME RESOURCES WHICH BECAME "THE CAMPUS GUIDE TO  
15 COPYRIGHT COMPLIANCE," WHICH IS A BROAD, VERY BROAD SET OF  
16 RESOURCES AND TOOLS FOR ACADEMIC INSTITUTIONS TO USE AS THEY  
17 ARE CREATING A CULTURE OF COMPLIANCE THAT WE TALKED ABOUT  
18 EARLIER. THIS WAS ONE OF THE TOOLS.

19 WE DID NOT DEVELOP THIS TOOL OURSELVES. IT WAS A TOOL  
20 THAT ACTUALLY WE MODIFIED TO SOME DEGREE, BUT IT WAS NOT OUR  
21 TOOL. IT WAS A TOOL THAT WAS ALREADY IN EXISTENCE IN THE  
22 MARKETPLACE.

23 Q. WHICH CCC EMPLOYEES, TO THE BEST OF YOUR KNOWLEDGE,  
24 WERE MEMBERS OF THE SMALL TEAM?

25 A. BY NAME?

1 Q. YES?

2 A. MYSELF; NICOLE MCKENNA, I DON'T REMEMBER HER TITLE AT  
3 THE TIME, SHE IS NOW A PROJECT MANAGER; TIM BOWEN, WHO IS OUR  
4 ACADEMIC LICENSING PRODUCTS MANAGER; TERRY BINATO, WHO IS NOW  
5 OUR DIRECTOR OF MARKETING COMMUNICATIONS; FRED HABER, WAS ALSO  
6 INVOLVED AS PART OF OUR REVIEW TEAM; AND DREW RIZETTI, WHO IS  
7 OUR MANAGER OF EDUCATION.

8 Q. AND DO YOU RECALL APPROXIMATELY WHAT YEAR THIS TEAM WAS  
9 WORKING TOGETHER ON THIS PROJECT?

10 A. I BELIEVE IT WAS RIGHT AROUND 2000.

11 Q. WAS THIS TEAM WORKING WITH ANYONE OUTSIDE OF CCC?

12 A. THERE WERE SEVERAL PEOPLE THAT WE CONTACTED OVER THE  
13 COURSE OF THIS PROJECT BECAUSE THERE IS REALLY A LOT OF THE  
14 CONTENT THAT WE DREW INTO THIS WE DREW FROM OUTSIDE RESOURCES.  
15 SO WE NEEDED TO CONTACT THOSE OUTSIDE RESOURCES TO GAIN  
16 PERMISSION TO ACTUALLY DRAW TOGETHER THESE PIECES OF CONTENT.

17 SO, YES, WE SPOKE WITH SEVERAL ORGANIZATIONS AND SEVERAL  
18 INDIVIDUALS OVER THE LIFE OF THE CREATION OF THIS TOOL.

19 THE COURT: LET ME INTERRUPT JUST FOR A MOMENT.  
20 WHAT IS THE EXHIBIT NUMBER OF THIS EXHIBIT?

21 MR. WARENZAK: THE EXHIBIT NUMBER IS DX 14, YOUR  
22 HONOR.

23 THE COURT: I THOUGHT THAT WAS THE DEPOSITION  
24 EXHIBIT NUMBER.

25 MR. WARENZAK: DEPOSITION EXHIBIT NUMBER IS ALSO 14

1 AS WELL.

2 THE COURT: OH, ALL RIGHT. THANK YOU.

3 BY MR. WARENZAK:

4 Q. I THINK WE WERE ON PAGE 187, LINE 22.

5 DO YOU RECALL THE NAMES OF ANY OF THOSE INDIVIDUALS OR  
6 ORGANIZATIONS?

7 A. WE SPOKE WITH --

8 MR. RICH: JUST SO I AM CLEAR, ARE WE TALKING ABOUT  
9 THE RANGE OF RESOURCES THAT THE WITNESS TESTIFIED TO OR  
10 SPECIFICALLY EXHIBIT 14 A?

11 MR. SHEESLEY: THE RANGE OF RESOURCES.

12 MR. RICH: THANK YOU.

13 THE WITNESS: AS WE WERE CREATING THIS WHOLE SET OF  
14 TOOLS, WE SPOKE WITH REPRESENTATIVES OF THE AMERICAN LIBRARY  
15 ASSOCIATION, REPRESENTATIVES FROM THE ASSOCIATION OF AMERICAN  
16 PUBLISHERS, I BELIEVE THE ASSOCIATION OF AMERICAN RESEARCH  
17 LIBRARIES. WE SPOKE WITH KEN CREWS AS WE WERE CONSIDERING  
18 DEVELOPING A TOOL LIKE THIS. THAT IS ALL I CAN THINK OF OFF  
19 THE TOP OF MY HEAD.

20 Q. DID YOU CONSULT WITH ANY OF THE PEOPLE OR ENTITIES YOU  
21 JUST IDENTIFIED OTHER THAN DR. CREWS IN CONNECTION WITH THIS  
22 EXHIBIT 14 A?

23 A. I DON'T REMEMBER SPECIFICALLY.

24 Q. DO YOU KNOW WHO DRAFTED EXHIBIT 14 A?

25 A. AS I MENTIONED, THIS ACTUALLY WAS A TOOL THAT WAS

1 ORIGINALLY DEVELOPED BY KENNETH CREWS, WAS IN THE MARKETPLACE  
2 AT THE TIME, IT WAS A TOOL THAT WAS FAMILIAR TO ACADEMIC  
3 INSTITUTIONS. SO AS WE WERE DRAWING TOGETHER ALL OF THESE  
4 RESOURCES, WE HAVE A RELATIONSHIP WITH KEN CREWS, SO WE  
5 THOUGHT THAT THIS WOULD BE A USEFUL TOOL OR SOMETHING LIKE IT.  
6 SO WE HAD ACTUALLY CONTACTED HIM AND ASKED IF WE COULD DRAW  
7 THIS INTO THE SET OF RESOURCES.

8 Q. WHAT SPECIFICALLY DID YOU ASK PROFESSOR CREWS FOR  
9 PERMISSION TO DRAW IN?

10 A. I WASN'T THE ONE WHO SPECIFICALLY HAD THE CONVERSATION,  
11 BUT MY UNDERSTANDING OF THE CONVERSATION WAS THAT WE ASKED HIM  
12 IF WE COULD. WE EXPLAINED THE PROJECT THAT WE WERE  
13 COMPLETING, THAT WE WERE ENDEAVORING TO COMPLETE, AND ASKED  
14 HIM IF WE COULD USE THE FAIR USE CHECKLIST THAT HE HAD CREATED  
15 AS A FRAMEWORK, IF HE WOULD MIND IF WE MODIFIED IT TO SOME  
16 DEGREE AND HE GRACIOUSLY AGREED.

17 Q. DID YOU CONSIDER USING ANY OTHER MATERIALS AS A  
18 FRAMEWORK IN PLACE OF THAT FAIR USE CHECKLIST THAT YOU  
19 EVENTUALLY OBTAINED PERMISSION FROM PROFESSOR CREWS TO USE?

20 MR. RICH: OBJECTION TO THE FORM.

21 THE WITNESS: I AM JUST TRYING TO REMEMBER. I AM  
22 SORRY FOR THE PAUSE.

23 Q. TAKE YOUR TIME.

24 A. MY RECOLLECTION WAS AS WE WERE TALKING ABOUT THIS  
25 PARTICULAR TOPIC, WE MIGHT COME UP WITH A TOOL RESONATE, SO AS

1 A MODEL THAT ALREADY EXISTED IN THE MARKETPLACE IS SOMETHING  
2 THAT CAME TO THE TOP OF MY --

3 Q. DO YOU RECALL IF THERE WERE ANY MODELS AVAILABLE?

4 A. OFF THE TOP OF MY HEAD, I DON'T RECOLLECT IF THERE  
5 WERE OTHER MODELS AVAILABLE AT THE TIME.

6 Q. CAN YOU EXPLAIN TO ME ANY WAYS IN WHICH YOU MODIFIED  
7 THE MODEL THAT YOU OBTAINED FROM DR. CREWS TO PRODUCE THE  
8 DOCUMENT THAT IS HERE BEFORE US AS EXHIBIT 14 A?

9 A. I ACTUALLY DON'T REMEMBER SPECIFICALLY WHAT WAS  
10 MODIFIED. BUT OUR OVERARCHING ATTEMPT WITH DEVELOPING THIS  
11 CAMPUS GUIDE WAS TO CREATE A SET OF RESOURCES THAT REALLY  
12 PROVIDED A VERY BALANCED APPROACH TO ACADEMIC INSTITUTIONS,  
13 GAVE THEM A SET OF RESOURCES THAT THEY CAN CHOOSE FROM TO HELP  
14 THEM AS THEY STRUGGLED WITH THE COPYRIGHT COMPLIANCE ISSUES  
15 THAT THEY WERE BEING FACED WITH NEARLY TEN YEARS AGO.

16 THIS WAS AT A TIME WHEN, AS I MENTIONED EARLIER, ACADEMIC  
17 LIBRARIES WERE REALLY JUST STARTING TO DEVELOP THEIR ERESERVE  
18 POLICIES, THEY WERE JUST STARTING TO THINK ABOUT DEVELOPING AN  
19 ERESERVE PROGRAM, AND THEY WERE JUST STARTING TO USE  
20 ELECTRONIC CONTENT MORE BROADLY ACROSS CAMPUS. SO THEY WERE  
21 REALLY CHALLENGED AT THIS POINT IN TIME.

22 AND FOR A LONG TIME, ACADEMIC LIBRARIANS, SPECIFICALLY,  
23 WERE ASKING COPYRIGHT CLEARANCE CENTER TO HELP THEM TO -- TO  
24 HELP EDUCATE THEM ON WHAT SOME OF THE ISSUES ARE SO THAT THEY  
25 CAN HAVE A MORE EDUCATED CONVERSATION WITHIN THEIR INSTITUTION

1 SO THEY COULD HAVE A MORE EDUCATED CONVERSATION WITH THEIR  
2 PROVOST, WITH THEIR LIBRARY DIRECTORS, WITH THEIR FACULTY  
3 MEMBERS AS THEY WERE TRYING TO EVANGELIZE THE NEED FOR  
4 COPYRIGHT COMPLIANCE VERY BROADLY ACROSS THE INSTITUTIONS.  
5 THEY WERE ASKING US TO HELP THEM.

6 AND WHILE THERE WERE TOOLS AVAILABLE IN THE MARKET FROM  
7 THE AMERICAN LIBRARY ASSOCIATION, FROM THE AAP, FROM KEN  
8 CREWS, FROM WHOEVER, WHAT THEY WERE REALLY LOOKING FOR WAS A  
9 CENTRALIZED TOOL, AND THAT IS WHAT WE WERE TRYING TO DO WAS  
10 DRAW TOGETHER ALL OF THOSE DIFFERENT TOOLS TO GIVE THEM KIND  
11 OF A SWEEP OF RESOURCES THAT THEY COULD CHOOSE FROM AS THEY  
12 WERE CREATING THEIR OWN COPYRIGHT POLICIES. THAT IS REALLY  
13 THE CONTEXT THAT THIS SITS IN.

14 I APOLOGIZE IF I AM CHALLENGED WITH KIND OF PULLING THIS  
15 OUT OF CONTEXT, BUT IT REALLY BELONGS WITHIN THAT CONTEXT OF  
16 A LARGER SET OF RESOURCES, THAT IS WHY I KEEP TALKING ABOUT IT  
17 IN RELATION TO THE LARGER CAMPUS GUIDE.

18 Q. SO THIS FAIR USE CHECKLIST THEN, IS IT FAIR TO SAY,  
19 WAS ONE OF THE SUITE OF TOOLS THAT THE CCC DEVELOPED?

20 A. ABSOLUTELY. ABSOLUTELY.

21 Q. AND IS THIS INDIVIDUAL TOOL IN ANY WAY DIFFERENT FROM  
22 THE FAIR USE CHECKLIST THAT YOU HAVE OBTAINED FROM DR. CREWS?

23 A. SO WHILE I AM NOT SURE EXACTLY HOW WE HAD MODIFIED IT,  
24 AS I SAID EARLIER, MY UNDERSTANDING OF ONE OF THE WAYS IN  
25 WHICH IT WAS MODIFIED WAS TO BRING IT MORE IN LINE WITH THAT

1 BALANCED APPROACH THAT WE WERE TRYING TO CREATE. AND SO MY  
2 UNDERSTANDING IS SOME OF THE LANGUAGE WAS MODIFIED TO CREATE  
3 MORE OF A BALANCED APPROACH THAN AT THE TIME WE BELIEVE IT HAD  
4 IN PLACE.

5 Q. DO YOU RECALL WHAT SPECIFIC LANGUAGE WAS MODIFIED?

6 A. I DON'T, I'M SORRY.

7 Q. CAN YOU TELL ME A LITTLE BIT MORE ABOUT WHAT YOU MEAN  
8 BY A BALANCED APPROACH?

9 A. BY A BALANCED APPROACH, AS I THINK I HAVE SAID A  
10 COUPLE OF TIMES OVER THE COURSE OF THIS CONVERSATION, ONE OF  
11 THE THINGS THAT WE ARE VERY COGNIZANT OF IS WE DON'T PROVIDE  
12 GUIDANCE IN TERMS OF FAIR USE. AND WE ARE CHALLENGED WITH  
13 THAT ON A REGULAR BASIS. CUSTOMERS CALL US, THEY ARE  
14 CHALLENGED WITH, WHAT DO I DO? IS THIS FAIR USE? DO I HAVE TO  
15 GET A LICENSE FOR THIS? AND AS A PRACTICE, WE REFRAIN FROM  
16 GIVING THEM GUIDANCE BECAUSE WE ARE NOT ATTORNEYS. OUR  
17 CUSTOMER RELATIONS STAFF IS IN NO WAY EQUIPPED TO HELP THEM  
18 EVALUATE THEIR PARTICULAR CIRCUMSTANCE OF HOW THEY ARE GOING  
19 TO USE THAT PIECE OF CONTENT AND HELP THEM TO EVALUATE WHETHER  
20 THAT IS A FAIR USE RIGHT.

21 EVALUATING FAIR USE IS SUCH A CIRCUMSTANTIAL TYPE OF  
22 EFFORT, IT IS NOT SOMETHING WE AS A PRACTICE OR POLICY EVER  
23 ENGAGE IN. SO AS WE WERE CREATING THIS TOOL, WE WANTED TO  
24 MAKE SURE THAT THE RESOURCES THAT WE DREW TOGETHER DID NOT  
25 KIND OF TILT IN ONE DIRECTION OR THE OTHER. THAT IT WAS A

1 VERY BALANCED APPROACH AND WAS NOT IN FACT KIND OF GUIDING  
2 SOMEONE TOWARD A PARTICULAR END. THAT IT WAS A SUITE OF  
3 TOOLS THAT AN INSTITUTION CAN KIND OF PICK AND CHOOSE FROM AND  
4 SAY THIS MODEL WORKS FOR ME, THIS MODEL WORKS FOR ME.

5 AND AS THEY PULLED TOGETHER PIECES OF THIS, BECAUSE THERE  
6 ARE SO MANY MORE PIECES TO THIS CAMPUS GUIDE, IT IS A VERY,  
7 VERY BROAD AND DEEP SET OF TOOLS. BUT AS YOU PULL TOGETHER  
8 ALL OF THE PIECES OF THIS, IT CREATES THIS -- GIVES THEM THE  
9 ABILITY TO CREATE THEIR OWN COPYRIGHT COMPLIANCE GUIDELINES.

10 SO THIS IS ONE TOOL THAT WOULD NEED TO BE USED IN  
11 CONJUNCTION WITH SOME OF THE OTHER TOOLS THAT WE HAVE CREATED  
12 AS PART OF THIS RESOURCE. AS A FOR INSTANCE, EMBEDDED IN  
13 HERE ARE SOME GUIDANCE ABOUT OBTAINING PERMISSION FOR  
14 COURSEPACK USE, GAINING PERMISSION FOR ELECTRONIC RESERVES,  
15 GAINING PERMISSION FOR INTERLIBRARY LOAN.

16 SO THIS DOCUMENT REALLY NEEDS TO BE KIND OF DRAWN TOGETHER  
17 WITH THOSE OTHER RESOURCES IN TERMS OF KIND OF CREATING THAT  
18 CULTURE OF COMPLIANCE THAT THESE INSTITUTIONS WERE LOOKING TO  
19 DO. THAT WAS WHY THEY WERE COMING TO US.

20 DOES THAT ANSWER YOUR QUESTION?

21 Q. IT DOES. THANK YOU. IF A POTENTIAL USER CONTACTS  
22 CCC WITH QUESTIONS ABOUT FAIR USE, WHAT DOES CCC TELL THEM?

23 A. THAT THEY NEED TO REFER TO THEIR COMPLIANCE POLICY.  
24 THEY NEED TO TALK TO THEIR IN-HOUSE COUNSEL. THE CHALLENGE  
25 WITH ACADEMIC INSTITUTIONS IS A FAIR NUMBER OF ACADEMIC

1 INSTITUTIONS DON'T HAVE THEIR OWN COUNSEL THEY CAN CONSULT.  
2 THEY ARE LOOKING FOR RESOURCES, THEY ARE LOOKING FOR TOOLS,  
3 THEY ARE LOOKING FOR HELP. AGAIN, THAT WAS THE FOUNDATION  
4 FOR REALLY BUILDING THIS. BUT THAT IS OUR RESPONSE. I WAS  
5 RESPONSIBLE FOR THE CUSTOMER RELATIONS TEAM. I HAVE GROWN  
6 OUT OF THE CUSTOMER RELATIONS TEAM, I HAVE DONE THAT JOB AND  
7 THAT IS JUST OUR ANSWER.

8 Q. SO IF I UNDERSTAND PART OF YOUR ANSWER, IN SOME  
9 CIRCUMSTANCES YOU MAY REFER SOMEONE APPROACHING CCC WITH A  
10 QUESTION ABOUT FAIR USE TO THIS CAMPUS GUIDE FOR COPYRIGHT  
11 COMPLIANCE; IS THAT CORRECT?

12 MR. RICH: OBJECTION. YOU CAN SO TESTIFY, IT WASN'T  
13 YOUR TESTIMONY.

14 THE WITNESS: IF SOMEONE WERE TO CONTACT US, WE WOULD  
15 DIRECT THEM TO THEIR OUTSIDE COUNSEL OR TO THEIR COPYRIGHT  
16 COMPLIANCE, THEIR OWN COPYRIGHT COMPLIANCE POLICY. IF  
17 SOMEONE WERE LOOKING TO CREATE COPYRIGHT COMPLIANCE POLICY,  
18 LIKE AN ACADEMIC LIBRARY WERE TO CONTACT US AND SAY, WHAT IS A  
19 GOOD WAY FOR ME TO START EVANGELIZING ABOUT COPYRIGHT  
20 COMPLIANCE AT MY INSTITUTION, I WANT TO REVISE OUR COPYRIGHT  
21 POLICY, HOW DO I GO ABOUT DOING THAT? WE CAN REFER THEM TO  
22 THE SUITE OF TOOLS THAT THEY CAN THEN USE AS COMPONENTS THAT  
23 THEY CAN PICK AND CHOOSE AND BEGIN TO DEVELOP THEIR OWN  
24 COPYRIGHT POLICY.

25 Q. HOW WOULD YOU DESCRIBE THE CCC'S INTENDED AUDIENCE FOR

1 CCC'S "CAMPUS GUIDE TO COPYRIGHT COMPLIANCE"?

2 A. INTENDED AUDIENCE FOR THE FULL CAMPUS GUIDE, ACADEMIC  
3 INSTITUTIONS PROBABLY. THE SPECIFIC AUDIENCE WHO IS REALLY  
4 ASKING FOR THIS WERE MOSTLY ACADEMIC LIBRARIANS. SO THEY  
5 WERE REALLY PROBABLY THE PRIMARY AUDIENCE FOR THIS. THEY ARE  
6 ALSO MORE KNOWLEDGEABLE ON COPYRIGHT ISSUES. MORE  
7 KNOWLEDGEABLE IN WHAT SOME OF THE CHALLENGES ARE. THEY  
8 UNDERSTAND HOW COMPLEX THE ISSUES ARE AND THEY UNDERSTAND THAT  
9 IT IS NOT JUST ONE SET OF BUSINESS RULES THAT ARE GOING TO  
10 CURE ALL OF THEIR CHALLENGES, THAT THEY NEED TO PUT A SET OF  
11 BUSINESS RULES IN PLACE TO ADDRESS THE DIFFERENT SET OF  
12 CONTENT NEEDS ACROSS CAMPUS.

13 Q. THIS FAIR USE CHECKLIST THAT YOU HAVE BEFORE YOU, IS  
14 THIS THE FINAL VERSION OF THE DOCUMENT THAT THIS SMALL TEAM  
15 PREPARED BACK IN 2000 AS YOU TESTIFIED EARLIER?

16 A. I ACTUALLY DON'T KNOW. I DON'T KNOW IF IT HAS BEEN  
17 UPDATED. I MOVED OUT OF THAT ROLE, I BELIEVE, SHORTLY  
18 AFTER WE CREATED THIS GUIDE. SO I ACTUALLY DON'T KNOW IF IT  
19 HAS BEEN UPDATED, IF THE CONTENT HAD BEEN UPDATED. I DO KNOW  
20 -- ACTUALLY, I LEARNED THIS AS PART OF OUR PREPARATION THAT  
21 THIS ACTUAL TOOL WAS REMOVED AS A TOOL WITHIN THIS COPYRIGHT  
22 GUIDE. SO THE LINKS TO IT WERE ACTUALLY REMOVED. IT IS NO  
23 LONGER A CURRENT TOOL THAT WE OFFER AS PART OF THE CAMPUS  
24 GUIDE TO COPYRIGHT COMPLIANCE.

25 Q. I WANT TO MAKE SURE I UNDERSTOOD EVERYTHING YOU TALKED

1 ABOUT. SO IT IS POSSIBLE THAT THIS DOCUMENT WAS UPDATED SOME  
2 TIME BETWEEN 2000 AND THE PRESENT AND YOU SIMPLY DON'T KNOW  
3 WHETHER IT HAS BEEN UPDATED DURING THAT TIME PERIOD OR NOT; IS  
4 THAT CORRECT?

5 A. THAT'S POSSIBLE.

6 Q. AND THEN YOU SAID THAT THIS FAIR USE CHECKLIST IS NO  
7 LONGER A CURRENT TOOL?

8 A. IT IS NO LONGER A CURRENT TOOL. IT HAS ACTUALLY BEEN  
9 PHYSICALLY REMOVED FROM "THE CAMPUS GUIDE TO COPYRIGHT  
10 COMPLIANCE."

11 Q. BY "PHYSICALLY REMOVED," YOU MEAN IT IS NO LONGER  
12 AVAILABLE ON THE CCC WEBSITE?

13 A. IT CAN NO LONGER BE NAVIGATED TO FROM WITHIN THIS SITE,  
14 WITHIN THIS -- "THE CAMPUS GUIDE TO COPYRIGHT COMPLIANCE" IS  
15 ACTUALLY A MICROSITE. IT IS, IN ESSENCE, A BALANCED SET OF  
16 TOOLS, ALMOST LIKE A BOOK, EXCEPT IT IS AN ONLINE VERSION.  
17 WE HAVE TAKEN THE LINKS AWAY, YOU CAN NO LONGER NAVIGATE TO  
18 THIS PARTICULAR PAGE FROM "CAMPUS GUIDE TO COPYRIGHT  
19 COMPLIANCE."

20 Q. IS THE FAIR USE CHECKLIST STILL AVAILABLE ON THE  
21 COPYRIGHT.COM WEBSITE THROUGH SOME OTHER ROUTE?

22 A. IT CANNOT BE NAVIGATED TO THROUGH ANY PART OF THE  
23 COPYRIGHT.COM OR ANY OTHER OF CCC'S WEBSITES.

24 Q. TO THE BEST OF YOUR KNOWLEDGE, IS IT STILL PUBLICLY  
25 AVAILABLE ON THE COPYRIGHT.COM WEBSITE?

1 A. MY UNDERSTANDING IS IT CANNOT BE NAVIGATED TO FROM THE  
2 COPYRIGHT.COM WEBSITE.

3 Q. DO YOU KNOW IF I TOOK THE URL ADDRESS THAT APPEARS AT  
4 THE VERY BOTTOM OF EXHIBIT 14 A AND TYPED THAT INTO MY WEB  
5 BROWSER, DO YOU KNOW IF I WOULD BE ABLE TO ACCESS THE FAIR  
6 USE CHECKLIST TODAY?

7 A. IT IS POSSIBLE. IT IS POSSIBLE THAT THE PAGE MAY  
8 PHYSICALLY STILL EXIST ON OUR SERVERS, WHICH MEANS GOOGLE  
9 WOULD CRAWL OVER IT AND FIND IT. BUT WHAT I DO KNOW IS THAT  
10 YOU CAN'T NAVIGATE TO IT FROM ANY OF OUR WEBSITES. SO IF YOU  
11 WERE TO GO TO COPYRIGHT.COM/SERVICES/COPYRIGHT ON CAMPUS, YOU  
12 MIGHT BE ABLE TO TYPE THIS IN AND ACTUALLY GET TO IT. YOU  
13 WOULDN'T BE ABLE TO COME FROM COPYRIGHT.COM OR COME FROM THE  
14 CAMPUS GUIDE AND GET TO IT FROM THERE.

15 Q. WHY DOES THE CCC NO LONGER OFFER NAVIGATION LINKS TO  
16 THIS FAIR USE CHECKLIST ON THE WEBSITE?

17 A. MY UNDERSTANDING IS THAT AS CONTENT USE HAS KIND OF  
18 EVOLVED OVER TIME -- REMEMBER WE CREATED THIS WHEN DIGITAL  
19 CONTENT USE WAS JUST BEING FORMED ON CAMPUS, POLICIES WERE  
20 JUST BEING FORMED ON CAMPUS -- AS CONTENT USE HAS EVOLVED, MY  
21 UNDERSTANDING IS THAT THIS WAS NO LONGER -- THIS WAS NOT  
22 CONSIDERED TO BE LEGALLY APPROPRIATE.

23 Q. WHAT DO YOU MEAN BY "LEGALLY APPROPRIATE"?

24 MR. RICH: IN ANSWERING, PLEASE DON'T CONVEY ANY  
25 PRIVILEGED COMMUNICATIONS YOU HAD WITH MR. HABER OR ANYONE

1 ELSE IN REPRESENTING CCC ON THIS MATTER. SUBJECT TO THAT,  
2 YOU CAN ANSWER.

3 THE WITNESS: MY UNDERSTANDING, UNFORTUNATELY I  
4 WASN'T INVOLVED IN THESE CONVERSATIONS AND THEY HAPPENED SOME  
5 TIME AGO, BUT MY UNDERSTANDING WAS THAT BETWEEN OUR PRODUCT  
6 MANAGER AND OUR LEGAL COUNSEL, IT WAS JUST DETERMINED THAT  
7 BASED ON WHERE CONTENT USE IS ON CAMPUS, THAT PIECES OF THIS  
8 PARTICULAR CHECKLIST JUST NO LONGER APPLIED.

9 Q. DO YOU KNOW IN PARTICULAR WHICH PIECES OF THIS  
10 CHECKLIST NO LONGER APPLY?

11 A. I DON'T, UNFORTUNATELY. AGAIN, I WASN'T PART OF  
12 THIS SPECIFIC CONVERSATION.

13 Q. DO YOU KNOW WHEN THOSE CONVERSATIONS TOOK PLACE?

14 A. I KNOW THAT IT WAS TAKEN DOWN OR THE LINKS WERE  
15 ELIMINATED SOME TIME IN EARLY 2008. I CAN ONLY ASSUME THAT  
16 CONVERSATIONS HAPPENED SHORTLY BEFORE THAT.

17 Q. HAS THIS FAIR USE CHECKLIST, TO THE BEST OF YOUR  
18 KNOWLEDGE, EVER BEEN REMOVED FROM THE CCC'S SERVER ENTIRELY  
19 AT ANY TIME?

20 A. I DON'T KNOW.

21 Q. DO YOU KNOW WHO WAS INVOLVED IN THE DISCUSSIONS?  
22 AGAIN, BEING CAREFUL NOT TO ASK YOU TO INVADE THE PRIVILEGE  
23 THAT COVERS COMMUNICATIONS WITH YOUR ATTORNEYS, DO YOU KNOW  
24 WHO WAS INVOLVED IN THESE DISCUSSIONS REGARDING THE  
25 APPROPRIATENESS OF THE FAIR USE CHECKLIST?

1 A. MY UNDERSTANDING WAS IT WAS A CONVERSATION BETWEEN OUR  
2 LICENSING MANAGER, TIM BOWEN, AND FRED HABER.

3 Q. DO YOU KNOW WHO INITIATED THOSE DISCUSSIONS?

4 A. I DON'T.

5 Q. DO YOU KNOW IF THERE WAS ANY EVENT THAT TRIGGERED THOSE  
6 DISCUSSIONS?

7 A. I ACTUALLY DON'T KNOW.

8 Q. DOES CCC HAVE ANY PLANS THAT YOU ARE AWARE OF TO AGAIN  
9 OFFER LINKS TO THIS FAIR USE CHECKLIST AS PART OF "THE CAMPUS  
10 GUIDE TO COPYRIGHT COMPLIANCE"?

11 A. IT IS MY UNDERSTANDING THAT WE DO NOT HAVE ANY  
12 INTENTION OF RESURFACING THIS.

13 Q. IS CCC IN THE PROCESS OF REVISING THE FAIR USE  
14 CHECKLIST?

15 A. NO, WE ARE NOT.

16 Q. THAT IS PAGE 204, LINE 2. I AM MOVING TO LINE 6 OF  
17 THE SAME PAGE.

18 JUST TO FINISH UP ON OUR QUESTIONS OF EXHIBIT 14 A WE WERE  
19 DISCUSSING BEFORE THE BREAK, I BELIEVE YOUR TESTIMONY,  
20 PLEASE CORRECT ME IF I AM WRONG, WAS THAT TO YOUR KNOWLEDGE,  
21 THE LINKS TO THE FAIR USE CHECKLIST WERE REMOVED FROM THE CCC  
22 WEBSITE IN EARLY 2008?

23 A. THAT'S MY UNDERSTANDING.

24 Q. THAT IS LINE 13 ON PAGE 204. I AM MOVING TO LINE 17.  
25 WHEN DID YOU BECOME AWARE THAT LINKS TO THE FAIR USE

1 CHECKLIST WERE REMOVED FROM THE CCC WEBSITE?

2 A. I THINK I MENTIONED EARLIER THAT I REALLY JUST BECAME  
3 AWARE OF IT AS I WAS PREPARING FOR THE DEPOSITION.

4 Q. WHO AT CCC WOULD HAVE ACTUALLY TAKEN THE TECHNICAL  
5 STEPS NECESSARY TO REMOVE THOSE LINKS?

6 A. PROBABLY SOMEBODY IN OUR MARKETING DEPARTMENT ACTUALLY  
7 WOULD HAVE GUIDED THAT ACTIVITY.

8 Q. THAT IS LINE 4 ON PAGE 205. I AM NOW ON LINE 13.

9 DOES THE CCC HAVE ANY OPINION AS TO WHETHER GSU'S ALLEGED  
10 INFRINGEMENT OF THE WORKS AT ISSUE IN THIS LAWSUIT HAS  
11 AFFECTED MARKET OR POTENTIAL MARKETS FOR THOSE WORKS?

12 A. DO WE HAVE A SENSE AS TO WHETHER OR NOT?

13 Q. YES.

14 A. WELL, ONE WAY TO THINK ABOUT THAT IS WHEN WE THINK  
15 ABOUT THE LICENSING REVENUE THAT WE WERE ABLE TO DRIVE TOWARD  
16 PUBLISHERS LIKE THE THREE PLAINTIFFS, AS A FOR INSTANCE, THAT  
17 IS A REVENUE STREAM FOR THOSE RIGHTS HOLDERS. SO THERE IS A  
18 MARKET THERE. PART OF WHAT CCC HAS DONE OVER THE YEARS IS TO  
19 ACTUALLY CREATE A MARKET FOR LICENSING, AND THROUGH THAT WE  
20 ARE ABLE TO DISTRIBUTE MILLIONS OF DOLLARS, TENS OF MILLIONS  
21 OF DOLLARS BACK TO RIGHTS HOLDERS, AND THUS HAVE REALLY  
22 CREATED THAT MARKET.

23 SO THE POTENTIAL IMPACT OF THE WORK OF GEORGIA STATE, OF  
24 ANY UNLICENSED USES THROUGH GEORGIA STATE, FOR INSTANCE, CAN  
25 SIGNIFICANTLY IMPACT THOSE RIGHTS HOLDERS, CERTAINLY IF IT

1 EXTENDS TO OTHER INSTITUTIONS THE SIZE AND NATURE OF GEORGIA  
2 STATE.

3 Q. DO YOU HAVE ANY INFORMATION AS TO WHETHER OR NOT GSU'S  
4 ALLEGED INFRINGEMENT HAS ACTUALLY CAUSED AN IMPACT TO THE  
5 RIGHTS HOLDERS?

6 A. IT IS HARD TO SAY. THE ONLY INFERENCE THAT WE COULD  
7 DRAW IS EITHER BY LOOKING AT THE WORKS THAT ARE CALLED TO  
8 QUESTION, AND IF THOSE HAD BEEN LICENSED OVER X PERIOD OF  
9 TIME, THAT IS ONE WAY TO DETERMINE WHAT THAT REVENUE IMPACT  
10 WOULD BE. SO THERE IS -- IT IS VERY -- IT IS JUST DIFFICULT  
11 TO TELL.

12 Q. IS THE REVENUE GENERATED BY LICENSING THE WORKS AT  
13 ISSUE IN THIS CASE DECLINING?

14 THAT IS LINE 6 ON PAGE 207. MOVING TO LINE TEN ON THE  
15 SAME PAGE.

16 A. THE ONLY WAY THAT I CAN THINK TO ANSWER THAT QUESTION  
17 IS JUST TO SAY THAT I ACTUALLY DON'T KNOW. I DON'T KNOW WHAT  
18 THE LICENSING REVENUE IS SPECIFICALLY FOR THOSE WORKS, SO I  
19 DON'T KNOW PERSONALLY IF IT HAS BEEN DECLINING.

20 Q. DO YOU KNOW IF THE REVENUE THAT CCC GENERATES THROUGH  
21 LICENSING THE WORKS AT ISSUE IN THIS CASE IS DECLINING?

22 A. I DON'T. I DON'T KNOW THE LICENSING REVENUE  
23 PARTICULAR TO THOSE WORKS.

24 Q. DO YOU KNOW IF THE TOTAL NUMBER OF REQUESTS FOR  
25 PERMISSION TO CCC FROM INDIVIDUALS ASSOCIATED WITH GEORGIA

1 STATE UNIVERSITY IS INCREASING OR DECREASING?

2 A. I DON'T KNOW WHO THE PEOPLE ARE WHO ARE ASSOCIATED WITH  
3 GEORGIA STATE. ARE YOU SPEAKING SPECIFICALLY OF FACULTY  
4 MEMBERS, PEOPLE WHO ARE ACTUALLY AFFILIATED WITH THE  
5 INSTITUTION, DIRECTLY WITH THE INSTITUTION?

6 Q. FOR CLARITY, LET ME GO AHEAD AND ASK THE QUESTION  
7 AGAIN. LET'S SAY OVER THE LAST FIVE YEARS, ARE THE NUMBER  
8 OF REQUESTS MADE TO CCC FOR PERMISSIONS MADE IN THE NAME OF  
9 FACULTY MEMBERS FROM GEORGIA STATE UNIVERSITY INCREASING?

10 A. I ACTUALLY DON'T KNOW. I PERSONALLY HAVEN'T LOOKED AT  
11 THE LICENSING REVENUE FROM GEORGIA STATE SPECIFICALLY, SO I  
12 ACTUALLY DON'T KNOW IF IT IS INCREASING OR DECREASING.

13 Q. DO YOU KNOW IF THE LICENSING REVENUE FROM GEORGIA STATE  
14 THAT YOU JUST REFERENCED, IF THAT AMOUNT HAS BEEN INCREASING  
15 OVER THE LAST FIVE YEARS?

16 A. LIKE I SAID, I HAVEN'T LOOKED AT THE SET OF ACCOUNTS SO  
17 I ACTUALLY DON'T KNOW WHAT THAT LICENSING REVENUE IS OR WAS.

18 Q. DOES CCC HAVE AN OPINION AS TO WHETHER THE USE OF  
19 ELECTRONIC RESERVE SYSTEMS AT ACADEMIC INSTITUTIONS GENERALLY  
20 HAS EFFECTED THE DEMAND FOR PERMISSIONS AVAILABLE THROUGH CCC?

21 A. WHAT WE HAVE SEEN, SOME OF THE TRENDS WE HAVE SEEN IN  
22 THE MARKET, AS WE HAVE TALKED EARLIER ABOUT OUR ACADEMIC  
23 PERMISSION SERVICE WHICH WAS FIRST ESTABLISHED IN 1991, THE  
24 ELECTRONIC COURSE CONTENT SERVICE, WHICH WAS ESTABLISHED  
25 LATER IN 1990'S, WHAT WE ARE SEEING IS THE PRINT PROGRAM IS

1 CRESTING OR DECLINING TO SOME DEGREE. AND WE EXPECT THAT,  
2 THE NATURE OF THE PROGRAM FOR PRINT USES, AND WE UNDERSTAND  
3 THERE IS A NATURAL SHIFT FROM PRINT TO DIGITAL USES.

4 AND WE ARE SEEING A DRAMATIC INCREASE FROM ELECTRONIC USES  
5 YEAR OVER YEAR. ALTHOUGH THE ELECTRONIC COURSE CONTENT  
6 SERVICE, BECAUSE IT IS A NEWER PROGRAM, IS STILL IN GENERAL A  
7 SMALLER PROGRAM, WE ARE NOT SEEING THAT THERE IS A DIRECT  
8 CORRELATION. WE ARE DEFINITELY SEEING SOME INSTITUTIONS WITH  
9 A GREATER DEGREE OF CONSISTENCY, SO AS THEIR PRINT LICENSING  
10 IS DECLINING, THEIR ELECTRONIC LICENSING IS INCREASING IN  
11 RELATIONSHIP TO EACH OTHER. AT OTHER INSTITUTIONS, WE ARE  
12 NOT SEEING THAT SAME SHIFT.

13 NOW, THAT COULD BE DUE TO A MULTITUDE OF REASONS, BUT WE  
14 ARE NOT SEEING THAT. WE ARE NOT SEEING THAT SHIFT AS CLEANLY  
15 IN OTHER INSTITUTIONS. SO KIND OF BROADLY WE BELIEVE THERE  
16 HAS BEEN AN IMPACT ON THE MARKET FOR THIS KIND OF USE.

17 Q. I BELIEVE YOU TESTIFIED JUST NOW AT SOME INSTITUTIONS  
18 THERE HAS BEEN A DIRECT CORRELATION BETWEEN THE DECLINE IN THE  
19 NUMBER OF PRINT PERMISSIONS REQUEST AND THE INCREASE IN THE  
20 NUMBER OF ELECTRONIC PERMISSIONS REQUEST. IS GEORGIA STATE  
21 UNIVERSITY AMONG ONE OF THOSE UNIVERSITIES WHERE THERE IS THAT  
22 DIRECT CORRELATION?

23 A. IT IS NOT ONE THAT I AM AWARE OF.

24 Q. TO YOUR KNOWLEDGE, IS GEORGIA STATE UNIVERSITY AN  
25 INSTITUTION WHERE THAT DIRECT CORRELATION DOES NOT EXIST?

1 A. AGAIN, BECAUSE I HAVEN'T BEEN LOOKING AT THEIR  
2 LICENSING REVENUE, I REALLY CAN'T GIVE YOU AN ANSWER TO THAT  
3 QUESTION.

4 Q. WHAT DOES CCC PERCEIVE TO BE SOME OF THE POTENTIAL  
5 FACTORS THAT COULD CAUSE THERE NOT TO BE A DIRECT CORRELATION  
6 BETWEEN THE DECLINE IN PRINT REQUESTS AND THE INCREASE IN THE  
7 ELECTRONIC REQUESTS AT A GIVEN INSTITUTION?

8 A. COULD YOU BE MORE SPECIFIC?

9 Q. I BELIEVE IN YOUR PREVIOUS ANSWER WHEN YOU WERE  
10 DISCUSSING THE FACT THAT AT SOME INSTITUTIONS THERE IS A  
11 DECLINE IN THE NUMBER OF PRINT REQUESTS AND THERE IS NOT AN  
12 ACCOMPANYING COMMENSURATE INCREASE IN ELECTRONIC REQUESTS,  
13 THAT COULD BE DUE TO A NUMBER OF FACTORS; IS THAT CORRECT?

14 A. YES.

15 Q. WHAT ARE SOME OF THOSE FACTORS?

16 A. LIBRARIES MAY HAVE ACCESS TO A SUBSCRIPTION FOR  
17 CONTENT, AND AS PART OF THAT SUBSCRIPTION THEY MAY BE ALLOWED  
18 TO LINK DIRECTLY TO THAT CONTENT. SO IF THERE IS SOME AMOUNT  
19 OF LINKING DIRECTLY TO THE CONTENT THAT IS NOT A LICENSABLE  
20 EVENT, EVEN THOUGH IT IS ELECTRONIC CONTENT, BUT IT IS NOT  
21 THE REUSE OF ELECTRONIC CONTENT, SO IT IS NOT A LICENSABLE  
22 EVENT. SO SOMETHING LIKE THAT.

23 Q. ANYTHING ELSE?

24 A. THAT IS THE BIGGEST FACTOR I CAN THINK OF.

25 Q. JUST SO THAT WE ARE CLEAR, CAN YOU EXPLAIN TO ME WHAT

1 YOU MEAN BY A LICENSABLE EVENT?

2 A. SOMETHING THAT WOULD REQUIRE PERMISSION.

3 Q. HOW MUCH REVENUE DID CCC GENERATE LAST YEAR IN  
4 CONNECTION WITH THE LICENSING ACTIVITIES WE HAVE DISCUSSED  
5 HERE TODAY?

6 A. THE ACADEMIC LICENSING?

7 Q. YES.

8 A. ACROSS ALL OF OUR ACADEMIC LICENSING, I BELIEVE IT WAS  
9 ABOUT 17 MILLION DOLLARS.

10 Q. IS IT POSSIBLE FOR YOU TO BREAK DOWN THAT 17 MILLION  
11 DOLLARS AMONG THE DIFFERENT PRODUCTS AND SERVICES WE HAVE  
12 DISCUSSED HERE TODAY?

13 A. YES, I BELIEVE I CAN. THE ACADEMIC PERMISSION  
14 SERVICE, IT STILL REALLY MAKES UP THE VAST MAJORITY OF THAT,  
15 AND IT WAS PROBABLY 14.5, SOMEWHERE, IT IS NOT AN EXACT  
16 NUMBER, BUT THAT IS IN THE RANGE. THE ELECTRONIC COURSE  
17 CONTENT SERVICE ABOUT 2 MILLION DOLLARS. AND THE ACADEMIC  
18 LICENSING SERVICE, BECAUSE IT IS FAIRLY KNEW, IS LESS THAN A  
19 MILLION.

20 Q. THE ACADEMIC LICENSING SERVICE?

21 A. THE ANNUAL COPYRIGHT LICENSE FOR ACADEMIC INSTITUTIONS.

22 Q. WHAT WAS THE AMOUNT FOR THAT ANNUAL LICENSE?

23 A. ABOUT A MILLION DOLLARS, JUST UNDER A MILLION DOLLARS.

24 Q. OVER THE LAST FIVE YEARS, HAS CCC'S REVENUE FROM  
25 ACADEMIC LICENSING ACTIVITIES INCREASED OR DECREASED?

1 A. IN TOTAL, IT PROBABLY REMAINED FLAT AT THIS POINT IN  
2 TIME. BUT THAT IS BECAUSE OF OUR KIND OF DIVERSIFICATION OF  
3 THE TYPES OF SERVICES THAT WE ARE PROVIDING, THE ANNUAL  
4 LICENSE STARTING TO FILL IN SOME OF THE GAPS. IN THE  
5 ACADEMIC PERMISSION SERVICE, WE ARE DEFINITELY SEEING A  
6 DECLINE.

7 Q. AND THAT IS PAGE 214, LINE 5. I AM NOW MOVING TO LINE  
8 13 OF THE SAME PAGE.

9 MS. MARINIELLO, HAS GSU'S ALLEGED USE OF COPYRIGHTED  
10 MATERIAL ON ITS ELECTRONIC RESERVE SYSTEM HAD ANY FINANCIAL  
11 IMPACT ON CCC?

12 A. THE ONLY FINANCIAL IMPACT THAT IT WOULD HAVE DIRECTLY  
13 -- THAT IT WOULD HAVE DIRECTLY ON CCC WOULD BE ON SERVICE  
14 FEES. AND SO IT IS NOMINAL, IT IS MINIMAL. THE IMPACT  
15 WOULD BE ON THE ROYALTY PAYMENTS THAT WOULD FLOW THROUGH OUR  
16 SYSTEMS OUT TO OUR RIGHTS HOLDERS.

17 Q. AND HAS THERE BEEN AN IMPACT ON THOSE SERVICE FEES?

18 A. I DON'T REALLY KNOW HOW TO ANSWER THAT QUESTION BECAUSE  
19 THERE IS NOT REALLY A YES OR NO BECAUSE THEY WEREN'T  
20 HAPPENING. IT IS NOT AS THOUGH THEY WERE HAPPENING AND THEN  
21 THEY STOPPED HAPPENING. THERE JUST HAS BEEN A PATTERN OF  
22 UNLICENSED USE IS MY UNDERSTANDING, SO THE ONLY IMPACT WOULD  
23 BE THAT WE HADN'T BEEN RECEIVING THOSE SERVICE FEES OVER TIME.

24 Q. DO YOU KNOW WHAT AMOUNT OF SERVICE FEES CCC HAS NOT  
25 BEEN RECEIVING?

1 A. THOSE SERVICE FEES THAT WE TALKED ABOUT EARLIER, THREE  
2 DOLLARS PER TRANSACTION AND X PERCENT OF THE ROYALTY FEE THAT  
3 WE WOULD HAVE RECEIVED. BUT A LOT OF THAT IS DEPENDENT ON  
4 HOW MANY ORDERS, WHAT TYPE OF CONTENT, THE LICENSE PRICE,  
5 ALL OF THOSE THINGS. SO THERE IS REALLY NO WAY TO SET A  
6 PARTICULAR DOLLAR AMOUNT TO THAT RIGHT NOW. I DON'T KNOW ANY  
7 OTHER WAY TO ANSWER YOUR QUESTION.

8 Q. WHAT INFORMATION WOULD YOU NEED TO BE ABLE TO SET A  
9 PARTICULAR DOLLAR AMOUNT FOR THE FINANCIAL IMPACTS ON CCC OF  
10 GSU'S ALLEGEDLY INFRINGING ACTIVITIES?

11 A. WE WOULD HAVE TO KNOW WHAT LICENSING ACTIVITY WOULD  
12 HAVE HAPPENED OVER THAT PERIOD OF TIME. SO WHAT WOULD  
13 GEORGIA STATE HAVE BEEN REQUESTING PERMISSION FOR? HOW MANY  
14 COPIES? HOW MANY STUDENTS? ALL OF THOSE THINGS THAT WE  
15 TALKED ABOUT EARLIER IN ORDER FOR US TO REALLY UNDERSTAND  
16 WHERE THE IMPACT TRULY IS.

17 Q. HOW WOULD YOU DETERMINE WHAT GSU'S LICENSING ACTIVITY  
18 WOULD HAVE BEEN OVER A GIVEN PERIOD OF TIME?

19 A. THAT WOULD REALLY BE UP TO GEORGIA STATE TO IDENTIFY TO  
20 US THE WORKS THAT WOULD NEED TO BE LICENSED AND THE NUMBER OF  
21 COPIES AND ALL OF THOSE PIECES OF INFORMATION OF THE WORKS  
22 THAT THEY WOULD DEEM TO BE LICENSABLE OR -- LET ME REPHRASE  
23 THAT A DIFFERENT WAY.

24 IT WOULD BE UP TO GEORGIA STATE TO LET US KNOW WHAT TITLES  
25 AND UNDER WHAT CIRCUMSTANCES THEY WOULD NEED TO REQUEST

1 PERMISSION.

2 Q. AND YOU WOULD LOOK TO GEORGIA STATE UNIVERSITY TO  
3 IDENTIFY THE TITLES AND THE CIRCUMSTANCES IN WHICH THEY WOULD  
4 NEED TO REQUEST PERMISSIONS FOR THOSE WORKS?

5 A. AS WE DO WITH OTHER INSTITUTIONS, CERTAINLY.

6 MR. WARENZAK: THAT IS PAGE 217, LINE 4. THAT IS  
7 THE END OF THIS DEPOSITION TESTIMONY. AT THIS POINT IN TIME  
8 WE WOULD LIKE TO MOVE THE EXHIBITS THAT WERE DISPLAYED AND  
9 DISCUSSED IN THIS DEPOSITION INTO EVIDENCE.

10 THE COURT: GO AHEAD.

11 MR. WARENZAK: DO YOU NEED ME TO RECITE THE NUMBERS  
12 FOR THAT?

13 THE COURT: I DO.

14 MR. WARENZAK: THE EXHIBIT THAT HAS BEEN IDENTIFIED  
15 AS 14 A IS DEFENDANT'S EXHIBIT DX 14. THE EXHIBIT THAT HAS  
16 BEEN IDENTIFIED AS 72 IN THE DEPOSITION TESTIMONY IS  
17 DEFENDANT'S DX 69. THE EXHIBIT IDENTIFIED AS 68 IN THE  
18 DEPOSITION TESTIMONY IS DEFENDANT'S DX 65. THE EXHIBIT  
19 IDENTIFIED AS 69 IS DEFENDANT'S DX 66.

20 THE COURT: I THOUGHT YOU HAD ALREADY COVERED THAT  
21 ONE.

22 MR. WARENZAK: I'M SORRY, YOUR HONOR, I DON'T KNOW IF  
23 THAT ONE HAS BEEN PUT IN BEFORE THIS.

24 THE COURT: START FROM THE TOP. MAYBE YOU OUGHT TO  
25 TAKE THEM ONE BY ONE. DX 14, ANY OBJECTION?

1 MR. RICH: NO OBJECTION.

2 THE COURT: IT IS ADMITTED.

3 WHAT IS THE NEXT ONE?

4 MR. WARENZAK: THAT WOULD BE DX 69.

5 MR. RICH: SAME.

6 THE COURT: I WILL ADMIT IT.

7 MR. WARENZAK: DX 65.

8 MR. RICH: NO OBJECTION.

9 THE COURT: IT IS ADMITTED.

10 MR. WARENZAK: DX 66.

11 MR. RICH: NO OBJECTION.

12 THE COURT: IT IS ADMITTED.

13 MR. WARENZAK: DX 67.

14 MR. RICH: NO OBJECTION.

15 THE COURT: IT IS ADMITTED.

16 MR. WARENZAK: AND THE LAST ONE IS DX 68.

17 MR. RICH: NO OBJECTION.

18 THE COURT: IT IS ADMITTED.

19 MR. WARENZAK: THANK YOU, YOUR HONOR.

20 MR. ASKEW: WE WILL BE CALLING PROFESSOR JENNIFER

21 MCCOY BY VIDEO DEPOSITION.

22 THE COURT: ALL RIGHT. YOU MAY PROCEED.

23 IS THIS A WHOLE DEPOSITION?

24 MR. SCHAEZEL: NO, MA'AM. THE PARTIES HAVE

25 COOPERATED TO PREPARE EXCERPTS, YOUR HONOR; HOWEVER, SINCE WE

1 ARE NOT READING, WE WILL HAVE TO HAND UP SOMETHING WITH THE  
2 EXCERPTS.

3 THE COURT: YOU WILL PERFECT THE RECORD LATER IS  
4 WHAT YOU ARE SAYING.

5 (WHEREUPON, THE VIDEOTAPE DEPOSITION OF JENNIFER MCCOY WAS  
6 PLAYED.)

7 THE COURT: WE NEED TO TAKE A BREAK. LET'S STOP  
8 HERE FOR A 20-MINUTE BREAK.

9 (WHEREUPON, A SHORT RECESS WAS HELD.)

10 MR. ASKEW: YOUR HONOR, NOW THAT MR. SCHAEZEL HAS  
11 RETURNED, I WOULD LIKE TO BE EXCUSED FOR AN HOUR OR TWO TO  
12 DEAL WITH SOME OTHER WITNESSES.

13 THE COURT: ALL RIGHT. LET'S RESUME.

14 MR. SCHAEZEL: I BELIEVE THAT CONCLUDES.

15 THE COURT: YOU KNOW SOMETHING I HAVE BEEN MEANING  
16 TO MENTION? HAVE YOU BEEN FILING THESE DEPOSITIONS, THE  
17 ORIGINALS? HAVE THEY BEEN FILED WITH THE COURT?

18 MR. KRUGMAN: I BELIEVE MANY HAVE.

19 THE COURT: OKAY. THEY SHOULD BE FILED. I AM  
20 JUST THINKING OUT LOUD HERE. THE BEST THING MIGHT BE TO  
21 ATTACH IT TO YOUR STATEMENTS ABOUT WHICH PARTS HAVE ACTUALLY  
22 BEEN INTRODUCED INTO EVIDENCE SO AS TO CLARIFY THAT ALTHOUGH  
23 YOU ARE FILING THE WHOLE DEPOSITION WITH THE COURT, ACTUALLY  
24 ONLY CERTAIN PARTS WERE READ INTO EVIDENCE AT TRIAL.

25 MR. KRUGMAN: WE WILL PROBABLY HAVE TO DO THAT FOR

1 MANY SEPARATELY BECAUSE MANY OF THE DEPOSITIONS HAD ALREADY  
2 BEEN FILED WITH THE COURT BEFORE PRESENTING THE TESTIMONY.

3 THE COURT: THAT IS FINE. I JUST WANTED TO MAKE  
4 SURE THE RECORD IS CLEAR.

5 MR. SCHAEZEL: VERY WELL. WE WILL DO THE SAME ON A  
6 GOING-FORWARD BASIS.

7 THE COURT: ALL RIGHT.

8 MR. SCHAEZEL: IN VIEW OF MS. MCCOY'S DEPOSITION, WE  
9 WOULD MOVE THE ADMISSION OF DEFENDANT'S EXHIBIT 381, WHICH IS  
10 MCCOY EXHIBIT 1, WHICH IS HER BIOGRAPHY OFF OF THE WEBSITE.

11 MR. LARSON: NO OBJECTION.

12 THE COURT: IT IS ADMITTED.

13 MR. SCHAEZEL: WE WOULD MOVE THE ADMISSION OF  
14 DEFENDANT'S EXHIBIT 383, WHICH IS MCCOY 3, WHICH IS THE  
15 SYLLABUS FOR HER CLASS 8250 IN THE FALL OF 2009.

16 MR. LARSON: WE HAVE NO OBJECTION, ALTHOUGH IT MAY  
17 ALREADY BE IN AS A PLAINTIFFS' EXHIBIT. I WILL CHECK ON  
18 THAT.

19 THE COURT: I WILL ADMIT IT.

20 MR. SCHAEZEL: AND THAT COULD HOLD TRUE FOR THE NEXT  
21 TWO, BUT THOSE ARE COPIES OF THE EXCERPTS WHICH ARE  
22 DEFENDANT'S EXHIBIT 384 AND 385. THE FIRST IS FOR DEMOGRAPHIC  
23 ACCOUNTABILITY IN LATIN AMERICA, THE SECOND IS FOR REGIMES AND  
24 DEMOCRACY IN LATIN AMERICA.

25 MR. LARSON: WE HAVE NO OBJECTION. THE WHOLE BOOKS

1 ARE IN, PROBABLY NOT THE PHOTOCOPIES, BUT NO OBJECTION.

2 THE COURT: THEY ARE ADMITTED.

3 MR. SCHAEZEL: WE WOULD MOVE THE ADMISSION OF  
4 MS. MCCOY'S CHECKLISTS, WHICH ARE AT DEFENDANT'S 386 AND  
5 DEFENDANT'S EXHIBIT 387, FIRST IS THE CHECKLIST FOR LATIN  
6 AMERICAN POLITICS, FALL 2009.

7 MR. LARSON: NO OBJECTION.

8 MR. SCHAEZEL: 387, ALSO LATIN AMERICAN CHECKLIST.

9 THE COURT: THEY ARE ADMITTED.

10 MR. SCHAEZEL: I THINK THAT IS ALL.

11 THE COURT: I NEED TO MENTION AT FOUR I HAVE A TRO.

12 MR. SCHAEZEL: NEXT IS OUR LAST VIDEO DEPOSITION,  
13 PROFESSOR GREENBERG. I UNDERSTAND SOME ISSUES WITH THAT, MY  
14 COLLEAGUE MS. BATES WILL ADDRESS.

15 MS. BATES: THE VIDEO DEPOSITION OF DAPHNE GREENBERG,  
16 IT WAS TESTIMONIAL DEPOSITION TAKEN ON APRIL 21ST OF THIS  
17 YEAR. AS WITH THE OTHER VIDEO DEPOSITIONS THAT WE HAVE  
18 SHOWN, PLAINTIFFS AND DEFENDANT DESIGNATIONS HAVE BEEN  
19 COMBINED TOGETHER TO PLAY A SINGLE VIDEO.

20 ONE ISSUE WE HAVE IS THAT PLAINTIFFS HAVE RAISED AN  
21 OBJECTION TO A PORTION OF A SEGMENT AND WE DON'T HAVE A WAY TO  
22 REMOVE THE SEGMENT THAT THEY HAVE OBJECTED TO. IT REFERS TO  
23 THE PROFESSOR TESTIFYING ABOUT DISCONTINUING HER USE OF ERES  
24 NOW IN THE FUTURE. WE DON'T CONTEST THEIR OBJECTION, BUT IF  
25 THEY CAN RENEW THAT OBJECTION AFTER WE PLAY THE VIDEO AND THEN

1 WE EXCISE THAT PORTION FROM THE PART WE FILE WITH THE COURT TO  
2 PERFECT THE RECORD, IF THAT WORKS FOR THEM.

3 MR. RICH: THAT IS ACCEPTABLE, YOUR HONOR.

4 THE COURT: ALL RIGHT.

5 MS. BATES: ONE OTHER THING I WANT TO HIGHLIGHT,  
6 PLAINTIFFS HAVE WITHDRAWN THEIR ALLEGATION WITH REGARD TO THIS  
7 PROFESSOR AS OF THEIR FILING YESTERDAY. DEFENDANTS OFFER IT  
8 NOW TO DEMONSTRATE THE EFFECT THE POLICY HAS HAD OF PROFESSOR  
9 ANALYSIS OF FAIR USE DURING THE RELEVANT TIME PERIOD.

10 THE COURT: SO YOU ARE SAYING WHATEVER THE CLAIM OR  
11 CLAIMS OF INFRINGEMENT MAY HAVE BEEN WITH RESPECT TO MATERIAL  
12 THIS PROFESSOR PUT ON ERES, THAT THAT CLAIM OR CLAIMS OF  
13 INFRINGEMENT HAVE BEEN WITHDRAWN.

14 MS. BATES: YES, AS OF YESTERDAY'S FILINGS.

15 MR. RICH: THAT'S CORRECT.

16 MR. KRUGMAN: ONE POINT. BRADFORD ADVISES ME  
17 APPARENTLY HE CAN CUTOUT THE SMALL PORTION THAT WAS OBJECTED  
18 TO IN PLAYING IT; IS THAT CORRECT?

19 MS. BATES: IT WAS ON PAGE 25, LINES 13 THROUGH 22.

20 MR. KRUGMAN: WE CAN ACTUALLY PLAY IT FOR THE COURT  
21 WITHOUT THE OBJECTED-TO MATERIAL.

22 THE COURT: ALL RIGHT. OFF WE GO.

23 (WHEREUPON, THE VIDEOTAPE DEPOSITION OF DAPHNE GREENBERG WAS  
24 PLAYED.)

25 MS. BATES: YOUR HONOR, MORE THAN PLAINTIFFS'

1 OBJECTED TO WAS EXCLUDED FROM THE VIDEO. MAY I READ THOSE?

2 MR. LARSON: I BELIEVE HE CAN PLAY THOSE.

3 (WHEREUPON, THE OMITTED PORTIONS OF THE VIDEO DEPOSITION WERE  
4 PLAYED.)

5 MS. BATES: THANK YOU, MR. LARSON.

6 IF I MAY MOVE INTO EVIDENCE THE EXHIBITS,  
7 DEFENDANT'S EXHIBIT 464 THAT CORRESPONDS TO GREENBERG FOUR  
8 DURING THE DEPOSITION.

9 MR. LARSON: NO OBJECTION.

10 THE COURT: IT IS ADMITTED.

11 MS. BATES: NEXT IS DEFENDANT'S EXHIBIT 605,  
12 CORRESPOND TO GREENBERG ONE.

13 MR. LARSON: NO OBJECTION.

14 THE COURT: IT IS ADMITTED.

15 MS. BATES: AND THE NEXT IS DR. GREENBERG'S  
16 CURRICULUM VITAE MARKED AS DEFENDANT'S EXHIBIT 905, IT WAS  
17 GREENBERG FIVE AT THE DEPOSITION.

18 THE COURT: IT IS ADMITTED.

19 MS. BATES: MOVE IN THE BOOK THAT WAS THE SUBJECT OF  
20 THE DEPOSITIONS, DEFENDANT'S EXHIBIT 740.

21 MR. LARSON: NO OBJECTION.

22 THE COURT: IT IS ADMITTED.

23 MR. SCHAEZEL: YOUR HONOR, WE WOULD LIKE TO CALL  
24 DEAN SEAMANS.

25 MR. LARSON: FROM THE MCCOY DEPOSITION THAT WE

1 WATCHED ON VIDEO, DX 381 WAS PREVIOUSLY ADMITTED AS PX 899  
2 FOR THE RECORD. DX 383 WAS PREVIOUSLY ADMITTED AS  
3 PLAINTIFFS' EXHIBIT 555. AND DX 387 WAS PREVIOUSLY ADMITTED  
4 AS PX 606.

5 THE COURT: HOW DO YOU WANT TO HANDLE THIS?

6 MR. SCHAEZEL: WE CAN COORDINATE. NO REASON THE  
7 COURT SHOULD HAVE TWO COPIES, WE CAN PULL OURS BACK.

8 THE COURT: ALL RIGHT. WHAT I WILL DO THEN IS DE-  
9 ADMIT THE DEFENSE EXHIBITS AND WE WILL STICK WITH THE  
10 PLAINTIFFS' EXHIBITS.

11 MR. SCHAEZEL: THAT'S FINE.

12 THE COURT: ALSO WHILE WE HAVE A PAUSE HERE, I HAVE  
13 BEEN NOTIFIED THE TRO APPLICATION HAS BEEN WITHDRAWN, WE DON'T  
14 HAVE TO STOP AT FOUR O'CLOCK.

15 THE CLERK: WHAT WAS THE FIRST NUMBER?

16 MR. LARSON: DX 381.

17 MR. SCHAEZEL: IF WE CAN, WHILE WE ARE DOING  
18 HOUSEKEEPING MATTERS. IF WE CAN ADDRESS ONE EXHIBIT THAT WE  
19 WILL USE WITH THIS WITNESS, IN PARTICULAR, YOUR HONOR. THAT  
20 ONE DTX 528. I WILL BE GLAD TO PROVIDE A COPY TO COUNSEL.

21 THE COURT: SO THIS IS AN OBJECTED TO EXHIBIT?

22 MR. SCHAEZEL: YES, MA'AM.

23 THE COURT: WHAT IS IT?

24 MR. SCHAEZEL: THE EXHIBIT IS A STIPULATION, YOUR  
25 HONOR, THAT THE PARTIES ENTERED INTO BACK IN 2010. IT WAS AT

1 THE TIME WHEN THE COURT WAS EXAMINING THE SUMMARY JUDGMENT  
2 MOTIONS. THE COURT ASKED FOR A COMPLETE COPY OF THE POLICY.  
3 THE PARTIES, AND I MENTIONED THIS EARLIER, HAVE A DISPUTE OVER  
4 WHAT CONSTITUTES POLICY AND I AM HONESTLY NOT INTERESTED IN  
5 RESOLVING THAT PORTION OF THE DISPUTE. WHAT WE WOULD LIKE TO  
6 BE ABLE TO DEMONSTRATE IS THAT IN THE POLICY, AS THE POLICY  
7 IS USED, THERE ARE LINKS. SO, FOR EXAMPLE, YOU CAN HAVE AN  
8 INTERNAL LINK THAT WILL TAKE YOU FROM PERMISSIONS TO ANOTHER  
9 PAGE WITHIN THE POLICY EVEN AS PLAINTIFFS EXPLAIN IT. THEN  
10 EXTERNAL LINKS IT WILL TAKE YOU TO A WEBSITE THAT IS RELATED,  
11 IN OUR VIEW.

12 IN THE DOCUMENT THAT THE COURT ATTACHED TO ITS SUMMARY  
13 JUDGMENT ORDER, WHICH IS IN EVIDENCE AS JTX 4, IT IS A  
14 19-PAGE DOCUMENT, BUT IT EFFECTIVELY DOES NOT INCLUDE OR SHOW  
15 ANY OF THESE EXTERNAL LINKS. THIS EXHIBIT, DTX 528 DOES  
16 SHOW EXTERNAL LINKS. WHAT WE DID IS WE WOULD SIMPLY, IF, FOR  
17 EXAMPLE, A LINK GOES OUT TO THE CCC PAGE, WE PHOTOCOPIED  
18 JUST THE FIRST PAGE OF THE CCC WEBSITE INSTEAD OF THE ENTIRE  
19 WEBSITE AND THEN PREPARED AN INDEX THAT SHOWS WHAT THAT IS.  
20 AND SO THE EXHIBIT COMPRISES THE STIPULATION FROM THE PARTIES  
21 WHERE WE TAKE OUR POSITION THAT THIS IS THE POLICY AND ALL  
22 RELATED MATERIAL, AND THEY TAKE THEIR POSITION THAT IT IS THE  
23 POLICY AND EXTRANEIOUS MATERIAL.

24 THE INDEX WE PREPARED THAT HAS TABS, JUST BASICALLY FOR  
25 EASE OF REFERENCE. AND THEN THE NEXT MATERIAL, WHICH IS THE

1 POLICY, AND IN OUR VIEW THE LINKS THAT RELATE TO THE POLICY.  
2 WE WOULD OFFER THAT INTO EVIDENCE.

3 THE COURT: THIS IS ALL DX 528?

4 MR. SCHAEZEL: YES, MA'AM.

5 MR. RICH: YOUR HONOR, WE DON'T HAVE ANY PROBLEM  
6 WITH THE RECORD ESTABLISHING THAT TO THE EXTENT IT IS  
7 ACCURATE. THE LINKS EXIST TO THIRD-PARTY MATERIALS. THE  
8 ISSUE IS WHETHER THIRD-PARTY MATERIALS SHOULD BE TREATED AS  
9 PART OF THE GSU POLICY. WE THINK FUNDAMENTALLY NOT. THERE  
10 IS NO FOUNDATION FOR ASSUMING THEY ARE. THEY ARE WHAT THEY  
11 ARE, THIRD-PARTY INFORMATION AND LINKS. AGAIN WE STIPULATE  
12 TO THAT.

13 BUT TO IMPORT THOSE THIRD-PARTY MATERIALS, WHICH ARE  
14 HEARSAY ABOUT WHICH NOBODY WILL HAVE COME IN AND TESTIFIED  
15 WITH ANY EXPERTISE TODAY, WITH POSSIBLE EXCEPTION OF  
16 DR. CREWS AS TO WHAT HE MAY TESTIFY TO, WE THINK IT IS  
17 HEARSAY AND INAPPROPRIATE AND A MISCHARACTERIZATION IN FACT OF  
18 WHAT CONSTITUTES THE GSU POLICY.

19 THE COURT: I AM GOING TO GO AHEAD AND ADMIT THE  
20 DOCUMENT WITHOUT RESOLVING THE ISSUE OF WHAT CONSTITUTES THE  
21 GSU POLICY.

22 NANCY HIGGINS SEAMANS, HAVING BEEN FIRST DULY SWORN,  
23 TESTIFIED AS FOLLOWS:

24 THE CLERK: BE SEATED. STATE YOUR FULL NAME FOR THE  
25 RECORD AND SPELL YOUR LAST NAME.

1 THE WITNESS: NANCY HIGGINS SEAMANS, S-E-A-M-A-N-S.

2 THE COURT: MR. RICH, DID YOU HAVE ANYTHING ELSE  
3 YOU WANTED TO SAY ON THAT ISSUE?

4 MR. RICH: I THINK WE HAVE ADDRESSED OUR POSITION.

5 THE COURT: ALL RIGHT. THANK YOU.

6 BY MR. SCHAEZEL:

7 Q. GOOD MORNING, MS. SEAMANS. COULD YOU PLEASE TELL THE  
8 COURT WHERE YOU ARE EMPLOYED?

9 A. EMPLOYED AT THE UNIVERSITY LIBRARY AT GEORGIA STATE  
10 UNIVERSITY.

11 Q. WHAT DO YOU DO AT THE UNIVERSITY LIBRARY AT GSU?

12 A. I AM DEAN OF LIBRARIES.

13 Q. COULD YOU BRIEFLY WALK US THROUGH YOUR EDUCATIONAL  
14 BACKGROUND THAT BROUGHT YOU TO THIS JOB?

15 A. I HAVE AN UNDERGRADUATE DEGREE IN POLITICAL SCIENCE  
16 FROM VIRGINIA TECH. I HAVE A MASTER'S DEGREE IN LIBRARY  
17 INFORMATIONS IN SCIENCES FROM THE UNIVERSITY OF NORTH  
18 CAROLINA, CHAPEL HILL. I HAVE A PH.D. IN INSTRUCTIONAL  
19 TECHNOLOGY AND DESIGN FROM VIRGINIA TECH.

20 Q. WHAT WAS YOUR FIRST PROFESSIONAL JOB?

21 A. I WAS A CATALOGER AND CHILDREN'S LIBRARIAN AT ROANOKE  
22 LIBRARY IN ROANOKE, VIRGINIA.

23 Q. APPROXIMATELY WHEN WAS THAT?

24 A. 1977, '78, LONG TIME AGO.

25 Q. AND ONCE YOU FINISHED, LET'S START WITH COLLEGE, WHAT

1 WAS YOUR NEXT JOB?

2 A. I WAS THE DIRECTOR OF LIBRARIES FOR THE JEFFERSON  
3 COLLEGE OF HEALTH SCIENCES FOR 13 YEARS, THAT IS IN ROANOKE,  
4 VIRGINIA. IT IS A PRIVATE HEALTH SCIENCES COLLEGE. AND THEN  
5 SPENT EIGHT YEARS AT VIRGINIA TECH. AND THREE-AND-A-HALF  
6 YEARS AT THE UNIVERSITY OF IOWA. AND HAVE BEEN HERE ALMOST  
7 THREE YEARS.

8 Q. LET'S START BACK THEN WITH THE VIRGINIA TECH JOB. WHAT  
9 DID YOU DO AT THE VIRGINIA TECH LIBRARY?

10 A. SEVERAL DIFFERENT JOBS. THE FINAL ONE WAS THE  
11 DIRECTOR OF INSTRUCTION REFERENCE AND OUTREACH FOR THE  
12 UNIVERSITY LIBRARY, SO RESPONSIBLE FOR MANY OF THE PUBLIC  
13 SERVICES FOR THE UNIVERSITY LIBRARY.

14 Q. AND APPROXIMATELY HOW MANY YEARS WERE YOU AT VIRGINIA  
15 TECH?

16 A. EIGHT YEARS.

17 Q. WHERE DID YOU GO NEXT?

18 A. TO THE UNIVERSITY OF IOWA.

19 Q. WHAT DID YOU DO THERE?

20 A. I WAS ASSOCIATE UNIVERSITY LIBRARIAN FOR SERVICES AND  
21 WAS THERE THREE-AND-A-HALF YEARS.

22 Q. WHEN YOU LEFT THE UNIVERSITY OF IOWA, DID YOU COME TO  
23 GEORGIA STATE UNIVERSITY?

24 A. I DID.

25 Q. WOULD YOU PLEASE DESCRIBE WHAT YOUR DUTIES AND

1 RESPONSIBILITIES ARE AS THE DEAN OF LIBRARIES AT GEORGIA  
2 STATE?

3 A. I AM RESPONSIBLE FOR ALL FUNCTIONING OF THE UNIVERSITY  
4 LIBRARY. I DO NOT HAVE RESPONSIBILITY FOR THE LAW LIBRARY.

5 Q. AND WHAT IS INVOLVED IN THE FUNCTIONS THAT YOU DO  
6 OVERSEE IN THE GEORGIA STATE LIBRARY?

7 A. PERSONNEL, BUDGET, STRATEGIC DIRECTIONS,  
8 RELATIONSHIPS WITH OTHER PEOPLE ON CAMPUS, MANAGING EVERY  
9 ASPECT OF WHAT GOES ON. WHAT HOURS WE ARE OPEN, POLICIES,  
10 ALL SORTS OF THINGS.

11 Q. HAVE YOU PUBLISHED ANY ARTICLES YOURSELF?

12 A. I HAVE.

13 Q. COULD YOU BRIEFLY DESCRIBE THEM?

14 A. THEY ARE MOSTLY LIBRARY FOCUSED. TOPICS WOULD BE  
15 MOSTLY LIBRARY INSTRUCTION OR ELECTRONIC THESIS AND  
16 DISSERTATION.

17 Q. HAVE YOU EVER RECEIVED ANY ROYALTIES FOR ANYTHING YOU  
18 HAVE PUBLISHED?

19 A. I HAVE.

20 Q. WOULD YOU TELL US?

21 A. DISSERTATION IS WITH PRO QUEST, I HAVE RECEIVED VERY,  
22 VERY, VERY SMALL CHECKS FROM THEM FOR MY DISSERTATION.

23 Q. AND JUST APPROXIMATELY WHAT ARE VERY, VERY?

24 A. LIKE TWELVE DOLLARS.

25 Q. DO YOU SERVE ON ANY PROFESSIONAL COMMITTEES?

1 A. BOTH WITHIN THE UNIVERSITY AND EXTERNAL TO THE  
2 UNIVERSITY, YES.

3 Q. PLEASE TELL US EXTERNAL FIRST.

4 A. I AM ON THE BOARD OF DIRECTORS FOR THE NETWORK DIGITAL  
5 LIBRARY OF THESIS AND DISSERTATIONS. AND HAVE BEEN INVOLVED,  
6 NOT CURRENTLY INVOLVED WITH ANYTHING, WITH THE AMERICAN  
7 LIBRARY ASSOCIATION, BUT HAVE BEEN IN THE PAST.

8 Q. HAVE YOU EVER WORKED, FOR EXAMPLE, WITH THE ASSOCIATION  
9 OF COLLEGE AND RESEARCH LIBRARIES?

10 A. I HAVE.

11 Q. WHAT HAVE YOU DONE?

12 A. I HAVE CHAIRED COMMITTEES FOR THEM, INCLUDING THE  
13 INSTRUCTION PROGRAM COMMITTEE AND THEIR DISSERTATION AWARD  
14 COMMITTEE.

15 Q. HAVE YOU EVER WORKED WITH THE VIRGINIA LIBRARY  
16 ASSOCIATION?

17 A. I HAVE.

18 Q. WHAT HAVE YOU DONE?

19 A. I WAS ON THE EDITORIAL BOARD FOR THE VIRGINIA LIBRARIES  
20 PUBLICATION AND I THINK THAT WAS THE MAIN EXTENT OF MY  
21 PARTICIPATION.

22 Q. WHILE YOU WERE IN IOWA, DID YOU WORK WITH THE IOWA  
23 LIBRARY ASSOCIATION?

24 A. I WAS A MEMBER AND I THINK DID PROGRAMMING FOR THEM,  
25 BUT WAS NOT AN OFFICER IN ANY WAY.

1 Q. APPROXIMATELY WHEN DID YOU ACCEPT THE OFFER TO COME TO  
2 GEORGIA STATE UNIVERSITY?

3 A. APRIL 2008.

4 Q. WOULD YOU PLEASE TELL US OF THE PHONE CONVERSATION IN  
5 WHICH YOU ACCEPTED THAT JOB?

6 A. I HAD CALLED THE PROVOST, THE THEN PROVOST RON HENRY  
7 TO DISCUSS WITH HIM ACCEPTING THE POSITION. AND HE SAID,  
8 WELL, I NEED TO WARN YOU THAT YOU MIGHT WANT TO LOOK AT THE  
9 NEW YORK TIMES BEFORE YOU ACCEPT THE OFFER, WE HAVE JUST BEEN  
10 SUED. I SAID, THANK YOU, I WILL CALL YOU BACK.

11 Q. AND WHAT WAS THE REFERENCE TO THE SUIT?

12 A. IT WAS THE LAWSUIT.

13 Q. WE PRESUME THAT YOU OBVIOUSLY CALLED HIM BACK AND  
14 ACCEPTED?

15 A. I DID.

16 Q. WHEN DID YOU START WORKING THEN AT GEORGIA STATE?

17 A. AUGUST 4TH, 2008.

18 Q. ONCE YOU TOOK THE JOB, WAS THERE A TIME THAT YOU WERE  
19 ASKED TO SERVE ON A COPYRIGHT COMMITTEE?

20 A. I WAS.

21 Q. WOULD YOU PLEASE DESCRIBE THE CIRCUMSTANCES OF YOUR  
22 BEING ASKED TO SERVE ON A COPYRIGHT COMMITTEE?

23 A. IT WAS SOME TIME IN THE FALL OF 2008, AND I RECEIVED AN  
24 EMAIL FROM BURNS NEWSOME, WHO IS IN THE BOARD OF REGENTS  
25 OFFICE, ASKING IF I WOULD SERVE ON A REGENTS COMMITTEE FOR

1 COPYRIGHT.

2 MR. SCHAEZEL: MAY I APPROACH, YOUR HONOR?

3 THE COURT: YES, YOU MAY.

4 BY MR. SCHAEZEL:

5 Q. IF YOU COULD PLEASE LOOK IN THE WITNESS BOOK THAT YOU  
6 HAVE BEEN HANDED TO WHAT HAS BEEN MARKED AS DEFENDANT'S  
7 EXHIBIT 145 FOR IDENTIFICATION.

8 A. OKAY.

9 Q. WHAT IS THIS?

10 A. THIS IS AN EMAIL FROM BURNS NEWSOME ASKING ME TO SERVE  
11 ON THE COMMITTEE, THE COPYRIGHT COMMITTEE, FOR THE BOARD OF  
12 REGENTS.

13 Q. WHERE DID YOU RECEIVE THIS EMAIL? WHERE WERE YOU WHEN  
14 YOU RECEIVED THIS EMAIL?

15 A. IN THE LIBRARY.

16 Q. YOU WERE IN YOUR OFFICE?

17 A. YES.

18 Q. ONCE YOU RECEIVED IT, WHAT DID YOU DO?

19 A. I AM SURE I REPLIED TO BURNS AND SAID, OF COURSE, I  
20 WILL DO THIS.

21 Q. WHEN YOU RECEIVED THE EMAIL, IF YOU LOOK AT THE SECOND  
22 SENTENCE, IT READS -- I'M SORRY -- FIRST WE MOVE THE  
23 ADMISSION OF THIS DOCUMENT.

24 MR. RICH: NO OBJECTION.

25 THE COURT: IT IS ADMITTED.

1 BY MR. SCHAETZEL:

2 Q. THE SECOND SENTENCE, MS. SEAMANS, READS:

3 "AS YOU KNOW, THE BOARD OF REGENTS'  
4 GUIDE TO COPYRIGHT, WITH A WEBSITE,  
5 IS A CENTRAL PART OF THE LAWSUIT  
6 FILED BY THE PUBLISHING INDUSTRY  
7 AGAINST THE BOARD AND GEORGIA STATE  
8 UNIVERSITY."

9 DO YOU SEE THAT LANGUAGE?

10 A. I DO.

11 Q. WHAT IS THE BOARD OF REGENTS' GUIDE TO COPYRIGHT?

12 A. MY UNDERSTANDING IS THAT IT WAS THE GUIDE TO USING  
13 COPYRIGHTED MATERIAL THAT WAS IN PLACE UP UNTIL THE NEW POLICY  
14 WAS IMPLEMENTED IN THE SPRING OF 2009.

15 Q. YOU MENTIONED THE NEW POLICY. IS THERE A DIFFERENCE  
16 BETWEEN GUIDE AND POLICY IN --

17 A. MY WAY OF THINKING, DEFINITELY.

18 Q. WHAT IS THAT DIFFERENCE?

19 A. A GUIDE IS SUGGESTIONS ON HOW TO PROCEED; A POLICY IS A  
20 REQUIREMENT THAT YOU PROCEED IN A CERTAIN WAY.

21 Q. ONCE YOU REPLIED TO MR. NEWSOME'S EMAIL, WAS THE  
22 COMMITTEE SUBSEQUENTLY FORMED?

23 A. IT WAS.

24 Q. DO YOU RECALL WHO WAS ON THE COMMITTEE?

25 A. THERE WERE MAYBE NINE PEOPLE REPRESENTING KENNESAW

1 STATE UNIVERSITY, GEORGIA TECH, THE MEDICAL COLLEGE, UGA,  
2 THE BOARD OF REGENTS OFFICE. I THINK THAT IS MOST OF THE  
3 ENTITIES THAT WERE REPRESENTED.

4 Q. IF WE LOOK FURTHER AT THE EMAIL, THE SECOND PARAGRAPH,  
5 THE FIRST SENTENCE READS:

6 "WE ENVISION A COMMITTEE OF PERHAPS  
7 NINE MEMBERS FROM WITHIN THE  
8 UNIVERSITY SYSTEM, WITH  
9 INSTITUTIONAL REPRESENTATION HEAVILY  
10 WEIGHTED TOWARD THE FOUR RESEARCH  
11 INSTITUTIONS."

12 A. UH-HUH (AFFIRMATIVE RESPONSE).

13 Q. WOULD THE COMPOSITION OF COMMITTEE MEMBERS THAT YOU  
14 JUST DESCRIBED BY SCHOOL REPRESENT A REPRESENTATION WEIGHTED  
15 TOWARD THE FOUR RESEARCH INSTITUTIONS?

16 A. IT WOULD.

17 Q. DID THE COMMITTEE ALSO HAVE COUNSEL?

18 A. YES.

19 Q. WHO WERE THOSE PEOPLE?

20 A. CYNTHIA HALL FROM GEORGIA STATE UNIVERSITY PARTICIPATED  
21 IN SOME OF THE MEETINGS AND MARY JOE VULCAR AND BURNS NEWSOME  
22 ATTENDED SOME OF THE MEETINGS. IN ADDITION YOU AND ASKEW  
23 WERE PRESENT.

24 Q. DID THERE COME A TIME WHEN THE COMMITTEE ACTUALLY HELD  
25 MEETINGS?

1 A. YES.

2 Q. WHO CHAIRED THOSE MEETINGS?

3 A. BILL POTTER IS THE DEAN OF LIBRARIES AT THE UNIVERSITY  
4 OF GEORGIA AND HE WAS THE CHAIR OF THE COMMITTEE.

5 Q. WHERE WOULD THE MEETINGS BE HELD?

6 A. IN ATLANTA.

7 Q. AND WHERE IN ATLANTA?

8 A. AT GEORGIA STATE UNIVERSITY.

9 Q. WOULD THE MEETINGS BE ATTENDED BY ALL COMMITTEE  
10 MEMBERS?

11 A. YES. YES.

12 Q. SO WOULD PEOPLE COME FROM OUT OF TOWN?

13 A. THEY WOULD INDEED.

14 Q. DID YOU ATTEND THOSE MEETINGS?

15 A. I DID.

16 Q. IF YOU WOULD PLEASE TURN IN YOUR WITNESS BOOK TO  
17 DEFENDANT TRIAL EXHIBIT 528.

18 A. (WITNESS COMPLIES.) OKAY.

19 Q. DO YOU RECALL BY NAME ALL OF THE OTHER MEMBERS OF THE  
20 COMMITTEE?

21 A. NOT BY NAME.

22 Q. WOULD YOU PLEASE TURN TO PAGE 15, I'M SORRY, TAB 15 OF  
23 EXHIBIT 528? DO YOU RECOGNIZE THIS TO BE A LIST OF THE OTHER  
24 PEOPLE WHO SERVED ON THE COMMITTEE WITH YOU?

25 A. I DO.

1 Q. DO YOU UNDERSTAND THIS TO BE A CORRECT IDENTIFICATION  
2 OF THE OTHERS WHO SERVED ON THE COMMITTEE WITH YOU?

3 A. I DO.

4 Q. WHEN DID THE COMMITTEE BEGIN TO FIRST MEET?

5 A. MY RECOLLECTION IS NOVEMBER OF 2008 WE HAD OUR FIRST  
6 MEETING.

7 Q. AND APPROXIMATELY HOW MANY TIMES DID THE COMMITTEE  
8 MEET?

9 A. I AM RECALLING FOUR TO SIX TIMES AND CONFERENCE CALLS  
10 IN BETWEEN.

11 Q. WERE THE FOUR TO SIX TIMES THAT THE COMMITTEE MET,  
12 WERE THOSE ALSO HELD IN ATLANTA?

13 A. YES.

14 Q. AND WERE THEY ATTENDED BY PEOPLE WHO HAD COME IN FROM  
15 OUT OF TOWN?

16 A. THEY WERE.

17 Q. OF THOSE ATTENDEES, WHAT INTERESTS AT THE VARIOUS  
18 UNIVERSITY WERE REPRESENTED?

19 A. CERTAINLY THE LIBRARY INTEREST WAS REPRESENTED BY  
20 DR. POTTER AND ME. SEVERAL FACULTY MEMBERS, THERE WERE  
21 UNIVERSITY ADMINISTRATORS, I THINK THERE WAS AN IT PERSON,  
22 THERE WAS SOMEONE FROM UGA, WHO IF I AM RECALLING CORRECTLY  
23 WAS WITH THE RESEARCH OFFICE BUT WAS AN ATTORNEY WITH THE  
24 RESEARCH OFFICE. SO I THINK A FAIRLY BROAD FACULTY,  
25 ADMINISTRATIVE, LIBRARY INTERESTS WERE REPRESENTED.

1 Q. DO YOU RECALL ANY OTHER INTERESTS THAT MAY HAVE BEEN  
2 REPRESENTED?

3 A. THE PRESENCE OF ATTORNEYS CERTAINLY REPRESENTED THE  
4 LEGAL INTERESTS, YES.

5 Q. IN YOUR OPINION, DID ANY OF THOSE INTERESTS DOMINATE  
6 THE CONVERSATION AT THE COMMITTEE?

7 A. IF THERE WAS ONE, I WOULD PROBABLY SAY IT WOULD BE THE  
8 FACULTY INTERESTS. THE FACULTY WERE PROBABLY THE MOST  
9 OUTSPOKEN. BUT I THINK IT WAS A FAIRLY BALANCED DISCUSSION.

10 Q. COULD YOU PLEASE DESCRIBE THE OPERATION OF THE  
11 COMMITTEE IN TERMS OF HOW IT CONDUCTED BUSINESS?

12 A. DR. POTTER TRIED TO GET -- KEEP THE GROUP FOCUSED IN  
13 MOVING THINGS FORWARD. THERE WAS A LOT OF DISCUSSION OF HOW  
14 TO PROCEED, WHAT TO INCLUDE, WHAT -- HOW TO -- HOW OR  
15 WHETHER TO USE THE EXISTING GUIDE. JUST KIND OF TWO-HOUR  
16 MEETINGS THAT KIND OF WORKED HIS MEETINGS WERE.

17 Q. FOR EXAMPLE, WOULD DR. POTTER BE THE PERSON WHO WOULD  
18 CALL THE MEETING TO ORDER?

19 A. HE WOULD.

20 Q. WOULD THERE BE AN AGENDA?

21 A. THERE WOULD BE A LOOSE AGENDA. IT WAS PROBABLY A  
22 LITTLE LESS FORMAL THAN THAT, BUT, YES, THERE WOULD BE AN  
23 AGENDA, AND TASKS THAT WE WERE TRYING TO ACCOMPLISH AS A  
24 GROUP, AND THINGS THAT WE MAY HAVE DISCUSSED PREVIOUSLY THAT  
25 WE FOLLOWED UP WITH WHILE WE WERE ABSENT. SO KIND OF TRYING

1 TO MOVE THINGS ALONG, YES.

2 Q. WHILE THERE MAY NOT HAVE BEEN A WRITTEN AGENDA, THERE  
3 WOULD BE TASKS TO BE REPORTED ON?

4 A. YES.

5 Q. AS A COMMITTEE MEMBER, DID YOU HAVE HOMEWORK?

6 A. WE DID.

7 Q. COULD YOU PLEASE DESCRIBE THE TYPE OF HOMEWORK THAT YOU  
8 DID?

9 A. THINGS LIKE REVIEWING POLICIES AND PROCEDURES THAT  
10 OTHER INSTITUTIONS HAD IN PLACE. WHETHER OR NOT THERE WERE  
11 SOME BEST PRACTICES THAT WE THOUGHT WOULD BE WORTH LOOKING  
12 INTO. OTHER WAYS THAT PEOPLE HAD CREATED THEIR POLICIES,  
13 IMPLEMENTED THEM.

14 Q. YOU MENTIONED REVIEWING WEBSITES OF OTHER UNIVERSITIES,  
15 DO YOU RECALL ANY OF THE WEBSITES THAT THE COMMITTEE REVIEWED?

16 A. CERTAINLY. WE LOOKED AT IUPUI, UNIVERSITY OF  
17 MINNESOTA, EMORY, COLUMBIA, CORNELL, LOOKED AT THE  
18 COPYRIGHT CLEARANCE CENTER SITE. I AM SURE THERE ARE OTHERS,  
19 BUT THAT IS WHAT OCCURS TO ME.

20 Q. NOW YOU MENTIONED IUPUI, WHAT DOES THAT STAND FOR?

21 A. INDIANA UNIVERSITY, PURDUE UNIVERSITY INDIANAPOLIS.

22 Q. VERY GOOD.

23 YOU ALSO MENTIONED THAT DR. POTTER WOULD TRY TO KEEP  
24 THINGS MOVING I BELIEVE YOU SAID. WAS THERE A TIME FRAME  
25 WITHIN WHICH THE COMMITTEE WAS WORKING?

1 A. I DON'T THINK THERE WAS AN EXPLICIT DEADLINE SET, BUT  
2 I THINK THERE WAS A SENSE THAT WE WANTED TO MOVE  
3 EXPEDITIOUSLY.

4 Q. IN YOUR EXPERIENCE, CAN WORKING WITH ACADEMICS  
5 SOMETIMES BE TIME CONSUMING?

6 A. OH, YES.

7 Q. YOU MENTIONED, FOR EXAMPLE, THERE WAS DISCUSSION ABOUT  
8 WHETHER TO USE THE REGENTS' GUIDE?

9 A. UH-HUH (AFFIRMATIVE RESPONSE).

10 Q. WHAT WAS THE DECISION?

11 A. THE DECISION WAS FINALLY MADE TO TREAT IT AS AN  
12 ARCHIVAL HISTORICAL DOCUMENT AND TO START PRETTY MUCH FRESH.  
13 THAT IT WOULD BE TOO CUMBERSOME TO TAKE THE GUIDE AND TRY TO  
14 WORK IT INTO A POLICY THAT WOULD BE ACTUALLY USABLE BY PEOPLE.

15 Q. WHAT OTHER CONSIDERATIONS WERE ADDRESSED BY THE  
16 COMMITTEE?

17 A. HOW TO MAKE IT -- MAKE THE POLICY SOMETHING THAT WAS  
18 USEFUL TO PARTICULARLY FACULTY MEMBERS IN ALL OF THE WAYS THAT  
19 THEY MIGHT BE INTERESTED IN COPYRIGHT. SO FOR TEACHING AND  
20 FOR RESEARCH AND FOR THEIR OWN WORKS, THEIR OWN MATERIALS FOR  
21 WHICH THEY HELD COPYRIGHTS, SO TRYING TO BE AS BROAD A TOOL  
22 AS WELL AS A POLICY FOR FACULTY MEMBERS THROUGHOUT THE WHOLE  
23 STATE.

24 Q. WERE THESE DISCUSSIONS LIMITED TO ISSUES AT GEORGIA  
25 STATE UNIVERSITY?

1 A. NO.

2 Q. WHAT WAS THE FOCUS IN TERMS OF WHO WAS BEING ADDRESSED  
3 BY THE POLICY PROPOSED POLICIES?

4 A. THE IDEA THAT IT WAS A POLICY FOR ALL OF THE  
5 INSTITUTIONS OF THE UNIVERSITY SYSTEM OF GEORGIA AND SO IT  
6 NEEDED TO REFLECT THE NEED OF ALL OF THE PEOPLE OF THE  
7 UNIVERSITY SYSTEM.

8 Q. FOR EXAMPLE, THERE IS A SCHOOL IN SOUTH GEORGIA,  
9 ABRAHAM BALDWIN, I AM NOT SURE IF YOU ARE FAMILIAR WITH IT,  
10 IT IS A MEMBER INSTITUTION. USING THAT AS AN EXAMPLE, WAS  
11 THERE CONCERN OR DISCUSSION AT THE COMMITTEE ABOUT HOW TO  
12 ADDRESS THE POLICY TO SCHOOLS THAT WOULD BE SMALLER AND NOT A  
13 RESEARCH INSTITUTION?

14 A. ALL OF THE SCHOOLS OF THE UNIVERSITY SYSTEM, IT IS A  
15 POLICY FOR ALL OF THEM, SO IT WAS TRYING TO COME UP WITH  
16 SOMETHING THAT COULD BE USED BY ALL OF THEM.

17 Q. WAS THERE A DISCUSSION ABOUT THE ROLE THE INDIVIDUAL  
18 PROFESSOR WOULD PLAY?

19 A. YES.

20 Q. WHAT WAS THAT DISCUSSION?

21 A. THAT THE PROFESSOR IS CREATING CONTENT THAT THEY MIGHT  
22 NEED TO PROTECT VIA COPYRIGHT AND WAS USING COPYRIGHT THAT  
23 THEY NEEDED TO UNDERSTAND HOW TO BEST USE THE CONTENT.

24 Q. WAS THERE DISCUSSION OF FAIR USE AT THE COMMITTEE?

25 A. YES.

1 Q. WHAT WAS THE DISCUSSION, IF ANY, ABOUT THE PROFESSOR  
2 ROLE IN THE FAIR USE ANALYSIS?

3 A. THAT THE PROFESSOR WAS THE INDIVIDUAL WHO WOULD BEST --  
4 BE IN THE BEST POSITION TO DETERMINE FAIR USE OF CONTENT.

5 THE COURT: WE NEED TO STOP SOMEWHERE ALONG IN HERE.  
6 DOES IT MATTER TO YOU?

7 MR. SCHAETZEL: NO, MA'AM.

8 THE COURT: LET'S GO AHEAD AND TAKE A LUNCH BREAK  
9 UNTIL 1:30.

10 (WHEREUPON, A LUNCH RECESS WAS HELD.)

11 THE COURT: YOU MAY PROCEED.

12 BY MR. SCHAETZEL:

13 Q. DR. SEAMANS, WE MENTIONED THE DIFFERENCE BETWEEN GUIDE  
14 AND POLICY. WITH REFERENCE TO THE REGENTS GUIDE, HAVE YOU  
15 EVER CONDUCTED A STUDY OF THE REGENTS GUIDE?

16 A. NO.

17 Q. IN TERMS OF WHAT WAS DISCUSSED AT THE COMMITTEE WITH  
18 REFERENCE TO THE PROFESSOR ROLE, BEFORE LUNCH TALKING ABOUT  
19 THE PROFESSOR ROLE, WHAT WERE THE COMMITTEE DISCUSSIONS ABOUT  
20 THE PROFESSORS' ROLE IN MAKING A FAIR USE DETERMINATION?

21 A. THAT THEY WERE THE PEOPLE IN THE BEST POSITION TO MAKE  
22 THAT DETERMINATION. AND THAT THE COMMITTEE NEEDED TO PROVIDE  
23 THEM WITH TOOLS TO HELP THEM MAKE A GOOD DECISION ABOUT FAIR  
24 USE.

25 Q. FROM YOUR POSITION AS THE DIRECTOR OF LIBRARIES, WHAT

1 ROLE DOES THE LIBRARY PLAY IN THAT DECISION BY THE PROFESSOR  
2 IN TERM OF MAKING A FAIR USE DETERMINATION?

3 MR. RICH: OBJECT TO THE FORM.

4 THE COURT: OVERRULED.

5 THE WITNESS: NONE.

6 BY MR. SCHAEZEL:

7 Q. DID YOU EXPRESS THAT VIEW AT THE COMMITTEE MEETINGS?

8 A. I DON'T RECALL.

9 Q. DID THE COMMITTEE ADDRESS WHAT THE LIBRARY'S ROLE  
10 SHOULD BE IN MAKING A FAIR USE DETERMINATION?

11 A. YES.

12 Q. WHAT DID THE COMMITTEE DO TO ADDRESS THAT ISSUE?

13 MR. RICH: I WILL HAVE TO OBJECT, YOUR HONOR. AT  
14 PRIOR DEPOSITIONS, WE WERE COMPLETELY SHUT DOWN FROM EXPLORING  
15 COMMITTEE DELIBERATIONS ON THE BASIS THAT IT WAS ALL WRAPPED  
16 IN A PRIVILEGE INVOLVING OUTSIDE COUNSEL AND INSIDE COUNSEL.  
17 AND, FOR EXAMPLE, IN POTTER'S DEPOSITION, I SAID IF I WERE TO  
18 INQUIRE INTO SUBJECT MATTERS WHICH WOULD BE EXACTLY LIKE THE  
19 BASIS FOR PROPOSING DECISIONS IN PROFESSORS OR THE LIBRARY IN  
20 LAW, MR. ASKEW, I THINK IT WAS, SAID WE WOULD INSTRUCT THE  
21 WITNESS NOT TO ANSWER. SO I JUST DON'T KNOW HOW THEY CAN  
22 SHIELD IT AT ONE LEVEL, OPEN IT UP ANOTHER LEVEL, AND EXPECT  
23 US TO THEN COME IN AND CROSS-EXAMINE HERE.

24 THE COURT: WHAT ABOUT AT THIS WITNESS'S DEPOSITION,  
25 HOW WAS THAT HANDLED? THERE WAS A DEPOSITION TAKEN?

1 MR. SCHAETZEL: THERE WAS, YES, MA'AM. I DEFENDED  
2 IT. MR. RICH TOOK THAT DEPOSITION. AND AT NO TIME IN THAT  
3 DEPOSITION WAS THIS WITNESS EVER INSTRUCTED NOT TO ANSWER A  
4 QUESTION ON THE BASIS OF PRIVILEGE. IN FACT, THE WITNESS  
5 WAS NEVER INSTRUCTED NOT TO ANSWER ANY QUESTION. TO THE  
6 CONTRARY, THE POSITION OF THE BOARD AND THE POSITION OF THE  
7 DEFENDANTS IN THIS CASE HAS ALWAYS BEEN, IF MR. ASKEW OR  
8 MYSELF WERE TO GIVE LEGAL ADVICE ON THE CASE AT THE COMMITTEE,  
9 THAT WOULD BE PRIVILEGED. BUT ANYTHING ELSE WAS, IF YOU  
10 WILL, FAIR GAME. AND WHAT WAS DONE IS SEVERAL TIMES I WOULD  
11 RAISE THE OBJECTION AND ASK MR. RICH EITHER, A, IF HE WAS  
12 TRYING TO INTRUDE INTO THE PRIVILEGE, SOMETIMES HE WOULD SAY  
13 NO, OR IF HE WERE, COULD WE HAVE AN AGREEMENT, BY ALLOWING  
14 THE WITNESS TO ANSWER, WE WERE NOT WAIVING THE PRIVILEGE TO  
15 WHICH HE WOULD SAY, YES, AND THE DEPOSITION WAS CONDUCTED ON  
16 THAT BASIS.

17 MR. RICH: AND, YOUR HONOR, THE REASON WE DIDN'T GO  
18 INTO THE ISSUE WITH SEAMANS WAS SHE UNDERSTANDABLY SAID SHE  
19 WASN'T FAMILIAR WITH A NUMBER OF THE LEGAL CONCEPTS.

20 FOR EXAMPLE, WHEN I INQUIRED AS TO WHY THE FORMER GUIDE  
21 WAS RELEGATED TO THE HISTORICAL ARCHIVES AND WAS THERE A  
22 SUBSTANTIAL BASIS FOR IT SHE PROFESSED TO NOT HAVE ANY  
23 EXPERTISE IN DOING SO. SHE IS NOW INDIRECTLY ENCAPSULATING  
24 WHAT WAS APPARENTLY A DEEPLY LEGAL-LADEN PROCESS AND OFFERING,  
25 QUOTE, THE COMMITTEE'S OUTPUT ON IT, WHICH IS NO DIFFERENT

1 THAN SIMPLY SUMMARIZING WHAT HAS TO INCORPORATE THE KIND OF  
2 LEGAL ADVICE THAT IN DR. POTTER'S DEPOSITION I WAS  
3 SYSTEMATICALLY BLOCKED FROM INQUIRING INTO.

4 THE COURT: AT THIS POINT I DON'T SEE THAT YOU WERE  
5 IMPEDED FROM CONDUCTING A FULL EXAMINATION OF THIS WITNESS.  
6 AND SO AT THIS POINT I AM GOING TO OVERRULE THE OBJECTION.

7 MR. RICH: OKAY.

8 BY MR. SCHAEZEL:

9 Q. DID THE COMMITTEE ADDRESS THE LIBRARY'S ROLE IN  
10 ASSISTING THE PROFESSOR TO MAKE A FAIR USE DETERMINATION?

11 A. YES.

12 Q. WHAT WAS DISCUSSED?

13 A. IT WAS THE SENSE THAT THE FACULTY MEMBER WAS THE PERSON  
14 WHO WAS IN THE BEST POSITION TO MAKE THE DETERMINATION. THE  
15 ROLE OF THE LIBRARY WAS TO FACILITATE THE USE OF THE TOOLS FOR  
16 USING ELECTRONIC RESERVES OR ANY KIND OF RESERVES, BUT THAT  
17 THE ACTUAL FAIR USE WOULD BE MADE BY -- DETERMINATION WOULD BE  
18 MADE BY FACULTY MEMBERS.

19 Q. WAS THERE ANY DISCUSSION IN RELATION TO THE AMOUNT THAT  
20 COULD BE USED IN TERMS OF A PERCENTAGE OR A DISCRETE NUMBER  
21 SUCH AS A CHAPTER?

22 MR. RICH: OBJECTION, YOUR HONOR. AGAIN, AN AREA  
23 I AM SURE THAT I WAS FORECLOSED FROM INQUIRING INTO IN TERMS  
24 OF LEGAL ADVICE, WHETHER THERE WAS A LEGAL LITMUS TEST OR  
25 ANYTHING ELSE.

1 THE COURT: OVERRULED.

2 THE WITNESS: THERE WAS DISCUSSION OF PERCENTAGES AND  
3 WHETHER OR NOT THERE SHOULD BE A PERCENTAGE ATTACHED TO THIS.  
4 AND THE DISCUSSION RESULTED IN THERE BEING A DECISION THAT  
5 THERE SHOULD NOT BE -- THAT IT WOULD DEPEND ON THE USE THAT  
6 THE FACULTY MEMBER WAS MAKING OF THE MATERIAL.

7 BY MR. SCHAEZEL:

8 Q. DID THE COMMITTEE CONSIDER THE USE OF A CHECKLIST?

9 A. YES.

10 Q. WHAT WAS DISCUSSED?

11 A. WHETHER OR NOT THAT WOULD BE A USEFUL TOOL FOR FACULTY  
12 MEMBERS AS THEY WORKED THROUGH FAIR USE QUESTIONS, AND THE  
13 DECISION WAS MADE THAT IT WOULD BE A USEFUL TOOL.

14 Q. WHAT WAS DONE TO DEVELOP THAT TOOL?

15 A. LOOKED AT THE COMMITTEE MEMBERS, LOOKED AT A NUMBER OF  
16 DIFFERENT CHECKLISTS THAT ARE BEING USED AT OTHER INSTITUTIONS  
17 AND TRIED TO PICK AND CHOOSE THE COMPONENTS FROM THOSE  
18 CHECKLISTS THAT WE THOUGHT WOULD BE MOST BENEFICIAL FOR  
19 FACULTY MEMBERS IN THE UNIVERSITY SYSTEM OF GEORGIA.

20 Q. WHAT WAS THE PURPOSE OF PROVIDING THE CHECKLIST?

21 A. JUST TO HELP FACULTY THINK THROUGH THE WHOLE PROCESS  
22 RATHER THAN RELYING ON ONE FACTOR TO UNDERSTAND THAT THERE ARE  
23 MULTIPLE FACTORS THAT THEY HAVE TO CONSIDER.

24 Q. IN TERMS OF LOOKING AT OTHER CHECKLISTS AND TRYING TO  
25 GET A PROFESSOR TO THINK THROUGH THE ONE THAT THE COMMITTEE

1 WAS CONTEMPLATING, WAS THERE ANYTHING DONE TO THE  
2 PRESENTATION OF THE CHECKLIST?

3 A. I AM RECALLING THAT THE FORMATTING WAS DISCUSSED TRYING  
4 TO MAKE IT FEEL -- MAKE IT LOOK TO A FACULTY MEMBER USING IT  
5 THAT THEY -- THAT THERE WERE REALLY CHOICES TO BE MADE AND  
6 THAT YOU REALLY DID HAVE TO LOOK AT BOTH SIDES OF THE LIST IN  
7 ORDER TO MAKE YOUR DECISIONS.

8 Q. WAS THERE ANYONE FROM OUTSIDE THE, IF YOU WILL,  
9 UNIVERSITY COMMUNITY, ASKED TO JOIN THE COMMITTEE?

10 A. OTHER THAN THE LEGAL COUNSEL, YOU AND MR. ASKEW, I  
11 DON'T BELIEVE SO.

12 Q. IT HAS BEEN SUGGESTED -- YOU MENTIONED LEGAL COUNSEL.  
13 IT HAS BEEN SUGGESTED THAT THE PURPOSE OF THE COMMITTEE WAS TO  
14 BE ESSENTIALLY A LITIGATION TOOL. AS A COMMITTEE MEMBER,  
15 WHAT IS YOUR OPINION?

16 A. I DON'T THINK SO. I THINK CERTAINLY THAT WAS A  
17 COMPONENT IN PULLING TOGETHER THE COMMITTEE, BUT I THINK THAT  
18 THERE WAS ALSO THE REALIZATION THAT THERE WAS A RATHER DATED  
19 GUIDELINE THAT WAS NOT PROVIDING THE KIND OF SUPPORT FOR  
20 FACULTY MEMBERS THAT NEEDED TO BE PROVIDED. AND SO IT WAS  
21 TIME TO LOOK AT THE WHOLE GUIDELINE AND SEE IF THERE IS  
22 SOMETHING DIFFERENT THAT COULD BE DONE.

23 Q. DID IT MATTER THAT THE GUIDELINES OR THE GUIDE -- THE  
24 REGENTS GUIDE WAS BEING LOOKED AT FOR ALL OF THE SCHOOLS AS  
25 OPPOSED TO JUST ONE SUCH AS GEORGIA STATE?

1 A. NO, I THINK THE FOCUS WAS ON LOOKING AT IT FOR ALL OF  
2 THE SCHOOLS. I THINK THE IDEA THAT IT HAD TO BE SOMETHING  
3 THAT WORKED FOR EVERY ONE, NOT JUST TO ADDRESS THE SITUATION  
4 THAT GEORGIA STATE WAS IN.

5 Q. APPROXIMATELY WHEN DID THE COMMITTEES WORK CONCLUDE?

6 A. I AM RECALLING JANUARY OF 2009.

7 Q. ONCE THE COMMITTEE'S WORK WAS OVER, WHAT HAPPENED?

8 A. WE WERE THANKED FOR OUR SERVICE AND SENT ON OUR WAY.  
9 AND THE POLICY THEN WENT INTO THE SYSTEM OFFICE AND WAS  
10 APPROVED AT SOME LEVEL. I AM NOT SURE WHETHER IT WAS THE  
11 CHANCELLOR OR BOARD OF REGENTS THAT APPROVED IT, BUT IT WAS  
12 APPROVED BY THE SYSTEM.

13 Q. AND BY THE SYSTEM, DO YOU MEAN?

14 A. THE UNIVERSITY SYSTEM OF GEORGIA.

15 Q. AT THE LIBRARY AT GEORGIA STATE UNIVERSITY, ONCE THE  
16 UNIVERSITY SYSTEM OF GEORGIA POLICY HAD BEEN APPROVED, WHAT  
17 HAPPENED?

18 A. AS MS. BURTLE TESTIFIED YESTERDAY, WHAT HAPPENED WITH  
19 US, WE STARTED TRYING TO IMPLEMENT THE POLICY. LOOKING AT  
20 PARTICULARLY THE FORMS THAT WE WERE USING, PARTICULARLY THE  
21 WEB FORMS AND TRYING TO FIGURE OUT WHAT HAD TO CHANGE WITH  
22 THOSE IN ORDER TO COME INTO COMPLIANCE WITH THE NEW POLICY.

23 Q. DID YOU PERSONALLY DO ANYTHING IN RELATION TO THE WEB  
24 FORMS?

25 A. I DON'T DO CODE, NO. I TASKED A GROUP TO WORK ON

1 THIS SO THERE WERE PEOPLE WITHIN THE LIBRARY THAT WERE  
2 ACTUALLY DESIGNING THE FORMS, DESIGNING THE WAY THE CONTENT  
3 WOULD BE LAID OUT, AND THEN PROGRAMMING, WRITING THE CODE  
4 THAT NEEDED TO BE DONE TO MAKE IT WORK.

5 Q. WAS THE GROUP TASKED WITH THIS RESPONSIBILITY HEADED UP  
6 BY MS. BURTLE?

7 A. YES.

8 Q. ONCE THEY WORKED TO PREPARE A DRAFT, SO TO SPEAK, DID  
9 THEY BRING IT TO YOU FOR REVIEW?

10 A. YES.

11 Q. DID YOU REVIEW IT?

12 A. YES.

13 Q. ONCE YOU REVIEWED THAT, WHAT DID YOU DO?

14 A. I BELIEVE THERE WAS ALSO A REVIEW BY THE LEGAL AFFAIRS  
15 PEOPLE AND THEN WE PUT IT UP AND WENT LIVE. I CAN'T SAY FOR  
16 SURE WHEN WE WENT LIVE. DOING THINGS IN THE MIDDLE OF  
17 SEMESTER CAN BE PROBLEMATIC. WE MIGHT HAVE DELAYED UNTIL WE  
18 FINISHED THE WORK OF SPRING SEMESTER AND WENT LIVE LATER IN  
19 THE SPRING SEMESTER, I CAN'T RECALL.

20 Q. WAS THERE ANY INTERACTION BETWEEN YOU AT GEORGIA STATE  
21 AND ANY OF THE OTHER SCHOOLS, PERHAPS THOSE THAT HAD BEEN ON  
22 THE COMMITTEE, IN RELATION TO THE REDO OF THE WEB SCREENS?

23 A. WE DID TALK ABOUT WHETHER OR NOT THERE WAS A WAY TO  
24 HAVE SOME CONSISTENCY AND KIND OF A SHARE YOUR EXPERIENCE  
25 RATHER THAN EVERY INSTITUTION HAVING TO INDIVIDUALLY REDO

1 THEIR WEBSITES, WHETHER WE COULD KIND OF SAY, OKAY, HERE IS  
2 WHAT WE HAVE DONE, DOES IT LOOK LIKE SOMETHING YOU ALL CAN  
3 USE? I THINK WE WENT INTO THAT. I'M NOT SURE HOW THAT PLAYED  
4 OUT.

5 Q. WAS THAT SOMETHING THAT YOU WERE DIRECTLY INVOLVED IN?

6 A. I BELIEVE SO. I THINK I CONTACTED THE LIBRARY  
7 DIRECTORS AT UGA AND AT GEORGIA TECH TO SEE IF THEY WERE  
8 INTERESTED.

9 Q. AS YOU SAY IT WENT LIVE, WHAT HAPPENED?

10 A. WE STARTED IMPLEMENTING THE POLICY. WE STARTED USING  
11 THE FORMS DIFFERENTLY AND TRYING TO MAKE SURE THAT PEOPLE WERE  
12 AWARE THAT WE WERE DOING SOMETHING DIFFERENT.

13 Q. IF YOU COULD PLEASE TURN TO EXHIBIT 160 IN YOUR BOOK,  
14 PTX 160. THIS IS A COLLECTION OF DOCUMENTS. OBVIOUSLY, I  
15 ONLY PUT THE FIRST ONE ON THE SCREEN. WHAT IS THIS?

16 A. THIS IS THE FIRST PAGE HERE IS THE GEORGIA STATE  
17 UNIVERSITY RESERVES REQUEST FORM THAT WE BROUGHT UP IN 2009,  
18 SPRING.

19 Q. DOES THIS EXHIBIT REFLECT, AS YOU SAID, THE WORK THAT  
20 WAS DONE IN ORDER TO GO LIVE WITH THE NEW POLICY?

21 A. YES. I BELIEVE SO.

22 Q. IF WE LOOK AT BULLET POINT THREE, IT STATES:

23 "USE THE BOARD OF REGENTS FAIR USE  
24 CHECKLIST TO DETERMINE IF USE OF THE  
25 ITEM FOR COURSE IS CONSIDERED FAIR

1 USE."

2 IF ONE CLICKS ON THAT LINK, WHAT HAPPENS?

3 A. ONE GOES TO THE SYSTEM WEBSITE WHERE THE POLICY IS  
4 AVAILABLE.

5 Q. IF YOU COULD PLEASE LOOK AT -- I'M SORRY, PTX 528.  
6 AND IDENTIFY THE PAGE THAT YOU ARE TAKEN TO IF YOU CLICK THAT  
7 LINK.

8 A. IT WOULD BE TAB ONE, THE POLICY ON COPYRIGHTED WORKS  
9 AND RESEARCH.

10 Q. NOW WHEN THE POLICY WENT LIVE, HOW WAS IT ANNOUNCED TO  
11 THE UNIVERSITY COMMUNITY?

12 A. I AM RECALLING AN EMAIL. I AM NOT RECALLING WHO SENT  
13 IT, WHERE IT CAME FROM. I KNOW THAT I WAS INVOLVED IN  
14 DRAFTING THE WORDING FOR THAT, BUT I AM NOT SURE WHETHER IT  
15 CAME FROM THE LIBRARY FROM LEGAL AFFAIRS OR FROM THE PROVOST  
16 OFFICE, BUT THERE WAS AN ANNOUNCEMENT MADE TO THE CAMPUS.

17 Q. HOW WAS IT INTENDED THAT A PROFESSOR WOULD ACTUALLY USE  
18 THE POLICY IN TERMS OF MAKING, LET'S SAY FOR EXAMPLE, A FAIR  
19 USE DETERMINATION?

20 MR. RICH: OBJECTION TO FORM AND LACK OF FOUNDATION.  
21 BY MR. SCHAEZEL:

22 Q. LET'S BACK UP IF I MIGHT THEN. WAS IT THE COMMITTEE'S  
23 INTENT THAT PROFESSORS WOULD USE THE POLICY TO MAKE FAIR USE  
24 DETERMINATIONS?

25 A. YES.

1 Q. IS IT YOUR UNDERSTANDING THAT PROFESSORS IN FACT DO  
2 REFER TO THE POLICY TO MAKE FAIR USE DETERMINATIONS?

3 A. YES.

4 Q. HOW IS IT THAT A PROFESSOR USES THE POLICY TO MAKE A  
5 FAIR USE DETERMINATION?

6 MR. RICH: OBJECTION.

7 THE COURT: YOU MEAN HOW ARE THEY SUPPOSED TO DO IT?

8 MR. SCHAETZEL: YES. THANK YOU.

9 THE COURT: I WILL ALLOW IT.

10 BY MR. SCHAETZEL:

11 Q. HOW IS IT INTENDED?

12 A. THE HOPE IS THAT AS THEY ARE THINKING OF USING AN  
13 ELECTRONIC RESERVE, THEY GO TO THE WEBSITE THAT THE UNIVERSITY  
14 LIBRARY HAS PUT TOGETHER AND THEY MAKE A DECISION ABOUT HOW  
15 THEY CAN USE THE CONTENT THAT THEY HAVE. SO WHETHER IT IS  
16 LINKING TO LICENSE WORK THAT IT IS IN THE PUBLIC DOMAIN, THAT  
17 THEY HAVE GOTTEN PERMISSION OR THAT IT IS A FAIR USE. IF  
18 THEY ARE TRYING TO DETERMINE IF IT IS A FAIR USE, THEY WOULD  
19 LINK OUT TO THE SYSTEM WEBSITE AND BE STEPPED THROUGH SEVERAL  
20 PAGES THAT WOULD GET THEM THROUGH DISCUSSION OF FAIR USE,  
21 WAYS OF UNDERSTANDING FAIR USE, AND THEN ULTIMATELY TO THE  
22 CHECKLIST.

23 Q. IS THE POLICY LIMITED TO JUST FAIR USE DETERMINATIONS?

24 A. NO.

25 Q. IS THE POLICY LIMITED TO FAIR USE DETERMINATIONS THAT

1 RELATE TO BOOKS OR TEXTS?

2 A. NO.

3 Q. WHAT DOES THE POLICY ADDRESS?

4 A. THE POLICY ADDRESSES THE USE OF COPYRIGHT, COPYRIGHTED  
5 WORKS, AND EDUCATION AND RESEARCH. SO IT NOT ONLY ADDRESSES  
6 HOW A FACULTY MEMBER WOULD USE WORKS THAT HAVE BEEN  
7 COPYRIGHTED BY OTHERS FOR THEIR TEACHING OR FOR THEIR  
8 RESEARCH, BUT HOW THEY WOULD ALSO COPYRIGHT THEIR OWN WORKS.  
9 SO, KIND OF A COMBINATION OF HOW COPYRIGHTED WORKS ARE USED  
10 GENERALLY.

11 Q. DID THE COMMITTEE INTEND THAT THE POLICY WOULD BE  
12 SOMETHING A PROFESSOR COULD USE TO DETERMINE IF THEY WERE  
13 MAKING FAIR USE ON SOMETHING THAT HAD NOTHING TO DO WITH THEIR  
14 CLASS, FOR EXAMPLE, THEY WERE PUBLISHING A PAPER?

15 A. YES.

16 Q. DID THE COMMITTEE INTEND THAT THE POLICY WOULD HAVE  
17 APPLICATION TO THINGS OTHER THAN BOOKS, SUCH AS MOVIES OR  
18 SOUND RECORDINGS?

19 A. YES.

20 Q. IF YOU WOULD, PLEASE, TURN TO EXHIBIT 528 AGAIN,  
21 DEFENDANT'S EXHIBIT 528. WITH SPECIFIC REFERENCE TO FAIR USE,  
22 HOW DOES THE POLICY ADDRESS THOSE QUESTIONS?

23 A. (WITNESS COMPLIES.)

24 WELL, IT KIND OF STARTS BROADLY AND NARROWS DOWN. SO  
25 TALKS ABOUT COPYRIGHT GENERALLY, AND IF I AM RECALLING

1 CORRECTLY THEN TALKS ABOUT FAIR USE AND THEN TALKS ABOUT  
2 DETERMINING FAIR USE AND THEN PROVIDES THE CHECKLIST.

3 Q. WOULD YOU PLEASE TURN TO TAB THREE OF EXHIBIT 528?  
4 WHAT IS THIS?

5 A. (WITNESS COMPLIES.)

6 THIS IS PART OF THE POLICY, THE WEBSITE THAT INCLUDES THE  
7 SYSTEM POLICY.

8 Q. WHAT WAS THE COMMITTEE'S INTENT IN TERMS OF INCLUDING  
9 THIS IN THE MATERIALS PROVIDED TO A PROFESSOR?

10 A. TO PROVIDE THEM WITH MATERIAL THAT THEY COULD LOOK AT  
11 TO THINK THROUGH HOW TO MAKE A FAIR USE DETERMINATION. THAT  
12 IT WASN'T SOMETHING THAT WAS A YES, NO KIND OF THING, THERE  
13 WERE NUANCES TO IT THAT THEY HAD TO LOOK AT.

14 Q. WAS IT THE COMMITTEE'S INTENT TO PROVIDE ADDITIONAL  
15 MATERIAL BESIDE WHAT IS SHOWN ON THESE TWO PAGES AT TAB THREE?

16 A. I BELIEVE THE WEBSITE LINKS OUT TO A VARIETY OF  
17 RESOURCES THAT WE HOPED THAT FACULTY WOULD TAKE ADVANTAGE OF  
18 AS THEY NEEDED THEM, INCLUDING THE TEXT OF THE LAW, VARIOUS  
19 PLACES WHERE THEY COULD GET PERMISSION, SAMPLE LETTERS FOR  
20 GETTING PERMISSIONS.

21 Q. IF YOU COULD LOOK AT THE LAST LINE OF EXHIBIT 3.

22 A. YES.

23 Q. IT READS:

24 "REVISED FOR USE BY THE UNIVERSITY  
25 SYSTEM OF GEORGIA BASED UPON THE

1 FAIR USE RESOURCES PROVIDED BY THE  
2 COPYRIGHT ADVISORY OFFICE AT  
3 COLUMBIA UNIVERSITY" WITH A WEBSITE.

4 IF ONE CLICKS THAT WEBSITE, WHERE DO THEY GO?

5 A. COLUMBIA UNIVERSITY.

6 Q. AND WHAT WOULD THEY SEE THERE?

7 A. SOME OF THE CONTENT THAT HAS BEEN PULLED TOGETHER AT  
8 THE COPYRIGHT ADVISORY OFFICE OF COLUMBIA.

9 Q. WHAT WAS THE PURPOSE OF INCLUDING THAT LINK TO THE  
10 COLUMBIA WEBSITE?

11 A. I THINK THE HOPE THE COMMITTEE WOULDN'T HAVE TO -- WE  
12 WOULDN'T HAVE TO CREATE FROM NOTHING WORKS THAT HAD ALREADY  
13 BEEN MADE AVAILABLE FOR LIBRARIES AND FOR FACULTY AT OTHER  
14 PLACES. SO TAKING ADVANTAGE OF OTHER PLACES THAT HAD  
15 CONTENT.

16 Q. DO YOU KNOW IF ANYONE AT COLUMBIA WAS CONTACTED TO  
17 INFORM THEM THAT THE UNIVERSITY SYSTEM OF GEORGIA INTENDED TO,  
18 FOR EXAMPLE, PROVIDE A LINK SUCH AS THIS?

19 A. I BELIEVE SO.

20 Q. WHAT IS YOUR KNOWLEDGE OF THAT?

21 A. THAT WE WOULD NOT LINK TO SOMETHING UNLESS IT WERE A  
22 COMMERCIAL OPERATION WITHOUT GETTING PERMISSION.

23 Q. IS IT YOUR UNDERSTANDING THAT THE COMMITTEE RECEIVED  
24 PERMISSION FOR THIS?

25 A. YES.

1 Q. WOULD YOU PLEASE DESCRIBE WHAT IS FOUND AT TAB FOUR OF  
2 THE POLICY?

3 A. THIS IS ONE OF THE PAGES ON THE WEBSITE THAT FACULTY  
4 HAVE TO GO THROUGH IN ORDER TO GET TO THE CHECKLIST.

5 Q. AND THAT CHECKLIST IS FOUND AT THE NEXT TAB, IS IT  
6 NOT?

7 A. YES.

8 Q. SO IN THE COMPUTER REALM, ONCE I GO THROUGH THE  
9 INTRODUCTION, I CLICK THROUGH TO ACTUALLY GET THE CHECKLIST;  
10 IS THAT CORRECT?

11 MR. RICH: OBJECTION LEADING.

12 THE WITNESS: YES.

13 THE COURT: SUSTAINED.

14 BY MR. SCHAEZEL:

15 Q. ONCE I CLICK ON THE INTRODUCTION PAGE, WHERE AM I  
16 DELIVERED?

17 A. ONE HAS TO CLICK THROUGH SEVERAL OTHER PAGES IN ORDER  
18 TO GET TO THE CHECKLIST. THE INTENT BEING TO NOT JUST HAVE  
19 FACULTY KIND OF BY ROTE GO TO THE FORM, BUT TO HAVE TO LOOK AT  
20 THE CONTENT THAT WAS PREPARATORY TO THE CHECKLIST.

21 Q. ONCE THE NEW POLICY WAS ROLLED OUT IN FEBRUARY OF 2009,  
22 AND THE NEW WEB SCREENS WERE UP, WHAT CHANGES DID YOU MAKE AT  
23 THE LIBRARY IN TERMS OF PROCEDURE?

24 A. I THINK PROBABLY THE MAIN ONE WAS TO CHARGE AND TO GIVE  
25 PERMISSION TO THE RESERVES PERSONNEL TO QUESTION FACULTY IN A

1 WAY THAT THEY NORMALLY WOULD NOT. SO THE IDEA THAT --  
2 FACULTY ARE KIND OF KING ON CAMPUS, PARTICULARLY FOR THE  
3 LIBRARY COMMUNITY. AND THIS WAS SAYING TO THE STAFF THAT THEY  
4 COULD SAY, I WON'T FILL OUT THAT CHECKLIST FOR YOU. OR I AM  
5 GOING TO HAVE TO ASK YOU TO TALK TO THE LEGAL AFFAIRS OFFICE  
6 ABOUT SOMETHING RATHER THAN JUST ACCEPTING EVERYTHING THAT THE  
7 FACULTY MEMBERS SAID. SO IT WAS A TRAINING PROCESS WITH THE  
8 STAFF AND THEN JUST IMPLEMENTING WHAT THE NEW SCREENS WERE  
9 TRYING TO ACCOMPLISH.

10 Q. YOU FIRST OF ALL MENTIONED YOU WOULD CHARGE STAFF, I  
11 PRESUME YOU DON'T MEAN CHARGING MONEY?

12 A. NO.

13 Q. WHAT DO YOU MEAN?

14 A. GIVE THEM THE PERMISSION TO ACTUALLY ENCOURAGE THEM TO  
15 ACTUALLY QUESTION FACULTY ABOUT THINGS.

16 Q. HOW WAS THAT DONE? HOW DID YOU GIVE THAT PERMISSION?

17 A. I HAD THEM IN A ROOM WITH ME AND SAID, THIS IS  
18 SOMETHING THAT IS VERY DIFFERENT AND WE NEED TO KIND OF THINK  
19 ABOUT IT DIFFERENTLY AND YOU HAVE MY PERMISSION TO SAY, I  
20 CAN'T MAKE THAT DECISION, I AM GOING TO SEND TO YOU MS. BYRD  
21 OR DEAN STEVENS OR TO LEGAL AFFAIRS.

22 Q. YOU SAY YOU HAD THEM IN A ROOM. HOW MANY PEOPLE DID  
23 YOU HAVE IN A ROOM?

24 A. IT WOULD HAVE BEEN THE THREE. RESERVES PEOPLE, AS I  
25 AM RECALLING, AND THEIR SUPERVISOR AND MS. BURTLE.

1 Q. DO YOU RECALL THE SPECIFICS OF WHAT YOU TOLD THEM?

2 A. NO.

3 Q. GENERALLY?

4 A. JUST THAT THEY HAD TO IMPLEMENT THIS POLICY TO THE BEST  
5 OF THEIR ABILITY AND TO NOT OWN THINGS THAT WERE PART OF  
6 THINGS THAT THEY SHOULD OWN.

7 Q. THEN IN TERMS OF PRACTICING POLICY, WHAT ELSE DO YOU  
8 DO AT THE LIBRARY TO ENSURE THAT THE POLICY IS FOLLOWED?

9 A. FROM OUR END IT IS JUST RELYING ON THE FACULTY MEMBERS  
10 TO DO WHAT IT IS THAT THEY ARE SUPPOSED TO BE DOING. SO WE  
11 DO NOT CHECK TO SEE THAT THEY HAVE DONE ANYTHING, WE JUST  
12 ASSUME THEY HAVE GONE THROUGH ALL OF THE FORMS AND HAVE DONE  
13 WHAT THEY ARE SUPPOSED TO DO.

14 Q. LET'S SAY, FOR EXAMPLE, THAT A FACULTY MEMBER SUBMITS A  
15 FAIR USE CHECKLIST.

16 A. UH-HUH (AFFIRMATIVE RESPONSE).

17 Q. WHAT WILL YOUR STAFF DO AT THE LIBRARY WITH THAT  
18 CHECKLIST?

19 A. THEY WOULD GIVE IT BACK TO THE FACULTY MEMBER AND SAY,  
20 YOU ARE SUPPOSED TO KEEP THIS.

21 Q. AND THEN THE FACULTY MEMBER COMES AND SAYS, I WOULD  
22 LIKE TO HAVE THIS WORK, AN EXCERPT FROM THIS BOOK POSTED ON  
23 ERESERVES, WHAT WILL LIBRARY STAFF DO?

24 A. THEY SEND THEM TO THE FORM TO STEP THROUGH. THE FORM  
25 WOULD STEP THEM THROUGH THE WHOLE PROCESS.

1 Q. WOULD THEY LOOK FOR WHETHER OR NOT MATERIAL MIGHT BE  
2 AVAILABLE IN ANOTHER WAY?

3 A. ONE OF THE THINGS THAT WE HAVE ASKED THE STAFF TO DO IS  
4 TO ALWAYS LOOK TO SEE IF WE HAVE LICENSED CONTENT THAT CAN BE  
5 USED IN LIEU OF MAKING A COPY, YES.

6 Q. CAN YOU PLEASE DESCRIBE WHAT YOU MEAN BY "LICENSED  
7 CONTENT"?

8 A. THIS IS PART OF THE LIBRARY COLLECTION WHERE WE HAVE,  
9 IT IS MOSTLY ELECTRONIC CONTENT AT THIS POINT, WHERE WE HAVE  
10 PURCHASED LICENSES TO USE THE MATERIALS IN CERTAIN WAYS.

11 Q. AND IF YOU HAVE A LICENSE OR YOU PURCHASED THE  
12 MATERIAL, WHAT DOES THE LIBRARY STAFF PERSON DO?

13 A. THEY PROVIDE A LINK TO THAT CONTENT.

14 Q. WHEN YOU SAY "THEY PROVIDE A LINK," WOULD YOU PLEASE  
15 DESCRIBE WHAT THAT MEANS? WHO DO THEY PROVIDE THE LINK TO?

16 A. THEY WOULD INSERT THE LINK INTO THE -- THE FACULTY  
17 MEMBER WOULD HAVE IDENTIFIED WHAT THE CONTENT IS. IF WE  
18 ACTUALLY HAVE A LICENSE TO IT, WE WOULD THEN PROVIDE THE LINK  
19 TO THE LICENSED CONTENT IN THE COURSE RESERVES PAGE RATHER  
20 THAN A LINK TO A COPY OF THAT CONTENT.

21 Q. WHAT DID YOUR LIBRARY STAFF DO AT THE END OF A TERM IN  
22 ORDER TO ENSURE COMPLIANCE WITH THE POLICY?

23 A. WERE WE NOT INVOLVED IN LITIGATION, WE WOULD PURGE THE  
24 DATABASE AND ARCHIVE THE CONTENT AT THE END OF EACH SEMESTER.

25 Q. WITH SPECIFIC REFERENCE TO ERESERVES, DOES THE LIBRARY

1 CHARGE ANY FEE FOR THE SERVICES IT PROVIDES?

2 A. THE LIBRARY CHARGES NO FEES FOR THE SERVICES, NO.

3 Q. DO YOU KNOW IF ANY FEE IS CHARGED TO THE STUDENT FROM  
4 THE LIBRARY OR ELSEWHERE, FROM ANY OTHER PLACE IN THE SCHOOL  
5 FOR USE OF THE ERESERVE SYSTEM?

6 A. NO, BUT BY PAYING TUITION, STUDENTS ARE GETTING  
7 ACCESS TO THE RESOURCES OF THE UNIVERSITY, NOT JUST THE  
8 LIBRARY.

9 Q. TURNING BACK TO WHAT HAS BEEN MARKED AS DEFENDANT'S  
10 TRIAL EXHIBIT 528, DOES THE POLICY ASSIST A PROFESSOR WHO  
11 DETERMINES THAT THEY NEED TO OBTAIN PERMISSION TO USE A GIVEN  
12 EXCERPT?

13 A. IT DOES.

14 Q. HOW DOES IT DO THAT?

15 A. IT PROVIDES BOTH AGENCIES THAT WILL HELP SECURE THOSE  
16 PERMISSIONINGS AND SAMPLE LETTERS THAT A FACULTY MEMBER CAN  
17 USE IF THEY WANT TO APPROACH A PUBLISHER OR COPYRIGHT HOLDER  
18 CORRECTLY.

19 MR. RICH: CAN WE GET A TIME PARAMETER TO MAKE SURE  
20 WE ARE TALKING 2009?

21 MR. SCHAETZEL: YES.

22 THE COURT: ASK THE QUESTION AGAIN.

23 BY MR. SCHAETZEL:

24 Q. MY QUESTION DID NOT SPECIFICALLY REFERENCE A TIME. IN  
25 2009, AFTER ADOPTION OF THE POLICY AND GONE LIVE, AS YOU SAID,

1 WOULD THE POLICY FACILITATE OR ASSIST A PROFESSOR IN OBTAINING  
2 PERMISSION TO USE AN EXCERPT?

3 A. YES.

4 Q. IF YOU WOULD, PLEASE, TURN TO TAB SEVEN OF  
5 DEFENDANT'S TRIAL EXHIBIT 528. WHAT IS THIS PAGE?

6 A. (WITNESS COMPLIES.)

7 THE HEADING IS ADDITIONAL RESOURCES AND IT TALKS ABOUT  
8 EXCEPTIONS TO THE COPYRIGHT LAW AND THEN PERMISSIONS, HOW IT  
9 WOULD IDENTIFY COPYRIGHT OWNERS, SOME OF THE LICENSING  
10 AGENCIES.

11 Q. IF ONE CLICKS ON THE PERMISSIONS LINK THERE, WHAT  
12 HAPPENS?

13 A. ONE GOES TO A PAGE THAT EXPLAINS HOW YOU MIGHT GO ABOUT  
14 GETTING PERMISSIONS.

15 Q. WOULD YOU PLEASE TURN TO TAB NINE?

16 A. (WITNESS COMPLIES.)

17 IF I AM NOT MISTAKEN. YES.

18 Q. ALL RIGHT. WHAT IS THIS PAGE?

19 A. THIS IS WHERE YOU WOULD GO TO IF YOU CLICKED ON THE  
20 PERMISSIONS LINK AND IT IS JUST A PARAGRAPH THAT EXPLAINS  
21 VARIOUS CIRCUMSTANCES UNDER WHICH YOU MIGHT NEED TO GET  
22 PERMISSION.

23 Q. WOULD THE POLICY HELP A PROFESSOR IF HE OR SHE HAD TO  
24 IDENTIFY THE OWNER OF A COPYRIGHT?

25 A. YES.

1 Q. IN ORDER TO OBTAIN A PERMISSION, FOR EXAMPLE?

2 A. YES.

3 Q. HOW DOES THE POLICY DO THAT?

4 A. THE CONTENT OF THE WEBSITE TALKS ABOUT DIFFERENT WAYS  
5 THAT YOU CAN IDENTIFY HOLDERS OF COPYRIGHT.

6 Q. IF YOU WOULD PLEASE TURN TO THE NEXT PAGE, WHAT IS THAT  
7 TAB?

8 A. IDENTIFYING THE COPYRIGHT.

9 Q. FIRST OF ALL, HOW DOES THE POLICY WORK WITH THE  
10 PROFESSOR OR ANOTHER TO IDENTIFY THE COPYRIGHT OWNER?

11 A. IT PROVIDES, EXPLAINS WHO MIGHT OWN THE COPYRIGHT.  
12 THEN I THINK LINKED TO THE U.S. COPYRIGHT OFFICE.

13 Q. DOES IT ALSO, FOR EXAMPLE, PROVIDE A LETTER THAT MIGHT  
14 BE USED IN ORDER TO CONTACT THE COPYRIGHT OWNER?

15 A. THERE IS A LINK TO THE SAMPLE LETTER THAT IS AVAILABLE  
16 TO GET PERMISSIONS.

17 Q. DOES THE COPYRIGHT POLICY ENVISION ASSISTING A  
18 PROFESSOR IN CONTACTING AGENCIES THAT MAY BE ABLE TO HELP WITH  
19 LICENSING OR PERMISSION?

20 A. YES.

21 Q. HOW SO?

22 A. THERE IS A LIST OF A NUMBER OF DIFFERENT AGENCIES THAT  
23 A FACULTY MEMBER COULD GO TO IN ORDER TO GET PERMISSIONS.

24 Q. COULD YOU PLEASE TURN TO TAB 11 OF DEFENDANT'S TRIAL  
25 EXHIBIT 28? WHAT IS THIS PAGE?

1 A. (WITNESS COMPLIES.)

2 THIS IS LIST OF THE AGENCIES THAT THE COMMITTEE PUT  
3 TOGETHER TO PROVIDE ASSISTANCE IN GETTING PERMISSIONS.

4 Q. AND, FOR EXAMPLE, THE FIRST LINK IT SHOWS IS "WORKS IN  
5 PRINT." WHAT HAPPENS IF ONE CLICKS ON THAT LINK?

6 A. ONE GOES TO A LIST OF AGENCIES THAT WOULD HELP YOU GET  
7 PERMISSIONS, INCLUDING THE COPYRIGHT CLEARANCE CENTER, FOR  
8 USING MATERIALS.

9 Q. AND IF YOU LOOK DOWN UNDER "WORKS IN PRINT," DO YOU SEE  
10 A LINK TO THE COPYRIGHT CLEARANCE CENTER?

11 A. YES.

12 Q. IF ONE CLICKS ON THAT LINK, WHAT HAPPENS?

13 A. IT GOES TO THE COPYRIGHT CLEARANCE CENTER.

14 Q. IF YOU WOULD, PLEASE, TURN TO TAB 25 AND TELL ME WHAT  
15 THAT IS.

16 A. (WITNESS COMPLIES.)

17 IT APPEARS TO BE THE HOME PAGE FOR THE COPYRIGHT CLEARANCE  
18 CENTER.

19 Q. IN 2009, IF ONE CLICKED ON THE COPYRIGHT CLEARANCE  
20 CENTER LINK SHOWN AT TAB 11, WOULD THEY HAVE BEEN DELIVERED  
21 TO THE COPYRIGHT CLEARANCE CENTER WEB PAGE AS SHOWN IN TAB 25?

22 A. I BELIEVE SO, YES.

23 Q. WAS THAT THE INTENT?

24 A. YES.

25 Q. YOU MENTIONED THAT THE POLICY INCORPORATED MATERIAL

1 FROM OTHER UNIVERSITIES, IN PARTICULAR COLUMBIA. WOULD YOU  
2 PLEASE TURN TO TAB 24 OF THIS EXHIBIT AND EXPLAIN WHAT THIS  
3 IS?

4 A. (WITNESS COMPLIES.)

5 THIS IS SAMPLE FORMS AND LETTERS FROM THE COLUMBIA  
6 COPYRIGHT ADVISORY OFFICE, ALL LINKED TO THAT.

7 Q. AND THESE ARE SAMPLE FORMS AND LETTERS FOR WHAT  
8 PURPOSE?

9 A. FOR GETTING PERMISSIONS.

10 Q. IF YOU GO BACK TO TAB 11, PLEASE, NEAR THE BOTTOM OF  
11 THIS PAGE IS A REFERENCE TO "MUSICAL WORKS PERFORMANCE  
12 RIGHTS," DO YOU SEE THAT?

13 A. I DO.

14 Q. WHAT IS THE PURPOSE OF THIS LANGUAGE?

15 A. THERE IS A NEED TO ALSO GET PERMISSION TO USE  
16 COPYRIGHTED MUSIC IF YOU WANT TO IN A COURSE OR IN VARIOUS  
17 PRESENTATIONS. AND THIS IS LINKS TO WAYS THAT YOU COULD GET  
18 PERMISSIONS TO USE MUSIC.

19 Q. SO WHAT HAPPENS IF I CLICK ON THE ASCAP LINK, WHICH IS  
20 THE FIRST ONE UNDER MUSICAL WORKS?

21 A. YOU GO TO THAT WEBSITE WHICH HAS, I BELIEVE, A TAB ON  
22 HOW TO GET PERMISSIONS TO USE MUSIC.

23 Q. AND YOU MENTIONED THAT YOU HAD LIBRARY RESERVE STAFF  
24 THAT YOU AND MS. BURTLE MET WITH; IS THAT CORRECT?

25 A. YES.

1 Q. DOES THAT LIBRARY RESERVE STAFF HAVE ITS OWN EMAIL  
2 ADDRESS?

3 A. IT DOES.

4 Q. DO YOU RECALL THE NAME OF THAT ADDRESS?

5 A. I THINK IT IS LIBRES. I THINK FULL NAME IS LIBRARY  
6 RESERVES, THEN IT IS LIBRES AT GSU DOT EDU (LIBRES@GSU.EDU).

7 MR. SCHAETZEL: IF I MAY APPROACH, YOUR HONOR.

8 THE COURT: YOU MAY.

9 BY MR. SCHAETZEL:

10 Q. LIKE TO SHOW YOU WHAT HAS BEEN MARKED AS DEFENDANT'S  
11 EXHIBIT 520 FOR IDENTIFICATION. WHAT IS THIS DOCUMENT?

12 A. IT APPEARS TO BE AN EMAIL FROM THE LIBRARY RESERVES  
13 FOLKS TO A FACULTY MEMBER SAYING THAT THEY HAVE SET UP THE  
14 COURSE PAGE FOR THIS COURSE AND PROVIDING THE PASSWORD TELLING  
15 WHEN IT WILL BE AVAILABLE.

16 Q. HOW ARE PASSWORDS DELIVERED, IF YOU WILL, OR TO  
17 FACULTY MEMBERS FOR USE IN THEIR ERESERVE COURSE PAGES?

18 A. THEY ARE DELIVERED VIA THE EMAIL THAT COMES FROM THE  
19 LIBRARY RESERVE STAFF.

20 Q. IS THAT WHAT IS OCCURRING IN THIS EXAMPLE HERE?

21 A. YES.

22 Q. ARE THESE E-MAILS PREPARED IN THE ORDINARY COURSE OF  
23 BUSINESS BY THE LIBRARY RESERVE STAFF?

24 A. YES.

25 Q. ARE THEY MAINTAINED AND KEPT IN THE ORDINARY COURSE OF

1 BUSINESS?

2 A. I BELIEVE SO. I AM NOT SURE HOW LONG THEY ARE KEPT,  
3 BUT THEY ARE KEPT THROUGH AT LEAST THE SEMESTER. I THINK AT  
4 THIS POINT WE ARE PROBABLY KEEPING THEM LONGER THAN THAT.

5 Q. AND WOULD THIS ONE HAVE BEEN, FOR EXAMPLE, MADE AT OR  
6 AROUND THE TIME OF 7-21-2009?

7 A. IT WOULD HAVE, YES.

8 MR. SCHAETZEL: WE MOVE ADMISSION OF DEFENDANT'S  
9 EXHIBIT 520.

10 MR. RICH: OBJECTION. PLAINLY A DOCUMENT SHE IS  
11 UNFAMILIAR WITH. SHE SAYS CLEARLY IT IS AN EMAIL, DOES NOT  
12 UNDERSTAND IF IT IS MAINTAINED IN THE COURSE OF BUSINESS.  
13 LACK OF FOUNDATION.

14 MR. SCHAETZEL: WITNESS TESTIFIED THAT HER STAFF,  
15 LIBRARY RESERVE STAFF, HAS THEIR OWN WEB OR THEIR OWN MAIL  
16 ADDRESS, IF YOU WILL, THAT IS THE RESERVES THAT IS HERE, LIB  
17 RESERVES. THAT THIS IS A BUSINESS RECORD. IT IS KEPT AND  
18 MAINTAINED BY THAT LIBRARY STAFF. IT WAS DONE AT OR ABOUT THE  
19 TIME INDICATED, WHICH WOULD BE 7-21-2009.

20 MR. RICH: WE HAVE TESTIMONY FROM AT LEAST TWO OTHER  
21 LIBRES WITNESSES THROUGH WHOM THIS DOCUMENT COULD HAVE BEEN --  
22 PROPER FOUNDATION COULD HAVE BEEN LAID FOR IT.

23 THE COURT: FOR WHAT PURPOSE IS IT TENDERED?

24 MR. SCHAETZEL: TENDERED FIRST TO SHOW FROM THE  
25 LIBRARY STAFF HOW THEY ACTUALLY DELIVER THE PASSWORD TO THE

1 FACULTY MEMBER. AND IT IS ALSO BEING OFFERED, YOUR HONOR,  
2 FOR THE PURPOSE OF SHOWING THAT THIS IS WHAT WAS PROVIDED TO  
3 PROFESSOR MARY OHMER ON OR ABOUT THE 21ST OF, I GUESS, THAT  
4 WOULD BE JULY OF 2009, BY THE LIBRARY RESERVE STAFF.

5 THE COURT: I WILL ADMIT IT AS A BUSINESS RECORD.  
6 BY MR. SCHAEZEL:

7 Q. YOU HAVE MENTIONED THAT YOU HAVE STAFF. LET'S FIRST  
8 BACK UP AND DO YOUR ENTIRE STAFF. HOW MANY PEOPLE ARE IN  
9 YOUR CHARGE AS DEAN OF LIBRARIES?

10 A. A HUNDRED.

11 Q. CAN YOU GENERALLY DESCRIBE THE ROLES THAT PEOPLE PLAY  
12 IN YOUR EMPLOY IN THE LIBRARY, IN A BROAD 30,000 FOOT  
13 PERSPECTIVE?

14 A. WE PROVIDE ALL THE FUNCTIONS AND SERVICES PROVIDED BY  
15 THE RESEARCH CAMPUS. PROVIDING MATERIALS, PROVIDING  
16 SERVICES, REFERENCE DESK, CIRCULATION, CATALOGING MATERIALS  
17 TO MAKE THEM AVAILABLE, BUDGET PERSONNEL.

18 Q. FOR EXAMPLE, DO YOU HAVE A TRADITIONAL RESERVES AREA?

19 A. WE DO.

20 Q. ARE THOSE -- IS THAT STAFFED BY PEOPLE THAT WORK FOR  
21 YOU?

22 A. THEY ARE THE SAME THREE PEOPLE THAT WE HAVE TALKED  
23 ABOUT IN TERMS OF THE ERES SYSTEM, YES.

24 Q. PLEASE DESCRIBE THE PHYSICAL RESERVES CAPABILITY AT  
25 GEORGIA STATE.

1 A. AT DESK WITH PERSONNEL AND SHELVES. SO, A PLACE  
2 WHERE PEOPLE COULD GET PHYSICAL RESERVES TO USE.

3 Q. CAN YOU DESCRIBE HOW A STUDENT WOULD TAKE ADVANTAGE OF  
4 THE PHYSICAL RESERVE SERVICE IN YOUR LIBRARY?

5 A. THEY WOULD COME IN THE LIBRARY, IDENTIFY THE COURSE  
6 THEY ARE ENROLLED IN, AND ASK.

7 Q. TO WHOM WOULD THEY IDENTIFY?

8 A. TO A STAFF MEMBER AT THE DESK.

9 Q. SO THE PERSON WALKS IN THE FRONT DOOR AND GOES WHERE?

10 A. TO THE ERESERVE AREA -- NOT THE ERESERVE AREA -- THE  
11 RESERVES AREA. AND APPROACHES THE STAFF MEMBER AND SAYS THAT  
12 THEY HAVE A CLASS THAT THEY UNDERSTAND THEY HAVE TO PAY FOR  
13 MATERIALS ON RESERVES THEY WOULD REQUEST THEM.

14 Q. AND WHAT DO THEY PROVIDE THEN TO THE PERSON THAT WORKS  
15 FOR YOU IN ORDER TO GET THE MATERIALS FOR THAT CLASS?

16 A. JUST THE INFORMATION ABOUT THE COURSE.

17 Q. DO THEY NEED TO HAVE A STUDENT ID?

18 A. I DON'T BELIEVE SO.

19 Q. DO THEY NEED TO HAVE ANY SPECIFICS LIKE A PASSWORD OR  
20 ANYTHING?

21 A. NO.

22 Q. ONCE THEY HAVE PROVIDED THE INFORMATION NECESSARY FOR  
23 YOUR STAFF PERSON TO IDENTIFY THE COURSE AND MATERIAL, WHAT  
24 HAPPENS?

25 A. THE STAFF MEMBER WOULD RETRIEVE THE MATERIAL AND CHECK

1 IT OUT TO THE STUDENT.

2 Q. DOES THE STAFF MEMBER KEEP TRACK OF WHAT IS GIVEN TO  
3 STUDENTS?

4 A. YES.

5 Q. DOES THE STAFF MEMBER TRACK THE TIME FOR WHICH SOME  
6 THINGS ARE GIVEN TO STUDENTS?

7 A. YES.

8 Q. ONCE THE TIME IS EXPIRED, IF THE MATERIAL HAS NOT BEEN  
9 RETURNED, WHAT HAPPENS?

10 A. IT BECOMES AN OVERDUE ITEM JUST LIKE ANYTHING ELSE THAT  
11 IS OVERDUE IN THE LIBRARY.

12 Q. ASSUMING IT IS OVERDUE, WHAT DOES THE STAFF MEMBER DO?

13 A. WHEN IT COMES BACK, IT GETS CHECKED IN AND THE STUDENT  
14 WOULD BE ASSESSED A FINE.

15 Q. ARE YOU THE PERSON RESPONSIBLE FOR THE BUDGET USED AT  
16 FOR THE LIBRARY BUDGET?

17 A. YES.

18 Q. CAN YOU GENERALLY DESCRIBE WHAT YOUR BUDGET CONSISTS  
19 OF?

20 A. IT CONSISTS OF MONEY TO PAY FOR PERSONNEL, OPERATING  
21 EXPENSES, AND COLLECTIONS, PROBABLY OF THE THREE BROAD AREAS.

22 Q. I AM SORRY, PERSONNEL?

23 A. OPERATE OPERATIONS. PERSONNEL, OPERATIONS, JUST  
24 KEEPING THINGS GOING AND COLLECTIONS.

25 Q. APPROXIMATELY HOW MUCH IS YOUR BUDGET?

1 A. IN ROUND NUMBERS, 10 MILLION DOLLARS.

2 Q. HOW IS THAT BUDGET OF 10 MILLION DOLLARS ALLOCATED?

3 A. HALF OF IT GOES TO THE PERSONNEL AND THE OPERATIONS  
4 PIECES OF THE LIBRARY AND THE OTHER HALF IS FOR COLLECTIONS.

5 Q. SO, APPROXIMATELY FIVE MILLION DOLLARS FOR COLLECTIONS?

6 A. YES.

7 Q. WHEN YOU USE COLLECTIONS IN THIS TERM, YOU ARE NOT  
8 TALKING ABOUT COLLECTING MONEY?

9 A. NO.

10 Q. WHAT ARE THE COLLECTIONS?

11 MR. RICH: YOUR HONOR, IF I MAY BE HEARD. WE  
12 RETROSPECT BACK TO 2009.

13 MR. SCHAETZEL: WE WILL DO THAT.

14 BY MR. SCHAETZEL:

15 Q. DO YOU RECALL WHAT THE BUDGET WAS WHEN YOU CAME IN  
16 2009?

17 A. I AM RECALLING THAT IT WAS CLOSER TO 11 MILLION DOLLARS  
18 IN 2009, YES.

19 Q. THAT IS AN INTERESTING STATISTIC. AND WAS THE  
20 ALLOCATION APPROXIMATELY THE SAME, WAS IT STILL 50-50?

21 A. IT WAS PROBABLY A LITTLE BIT WEIGHTED MORE TOWARD THE  
22 PERSONNEL AND OPERATING SIDE AT THAT POINT. SO IT PROBABLY  
23 WOULD HAVE BEEN STILL CLOSE TO FIVE MILLION DOLLARS FOR  
24 COLLECTIONS AND SLIGHTLY MORE, A LITTLE MORE THAN FIVE  
25 MILLIONS IN COLLECTIONS, AND A LITTLE MORE THAN FIVE MILLION

1 IN PERSONNEL AND OPERATIONS.

2 Q. AND STAYING IN 2009 --

3 A. OKAY.

4 Q. -- WHEN YOU USE THE TERM "COLLECTIONS" HERE, WHAT  
5 "COLLECTIONS" ARE YOU REFERRING TO?

6 A. WE SPEND OUR COLLECTION MONEY BUYING RESOURCES FOR THE  
7 FACULTY, STAFF AND STUDENTS OF THE UNIVERSITY TO USE. AND  
8 THAT IS DIVIDED BETWEEN LICENSED CONTENT THAT WE PURCHASED  
9 THAT IS LARGELY ELECTRONIC AND THEN MONOGRAPH, PRINT  
10 MATERIALS THAT ARE -- PRINT MATERIALS THAT ARE LARGELY  
11 MONOGRAPHS OR BOOKS.

12 Q. AND IN 2009, APPROXIMATELY WHAT PORTION OF FIVE MILLION  
13 DOLLARS OF COLLECTION WOULD HAVE BEEN SPENT ON ELECTRONIC  
14 MATERIALS?

15 A. I BELIEVE IT STILL WOULD HAVE BEEN CLOSE TO FOUR  
16 MILLION FOR THE ELECTRONIC MATERIALS AND ONE MILLION FOR  
17 MONOGRAMS.

18 Q. YOU MENTIONED ELECTRONIC MATERIALS. THERE HAS BEEN A  
19 LOT OF CONVERSATION ABOUT JOURNAL ARTICLES AND WHAT IS  
20 LICENSED AND WHAT IS NOT. CAN YOU PLEASE DESCRIBE WHAT IS IN  
21 THE ELECTRONIC COLLECTIONS BUDGET AT FOUR MILLION DOLLARS?  
22 WHAT MAKES THAT UP AT GEORGIA STATE?

23 A. IT IS A COMBINATION OF A NUMBER OF THINGS. WE  
24 PURCHASE JOURNAL PACKAGES, WE PURCHASE DATABASES, AND WE  
25 PURCHASE E-BOOK PACKAGES. SO, IT IS THE COMBINATION OF ALL

1 OF THE CONTENT THAT IS AVAILABLE ELECTRONICALLY THROUGH THE  
2 LIBRARY.

3 Q. WHAT ARE JOURNAL PACKAGES?

4 A. WELL, MOST OF THE TIME, RATHER THAN BUYING AN  
5 INDIVIDUAL JOURNAL TITLE FROM A VENDOR, THEY COME IN BUNDLES,  
6 SO WE WORK THROUGH A VENDOR WHO WILL PUT TOGETHER A PACKAGE  
7 THAT BEST MEETS OUR NEEDS. SO WE WILL BUY A PACKAGE OF  
8 JOURNAL TITLES THAT REFLECTS THE DISCIPLINES THAT ARE TAUGHT  
9 AT GEORGIA STATE.

10 Q. THIS MAY BE TOO GRANULAR OF A QUESTION, CAN YOU  
11 IDENTIFY EXAMPLE BUNDLE?

12 A. WELL, FOR EXAMPLE, WE WOULD BUY FROM ELSEVIER SOME  
13 PACKAGE OF CONTENT THAT IS AVAILABLE ELECTRONICALLY FOR OUR  
14 USERS, ELSEVIER BEING A VENDOR OF JOURNAL CONTENT.

15 Q. ELSEVIER IS A PUBLISHER OF JOURNALS?

16 A. AGGREGATE OF JOURNALISTS AND PUBLISHERS.

17 Q. WHEN YOU MENTION DATABASES IN THIS, WHAT SORT OF  
18 DATABASES?

19 A. THEY RUN FROM VERY, VERY BROAD GENERAL DATABASES TO  
20 SOME THAT ARE VERY DISCIPLINE SPECIFIC. CHEM ABSTRACTS WOULD  
21 BE A CHEMICAL DATABASE. SOME OF THE BROAD ONES WOULD BE LIKE  
22 EBSCOHOST OR SOMETHING LIKE THAT THAT COVERS A WIDE RANGE OF  
23 TOPICS AND A WIDE RANGE OF JOURNAL DOCUMENTS.

24 Q. AND FINALLY E-BOOKS?

25 A. WE MOSTLY PURCHASE THOSE, I BELIEVE, THROUGH AGAIN

1 PACKAGES, LIKE A NET LIBRARY PACKAGE OR EBRARY PACKAGE WHERE  
2 WE ARE BUYING A NUMBER OF TITLES THAT COME TOGETHER, BUNDLES,  
3 SO THAT WE DON'T HAVE A WHOLE LOT OF SAY IN WHAT WE ARE  
4 GETTING WITH THOSE.

5 Q. IN THE 2009 TIME FRAME WITHIN YOUR BUDGET FOR  
6 ELECTRONIC MATERIALS AND MONOGRAPHS, DID YOU HAVE AN EXTRA  
7 \$125,000 TO SPEND ON NEW LICENSES?

8 A. NO.

9 Q. DOES GEORGIA STATE UNIVERSITY PAY ANY MONEY TO THE  
10 COPYRIGHT CLEARANCE CENTER?

11 A. YES.

12 Q. DID IT IN 2009?

13 A. YES.

14 Q. FOR WHAT DID YOU PAY THE COPYRIGHT CLEARANCE CENTER IN  
15 2009?

16 A. I BELIEVE IT WAS THROUGH THE ACADEMIC PERMISSION  
17 SERVICE AND IT WAS FOR PREDOMINANTLY, IF NOT EXCLUSIVELY,  
18 INTERLIBRARY LOAN USE.

19 Q. WHAT IS INTERLIBRARY LOAN?

20 A. THIS IS WHERE LIBRARIES WILL SHARE MATERIALS. SO IF,  
21 FOR EXAMPLE, I DON'T HAVE A BOOK OR I DON'T HAVE A JOURNAL  
22 THAT A FACULTY MEMBER OR STUDENT NEEDS, I CAN CONTACT ANOTHER  
23 INSTITUTION AND BORROW THAT MATERIAL TO BE USED BY MY STUDENT  
24 OR FACULTY MEMBER.

25 Q. LET'S SAY, FOR EXAMPLE, THERE IS A JOURNAL THAT GEORGIA

1 STATE DOES NOT HAVE BUT PERHAPS EMORY DOES, PLEASE DESCRIBE  
2 THE TRANSACTION.

3 A. WE WOULD PUT THROUGH A REQUEST TO BORROW THE CONTENT  
4 FROM EMORY AND THEY WOULD SEND IT TO US.

5 Q. WHO WOULD YOU PUT THE REQUEST TO?

6 A. THEY HAVE AN INTERLIBRARY LOAN OFFICE, WE HAVE AN  
7 INTERLIBRARY LOAN OFFICE.

8 Q. SO THE "THEY" IS EMORY?

9 A. YES.

10 Q. HOW DOES MONEY GET PAID TO THE COPYRIGHT CLEARANCE  
11 CENTER WITH YOUR RELATION WITH THE EMORY INTERLIBRARY?

12 A. WHEN WE HAVE GONE BEYOND ACCEPTABLE USE OF SOMEBODY'S  
13 WORK, WE PAY THE PERMISSION.

14 Q. HOW DOES COPYRIGHT KNOW YOU WILL PAY THE PERMISSION OR  
15 NEED TO PAY?

16 A. WE TELL THEM.

17 Q. HOW IS IT ACCOMPLISHED?

18 A. I BELIEVE IN ELECTRONIC FORM.

19 Q. LIKE TO GO BACK TO THE INTRODUCTION OF THE POLICY.

20 ONCE IT HAS GONE LIVE, AS YOU HAVE DESCRIBED IT, WHAT  
21 TRAINING WAS PROVIDED TO LIBRARY STAFF ABOUT THE NEW POLICY?

22 A. I BELIEVE WE HAD CYNTHIA HALL COME INTO THE LIBRARY AND  
23 PROVIDE A TRAINING SESSION FOR LIBRARY PERSONNEL.

24 Q. AND MS. HALL WAS WITH LEGAL AFFAIRS AT THAT TIME IN  
25 2009, CORRECT?

1 A. YES.

2 Q. WHO ATTENDED THIS TRAINING?

3 A. A NUMBER OF PEOPLE IN THE LIBRARY, BUT IT WAS  
4 PREDOMINANTLY PROVIDED FOR THE FOLKS THAT WERE GOING TO BE  
5 DEALING WITH THIS MOST DIRECTLY, SO THE RESERVE STAFF. BUT I  
6 THINK THERE WERE A NUMBER OF OTHER PEOPLE WHO WERE INTERESTED  
7 IN JOINING THE TRAINING.

8 Q. DO YOU RECALL APPROXIMATELY HOW MANY PEOPLE WERE THERE?

9 A. IT FEELS LIKE IT WAS A ROOM FULL, SO MAYBE 35.

10 Q. AND WHERE WAS THIS ROOM?

11 A. I THINK IT WAS IN ONE OF THE CLASSROOMS IN THE LIBRARY,  
12 SO I AM RECALLING THE FIRST FLOOR CLASSROOM, WHICH SEATS, I  
13 THINK, 50.

14 Q. WOULD YOU PLEASE LOOK AT WHAT HAS BEEN MARKED AS  
15 DEFENDANT'S TRIAL EXHIBIT 140 IN YOUR NOTEBOOK?

16 A. (WITNESS COMPLIES.)

17 Q. WHAT IS THIS DOCUMENT?

18 A. THIS IS THE -- I AM SPECULATING AS TO THE POWERPOINT  
19 THAT MS. HALL USED IN DOING THE TRAINING FOR THE LIBRARY  
20 PERSONNEL.

21 Q. DO YOU RECALL IF YOU WERE PROVIDED A COPY OF THE  
22 POWERPOINT AT THAT TIME?

23 A. I DON'T RECALL.

24 Q. DO YOU RECALL SEEING THIS DOCUMENT OTHER THAN TODAY?

25 A. YES.

1 Q. WHEN DID YOU FIRST SEE THIS DOCUMENT?

2 A. THE DATE ON IT IS THE 23RD AND IT COULD HAVE BEEN AT  
3 THE TRAINING SESSION THAT WAS HELD AT THE LIBRARY AT THAT  
4 POINT ON FEBRUARY 23RD, 2009.

5 Q. DO YOU RECALL IF THE TRAINING PROVIDED TO THE FULL ROOM  
6 OF PEOPLE INCLUDED TRAINING REGARDING THE NEW ELECTRONIC  
7 RESERVES PROCESS THAT WAS GOING TO BE IMPLEMENTED?

8 MR. RICH: OBJECTION, LEADING.

9 THE COURT: OVERRULED.

10 THE WITNESS: I BELIEVE IT WAS INCLUDED, YES.

11 BY MR. SCHAEZEL:

12 Q. WHAT DO YOU RECALL AT THAT TRAINING?

13 A. THAT MS. HALL TALKED THROUGH THE PROCESS AND WHAT THE  
14 ROLE OF THE LIBRARY WOULD BE AS OPPOSED TO WHAT THE ROLE OF  
15 FACULTY WILL BE. HOW TO USE THE USG SITE, HOW FACULTY WILL  
16 BE USING IT.

17 Q. DO YOU RECALL IF THERE WAS ANY MENTION MADE OF WHETHER  
18 OR NOT, FOR EXAMPLE, A PASSWORD IS GOING TO BE USED?

19 MR. RICH: OBJECTION, HEARSAY. MS. HALL IS ON THE  
20 WITNESS LIST, HASN'T APPEARED, YOUR HONOR.

21 THE COURT: OVERRULED.

22 THE WITNESS: PASSWORDS ARE REQUIRED, YES.

23 BY MR. SCHAEZEL:

24 Q. DO YOU REMEMBER IF THERE WAS ANY TRAINING REGARDING  
25 PASSWORDS?

1 A. I DON'T RECALL THAT.

2 Q. IF YOU COULD PLEASE LOOK AT PAGE 21130 OF THIS  
3 DOCUMENT, SEE IF THAT REFRESHES YOUR RECOLLECTION.

4 A. IT SAYS "PASSWORD RESTRICTED WITH ACCESS."

5 Q. DO YOU RECALL IF THERE WAS ANY TRAINING REGARDING  
6 PASSWORDS AT THAT TRAINING SESSION?

7 A. IT WAS PART OF THE TRAINING SO I DON'T RECALL.

8 Q. YOU DON'T RECALL? HOW LONG DID THE TRAINING SESSION  
9 LAST?

10 A. I AM RECALLING THAT IT WAS SCHEDULED FOR AN HOUR AND  
11 WENT MUCH CLOSER TO TWO HOURS BECAUSE THERE WERE LOTS OF  
12 QUESTIONS BY THE LIBRARY FOLKS ABOUT WHAT WAS GOING ON.

13 Q. WHAT SORTS OF QUESTIONS?

14 A. HOW THE POLICY WAS TO BE IMPLEMENTED, WHAT THE ROLE OF  
15 THE LIBRARY WAS. BECAUSE WE HAD LIBRARIANS WHO MIGHT BE  
16 WORKING WITH FACULTY, HOW DO I HANDLE FACULTY APPROPRIATELY.

17 Q. HAD YOU ALREADY HAD YOUR MEETING WITH MS. BURTLE AND  
18 THE OTHER LIBRARY STAFF PEOPLE YOU MENTIONED WHERE YOU SAID  
19 YOU WERE GOING TO EMPOWER THEM TO SAY SOMETHING DIFFERENT TO  
20 FACULTY MEMBERS, HAD THAT MEETING ALREADY OCCURRED?

21 A. I THINK THAT CAME LATER.

22 Q. CAME AFTER THE FIRST TRAINING SESSION?

23 A. YES.

24 MR. SCHAEZEL: YOUR HONOR, IF I MAY AT THIS POINT  
25 IN TIME, I WOULD LIKE TO ASK THE COURT'S PERMISSION BEFORE I

1 ASK THE QUESTION, I WOULD LIKE TO RAISE A SUBJECT MATTER WITH  
2 THE COURT.

3 THIS WITNESS, BY VIRTUE OF HER POSITION, HAS KNOWLEDGE OF  
4 USE OF THE ERESERVE SYSTEM IN TERMS OF REQUESTS IN THE FALL OF  
5 2008, WHICH IS OUTSIDE THE TIME PERIOD, AND THE FALL OF 2009,  
6 AND CAN DRAW A COMPARISON FOR THE COURT IN TERMS OF ITS USE.  
7 FROM OUR POSITION, AS HAS BEEN POINTED OUT, THERE WAS  
8 INFORMATION --

9 THE COURT: IN TERMS OF WHAT USE.

10 MR. SCHAEZEL: OF ELECTRONIC RESERVE SYSTEM AT  
11 GEORGIA STATE. FROM OUR POSITION, THERE HAS BEEN EVIDENCE AND  
12 WE HAVE WITHDRAWN OUR OBJECTION, FOR EXAMPLE, TO PERMISSION  
13 EVIDENCE THAT WOULD INCLUDE THE TIME PERIOD, BUT ALSO HAVE  
14 EVIDENCE OUTSIDE THE TIME PERIOD, FOR EXAMPLE, SOMETIME IN  
15 2008 OR LATER IN 2010.

16 CONSISTENT WITH THAT TESTIMONY, WE WOULD LIKE TO PROVIDE  
17 THE COURT WITH THIS INFORMATION, BUT I DO NOT WANT TO RUN  
18 AFOUL OF THE COURT'S DIRECTION TO KEEP THE MATTER LIMITED TO  
19 2009. I AM REQUESTING PERMISSION TO ASK AND GET AN ANSWER TO  
20 THE QUESTION OF WHAT IS THIS WITNESS'S KNOWLEDGE OF THE USE OF  
21 ERESERVE IN THE FALL 2008 TERM AS OPPOSED TO THE FALL 2009  
22 TERM.

23 MR. RICH: THIS IS FOUNDATIONAL. TRIED TO GET IN  
24 ERES REPORTS FROM 2008, YOUR HONOR EXCLUDED THEM. THEY WERE  
25 PROVIDED BY THE GROUND RULES FUNDAMENTAL TO OUR CASE, WERE

1 SHOWING THE OPPOSITE OF WHAT MR. SCHAETZEL IS TRYING TO SHOW.  
2 CONTINUING PERSISTENT LARGE AND SYSTEMATIC USE PREDATING 2008.  
3 WE WANTED TO GO BACK TO 2003 AND WOULD HAVE GONE INTO 2010.  
4 THIS IS ASTONISHING TO ME, MR. SCHAETZEL WILL ARGUE THERE IS  
5 A RATIONALE TO PERMIT THEM TO DO IT WHEN WE HAVE BEEN  
6 PRECLUDED FROM DOING IT, BE ENORMOUSLY PREJUDICIAL.

7 THE COURT: DO YOU WISH TO RESPOND?

8 MR. SCHAETZEL: YES, YOUR HONOR, ONLY TO SAY THAT I  
9 CERTAINLY HAVE NO INTENT TO GO ANY OTHER TIME PERIOD THAN FALL  
10 2008 AND 2009 IN VIEW OF, FOR EXAMPLE, PERMISSIONS REQUEST  
11 THAT ARE NOW IN THE RECORD OVER THAT SAME TIME PERIOD.

12 THE COURT: PERMISSIONS REQUEST TO CCC?

13 MR. SCHAETZEL: OR THROUGH SAGE, YOUR HONOR. FOR  
14 EXAMPLE, I DID THE CROSS-EXAMINATION OF MS. RICHMAN. THERE  
15 ARE SAGE REQUESTS SHOWING HOW MANY REQUESTS WERE MADE FOR --  
16 HOW MUCH MONEY WAS PAID TO SAGE AS A RESULT OF PERMISSION  
17 REQUESTS THROUGH CCC.

18 THE COURT: THESE ARE QUESTIONS THAT YOU ASKED OF  
19 MS. RICHMAN OR THE OTHER SIDE DID?

20 MR. SCHAETZEL: IN DOCUMENTS THAT THE OTHER SIDE  
21 PROFFERED THAT WE HAD OBJECTED TO AS BEING OUTSIDE THE TIME  
22 FRAME AND THEN WITHDREW OUR OBJECTION.

23 MR. RICH: YOUR HONOR, THAT HAS ABSOLUTELY NOTHING TO  
24 DO WITH ERES PRACTICES THAT ARE AT ISSUE IN THE CASE. I  
25 DON'T HAVE THE DOCUMENTS IN FRONT OF ME. MAY HAVE HAD TO DO

1 WITH OVERLAPPING TIME PERIOD AND FISCAL PERIODS BY SHOWING  
2 PERMISSIONS INCOME EARNED BY THE OTHER SIDE. IT HAS NOTHING  
3 TO DO WITH THE ACTIVITIES UNDERTAKEN BY GEORGIA STATE THAT ARE  
4 AT THE ROOT OF THIS CASE, WHICH ARE THE PERSISTENCE OF  
5 INCREASE, DECREASE, SAME PRACTICE OVER TIME.

6 YOUR HONOR DETERMINED THAT TO TAKE THIS CASE, AS WE  
7 UNDERSTAND IT, WE WOULD TAKE THREE ACADEMIC TERMS AND THAT  
8 WOULD BE THE BASIS FOR DETERMINING THE NATURE OF THE PRACTICE  
9 AS WELL AS WHATEVER INFERENCES YOUR HONOR MAY DRAW ABOUT  
10 SYSTEMATIC NATURE, CONTINUOUS NATURE. WE HAVE, AS YOU KNOW,  
11 DOGGEDLY WANTED TO BROADEN THAT PERIOD OUT. WE THINK THE  
12 FACTS ARE FAVORABLE. HERE WE ARE AT THE PENULTIMATE DAY OF  
13 THE TRIAL, MR. SCHAETZEL SAYS GIVE ME A LITTLE CHANCE TO PUT  
14 IN THE RECORD MY VERSION OF GOOD FACTS GOING BACK TO 2008.  
15 WE HAVE BEEN FORECLOSED FROM GETTING ERES REPORTS FROM 2008,  
16 EXACTLY GOING TO THAT SUBJECT IN THE RECORD. YOUR HONOR  
17 OVERRULED US ON MANY OF THOSE REPORTS. IT SEEMS TO ME HIGHLY  
18 INAPPROPRIATE.

19 THE COURT: I WILL SUSTAIN THE OBJECTION. WOULD  
20 YOU LIKE TO MAKE A PROFFER IF YOU KNOW WHAT THE ANSWER WAS  
21 GOING TO BE?

22 MR. SCHAETZEL: I HAVE SOME IDEA, YOUR HONOR, AND A  
23 PROFFER WOULD BE THAT SUBJECT TO THE WITNESS'S PROFESSIONAL  
24 JUDGMENT, THAT IN THE FALL OF 2008 OR THAT BETWEEN THE FALL  
25 OF 2008 AND THE FALL OF 2009 TERMS, THE REQUESTS WOULD HAVE

1 DECREASED ON THE ORDER OF 20 OR 30 PERCENT OR MORE.

2 THE COURT: THE PERMISSIONS YOU ARE TALKING ABOUT OR  
3 REQUESTS?

4 MR. SCHAETZEL: NUMBER OF DOCUMENTS, NUMBER OF  
5 REQUESTS TO LOAD DOCUMENTS ON TO THE ERESERVE SYSTEM.

6 THE COURT: ALL RIGHT. GO AHEAD.

7 BY MR. SCHAETZEL:

8 Q. DR. SEAMANS, DOES THE GEORGIA STATE UNIVERSITY LIBRARY  
9 HAVE A POLICY FAVORING POSTING MATERIALS TO EITHER ELECTRONIC  
10 RESERVES OR TRADITIONAL RESERVES?

11 A. I DON'T THINK IT FAVORS IT. I THINK IT IS VERY  
12 SUPPORTIVE OF ELECTRONIC RESERVES, BUT I DON'T KNOW THAT IT  
13 FAVORS IT PARTICULARLY.

14 Q. DR. SEAMANS, HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE  
15 PROPOSED INJUNCTION OFFERED BY THE PLAINTIFFS IN THIS CASE?

16 A. I HAVE.

17 Q. FROM YOUR POSITION, AS THE DIRECTOR OF LIBRARIES AT  
18 GEORGIA STATE UNIVERSITY, SHOULD THAT INJUNCTION BE ENTERED,  
19 DO YOU SEE ANY PROBLEMS FROM YOUR PERSPECTIVE?

20 A. LOOKING AT IT SOLELY FROM A LIBRARY PERSPECTIVE, IT  
21 FEELS THAT IT WOULD BE VERY, VERY DIFFICULT TO IMPLEMENT.

22 Q. WHY?

23 A. I HAVEN'T REALLY THOUGHT THROUGH THE WHOLE THING, BUT  
24 IT LOOKS AS THOUGH WE WOULD EITHER HAVE TO MANAGE BEHAVIORS BY  
25 OUR USERS IN TERMS OF THE WAY THEY USE THE MATERIALS THAT WE

1 PURCHASED FROM OXFORD, CAMBRIDGE, AND SAGE, OR WE WOULD, ON  
2 THE FLIP SIDE, HAVE TO MANAGE THE COLLECTIONS THAT WE HAVE  
3 PURCHASED FROM OXFORD, CAMBRIDGE, AND SAGE. IT IS KIND OF  
4 RATHER KNOTTY TO TRY TO FIGURE OUT, THAT IS WITH A K, FIGURE  
5 OUT HOW YOU WOULD MAKE THIS WORK.

6 Q. YOU MEAN K-N-O-T-T-Y?

7 THE COURT: I THOUGHT THAT IS WHAT SHE SAID.

8 BY MR. SCHAEZEL:

9 Q. WHEN YOU TALK ABOUT MANAGE BEHAVIOR OF USERS, WHO ARE  
10 YOUR USERS THAT YOU ARE REFERRING TO?

11 A. I AM TALKING TO THE PEOPLE WHO COME IN THE DOOR OF THE  
12 LIBRARY AND ARE USED TO USING LIBRARY COLLECTIONS IN A CERTAIN  
13 WAY AND WE WOULD HAVE TO ASK THEM TO USE THE MATERIALS FROM  
14 OXFORD, CAMBRIDGE, AND SAGE IN A DIFFERENT WAY.

15 Q. FIRST OF ALL, WOULD THOSE USERS INCLUDE STUDENTS?

16 A. THEY WOULD INCLUDE STUDENTS.

17 Q. I MEAN, HOW MANY PEOPLE ON AVERAGE COME THROUGH YOUR  
18 DOORS A DAY?

19 A. SOMEWHERE BETWEEN 8 AND 11, 12,000 A DAY.

20 Q. THAT IS PEOPLE, RIGHT?

21 A. THAT IS PEOPLE.

22 Q. AND THOSE PEOPLE INCLUDE STUDENTS?

23 A. YES.

24 Q. ANYONE ELSE?

25 A. THEY INCLUDE FACULTY. THEY INCLUDE STAFF. THEY

1 INCLUDE PEOPLE FROM THE PUBLIC. WE ARE OPEN TO THE PUBLIC.  
2 STUDENTS FROM OTHER INSTITUTIONS, RESEARCHERS.

3 Q. IF YOU FELT IT NECESSARY TO MANAGE THE BEHAVIOR OF  
4 THOSE USERS, WHAT ARE SOME STEPS THAT YOU MIGHT THINK YOU  
5 WOULD HAVE TO TAKE?

6 A. WELL, IF I AM RECALLING THE PROPOSAL CORRECTLY, ONE  
7 OF THEM IS THAT PEOPLE WOULD NOT BE ABLE TO MAKE COPIES OF  
8 MATERIALS, SO WE WOULD EITHER HAVE TO MANAGE HOW PEOPLE MAKE  
9 COPIES OR MAKE SCANS OF THINGS, AND I CAN'T QUITE WRAP MY HEAD  
10 AROUND HOW WE WOULD DO THAT.

11 Q. HOW WOULD YOU CONTROL HOW PEOPLE MAKE COPIES?

12 A. I CAN'T QUITE WRAP MY HEAD AROUND THAT.

13 Q. WHAT FACILITY DO YOU HAVE NOW IN THE LIBRARY FOR PEOPLE  
14 TO MAKE COPIES?

15 A. WE HAVE COPY MACHINES AND WE HAVE SCANNERS BOTH.

16 Q. WOULD YOU HAVE TO CONSIDER RESTRICTING ACCESS TO THOSE  
17 PIECES OF EQUIPMENT?

18 A. THIS IS WHERE I WAS TALKING ABOUT KIND OF RESTRICTING  
19 THE COLLECTION VERSUS MANAGING THE BEHAVIORS. THE OTHER  
20 ALTERNATIVE THAT HAS OCCURRED TO ME IS WE WOULD HAVE TO TRY TO  
21 SEGREGATE THE CONTENT THAT WE PURCHASED FROM THOSE THREE  
22 PUBLISHERS AND HAVE IT BE USED IN A DIFFERENT KIND OF WAY.  
23 SO, YOU WOULD HAVE TO ASK FOR THE CONTENT AND BE TOLD THAT  
24 YOU CAN ONLY USE IT CERTAIN WAYS AND IT IS HARD TO IMAGINE HOW  
25 YOU WOULD DO THIS TO BE HONEST.

1 MR. SCHAEZEL: JUST ONE MINUTE, PLEASE, YOUR  
2 HONOR.

3 BY MR. SCHAEZEL:

4 Q. WAS IT THE INTENT OF THE COMMITTEE THAT POLICY IN 2009  
5 COVER BLACKBOARD OR ULEARN?

6 A. I THINK THE ASSUMPTION WAS THAT IT WOULD COVER ANY KIND  
7 OF COPYRIGHTED MATERIAL REGARDLESS OF THE DELIVERY MECHANISM,  
8 YES.

9 Q. AND WAS THE POLICY AS IMPLEMENTED DIRECTED TO ANY SORT  
10 OF ACTIVITY AS YOU JUST DESCRIBED?

11 A. YES.

12 MR. SCHAEZEL: WE HAVE NO FURTHER QUESTIONS AT THIS  
13 TIME, YOUR HONOR.

14 MR. RICH: YOUR HONOR, PROCEED WITH CROSS OR TAKE THE  
15 AFTERNOON BREAK?

16 THE COURT: I COULD GO EITHER WAY ON IT. Y'ALL  
17 WANT TO TAKE A BREAK NOW?

18 MR. RICH: IT MAKES SENSE.

19 THE COURT: ALL RIGHT. LET'S TAKE A 20-MINUTE  
20 BREAK.

21 (WHEREUPON, A SHORT RECESS WAS HELD.)

22 THE COURT: YOU MAY PROCEED, MR. RICH.

23 MR. RICH: THANK YOU VERY MUCH, JUDGE.  
24  
25

1 CROSS EXAM

2 BY MR. RICH:

3 Q. GOOD AFTERNOON, MS. SEAMANS.

4 A. GOOD AFTERNOON.

5 Q. NICE TO SEE YOU AGAIN. AS DEAN OF LIBRARIES AT GSU,  
6 YOU HAVE SUPERVISORY RESPONSIBILITY OVER LIBRARY STAFF  
7 RESPONSIBLE FOR THE ERES SYSTEM, CORRECT?

8 A. INDIRECTLY, YES.

9 Q. AND IN THAT CAPACITY, YOU HAVE RESPONSIBILITY FOR  
10 ENSURING THAT THE ERES SYSTEM, AS IT OPERATES AT GSU, COMPLIES  
11 WITH POLICIES AT THE BOARD OF REGENTS AND OF GSU ITSELF,  
12 CORRECT?

13 A. WITHIN THE LIMITS OF WHAT WE ARE ASKED TO DO AT THE  
14 LIBRARY, YES.

15 Q. YOU DO HAVE THAT RESPONSIBILITY?

16 A. RIGHT.

17 Q. I TAKE IT WE ESTABLISHED -- MR. SCHAEZEL ESTABLISHED  
18 ON YOUR DIRECT EXAMINATION THAT YOU SERVE AS A MEMBER OF THE  
19 REGENTS COMMITTEE THAT GENERATED THE NEW SYSTEM-WIDE POLICY  
20 FOR THE UNIVERSITY OF GEORGIA SYSTEM, CORRECT?

21 A. YES.

22 Q. AND THAT COMMITTEE, I TAKE IT, ALSO ESTABLISHED,  
23 RETAINED THE LAW FIRM OF KING AND SPALDING AS ITS OUTSIDE  
24 LEGAL ADVISORS?

25 A. THAT IS MY UNDERSTANDING.

1 Q. UNDERSTANDING OR DID YOU KNOW THAT FOR A FACT?

2 A. I AM NOT SURE I KNEW THAT FOR A FACT.

3 Q. DID YOU NEVER INTERACT WITH THAT LAW FIRM OR ANY OF ITS  
4 REPRESENTATIVES ON THE COMMITTEE?

5 A. I DID.

6 Q. AND SO AM I MISSING YOU SAY IT IS YOUR UNDERSTANDING?

7 A. HOW THEY WERE RETAINED, I DON'T KNOW.

8 Q. YOU UNDERSTOOD THEY WERE ACTING?

9 A. THEY WERE THERE.

10 Q. AS LEGAL COUNSEL?

11 A. YES.

12 Q. IN THE PERSONS OF MESSRS. SCHAEZEL AND ASKEW?

13 A. YES.

14 Q. IN THE FOUR TO SIX MEETINGS THAT YOU RECALL  
15 PARTICIPATING IN, WERE THEY PRESENT AT ALL OF THOSE MEETINGS?

16 A. I DON'T BELIEVE SO, BUT I CAN'T RECALL EXACTLY.

17 Q. DO YOU RECALL IF THEY WERE PRESENT AT ANY OF THE  
18 MEETINGS?

19 A. I THINK AT LEAST AT ONE.

20 Q. ANOTHER MEMBER OF THE COMMITTEE, I TAKE IT, WAS CYNTHIA  
21 HALL; IS THAT CORRECT?

22 A. I DON'T THINK SHE WAS DESIGNATED AS A MEMBER, BUT I  
23 THINK SHE WAS ATTENDING SOME OF THE MEETINGS, ALSO.

24 Q. AND SHE WAS ALSO ACTING IN A LEGAL CAPACITY; IS THAT  
25 CORRECT?

1 A. THAT IS MY UNDERSTANDING.

2 Q. NOW, WHILE YOU ARE NOT A LAWYER BY TRAINING, YOU HAVE  
3 AN ADVANCED DEGREE IN LIBRARY SCIENCE, CORRECT?

4 A. I DO.

5 Q. YOU HAVE READ BOOKS ON COPYRIGHT LAW, RIGHT?

6 A. I HAVE.

7 Q. AND YOU HAVE DEALT WITH COPYRIGHT ISSUES IN THE  
8 ACADEMIC LIBRARY SETTING FOR A NUMBER OF YEARS, CORRECT?

9 A. YES.

10 Q. INCLUDING ISSUES CONSIDERING IMPACT OF TECHNOLOGY ON  
11 SOUND COPYRIGHT PRACTICE, RIGHT?

12 A. YES.

13 Q. A PART OF WHICH YOU HAVE DEVELOPED A WORKING  
14 FAMILIARITY WITH THE FAIR USE DOCTRINE; IS THAT TRUE?

15 A. YES.

16 Q. YOU HAVE ALWAYS CONCEIVED, ALWAYS CONCEIVED OF GSU  
17 ERES SYSTEM AS AFFORDING STUDENTS ACCESS SOLELY TO  
18 SUPPLEMENTAL AS OPPOSED TO REQUIRED READINGS; ISN'T THAT TRUE?

19 A. THAT WAS PART OF MY TESTIMONY IN THE DEPOSITION, YES.

20 Q. YOU TESTIFIED TRUTHFULLY, CORRECT?

21 A. I DID.

22 Q. SUCH THAT THE USE OF THE ERES SYSTEM TO SUPPLY STUDENTS  
23 WITH REQUIRED READINGS WOULD NOT BE AN ACCEPTABLE USE OF THE  
24 ERES SYSTEM IN YOUR ESTIMATION, CORRECT?

25 A. THAT WOULD BE ONE OF THE FACTORS THAT ONE WOULD HAVE TO

1 LOOK AT, YES.

2 Q. NOW, LET ME ASK THE QUESTION AGAIN, I WOULD  
3 APPRECIATE A DIRECT ANSWER. YOUR VIEW IS THAT THE USE OF THE  
4 ERES SYSTEM TO SUPPLY STUDENTS REQUIRED STRICTLY WITH  
5 SUPPLEMENTARY READINGS WOULD NOT BE AN ACCEPTABLE USE OF THE  
6 ERESERVE SYSTEM; ISN'T THAT CORRECT?

7 A. THAT WAS PART OF MY DEPOSITION IN 2009 AND I NO LONGER  
8 SUBSCRIBE TO THAT VIEW.

9 Q. YOU BELIEVED THAT TO BE THE CASE AT THE TIME OF YOUR  
10 DEPOSITION IN 2009, CORRECT?

11 A. YES.

12 Q. THAT WAS HOW LONG AFTER THE COMMITTEE HAD CONCLUDED ITS  
13 DELIBERATIONS?

14 A. AND IF YOU WILL RECALL --

15 Q. PLEASE ANSWER MY QUESTION. YOU HAVE PLENTY OF TIME TO  
16 EXPAND ON REDIRECT. HOW LONG WAS IT IN MARCH OF 2009  
17 FOLLOWING THE CONCLUSION OF THE MEETING?

18 A. ONE MONTH. TWO MONTHS.

19 Q. THE COMMITTEE THAT WAS EXPERTLY REPRESENTED BY OUTSIDE  
20 COUNSEL, CORRECT?

21 A. YES.

22 Q. AND REPRESENTED AS WELL BY CYNTHIA HALL, CORRECT?

23 A. YES.

24 Q. BY REQUIRED READINGS, JUST SO THE RECORD IS CLEAR, YOU  
25 HAVE IN MIND READINGS THAT ARE GOING TO BE ON THE EXAM, AS

1 YOU PUT IT IN THE VERNACULAR IN THE DEPOSITION?

2 A. YES.

3 Q. AS OPPOSED TO READINGS DESIGNED JUST TO ENHANCE A  
4 STUDENT'S UNDERSTANDING OF WHAT WAS GOING ON?

5 A. OR TO SUPPLEMENT THE CONTENT OF THE COURSE, YES.

6 Q. NOW, INsofar AS WE ARE TALKING ABOUT WHAT WAS AT LEAST  
7 YOUR CONCEPTION AT THE TIME OF THE DEPOSITION RIGHT ON THE  
8 HEELS OF THE COMMITTEE DELIBERATIONS AS TO THE PROPER USE OF  
9 THE ERES SYSTEM, THAT INTENDED USE REALLY WAS NO DIFFERENT,  
10 WAS IT, FROM THE INTENDED USE OF THE PHYSICAL RESERVES SYSTEM  
11 AT GSU; ISN'T THAT CORRECT?

12 A. RESTATE THAT FOR ME, PLEASE.

13 Q. I AM GLAD, I'M SORRY, I WASN'T CLEAR. INsofar AS IT  
14 WAS YOUR VIEW THAT THE ERES SYSTEM WAS TO BE USED SOLELY TO  
15 SUPPLY SUPPLEMENTAL AS OPPOSED TO REQUIRED READINGS TO  
16 STUDENTS, THAT WAS CONSISTENT WITH GSU'S POLICY AND VIEW AS  
17 TO THE APPROPRIATE USE OF PHYSICAL RESERVES, AS WELL IN  
18 RELATION TO COURSE READINGS, CORRECT?

19 A. YES.

20 Q. AND THAT HAS BEEN STATED AS PART OF THE GSU POLICY FOR  
21 YEARS, CORRECT?

22 A. TO THE BEST OF MY KNOWLEDGE, YES.

23 Q. AND, INDEED, GSU POLICY FOR YEARS HAS INDICATED THAT  
24 THE PURPOSE OF PHYSICAL RESERVES IS TO MAKE VARIOUS COPIES OF  
25 SUPPLEMENTARY MATERIALS AVAILABLE TO STUDENTS IN A SPECIFIC

1 COURSE, CORRECT?

2 A. YES.

3 Q. NOW, WITH RESPECT TO REQUIRED READINGS, IT WAS ALSO  
4 YOUR VIEW, WAS IT NOT, THAT USES OF EXCERPTS OF COPYRIGHTED  
5 READINGS FOR PURPOSES OF COURSE READING MATERIALS REQUIRED THE  
6 FACULTY MEMBER TO OBTAIN PERMISSION FROM THE COPYRIGHT OWNER,  
7 CORRECT?

8 A. IN SOME INSTANCES, YES.

9 Q. IN SOME INSTANCES OR IN ALL INSTANCES?

10 A. IN SOME INSTANCES.

11 MR. RICH: IF I MAY HAVE A COPY OF THE WITNESS'S  
12 DEPOSITION. MAY I APPROACH, YOUR HONOR?

13 THE COURT: YES.

14 BY MR. RICH:

15 Q. I AM GOING TO ASK THAT WE -- TURN YOUR ATTENTION TO  
16 PAGE 56 BEGINNING AT LINE TWO, PLEASE. IF WE COULD PLAY  
17 THIS SEGMENT, PLEASE, BEGINNING AT 46 LINE 2.

18 MR. SCHAETZEL: OBJECTION, YOUR HONOR.

19 (WHEREUPON, THE VIDEOTAPED DEPOSITION WAS PLAYED.)

20 "Q. WHAT IS YOUR UNDERSTANDING  
21 ABOUT THE APPLICABILITY OF THE  
22 GUIDANCE PROVIDED?"

23 THE COURT: DID YOU HAVE AN OBJECTION, MR.  
24 SCHAETZEL?

25 MR. SCHAETZEL: I DID. I BELIEVE THE QUESTION ABOUT

1 TO BE ASKED IS GOING TO GO RATHER THAN TO THE SUBJECT ON THE  
2 TABLE RIGHT NOW, IT IS GOING TO GO TO COURSEPACKS. THAT  
3 WOULD EXCEED THE SCOPE OF ANY DIRECT QUESTIONING AND WOULD BE  
4 DIRECTED TO IRRELEVANT SUBJECT MATTER, SO WE OBJECT TO THAT  
5 FOR THE USE OF THIS PURPOSE.

6 THE COURT: I DON'T REALLY CARE ABOUT THE EXCEEDING  
7 THE SCOPE PART. THAT DOESN'T MATTER TO ME ONE WAY OR THE  
8 OTHER. ARE YOU SAYING IT DOESN'T REALLY GO TO IMPEACHMENT  
9 BECAUSE THIS IS RELATED TO COURSEPACKS?

10 MR. SCHAEZEL: YES, MA'AM.

11 MR. RICH: YOUR HONOR, IT WAS REALLY AN INTEGRATED  
12 SERIES OF ANSWERS.

13 THE COURT: I WILL ALLOW IT, GO AHEAD.  
14 (WHEREUPON, THE VIDEOTAPED DEPOSITION WAS PLAYED.)

15 "Q. WHAT IS YOUR UNDERSTANDING  
16 ABOUT THE APPLICABILITY OF THE  
17 GUIDANCE PROVIDED AND INDEED OF THE  
18 CHECKLIST --

19 A. UH-HUH (AFFIRMATIVE RESPONSE).

20 Q -- - TO THE CREATION OF  
21 COURSEPACKS?

22 A. THERE IS NO LINK. A COURSEPACK  
23 IS A -- IS LIKE A TEXTBOOK THAT IS  
24 CREATED AND SOLD, AND SO THERE'S  
25 NOT A NEED -- I MEAN YOU MUST GET

1           COPYRIGHT PERMISSION TO MAKE THE  
2           COPIES AND TO SELL THEM.

3           Q.   AND WHY IS IT THAT YOU HAVE THAT  
4           UNDERSTANDING THAT THE COPYRIGHT LAW  
5           WOULD REQUIRE THAT? IS IT BECAUSE  
6           WHAT HAS BEEN CREATED IS TANTAMOUNT  
7           TO A TEXTBOOK?

8           A.   IT IS THAT ITS REQUIRED MATERIAL  
9           FOR A CLASS, AS OPPOSED TO  
10          SUPPLEMENTAL MATERIAL, AND STUDENTS  
11          ARE REQUIRED TO PURCHASE IT FOR THAT  
12          COURSE."

13 (WHEREUPON, THE VIDEOTAPED DEPOSITION ENDED.)

14 BY MR. RICH:

15        Q.    DO YOU RECALL GIVING THOSE ANSWERS?

16        A.    I DO.

17        Q.    NOW, YOU HAVE ALSO, I TAKE IT, AGREE THAT WITH RESPECT  
18 TO REQUIRED READINGS AND EVEN IF SUCH READINGS WERE BUNDLED  
19 INTO COURSEPACKS, IT IS IMMATERIAL WHAT FORM THOSE  
20 COURSEPACKS MIGHT TAKE PAPER VERSUS ELECTRONIC IN TERMS OF  
21 PERMISSION REQUIREMENTS, CORRECT?

22        A.    CORRECT.

23        Q.    SO THAT SO LONG AS THE READINGS, HOWEVER THEY ARE  
24 ASSEMBLED OR COLLECTED OR DISTRIBUTED ENTAIL REQUIRED  
25 READINGS, YOUR VIEW HAS BEEN THAT THEY REQUIRE PERMISSION

1 FROM THE COPYRIGHT OWNER TO BE UTILIZED AS COURSE READINGS,  
2 CORRECT?

3 A. AS STATED IN MY DEPOSITION, YES.

4 Q. AND ALSO YOUR VIEW, STATED IN YOUR DEPOSITION, THAT  
5 SUCH PERMISSIONS ARE REQUIRED NO MATTER WHAT THE SIZE OF THE  
6 COMPONENT READINGS MIGHT BE, THAT WOULD EITHER BE PHYSICALLY  
7 AS COLLECTED IN A VILLOBOUND COURSEPACK OR SEPARATELY THROUGH  
8 ELECTRONIC FILES BE OFFERED TO CLASSES OF STUDENTS, CORRECT?

9 A. AS STATED IN MY DEPOSITION, YES.

10 Q. NOW, AS PART OF ITS ANNUAL BUDGET, I THINK YOU  
11 TESTIFIED, THAT THE GSU LIBRARY, LET'S STAY WITH '09, PAYS  
12 SUBSCRIPTION FEES TO A NUMBER, AMONG OTHERS, OF JOURNAL  
13 PUBLISHERS ENABLING THE UNIVERSITY AND ITS STUDENTS AND ITS  
14 FACULTY TO ACCESS THOSE JOURNALS ELECTRONICALLY; IS THAT  
15 CORRECT?

16 A. THAT'S CORRECT.

17 Q. YOU SAID THERE WERE DATABASES AND E-BOOKS AS WELL?

18 A. YES.

19 Q. I THINK YOUR TESTIMONY INDICATES THAT THAT ACTIVITY  
20 COMPRISES A SIGNIFICANT PART OF THE LIBRARY'S TOTAL BUDGET,  
21 CORRECT?

22 A. YES.

23 Q. AND I BELIEVE YOU TESTIFIED THAT, IF I AM CORRECT, IT  
24 IS ALMOST, IT IS A FOUR-TO-ONE RATIO, APPROXIMATELY, OF THE  
25 SEGMENT OF THE LIBRARY BUDGET THAT GOES TO COLLECTIONS, DID I

1 UNDERSTAND THAT CORRECTLY?

2 A. IT WAS A FOUR-TO-ONE.

3 Q. FOUR MILLION DOLLARS?

4 A. FIVE MILLION GOES TO COLLECTIONS, FOUR MILLION OF IT  
5 LARGELY TO ELECTRONIC DATABASES, ERESOURCES, ONE MILLION TO  
6 MONOGRAPHS.

7 Q. AND FOCUSING ON THE ELECTRONIC SUBSCRIPTIONS, I TAKE IT  
8 THAT THOSE SUBSCRIPTIONS AFFORD GSU A LICENSE AMONG WHATEVER  
9 ELSE THEY AUTHORIZE TO USE THE COPYRIGHTED CONTENT IN  
10 DIGITIZED ELECTRONIC FORM?

11 A. THEY DO.

12 Q. INCLUDING IN RELATION TO COURSE OFFERINGS TO STUDENTS,  
13 CORRECT?

14 A. YES.

15 Q. AND, INDEED, PART OF THE PREMISE OF THE NEW POLICY, I  
16 BELIEVE YOU TESTIFIED, WAS TO UTILIZE THAT EXISTING  
17 INVESTMENT, AS IT WERE, BY REQUIRING FACULTY FIRST TO INQUIRE  
18 OF THE LIBRARY STAFF AS TO WHETHER A PARTICULAR PIECE OF  
19 CONTENT IS ALREADY SUBJECT TO SUCH A LICENSE, CORRECT?

20 A. YES.

21 Q. IN ORDER TO ALLOW A LINK TO THAT CONTENT TO BE PROVIDED  
22 ON THE ERES COURSE PAGE, RIGHT?

23 A. YES.

24 Q. AND THEREBY, IN ESSENCE, BENEFIT FROM THAT INVESTMENT  
25 OF THAT INTELLECTUAL PROPERTY, CORRECT?

1 A. YES.

2 Q. NOW SO I AM CORRECT, AM I NOT, THAT THE STATED POLICY  
3 DEVELOPED BY THE COMMITTEE ON WHICH YOU WERE A PART REQUIRES  
4 FACULTY MEMBERS, LET'S STAY WITH JOURNAL ARTICLES FOR A  
5 MOMENT, I THINK THAT IS THE SPECIFIC ARTICULATION OF THE  
6 POLICY DOCUMENTS, REQUIRES AS A FIRST MATTER, AS A DEFAULT  
7 PROPOSITION THAT FIRST THE INQUIRY BE MADE WHETHER A  
8 SUBSCRIPTION TO THIS MATERIAL EXISTS AND IS HELD BY THE  
9 UNIVERSITY OR ANYONE THE UNIVERSITY HAS CONTRACTED WITH,  
10 CORRECT?

11 A. I DON'T BELIEVE SO, NO. I DO NOT THINK IT IS THE  
12 DEFAULT POSITION. I THINK IT IS ONE OF FOUR CHOICES THAT A  
13 FACULTY MEMBER HAS TO MAKE.

14 Q. IS IT NOT YOUR UNDERSTANDING THAT WITH RESPECT TO  
15 PROPOSED POSTINGS OF JOURNALS THAT THE NEW POLICY REQUIRES IN  
16 THE FIRST INSTANCE THAT AN INQUIRY BE MADE OF THE LIBRARY  
17 STAFF AS TO WHETHER AN ELECTRONIC SUBSCRIPTION TO THAT JOURNAL  
18 EXISTS?

19 A. IT WOULD BE A COMPONENT OF THE REQUEST, YES.

20 Q. AND THAT IS BEFORE SOMEBODY WOULD GO THROUGH, IN  
21 THEORY, A FAIR USE CHECKLIST OR A FAIR USE ANALYSIS AS TO THAT  
22 BODY OF MATERIAL, CORRECT?

23 A. YES.

24 Q. SO WHEN I SAID DEFAULT, I AM SORRY, I WAS IMPRECISE.  
25 BY THAT I MEANT THE INITIAL STEP IS TO INVESTIGATE THE

1 AVAILABILITY OF A LICENSE FIRST, CORRECT?

2 A. YES.

3 Q. AND IF -- BUT ONLY IF THOSE LICENSES DON'T EXIST DOES  
4 THE PROCEDURE CALL FOR THE FACULTY MEMBER, IF HE OR SHE  
5 WISHES, TO DEVELOP A FAIR USE ANALYSIS BY USING THE CHECKLIST  
6 TO DETERMINE NOTWITHSTANDING THE ABSENCE OF SUCH A LICENSE  
7 THAT IT MIGHT STILL BE AVAILABLE WITHOUT PERMISSION AS A FAIR  
8 USE, CORRECT?

9 A. YES.

10 Q. ON THE OTHER HAND, WHEN IT COMES TO SCANNING AND  
11 UPLOADING COPYRIGHTED EXCERPTS OF BOOKS, FOR EXAMPLE, OF THE  
12 TYPE THAT ARE IN EVIDENCE HERE AND THAT YOU HAVE PATIENTLY SAT  
13 THROUGH LOTS OF TESTIMONY CONCERNING, THE FIRST STEP THAT IS  
14 PRESCRIBED BY THE NEW POLICY IS TO ASK THE FACULTY MEMBER TO  
15 CONDUCT A FAIR USE ANALYSIS, CORRECT?

16 A. IT IS ONE OF THE FOUR STEPS. ONE OF THE STEPS IS TO  
17 LOOK AND SEE IF WE HAVE THE LICENSED CONTENT AVAILABLE. SO,  
18 IF WE HAVE A BOOK THAT HAS BEEN LICENSED IN THAT WAY, THAT  
19 WOULD BE A STEP.

20 Q. I'M SORRY, I DIDN'T MEAN TO INTERRUPT YOU.

21 A. ALL RIGHT.

22 Q. BUT ASSUMING, AS IS THE CASE WITH A PREDOMINANT NUMBER  
23 OF BOOK EXCERPTS, I ASSUME YOU WOULD AGREE THERE DOESN'T EXIST  
24 AN EQUIVALENT ELECTRONIC DATABASE, THE FACULTY MEMBER IS  
25 AUTHORIZED TO MOVE DIRECTLY TO A FAIR USE ANALYSIS AS OPPOSED,

1 FOR EXAMPLE, TO EXPLORING THE POSSIBILITY OF OBTAINING  
2 PERMISSION TO SECURE RIGHTS TO USE THE MATERIAL, CORRECT?

3 A. IT IS ONE OF THE FOUR CHOICES THAT THEY HAVE, YES.

4 Q. NOW, IT IS DONE, I TAKE IT, IN CIRCUMSTANCES AS HAS  
5 BEEN STIPULATED IN THIS CASE WHERE NO MONEY HAS BEEN MADE  
6 AVAILABLE BY THE LIBRARY OR GSU IN GENERAL TO SECURE  
7 COMPARABLE ELECTRONIC USE RIGHTS WITH RESPECT TO SUCH BOOK  
8 EXCERPTS, CORRECT?

9 A. WE ARE PURCHASING ELECTRONIC USE RIGHTS FOR BOOK  
10 EXCERPTS WHEN THEY ARE AVAILABLE.

11 Q. AM I NOT CORRECT THAT GSU HAS NO BUDGET FOR AND HAS NO  
12 PLANS TO BUDGET FOR PERMISSIONS FOR POSTINGS OF ERES MATERIALS  
13 FOR WHICH THE UNIVERSITY HAS NOT ALREADY SECURED ELECTRONIC  
14 RIGHTS LICENSES?

15 A. YES.

16 Q. NOW YOU TESTIFIED IN RESPONSE TO MR. SCHAEZEL THAT  
17 THE UNIVERSITY UNDER THE NEW POLICY HAS PUT IN LOTS OF -- IS  
18 PLAYING A FACILITATING ROLE, IS PREPARED TO PLAN A  
19 FACILITATING ROLE IN SECURING PERMISSIONS FOR COPYRIGHTED  
20 CONTENT, DO YOU REMEMBER THAT DISCUSSION?

21 A. YES.

22 Q. HE POINTED YOU TO SEVERAL PAGES IN THE BINDER ABOUT  
23 THAT?

24 A. YES.

25 Q. AND HE MADE REFERENCE TO CCC AND SO FORTH. NOW, MY

1 QUESTION TO YOU IS, HOW MANY TIMES WAS THAT SERVICE AVAILED  
2 OF BY A PROFESSOR PROPOSING TO POST MATERIAL TO THE ERES  
3 SERVER IN 2009?

4 A. I HAVE NO WAY OF KNOWING THAT.

5 Q. YOU DON'T KNOW SITTING HERE?

6 A. NO.

7 Q. YOU KNOW OF A SINGLE PERMISSION REQUEST WAS PROPOSED BY  
8 THE LIBRARY STAFF?

9 A. I DON'T KNOW AND NO ONE I WOULD KNOW.

10 Q. SITTING HERE TODAY, YOU DON'T KNOW IF ANY WERE ACTUALLY  
11 ACTIVATED, CORRECT?

12 A. YES.

13 Q. HAD IT BEEN ACTIVATED, I TAKE IT, WE HAVE JUST  
14 ESTABLISHED THE LIBRARY WOULD HAVE HAD NO BUDGET TO ASSIST OR  
15 UNDERWRITE OR PAY FOR ANY PERMISSION THAT WOULD HAVE BEEN  
16 SECURE, CORRECT?

17 A. CORRECT.

18 Q. YOU ALSO MADE REFERENCE TO CERTAIN KNOWLEDGE OF GSU'S  
19 RELATIONS WITH THE COPYRIGHT CLEARANCE CENTER IN 2009?

20 A. YES.

21 Q. I TAKE IT THAT IS INFORMATION YOU WERE RECENTLY  
22 APPRISED OF?

23 A. IT WAS.

24 Q. BUT AT THE TIME OF YOUR DEPOSITION, AM I CORRECT, YOU  
25 SAID YOU HAD HAD NO DEALINGS WITH CCC FOR MORE THAN 20 YEARS,

1 CORRECT?

2 A. THAT'S TRUE.

3 Q. OTHER THAN HEARSAY, YOU KNEW OF NO DEALINGS BY YOUR  
4 LIBRARY STAFF?

5 A. THAT'S TRUE.

6 Q. NOW, YOU MENTIONED THAT CERTAIN PAYMENTS YOU HAVE BEEN  
7 ADVISED, YOU DON'T KNOW FOR FIRSTHAND, I TAKE IT, WERE MADE TO  
8 THE SO-CALLED ACADEMIC PERMISSION SERVICE OF CCC?

9 A. THAT WAS MY UNDERSTANDING.

10 Q. ADVISED ANY PAYMENTS MADE BY GSU IN CONNECTION WITH THE  
11 ELECTRONIC COURSE OF CCC?

12 A. NO.

13 Q. "NO" MEANING YOUR UNDERSTANDING IS THERE WERE NONE?

14 A. MY UNDERSTANDING THERE WERE NONE.

15 Q. WITH RESPECT TO ANY PAYMENTS THAT MIGHT HAVE BEEN MADE  
16 WITH CCC IN CONNECTION WITH THE CREATION OF COURSEPACKS,  
17 WHETHER INTERNALLY BY THE BOOK STORE OR CORNER COFFEE SHOP,  
18 WHAT IS YOUR KNOWLEDGE OF THAT IN RELATION TO GSU?

19 A. I HAVE NO KNOWLEDGE OF THAT.

20 Q. YOU DON'T KNOW THAT NO PAYMENTS WERE MADE FOR THOSE?

21 A. I DON'T KNOW THAT ANY PAYMENTS WERE MADE.

22 Q. YOU DON'T KNOW -- LET ME PHRASE IT DIFFERENTLY, ASK THE  
23 QUESTION DIFFERENTLY. IF IN FACT PAYMENTS FOR SUCH  
24 COURSEPACKS HAVE BEEN MADE, THAT IS SOMETHING YOU DON'T KNOW  
25 ABOUT?

1 A. THERE WOULD BE NO REASON FOR ME TO KNOW THAT.

2 Q. NOW THE TOPIC OF HOW TO FUND PERMISSIONS FOR WORKS  
3 FOUND TO EXCEED FAIR USE UNDER THE NEW POLICY WASN'T  
4 EXPLICITLY DISCUSSED BY THE COMMITTEE OVER WHICH YOU WERE A  
5 PART, WAS IT?

6 A. NO.

7 Q. AND THAT COMMITTEE, LIKEWISE, ESTABLISHED NO  
8 PROCEDURES, DID IT, FOR FACILITATING, OBTAINING SUCH  
9 PERMISSIONS FOR POSTING ELECTRONIC COURSE CONDUCT, CORRECT?

10 A. OTHER THAN THE CONTENT THAT WAS INCLUDED IN THE POLICY  
11 AS TO WHAT THE AGENCIES WERE AND KIND OF SAMPLES OF HOW TO DO  
12 IT.

13 Q. YOU WOULD ACKNOWLEDGE THAT IT WOULD BE AT LEAST  
14 POSSIBLE, WOULD IT NOT, FOR GSU TO LEVY A STUDENT FEE TO  
15 COVER COPYRIGHT PERMISSIONS, IT IS AT LEAST POSSIBLE, RIGHT?

16 A. IT IS. ANYTHING IS POSSIBLE, YES.

17 Q. NOW, AM I CORRECT THAT AMONG THE STUDENT ASSESSMENTS  
18 THAT ALREADY EXIST AT GSU IS SOMETHING CALLED A LIBRARY FEE?

19 A. YES.

20 Q. AM I CORRECT THAT THAT RUNS 35 DOLLARS A SEMESTER?

21 A. IT DOES.

22 Q. NOW, I AM GOING TO READ YOU FROM THE GSU WEBSITE THE  
23 DESCRIPTION OF THAT LIBRARY FEE AND ASK YOU IF YOU CAN  
24 CORROBORATE IT IS AN ACCURATE STATEMENT OF WHAT IT  
25 COMPREHENDS.

1 QUOTE, A LIBRARY FEE WAS INSTITUTED  
2 IN 2004 FOR MAJOR IMPROVEMENTS TO  
3 THE LIBRARY. RENOVATIONS ARE BEING  
4 MADE TO SERVE THE GROWING STUDENT  
5 BODY, AND PROVIDE SERVICES IN DEMAND  
6 BY STUDENTS. IMPROVEMENTS INCLUDE  
7 EXPANSION OF GROUP STUDY ROOMS, AN  
8 EXPANDED BRIDGE WITH MORE WORK  
9 SPACE, ADVANCED TECHNOLOGY, AN  
10 ENHANCED SPECIAL COLLECTIONS  
11 SECTION, AND AREAS TO ENCOURAGE  
12 COLLABORATIVE LEARNING AND  
13 INSTRUCTIONS, END QUOTE.

14 IS THAT CORRECT, TO YOUR KNOWLEDGE?

15 A. CORRECT TO MY KNOWLEDGE. IT PREDATES WHEN I WAS AT  
16 GSU, BUT, YES.

17 Q. THAT IS AT THE RATE OF 35 PERCENT PER STUDENT PER  
18 ACADEMIC TERM?

19 A. CORRECT.

20 Q. I TAKE IT THERE WAS ALSO AT GSU A STUDENT LEVY WHICH IS  
21 STYLED A TECHNOLOGY FEE?

22 A. THERE IS.

23 Q. AM I CORRECT THAT THAT IS IN THE AMOUNT OF 85 DOLLARS  
24 PER ACADEMIC TERM?

25 A. I DON'T KNOW THAT FOR SURE, BUT THAT SOUNDS REASONABLE.

1 Q. OKAY. AND ACCORDING TO THE GSU WEBSITE QUOTE, THE  
2 TECHNOLOGY FEE IS USED PRIMARILY TO BENEFIT STUDENTS TO ASSIST  
3 THEM IN MEETING THE EDUCATIONAL OBJECTIVES OF THEIR ACADEMIC  
4 PROGRAM BY PROVIDING ACCESS TO COMPUTERS, SOFTWARE,  
5 DATABASES, NETWORKS, AND OTHER SERVICES, DOES THAT SOUND  
6 RIGHT TO YOU?

7 A. IT DOES.

8 Q. AM I CORRECT -- WERE YOU IN COURT WHEN EXCERPTS FROM  
9 THE TESTIMONIAL DEPOSITION OF PRESIDENT BECKER WAS TAKEN  
10 EARLIER IN THIS CASE?

11 A. YES.

12 Q. AM I CORRECT IN RECALLING HE SAID THE TOTAL STUDENT  
13 FEES ON A SEMESTER BASIS RUNS AROUND 800 DOLLARS AT GSU  
14 CURRENTLY?

15 A. I REMEMBER HIM TALKING ABOUT THAT, THAT HE WAS A  
16 LITTLE BIT VAGUE ON THE AMOUNT PER YEAR.

17 Q. WHAT IS YOUR UNDERSTANDING?

18 A. I HAVE NO IDEA SPECIFICALLY WHAT IT IS, BUT IT IS  
19 SIZABLE.

20 Q. AND WERE YOU ALSO IN COURT TO HEAR HIM TESTIFY THAT GSU  
21 RECENTLY INCREASED STUDENT FEES BY ABOUT 90 DOLLARS PER TERM  
22 TO SUPPORT GSU'S NEW FOOTBALL PROGRAM?

23 A. YES.

24 Q. NOW, WERE YOU ALSO IN COURT TO HEAR MS. ARMSTRONG OF  
25 CCC TESTIMONY?

1 A. I WAS.

2 Q. DO YOU RECALL HER ESTIMATING THAT AN ANNUAL CCC BLANKET  
3 LICENSE, IF OFFERED TODAY TO GEORGIA STATE UNIVERSITY AND ITS  
4 FACULTY AND STUDENTS COVERING ACCESS TO SEVERAL MILLIONS OF  
5 COPYRIGHTED WORKS, WOULD RUN GSU IN THE NEIGHBORHOOD OF ABOUT  
6 \$3.75 ANNUALLY, DO YOU RECALL THAT?

7 A. NOT \$3.75.

8 Q. DO YOU RECALL HER TESTIFYING THAT THE OVERALL COST,  
9 ALL IN FOR A YEAR, WOULD BE ABOUT \$114,000?

10 A. I DO RECALL THAT.

11 Q. I BELIEVE I WILL REPRESENT TO YOU, WE CALCULATED, DID  
12 THE MATH ON IT, ASSUME POPULATION OF STUDENTS OF ABOUT 30,000,  
13 THAT IS HOW WE ARRIVED OR SHE DERIVED 3.75.

14 A. I UNDERSTOOD YOU TO SAY THE WHOLE FEE WAS 3.75.

15 Q. NOT EVEN CCC --

16 A. I WAS SURPRISED.

17 Q. YEAH. SURPRISED?

18 A. THAT YOU THOUGHT IT WAS 3.75.

19 Q. NOW MY QUESTION TO YOU IS, DO YOU HAVE ANY REASON TO  
20 BELIEVE THAT SUCH A MODEST ADDITIONAL CHARGE TO THOSE ALREADY  
21 INCURRED BY GSU STUDENT BODY TO SUPPORT COPYRIGHTED CONTENT  
22 WOULD BE EITHER AN UNREASONABLE OR UNSUSTAINABLE ONE?

23 A. I BELIEVE IT WOULD BE UNSUSTAINABLE, YES.

24 Q. AS OPPOSED TO A 90 DOLLAR TERM FOOTBALL FEE?

25 A. YES.

1 Q. AND 85 DOLLAR TERM TECHNOLOGY FEE?

2 A. YES. I WOULD BE GLAD TO PROVIDE CONTEXT TO BOTH OF  
3 THOSE.

4 Q. I AM SURE MR. SCHAETZEL WILL PROVIDE YOU AN  
5 OPPORTUNITY.

6 A. YES. YES, SIR.

7 Q. AND 35 DOLLAR LIBRARY FEE?

8 A. YES.

9 Q. FOUR MILLION DOLLAR ELECTRONIC JOURNAL FEE?

10 A. YES.

11 Q. FIVE MILLION DOLLAR CONTENT ACQUISITION FEE?

12 A. YES.

13 Q. IN YOUR VIEW, AND I TAKE IT THAT OF THE COMMITTEE OF  
14 WHICH YOU WERE A PART, IS THAT THE PERSON WHO CAN BEST  
15 DETERMINE WHETHER A USE IS A FAIR USE IS THE FACULTY MEMBER  
16 TEACHING THE CLASS, CORRECT?

17 A. YES.

18 Q. AND THAT WITH THE POSSIBLE EXCEPTION -- WITH THE  
19 EXCEPTION OF SOMETHING ONE OF YOUR LIBRARY COLLEAGUES  
20 MENTIONED ON DIRECT OF A RED FLAG REVIEW, YOU ACKNOWLEDGE  
21 THAT THERE REALLY IS NO FORM OF ACTIVE SUPERVISION OR AUDITING  
22 OR OTHER REVIEW BY THE LIBRARY STAFF OF THESE FAIR USE  
23 DETERMINATIONS FOR THEIR REASONABLENESS, CORRECT?

24 A. YES.

25 Q. IT IS ALL REPOSED IN THE BELIEF AND THE PROPOSITION, I

1 TAKE IT, THAT THE INDIVIDUAL FACULTY ARE IN THE VERY BEST  
2 POSITION THEMSELVES TO MAKE THEIR BEST, MOST GOOD-FAITH  
3 DETERMINATIONS AS TO WHAT DOES AND DOES NOT CONSTITUTE FAIR  
4 USE. IS THAT AN ACCURATE ENCAPSULATION OF THE POSITION?

5 A. YES.

6 Q. I TAKE IT THAT -- ARE YOU FAMILIAR WITH THE HISTORY OF  
7 THE SO-CALLED RED FLAG REVIEW AS IT HAS BEEN CALLED?

8 A. YES.

9 Q. YOU HAVE NO REASON TO DISAGREE WITH MS. BURTLE  
10 INDICATING THAT IN ALL OF 2009, SHE RECALLED ONE WORK HAVING  
11 BEEN RED-FLAGGED AND THAT WAS BECAUSE IT WAS A VERY  
12 SIGNIFICANT PROPOSED TAKING OF A WORK?

13 A. I BELIEVE WHAT SHE SAID WAS THAT IT WAS BROUGHT TO HER  
14 ATTENTION. I DON'T HAVE ANY KNOWLEDGE OF WHAT WAS REFERRED  
15 TO THE LEGAL AFFAIRS OFFICE. I THINK THAT IS WHAT SHE ALSO  
16 TESTIFIED.

17 Q. AND COULD YOU IDENTIFY FOR THE COURT THE RANGE OF  
18 EXPERIENCE WHICH THE LIBRARY CLERICAL STAFF THAT PROCESSES  
19 ERES REPORTS HAS FROM LOW TO HIGH?

20 A. WELL, TOTAL THEY HAVE PROBABLY 25 OR 30 YEARS OF  
21 EXPERIENCE WORKING IN THE LIBRARY. TWO OF THEM HAVE LIBRARY  
22 DEGREES IN LIBRARY SCIENCE. THEY HAVE BEEN IN THE RESERVE  
23 OFFICE FOR A NUMBER OF YEARS AND ARE FAMILIAR WITH IT.

24 Q. BUT IS IT NOT THE CASE THAT THAT DESK, THE RESERVES  
25 DESK OR ERESERVES DESK, IS POPULATED WITH UNDERGRADUATE

1 STUDENTS FROM TIME TO TIME?

2 A. RARELY, BUT OCCASIONALLY IT COULD BE, YES.

3 Q. HIGH SCHOOL STUDENTS?

4 A. NO.

5 Q. NEVER HIGH SCHOOL STUDENTS?

6 A. I DON'T BELIEVE SO.

7 Q. DO YOU POSSIBLY RECALL IN YOUR DEPOSITION INDICATING IT

8 WOULD BE STAFFERS WITH AS LITTLE AS A HIGH SCHOOL DEGREE?

9 MAYBE I MISSTATED HIGH SCHOOLERS.

10 A. YES.

11 Q. LET ME WITHDRAW THAT AND RE-ASK THE QUESTION.

12 A. YES, IT COULD BE SOMEONE WITH THAT LEVEL OF EDUCATION;

13 UNLIKELY, BUT YES.

14 Q. THAT THE RANGE OF EXPERIENCE IN TERMS OF THE INTERFACE

15 AT THAT DESK IS, AS YOU PUT IT, FROM ALMOST NOTHING ON UP?

16 A. YES.

17 Q. NOW, YOU TESTIFIED ON DIRECT THAT A NUMBER OF MEMBERS

18 OF THE LIBRARY STAFF ATTENDED A TRAINING SESSION CONDUCTED BY

19 MS. HALL SHORTLY AFTER THE NEW POLICY WAS IMPLEMENTED; IS THAT

20 RIGHT?

21 A. YES.

22 Q. AND IS IT CORRECT, TO YOUR RECOLLECTION, THAT AT THIS

23 SEMINAR, THE ONLY EXAMPLE THAT WAS PROVIDED OF THE KIND OF

24 RED FLAG THAT OUGHT TO GET THE ATTENTION OF THE LIBRARY STAFF

25 WAS WHEN SOMEONE PROPOSED THAT AN ENTIRE BOOK BE SCANNED?

1 A. THAT SEEMS LIKELY, YES.

2 Q. AND IN ANY EVENT, THOUGH, YOU WOULD AGREE THAT EVEN  
3 THIS RED FLAG PROCESS IS NOT ALL THAT IMPORTANT AT THE END OF  
4 THE DAY INSOFAR AS WE HAVE ESTABLISHED THAT IT REALLY IS THE  
5 FACULTY MEMBERS' RESPONSIBILITY TO KNOW HOW THE MATERIAL IS  
6 BEING USED IN THE COURSE, CORRECT?

7 A. CORRECT.

8 Q. NOW, IT IS ALSO THE CASE, ISN'T IT, THAT WHILE IN  
9 THEORY A FACULTY MEMBER COULD REACH OUT FOR GUIDANCE OF THE  
10 TYPE YOU TESTIFIED TO ON DIRECT, WHETHER LIBRARY OR THE LEGAL  
11 TEAM, ET CETERA, IN MAKING HIS FAIR USE DETERMINATIONS,  
12 WHETHER HE DOES OR NOT IS ENTIRELY VOLUNTARY, CORRECT?

13 A. YES.

14 Q. SO THAT AS YOU HEARD SEVERAL PROFESSORS TESTIFY, TO THE  
15 EXTENT THEY FEEL CONFIDENT THAT THEY UNDERSTAND WHAT THEY ARE  
16 DOING, THAT THEY UNDERSTAND THE MEANING OF THE CHECKLIST AND  
17 THE UNDERLYING TERMS, THERE IS NO REQUIREMENT THAT THEY REACH  
18 OUT FOR ASSISTANCE, CORRECT?

19 A. THERE IS NO REQUIREMENT. I THINK ON OCCASION THE  
20 LEGAL AFFAIRS OFFICE HAS CONTACTED A FACULTY MEMBER AND  
21 DISCUSSED A QUESTION WITH THEM, BUT I THINK THERE IS NO  
22 REQUIREMENT FOR THE FACULTY MEMBER TO BE PROACTIVE.

23 Q. YOU ARE NOT SUGGESTING THAT THAT OUTREACH, SUCH AS IT  
24 MAY HAVE BEEN, IS DONE WITH ANY REGULARITY?

25 A. I THINK IT IS TRIGGERED BY SOME EVENTS THAT THAT

1 HAPPENED.

2 Q. YOU ARE NOT SUGGESTING THAT IS A COMMON OR FREQUENT  
3 OCCURRENCE?

4 A. I WOULDN'T KNOW.

5 Q. NOW, NOTWITHSTANDING THAT, IT IS LEFT ALMOST COMPLETELY  
6 TO THE FACULTY MEMBER TO MAKE THESE DETERMINATIONS. I TAKE IT  
7 IT WAS THE COMMITTEE'S VIEW THAT THE SOUNDNESS OF THIS  
8 APPROACH PRESUPPOSES THAT FACULTY WILL HAVE SOME EDUCATION AND  
9 TRAINING IN COPYRIGHT, TRUE?

10 A. YES.

11 Q. THAT WAS A COMPONENT THAT WAS VIEWED AS DESIRABLE BY  
12 THE COMMITTEE, YES?

13 A. I BELIEVE SO, YES.

14 Q. AND ONE PURPOSE OF THAT TRAINING, I TAKE IT, WOULD BE  
15 TO PROMOTE SOME DEGREE OF UNIFORMITY IN THE FACULTY'S  
16 APPROACHES TO FAIR USE DETERMINATIONS, CORRECT?

17 A. YES.

18 Q. NOW, TO YOUR KNOWLEDGE, MS. SEAMANS, AS HEAD  
19 LIBRARIAN WITH ULTIMATE SUPERVISORY RESPONSIBILITY OVER THE  
20 IMPLEMENTATION OF THE ERES SYSTEM, HOW MANY OF GSU'S  
21 APPROXIMATELY -- WELL, LET'S SAY 1,100 FACULTY MEMBERS, 1,200  
22 FACULTY MEMBERS HAVE UNDERGONE, UNDERGONE SUCH TRAINING?

23 A. I HAVE NO IDEA.

24 Q. WHAT PERCENTAGE, TO YOUR KNOWLEDGE, OF THE FACULTY WHO  
25 POSTED COPYRIGHTED CONTENT, EITHER ON THE ERES OR THE ULEARN

1 SYSTEMS DURING MAY 2009, SUMMER 2009, OR FALL 2009, UNDERWENT  
2 SUCH TRAINING TO YOUR KNOWLEDGE?

3 A. I HAVE NO IDEA.

4 Q. ARE YOU STILL OF THE VIEW, AS YOU WERE IN 2009, THAT  
5 YOU PERSONALLY, AT LEAST, AREN'T TERRIBLY CONCERNED AT THE END  
6 OF THE DAY ABOUT THE DEGREE OF UNIFORMITY OF OUTCOMES OF THESE  
7 FAIR USE CHECKLIST PROCEDURES ON THE THEORY THAT BAD DECISIONS  
8 THAT MIGHT BE MADE IN EITHER DIRECTION WOULD TEND TO BALANCE  
9 THEMSELVES OUT?

10 A. YES.

11 Q. NOW, IS THIS THE RESULT OF ANY LEGAL ADVICE THAT YOU OR  
12 THIS COMMITTEE RECEIVED?

13 A. NO.

14 Q. AWARE OF ANY PRINCIPLE COPYRIGHT LAW THAT SUPPORTS THAT  
15 KIND OF PREMISE?

16 A. NO, IT IS MORE HUMAN NATURE.

17 Q. I BELIEVE YOU TESTIFIED ON DIRECT THAT ONCE THE  
18 COMMITTEE CONCLUDED ITS FORMULATION OF THE NEW POLICY IT WAS  
19 IMMEDIATELY DISBANDED, RIGHT?

20 A. TO THE BEST OF MY RECOLLECTION, YES.

21 Q. I THINK YOUR COLLOQUIAL PHRASE WAS, "YOU WERE SENT ON  
22 YOUR WAY"?

23 A. YES.

24 Q. IT DIDN'T STICK AROUND TO SEE HOW THE ERES FAIR USE  
25 PROCESS IT HAD PUT IN PLACE WAS WORKING IN PRACTICE; IS THAT

1 CORRECT?

2 A. THAT'S CORRECT.

3 Q. ALSO, TO YOUR KNOWLEDGE, THERE IS NO CENTRAL REPOSITORY  
4 FOR COMPLETED FACULTY FAIR USE CHECKLISTS; IS THAT TRUE?

5 A. TRUE.

6 Q. IN FACT, I THINK YOU TESTIFIED TO MR. SCHAEZEL THAT  
7 IF ONE WAS HANDED TO THE LIBRARY STAFF, IT WOULD BE HANDED  
8 RIGHT BACK?

9 A. YES.

10 Q. INSTEAD, THESE CHECKLISTS ARE SUPPOSED TO BE PRINTED  
11 OUT AND RETAINED BY THE INDIVIDUAL FACULTY MEMBERS, RIGHT?

12 A. YES.

13 Q. SO IT IS REALLY AN HONOR SYSTEM, ISN'T IT?

14 A. YES.

15 Q. WHERE FACULTY POSTING COPYRIGHTED, NONPERMISSIONED ERES  
16 MATERIALS ARE REQUIRED TO FILL OUT A FORM ATTESTING TO HAVING  
17 DONE SO BUT WHERE NO VERIFICATION SYSTEM IN FACT EXISTS; ISN'T  
18 THAT TRUE?

19 A. YES.

20 Q. AND, TO YOUR KNOWLEDGE, IS THERE IS A MINIMUM TIME  
21 PERIOD FOR WHICH FACULTY ARE REQUIRED TO RETAIN THESE  
22 CHECKLISTS?

23 A. I AM NOT AWARE.

24 Q. ALSO, NO ENFORCEMENT MECHANISM DIRECTED TO ENSURING  
25 THAT THESE PROCEDURES ARE CARRIED OUT, IS THERE?

1 A. NO.

2 Q. SO WHETHER OR NOT A FACULTY MEMBER FILLS OUT A  
3 CHECKLIST IS AGAIN A MATTER OF FAITH ON THE PART OF GSU,  
4 CORRECT?

5 A. IT PROBABLY COULD BE ALSO INCLUDED AS PART OF THE HONOR  
6 SYSTEM THAT IS PART OF THE UNIVERSITY, BUT, YES, ABIDING BY  
7 POLICIES THAT ARE PART OF THE UNIVERSITY.

8 Q. AND WHETHER THE CHECKLISTS HAVING BEEN FILLED OUT WERE  
9 RETAINED FOR A REASONABLE PERIOD OF TIME IS ALSO A MATTER OF  
10 FAITH, CORRECT?

11 A. YES.

12 Q. AND THERE IS NO MECHANISM TO ENSURE THAT IN THE GUISE  
13 OF FAIR USE A FACULTY MEMBER HAD NOT BLATANTLY INFRINGED  
14 COPYRIGHT, TRUE?

15 A. TRUE.

16 Q. THERE IS, IN CONTRAST, A SERIES OF DISCIPLINARY  
17 POLICIES AT GEORGIA STATE UNIVERSITY COVERING A BROAD RANGE OF  
18 OTHER FACULTY MISCONDUCT, ISN'T THAT THE CASE?

19 A. YES.

20 Q. INCLUDING FOR PLAGIARISM?

21 A. YES.

22 Q. MISAPPROPRIATION OF FUNDS?

23 A. YES.

24 Q. INAPPROPRIATE RELATIONSHIPS WITH STUDENTS?

25 A. YES.

1 Q. BUT NOT FOR VIOLATING COPYRIGHT LAW?

2 A. THOUGH I BELIEVE IT WOULD FALL UNDER THE UMBRELLA OF  
3 ALL OF THE POLICIES THAT THE UNIVERSITY HAS IN PLACE.

4 Q. THE COMMITTEE, FOR ITS PART, I TAKE IT, DID NOT  
5 PROMULGATE ANY ENFORCEMENT MECHANISMS OR RECOMMEND THEM TO THE  
6 BOARD OF REGENTS; IS THAT CORRECT?

7 A. NO.

8 Q. NOW TURNING TO ULEARN, IT IS ACCURATE, I TAKE IT, THAT  
9 GSU STUDENTS INCREASINGLY ARE ASKING FOR ACCESS TO MATERIALS  
10 THROUGH WHAT IS GENERALLY CALLED COURSE MANAGEMENT SYSTEMS,  
11 YES?

12 A. YES.

13 Q. AND IS ULEARN AN EXAMPLE OF SUCH A COURSE MANAGEMENT  
14 SYSTEM?

15 A. IT IS.

16 Q. AND AS A RESULT OF WHICH, GSU IS EXPERIENCING AN  
17 INCREASED COURSE OF USE FOR MOST COURSES, CORRECT?

18 A. I WOULD SPECULATE, BUT I DON'T KNOW.

19 Q. AT THE TIME OF YOUR DEPOSITION, I WILL REPRESENT TO  
20 YOU, YOU THOUGHT THAT WAS THE CASE, OKAY.

21 IS IT ACCURATE THAT FACULTY MEMBERS CAN POST COURSE  
22 READING MATERIALS FOR THE STUDENTS IN THEIR COURSES VIA ULEARN  
23 AS AN ALTERNATIVE OR SUPPLEMENT TO ERES POSTINGS?

24 A. YES.

25 Q. AND GSU, IN FACT I THINK YOU AGREED WITH MR. SCHAETZEL

1 HAS NO POLICY THAT FAVORS ONE FORMAT OVER THE OTHER FOR  
2 POSTINGS OF COURSE MATERIALS, RIGHT?

3 A. CORRECT.

4 Q. SO THERE IS NO STATED PREFERENCE THAT FACULTY USE  
5 EITHER ERES OR ULEARN FOR THIS PRACTICE?

6 A. YES.

7 Q. YOU UNDERSTAND NEW COPYRIGHT POLICY APPLIES IN EQUAL  
8 FORCE TO SUCH POSTINGS OF ULEARN?

9 A. YES.

10 Q. NOT EVEN A RED FLAG REVIEW BY LIBRARY STAFF FOR ULEARN,  
11 RIGHT?

12 A. CORRECT.

13 Q. SUCH FACULTY MEMBER DETERMINATIONS GO COMPLETELY,  
14 COMPLETELY UNREVIEWED, RIGHT?

15 A. I'M SORRY, I MISSED A WORD.

16 Q. SUCH THAT FACULTY MEMBER DETERMINATIONS AS TO FAIR USE  
17 GO COMPLETELY UNREVIEWED IN RELATION TO ULEARN POSTINGS,  
18 CORRECT?

19 A. CORRECT.

20 Q. NOW, I BELIEVE YOU INDICATED DISCUSSING THE  
21 COMMITTEE'S DELIBERATIONS. YOU THOUGHT IT HAD ITS FIRST  
22 MEETING IN OR AROUND NOVEMBER OF 2008?

23 A. YES.

24 Q. WOULD YOU -- IF I SAY TO YOU THAT THE COMMITTEE CHAIR,  
25 MR. POTTER, TESTIFIED THAT THE FIRST MEETING OCCURRED IN

1 EARLY DECEMBER, DO YOU HAVE ANY REASON TO DISPUTE THAT?

2 A. NO.

3 Q. I TAKE IT YOU RECALL THE COMMITTEE CONCLUDING ITS  
4 DELIBERATIONS IN EARLY FEBRUARY OF 2009, RIGHT?

5 A. OR LATE JANUARY.

6 Q. OR LATE JANUARY. SO ROUGHLY A 60-DAY DELIBERATION  
7 PERIOD, RIGHT?

8 A. RIGHT.

9 Q. NOW, YOU WERE SHOWN A DOCUMENT INVITING YOU TO  
10 PARTICIPATE IN THAT COMMITTEE PROCESS, DO YOU RECALL THAT?

11 A. I DO.

12 Q. FROM MR. NEWSOME?

13 A. YES.

14 Q. AND I TAKE IT HE HAS A LEGAL AFFAIRS POSITION AS A VICE  
15 CHAIR OF THE BOARD OF REGENTS FOR THE STATE?

16 A. I BELIEVE SO.

17 Q. AND I BELIEVE MR. SCHAEZEL READ INTO THE RECORD, I  
18 WON'T DO IT AGAIN, IN THE FIRST PARAGRAPH A REFERENCE TO THE  
19 LITIGATION, NAMELY THIS CASE, WHICH HAD BEEN COMMENCED,  
20 RIGHT?

21 A. YES.

22 Q. SO IT WAS CERTAINLY YOUR UNDERSTANDING, I TAKE IT,  
23 THAT THE IMMEDIATE IMPUDENCE, AT A MINIMUM, FOR THE COMMITTEE  
24 CONVENING WAS THE ADVENT OF THIS LITIGATION, CORRECT?

25 A. THAT WAS WHAT MR. NEWSOME CONVEYED, YES.

1 Q. WITH RESPECT TO WHATEVER ANY OTHER -- LET ME ASK THE  
2 QUESTION THIS WAY. WERE YOU PRIVY TO ALL OF MR. POTTER'S  
3 CONVERSATIONS WITH MR. NEWSOME AT THE OUTSET OF THE COMMITTEE  
4 PROCESS?

5 A. I DON'T KNOW.

6 Q. DO YOU KNOW WHAT MR. NEWSOME MAY HAVE COMMUNICATED TO  
7 MR. POTTER ABOUT THE RATIONALE FOR THE COMMITTEE?

8 A. NO.

9 Q. DID MR. POTTER SHARE ANY OF THAT TO YOU?

10 A. NO.

11 Q. TO YOUR KNOWLEDGE, DID HE SHARE IT WITH OTHER COMMITTEE  
12 MEMBERS?

13 A. I DON'T KNOW.

14 Q. BY THE WAY, YOU DIDN'T BELIEVE MS. HALL WAS A MEMBER OF  
15 THE COMMITTEE. I HAVE BEEN SHOWN WHAT APPEARS AT TAB 15 IN  
16 YOUR BOOK, LET'S JUST CLEAR UP THE RECORD ON THAT, TAKE A  
17 QUICK LOOK AT THAT, PLEASE. DO YOU SEE HER NAME LISTED THERE  
18 THIRD NAME DOWN?

19 A. YES.

20 Q. DOES THAT REFRESH YOUR RECOLLECTION?

21 A. IT DOES.

22 Q. YOU RECALL THAT SAME LETTER FROM MR. NEWSOME -- LET  
23 ME DO THIS DIRECTLY, LET ME GET IT. I GUESS IT IS IN YOUR  
24 BOOK AS DEFENDANT'S TRIAL EXHIBIT 145. IF YOU COULD TAKE A  
25 LOOK AT THE SECOND PARAGRAPH, PLEASE, WHICH STATES IN THE

1 MIDDLE:

2 "AS THE GUIDELINES CURRENTLY REFLECT  
3 ESTABLISHED PRINCIPLES OF COPYRIGHT  
4 LAW, IT WILL NOT BE NECESSARY TO  
5 REWRITE THE GUIDELINES FROM SCRATCH;  
6 RATHER, THE COMMITTEE WILL BE  
7 CHARGED WITH SIMPLY RECOMMENDING  
8 THOSE CHANGES WHICH WILL MORE  
9 ACCURATELY REFLECT ACCEPTABLE USE IN  
10 HIGHER EDUCATION." END QUOTE.

11 DO YOU SEE THAT?

12 A. I DO.

13 Q. AT THE END OF THE DAY, THOUGH, THAT IS NOT WHAT  
14 HAPPENED WITH RESPECT TO CONTINUED USE OF THE PRIOR GUIDE; IS  
15 THAT CORRECT?

16 A. CORRECT.

17 Q. AS YOU TESTIFIED, IT WAS PUT ON IN HISTORICAL ARCHIVE,  
18 YES?

19 A. YES.

20 Q. NOT TO BE USED AS ANY CONTINUING SOURCE OF ADVICE  
21 THROUGH THE GEORGIA SYSTEM?

22 A. NO.

23 Q. SITTING HERE TODAY, YOU DON'T REALLY KNOW WHY THAT IS,  
24 DO YOU?

25 A. THE DISCUSSION FROM THE COMMITTEE WAS THAT IT WOULD BE

1 TOO CONFUSING TO TRY TO PICK AND CHOOSE FROM THE GUIDE AND  
2 INCORPORATE THINGS INTO A POLICY AND IT WOULD BE BETTER TO  
3 START OVER.

4 Q. WHAT UNDERSTANDING, IF ANY, DID YOU DEVELOP AS TO  
5 WHETHER ONE OF THE REASONS THAT THIS DOCUMENT WAS RELEGATED TO  
6 THE ARCHIVES WAS BECAUSE THE ADVISE IT HAD BEEN PROVIDING TO  
7 THE UNIVERSITY SYSTEM OF GEORGIA COMMUNITY WAS NO LONGER  
8 VIEWED AS RELEVANT OR APPROPRIATE?

9 A. I DON'T KNOW.

10 Q. NOW, THE COMMITTEE FACED THE REALITY, DID IT NOT,  
11 THAT SINCE THE TIME OF THE PRIOR GUIDE, WHICH I THINK WAS  
12 EFFECTIVE IN 1997; IS THAT CORRECT?

13 A. I DON'T KNOW.

14 Q. I THINK IT IS STYLED "1997 REGENTS GUIDE." I WILL SAY  
15 TO YOU, SINCE THAT TIME, ENORMOUS CHANGES IN TECHNOLOGY,  
16 ESPECIALLY IN RELATION TO STUDENT APPETITE TO ACCESS FOR  
17 COURSE READINGS ELECTRONICALLY, RIGHT?

18 A. THAT IS A COMPONENT.

19 Q. AS YOU SAID IN YOUR DEPOSITION, SUCH PERVASIVE --

20 A. YES.

21 Q. -- PART OF THAT ASPECT IS ERES SYSTEM?

22 A. YES.

23 Q. I THINK WE HAVE ESTABLISHED THE CORE PRODUCT OF THE  
24 COMMITTEE AT THE END OF THESE DELIBERATIONS WAS THIS FAIR USE  
25 CHECKLIST AS THE BASIS FOR MAKING FACULTY MAKING FAIR USE

1 DETERMINATIONS, CORRECT?

2 A. CORE PRODUCT IMPLIES THAT THAT WAS THE ONLY THING WE  
3 WERE WORKING ON AND I THINK IT WAS THE WHOLE POLICY THAT WAS  
4 OF IMPORTANCE TO US.

5 Q. FAIR ENOUGH. YET THE COMMITTEE NEVER CONSIDERED, DID  
6 IT, THE IMPACT THAT IMPLEMENTATION OF THE NEW POLICY OR OF  
7 THE CHECKLIST OR IN COMBINATION WOULD HAVE ON THE NUMBERS OF  
8 UNPERMISSIONED WORKINGS PLACED ON THE ERES SYSTEM; ISN'T THAT  
9 TRUE?

10 A. COULD YOU RESTATE THE QUESTION?

11 Q. THE COMMITTEE, NOTWITHSTANDING RECOGNIZING THIS  
12 EXPLOSION OF TECHNOLOGY MANIFESTED BY THIS GREAT STUDENT  
13 DESIRE FOR ACCESS AND COURSE READINGS ELECTRONICALLY, NEVER  
14 ATTEMPTED TO GAUGE THE IMPACT OF ITS DELIBERATIONS AND ITS  
15 RESULTING POLICY ON NATURAL PRACTICE, DID IT?

16 A. I THINK THAT MAY HAVE BEEN TO SOME EXTENT DELIBERATE  
17 BECAUSE THERE ARE 35 INSTITUTIONS THAT WERE GOING TO HAVE TO  
18 IMPLEMENT THE POLICY AND THEY WERE ALL DIFFERENT, SO IT WAS  
19 GOING TO VERY MUCH BE AN INSTITUTIONAL IMPLEMENTATION. SO NO  
20 WAY FOR THE COMMITTEE TO SET OUT SOMETHING THAT WOULD BE A  
21 ONE-SIZE-FITS-ALL FOR ALL OF THE INSTITUTIONS IN TERMS OF  
22 IMPLEMENTATION.

23 Q. SO THE COMMITTEE ISSUED ITS POLICY, DISBANDED WITHOUT  
24 ANY IDEA, I TAKE IT, WHETHER THE FRUITS OF ITS WORK IN ACTUAL  
25 PRACTICE WOULD RESULT IN AN INCREASE, A DECREASE, OR A LEVEL

1 USE OF UNPERMISSIONED MATERIALS ON THE ERES OR ULEARN SYSTEM,  
2 CORRECT?

3 A. CORRECT.

4 Q. NO TESTS WERE MADE, CORRECT?

5 A. GIVE ME -- I AM NOT SURE WHAT YOU ARE TALKING ABOUT.

6 Q. WAS IT BETA TESTED WITH A SAMPLE OF FACULTY?

7 A. NO.

8 Q. ANY TRIALS OF ANY KIND MADE?

9 A. NO.

10 Q. THE GUIDING PREMISE, I TAKE IT, WAS PUT OUT THESE TOOLS  
11 FOR THE FACULTY AND LET THE FAIR USE CHIPS FALL WHERE THEY  
12 MAY, RIGHT?

13 A. CERTAINLY BASED ON COMMON PRACTICE THROUGHOUT THE  
14 UNITED STATES IN TERMS OF FAIR USE, YES.

15 Q. THAT WAS SO REPRESENTED TO YOU?

16 A. THAT IS A COMPONENT OF THE DELIBERATION, YES.

17 Q. WHAT WAS THE BASIS ON WHICH YOU ULTIMATELY -- THE  
18 COMMITTEE DECIDED THIS IS THE NORM OF NATURAL PRACTICE AROUND  
19 THE UNITED STATES?

20 A. IN REVIEWING WHAT OTHER UNIVERSITIES -- WHAT OTHER  
21 LARGE RESEARCH UNIVERSITY SYSTEMS WERE DOING.

22 Q. YOU PERSONALLY MADE THAT REVIEW?

23 A. WE ALL AS A COMMITTEE LOOKED AT OTHER -- WHAT OTHER  
24 INSTITUTIONS WERE DOING.

25 Q. YOU PERSONALLY MADE THAT REVIEW?

1 A. THE COMMITTEE AS A GROUP LOOKED AT ALL OF THEM.

2 Q. MY QUESTION IS SEPARATE FROM THAT. I AM ASKING, YOU.  
3 AS A COMMITTEE MEMBER, PERSONALLY REVIEWED SUCH POLICIES?

4 A. I LOOKED AT WHAT OTHER INSTITUTIONS ARE DOING, YES,  
5 INDIVIDUALLY, YES.

6 Q. YOU PERSONALLY CONCLUDED THAT THE PROPOSAL THAT WAS  
7 BEING PUT OUT WAS CONSISTENT WITH PRACTICE NATIONALLY?

8 A. IN THE CONTEXT OF DISCUSSION WITH THE OTHER PEOPLE IN  
9 THE COMMITTEE, YES.

10 Q. AND WITH YOUR COUNSEL?

11 A. YES.

12 Q. NOW, CONCERNING FACULTY MEMBERS, I TAKE IT NONE APART  
13 FROM THOSE WHO MAY HAVE SERVED ON THE COMMITTEE WITH YOU WERE  
14 INTERVIEWED TO GET YOUR INPUT ON THE PROPOSED PROCESS,  
15 CORRECT?

16 A. NOT TO MY KNOWLEDGE.

17 Q. NOW, IF YOU WOULD STAY WITH YOUR BINDER, PLEASE TURN  
18 TO DEFENDANT'S TRIAL EXHIBIT 528. THAT IS THE ONE WITH A LOT  
19 OF SUBPARTS TO IT.

20 A. YES.

21 Q. HOW MANY OF THE NEXT MATERIALS, IF YOU BEGIN AT TAB  
22 MATERIAL 16 OF THIS BINDER, WHICH IS THE THIRD-PARTY  
23 MATERIALS?

24 A. UH-HUH (AFFIRMATIVE RESPONSE).

25 Q. HOW MANY OF THESE WHILE YOU WERE ON THE COMMITTEE WERE

1 DISCUSSED IN ONE OR MORE COMMITTEE MEETINGS, THESE  
2 THIRD-PARTY SITES?

3 A. I WOULD SAY THE MAJORITY OF THEM.

4 Q. MAJORITY WERE?

5 A. YES.

6 Q. WAS IT THE INTENT TO INCORPORATE THE CONTENTS, AND TO  
7 THE EXTENT THEY HAD ADVICE AS TO COPYRIGHT CONTAINED IN ALL OF  
8 THESE, AS A FORMAL PART OF THE UNIVERSITY SYSTEM OF GEORGIA'S  
9 NEW POLICY?

10 A. I BELIEVE SO.

11 Q. YES. SO, YOU WERE ASKING QUESTIONS ABOUT THE  
12 COLUMBIA WEBSITE. IS IT YOUR UNDERSTANDING THAT THE  
13 COPYRIGHT RULES OF THE ROAD SET FORTH IN THE COLUMBIA ADVISORY  
14 OFFICE GUIDANCE THAT IS EXCERPTED HERE ARE FORMALLY A PART OF  
15 THE COPYRIGHT POLICIES OF THE UNIVERSITY SYSTEM OF GEORGIA?

16 A. I THINK SO BECAUSE THE DISCUSSION THAT I RECALL FROM  
17 THE COMMITTEE DELIBERATIONS WAS THAT IF WE DID NOT USE CONTENT  
18 THAT WAS READILY AVAILABLE TO US WE WOULD HAVE TO RECREATE  
19 CONTENT AND IT WOULD BE DUPLICATIVE. THERE WAS NO REAL  
20 REASON TO SINCE IT HAD BEEN DONE BY OTHER ENTITIES.

21 Q. LET ME BE A LITTLE MORE CONCRETE. IF YOU TURN TO TAB  
22 21, PLEASE. DO YOU SEE THAT AS SEVERAL PAGES FROM THE  
23 COLUMBIA COPYRIGHT ADVISORY OFFICE?

24 A. YES.

25 Q. DO YOU SEE THERE ARE LINKS TO, AMONG OTHER THINGS,

1 COPYRIGHT IN GENERAL, COPYRIGHT QUICK GUIDE, FAIR USE, FAIR  
2 USE CHECKLIST, COPYRIGHT OWNERSHIP, PERMISSIONS, DO YOU SEE  
3 ALL OF THOSE?

4 A. YES.

5 Q. DID YOU PERSONALLY NAVIGATE THROUGH SOME OR ALL OF  
6 THOSE WHILE YOU WERE ON THE COMMITTEE?

7 A. AT LEAST SOME OF THEM.

8 Q. DID YOU UNDERSTAND AND DO YOU UNDERSTAND TODAY THAT, I  
9 TAKE IT, SOME OF THOSE INCLUDE GUIDANCE AS TO HOW TO EVALUATE  
10 THE FOUR FAIR USE FACTORS, FOR EXAMPLE?

11 A. YES.

12 Q. AND THERE IS EVEN A DIFFERENT -- ARE YOU AWARE THE  
13 CHECKLIST REFERRED TO THERE IS SIMILAR BUT NOT IDENTICAL TO  
14 THAT WHICH WAS ADOPTED BY GEORGIA STATE UNIVERSITY?

15 A. YES.

16 Q. SO --

17 A. OR BY.

18 Q. THE SYSTEM?

19 A. THE SYSTEM.

20 Q. SO, IF I WERE, INSTEAD OF USING THE GEORGIA FORM, IF I  
21 WERE TO TAKE THE COLUMBIA FORM AS A FACULTY MEMBER AT GSU,  
22 WOULD THAT, IN YOUR ESTIMATION, BE A PROPER THING FOR ME TO DO  
23 AND CONSISTENT WITH THE POLICY?

24 A. IT WOULD BE CONSISTENT WITH THE POLICY. IT WOULD  
25 PROBABLY NOT BE THE PREFERRED ACTION THAT WE WOULD HOPE THE

1 FACULTY WOULD TAKE. THEY WOULD HAVE HAD TO GO PAST THE FAIR  
2 USE CHECKLIST THAT GSU SYSTEM CREATED TO GET TO THAT.

3 Q. I THOUGHT I UNDERSTOOD YOU TO SAY THAT ALL ASPECTS OF  
4 THE COLUMBIA POLICY WERE, IN FACT, INCORPORATED INTO THE  
5 UNIVERSITY SYSTEM OF GEORGIA POLICY?

6 A. THE LINKS OUT TO THOSE PAGES ARE PART OF HOW I VIEW  
7 THE POLICY. AND HOW FACULTY USED THE MATERIAL, I THINK, IS  
8 UP TO THEM TO DETERMINE, BUT THEY WOULD HAVE HAD TO HAVE  
9 BYPASSED THE ONE THAT IS THE USG POLICY AND THE FAIR USE  
10 CHECKLIST THAT THE USG SYSTEM HAD PUT INTO PLACE IN ORDER TO  
11 GET TO THAT. SO I THINK THE HOPE WAS THAT THEY WOULD STOP  
12 WHEN THEY GOT THERE AND WOULD ONLY USE THE LINKS OUT TO HELP  
13 THEM MAKE THEIR DETERMINATION.

14 Q. SO WHAT I THINK I AM HEARING YOU SAY IS THESE WERE  
15 DESIGNED AS RESOURCES TO SUPPLEMENT THE FACULTY IN COMPLYING  
16 WITH THE CORE POLICY DOCUMENTS THAT ARE FOUND IN THE FIRST  
17 FIFTEEN TABS HERE; IS THAT CORRECT?

18 A. THE WHOLE POLICY IS A RESOURCE, YES.

19 Q. YES. WHAT I AM TRYING TO UNDERSTAND IS, I PERHAPS  
20 MISUNDERSTOOD THE DIRECT EXAMINATION, WHICH APPEARED TO  
21 SUGGEST THAT THE ENTIRE POLICY QUITE LITERALLY COMPRISES  
22 EVERYTHING, INCLUDING ALL OF THE CONTENT TO WHICH THESE TABS  
23 LINK; IS THAT YOUR UNDERSTANDING?

24 A. YES.

25 Q. THIS IS THE POLICY?

1 A. YES.

2 Q. TAKE A LOOK AT TAB 47. CAN YOU ACTUALLY -- LET'S LOOK  
3 AT TAB 42. CAN YOU DESCRIBE WHAT PART OF THE UNIVERSITY  
4 SYSTEM OF GEORGIA POLICY THE INTERNET MOVIE DATABASES?

5 A. THERE IS A LINK ON THE PERMISSIONS GUIDELINE THAT TALKS  
6 ABOUT GETTING PERMISSION FOR FILM AND SAYS THAT A STARTING  
7 POINT TO DETERMINE WHO IS THE COPYRIGHT HOLDER FOR A FILM  
8 MIGHT BE THE INTERNET MOVIE DATABASE, YES.

9 Q. TAKE A LOOK AT TAB 47. SAME QUESTION AS TO THE C-NET  
10 DATABASE?

11 A. C-NET WOULD BE THE SAME THING FOR SOFTWARE, SO TRY TO  
12 DETERMINE A COPYRIGHT HOLDER FOR SOFTWARE.

13 Q. SO, AGAIN, IT IS A RESOURCE SAYING IF YOU HAVE THE  
14 FOLLOWING TYPE NEED, HERE IS A RESOURCE YOU CAN TURN TO,  
15 CORRECT?

16 A. YES.

17 Q. YOU SEE THAT AS SYNONYMOUS AS BEING A PART OF THE  
18 POLICY ITSELF THAT WAS UNDER -- THAT WAS DEVELOPED BY YOUR  
19 COMMITTEE? I DON'T MEAN TO BE SEMANTICALLY QUIBBLING, I AM  
20 TRYING TO UNDERSTAND.

21 A. FEELS LIKE IT.

22 I THINK THE THINKING OF THE COMMITTEE WAS THAT IF WE WERE  
23 NOT TO USE OTHER RESOURCES, WE WOULD HAVE TO CREATE OUR OWN  
24 LIST OF THESE RATHER THAN LINKING OUT TO THEM SO THAT IT WAS  
25 USING RESOURCES THAT WERE ALREADY AVAILABLE.

1 Q. NOW, YOU UNDERSTAND THAT TRANSFORMATIVENESS IS AN  
2 IMPORTANT CONSIDERATION UNDER FACTOR ONE OF A FAIR USE  
3 ANALYSIS, TRUE?

4 A. IT IS ONE OF SEVERAL THAT ARE IMPORTANT, YES.

5 Q. BUT IT IS, IN ITS OWN RIGHT, AN IMPORTANT  
6 CONSIDERATION, TRUE?

7 A. AS THEY ALL ARE.

8 Q. AND YOU AGREE, DO YOU NOT, THAT THE PHOTOCOPYING OR  
9 THE ELECTRONIC DUPLICATION OF A WORK FOR ERES OR ULEARN  
10 DISTRIBUTION IS NOT TRANSFORMATIVE WITHIN THE MEANING OF  
11 COPYRIGHT LAW?

12 A. I THINK IT PROBABLY COULD BE, BUT I THINK IN MOST  
13 INSTANCES IT IS NOT.

14 Q. THAT A TRANSFORMATIVE USE IS ONE INVOLVING TAKING THE  
15 ORIGINAL AND TURNING IT INTO SOMETHING NEW, CORRECT?

16 A. YES.

17 Q. TRANSFORMING IT BY ADDING SOMETHING NEW TO IT, RIGHT?

18 A. GENERALLY, YES.

19 Q. IN CONTRAST TO AN EXAMPLE, I TAKE IT, LIBRARIANS  
20 COMMONLY USE AS THE QUINTESSENTIAL TRANSFORMATIVENESS EXAMPLE,  
21 WHICH IS THE FACTS IN THE 2 LIVE CREW PARODY CASE?

22 A. GOT TO ADMIT IT IS COMPELLING.

23 Q. THAT IS, IN FACT, THE EXAMPLE YOU PROVIDED ME AT THE  
24 DEPOSITION?

25 A. I DID.

1 Q. AND THE NONTRANSFORMATIVE NATURE OF STRAIGHTFORWARD  
2 PHOTOCOPYING OR ELECTRONIC COPYING OF COURSE READING MATERIALS  
3 IS NOT AFFECTED BY SIMPLY COMBINING A SERIES OF PHOTOCOPIES OR  
4 ELECTRONIC COPIES INTO A PAPER OR ELECTRONIC ANTHOLOGY,  
5 CORRECT?

6 A. I DON'T THINK YOU COULD SAY -- I DON'T THINK I COULD  
7 SAY THAT WITH ANY SURETY, NO, PARTICULARLY HAVING HEARD SOME  
8 OF THE TESTIMONY FROM THE FACULTY DURING THE LAST TWO WEEKS  
9 WHEN THEY TALK ABOUT THEIR USES OF CONTENT.

10 Q. BUT AT LEAST AS OF 2009 THAT WAS YOUR VIEW?

11 A. AS OF 2009, YES.

12 Q. I WILL REPRESENT TO YOU THAT LESS THAN ONE-THIRD,  
13 ASSUME IT IS ACCURATE, LESS THAN ONE-THIRD OF THE CHECKLISTS  
14 THAT HAVE COME INTO EVIDENCE DURING THIS TRIAL CHECKED THE BOX  
15 NONTRANSFORMATIVE, OKAY. LESS THAN ONE IN THREE?

16 A. I WILL ACCEPT THAT.

17 Q. ASSUMING THAT TO BE ACCURATE, DOES THAT GIVE YOU SOME  
18 DEGREE OF CONCERN AS TO HOW WELL-INFORMED FACULTY MEMBERS ARE  
19 AS TO BASIC COPYRIGHT AND FAIR USE CONCEPTS?

20 A. NO.

21 Q. IT DOESN'T TROUBLE YOU AT ALL?

22 A. NO.

23 Q. YOU ARE ALSO AWARE THAT FACTOR THREE ASSESSES THE  
24 AMOUNT AND SUBSTANTIALITY OF THE TAKING, CORRECT?

25 A. YES.

1 Q. AND YOUR UNDERSTANDING OF YEARS OF EXPERIENCE AND WORK  
2 ON THE COMMITTEE IS THAT THERE IS NO NUMERICAL PERCENTAGE  
3 BELOW WHICH CONSTITUTES A SAFE HARBOR?

4 A. CORRECT.

5 Q. IN FACT, IF WE LOOK AT THE POWERPOINT SLIDES FROM  
6 MS. HALL'S PRESENTATION IN YOUR BINDER SOMEWHERE, JX 140 --  
7 PARDON ME, DTX 140. IF YOU TURN TO IN THE RIGHT-HAND  
8 BOTTOM PAGE NUMBER 0021146, COPYRIGHT MYTHS, DO YOU SEE THAT?

9 A. YES.

10 Q. DO YOU SEE WHAT THE SECOND BULLET REPORTS AS A  
11 COPYRIGHT MYTH?

12 "IT IS LEGAL TO COPY AS LONG AS YOU  
13 DON'T COPY THE ENTIRETY, PARENS,  
14 MORE THAN 25 PERCENT, 20 PERCENT,  
15 10 PERCENT, ET CETERA, CLOSE  
16 PARENS OF THE WORK."

17 A. I DO.

18 Q. THAT IS CONSISTENT WITH YOUR UNDERSTANDING OF THE WORK,  
19 AS WELL?

20 A. YES.

21 Q. INSTEAD I THINK YOU SAID, THIS ON YOUR DIRECT  
22 TESTIMONY, EACH SITUATION IS DIFFERENT. YOU NEED TO LOOK AT  
23 THE PARTICULAR CIRCUMSTANCES OF THE USE; IS THAT CORRECT?

24 A. YES.

25 Q. SO IF A GSU PROFESSOR BELIEVES THAT, IN AND OF ITSELF,

1 TAKING JUST UNDER TEN PERCENT OR 15 PERCENT OR 20 PERCENT OF A  
2 WORK CONSTITUTES A SAFE HARBOR FOR FAIR USE, YOU WOULDN'T  
3 AGREE WITH THAT, WOULD YOU?

4 A. NOT NECESSARILY.

5 Q. NOT NECESSARILY?

6 A. IT WOULD DEPEND ON THE USE.

7 Q. WHAT IF IT IS A HARD AND FAST LITMUS TEST ADOPTED BY A  
8 PROFESSOR? PROFESSOR RICH SAYS, HERE IS THIS NICE CHECKLIST,  
9 BUT I FEEL PRETTY COMFORTABLE AT THE END OF THE DAY BECAUSE I  
10 KNOW MY TAKING IS LESS THAN 20 PERCENT, IS THAT A PROPER  
11 CONCEPTION OF FACTOR THREE?

12 A. ALONG WITH ALL OF THE OTHER FACTORS THAT THEY HAVE  
13 CONSIDERED, YES.

14 Q. LET'S ASSUME THAT THAT OVERRIDES ANY OF THE OTHER  
15 FACTORS OR DOMINATES THEIR THINKING, WHICH IS THE PREDOMINANT  
16 THOUGHT BEING AS LONG AS I STAY UNDER MY OWN SAFE HARBOR  
17 NUMBER, I AM OKAY, AT LEAST UNDER FACTOR THREE, IS THAT A  
18 PROPER CONCEPTION OF FAIR USE IN YOUR ESTIMATION?

19 A. NO, BECAUSE IT IS TAKING ONE FACTOR BY ITSELF AND  
20 LOOKING AT IT IN ISOLATION. ONE SUBSET OF A FACTOR AND  
21 LOOKING AT IT IN ISOLATION.

22 Q. CONCERNING THE CHECKLIST FACTOR FOUR CONSIDERATIONS,  
23 WHICH IS MARKET HARM AND SO FORTH, DO YOU BELIEVE THAT THE  
24 MOST IMPORTANT ELEMENT WITHIN FACTOR FOUR IS AN EVALUATION OF  
25 THE EFFECT ON THE MARKET OR POTENTIAL MARKET FOR THE WORK,

1 CORRECT?

2 A. I BELIEVE IT IS ONE OF THE FACTORS TO CONSIDER IN  
3 FACTOR FOUR.

4 Q. YOU BELIEVE IT IS THE MOST IMPORTANT FACTOR, DON'T  
5 YOU?

6 A. IT IS ONE OF THE FACTORS.

7 Q. LET'S PLAY AN EXCERPT. I WILL ASK YOU TO TURN TO YOUR  
8 DEPOSITION, PLEASE, AT PAGE 188. I BELIEVE BEGINNING AT  
9 LINE TWO. WE WILL PLAY THAT.

10 (WHEREUPON, THE VIDEOTAPED DEPOSITION WAS PLAYED.)

11 "Q. LOOKING WITHIN FACTOR FOUR, ARE  
12 THERE ONE OR MORE ELEMENTS THAT YOU  
13 THINK DESERVE MORE WEIGHT COMPARED  
14 TO OTHERS?

15 A. BECAUSE AS I'VE SAID I THINK ONE  
16 OF THE THINGS THAT FACULTY MEMBERS  
17 WOULD BE THINKING ABOUT WOULD BE  
18 WHAT THE IMPACT COULD/WOULD BE ON  
19 MATERIALS FOR WHICH THEY HOLD THE  
20 COPYRIGHT. I WOULD THINK A FACULTY  
21 MEMBER WOULD WEIGH MORE THE IMPACT  
22 OR THE EFFECT ON MARKET OR POTENTIAL  
23 MARKET FOR THE COPYRIGHTED WORK.

24 Q. THERE IS NO EXPLICIT GUIDANCE  
25 THAT WOULD REQUIRE THAT, HOWEVER,

1 CORRECT?

2 A. NO.

3 Q. SO THAT IN THEORY IF SOMEONE WAS  
4 DOING THIS SOMEWHAT MECHANICALLY --

5 A. UH-HUH (AFFIRMATIVE RESPONSE).

6 Q. -- YOU COULD FIND YOU COULD MAKE  
7 A JUDGMENT THAT THERE COULD BE A  
8 VERY SIGNIFICANT IMPAIRMENT OF THE  
9 MARKET, YET FIND A MAJORITY OF  
10 OTHER FACTORS FAVORING FAIR USE THAT  
11 COULD LEAD THE FACULTY MEMBER DOING  
12 THE MATH, AS IT WERE, WITHIN  
13 FACTOR FOUR TO SAY, I STILL WIN  
14 FACTOR FOUR, THAT'S FEASIBLE,  
15 CORRECT?

16 A. IT IS FEASIBLE.

17 Q. DO YOU THINK THAT WOULD BE A  
18 DESIRABLE OUTCOME?

19 A. NOT IF I WERE THE HOLDER OF THE  
20 COPYRIGHT, NO."

21 (WHEREUPON, THE VIDEOTAPE DEPOSITION STOPPED.)

22 BY MR. RICH:

23 Q. DO YOU RECALL THAT TESTIMONY?

24 A. I DO.

25 Q. NOW I AM GOING TO REPRESENT TO YOU, AGAIN FROM THE

1 EVIDENCE THAT IS IN THE RECORD OF THIS CASE, THAT NOT A SINGLE  
2 ONE OF THE FAIR USE CHECKLISTS RELATING TO THE JOINT EXHIBIT  
3 WORKS CONTAINS A CHECKMARK IN THE SIGNIFICANTLY IMPAIRS MARKET  
4 OR POTENTIAL MARKET FOR COPYRIGHTED WORK. ASKING YOU TO  
5 ASSUME I AM REPRESENTING TO YOU ACCURATELY. ASSUMING THAT IS  
6 ACCURATE, DOES THAT CONCERN YOU AS TO THE EFFICACY OF THE NEW  
7 POLICY?

8 A. NO.

9 Q. IT DOESN'T BOTHER YOU?

10 A. NO.

11 Q. I TAKE IT THAT YOU WERE IN COURT TO HEAR NUMEROUS  
12 PROFESSORS TESTIFY THAT SUCH CONSIDERATION OF MARKET HARM, AS  
13 THEY MAY HAVE UNDERTAKEN, FOCUSED SOLELY ON THE NOTION OF LOST  
14 SALES, YOU HEARD THAT TESTIMONY, YES?

15 A. I DID.

16 Q. AND NOT POTENTIAL LOST PERMISSIONS INCOME?

17 A. YES.

18 Q. NOTWITHSTANDING WHICH I WILL REPRESENT TO YOU ONLY 13  
19 PERCENT OF THE CHECKLIST IN EVIDENCE MARKED THE BOX LICENSING  
20 OR PERMISSION IS REASONABLY AVAILABLE, DOES THAT TROUBLE YOU?

21 A. NO.

22 Q. NOT AT ALL?

23 A. NO.

24 Q. YOU RESPONDED TO A FEW QUESTIONS FROM MR. SCHAEZEL  
25 ABOUT CONCERNS ABOUT THE INJUNCTION AS YOU UNDERSTOOD IT,

1 PROPOSED INJUNCTION?

2 A. YES.

3 Q. MY FINAL QUESTION TO YOU IS, WERE THIS COURT TO  
4 DETERMINE THAT ONE OR MORE ASPECTS OF THE POLICY UNDER REVIEW  
5 IN FACT IS IN VIOLATION OF COPYRIGHT LAW AND REQUIRED  
6 REMEDIATION, I TAKE IT YOU AND YOUR ENTIRE LIBRARY TEAM WOULD  
7 DO WHATEVER IS NECESSARY TO REMEDIATE IT, CORRECT?

8 A. BY DETERMINATION OF THE COURT, ABSOLUTELY, YES.

9 MR. RICH: THANK YOU VERY MUCH FOR YOUR TIME. I  
10 HAVE NO FURTHER QUESTIONS.

11 THE COURT: ANYTHING ELSE?

12 MR. SCHAEZEL: YES, MA'AM.

13 REDIRECT EXAM

14 BY MR. SCHAEZEL:

15 Q. DEAN SEAMANS, LET ME START BY GIVING YOU AN OPPORTUNITY  
16 TO ANSWER THE QUESTION THAT EVIDENTLY MR. RICH DIDN'T WANT TO  
17 HAVE YOU TO ANSWER OR AT LEAST ONE OF THEM TO GIVE SOME  
18 CONTEXT TO THE FEES THAT HE MENTIONED. HE MENTIONED THERE  
19 WAS A TECHNOLOGY FEE, STUDENT FEE FOR THIS OR THAT. YOU  
20 INDICATED YOU COULD GIVE CONTEXT TO THAT AS OPPOSED TO A  
21 POTENTIAL LICENSE OR SOME FEE BEING PAID FOR A LICENSE?

22 A. WELL, IN TERM OF LIBRARY FEE, IT IS A DEBT SERVICE  
23 FEE. SO IT IS SOMETHING THAT IS PAYING OFF THE RENOVATION TO  
24 THE BUILDING. NONE OF IT COMES TO THE OPERATING BUDGET OF  
25 THE LIBRARY, IT IS PAYING FOR THE RENOVATION THAT TOOK PLACE

1 FOUR YEARS AGO. SO, NONE OF THAT MONEY ACTUALLY COMES TO  
2 THE LIBRARY TO BE SPENT FOR COLLECTIONS OR SERVICES.

3 IN TERMS OF THE WAY FEES ARE ADDED, THERE IS A LONG  
4 PROCESS, BUT IT DOES GET VOTED ON BY STUDENTS AND BY FACULTY  
5 AND THEY HAVE TO AGREE TO THIS. SO IT IS SOMETHING THAT  
6 THERE ACTUALLY WAS, I THINK, IF I RECALL, A THREE DOLLAR  
7 SUSTAINABILITY FEE OR SOMETHING LIKE THAT THAT I BELIEVE GOT  
8 VOTED DOWN, EVEN THOUGH THERE WAS A LOT OF SUPPORT FOR IT.  
9 SO IT IS A VERY MUDDY KIND OF PROCESS THAT IS NOT NEARLY AS  
10 STRAIGHTFORWARD AS SAYING WE ARE GOING TO POP A FEW ON AND ADD  
11 IT AT WHAT IS GOING ON AT THE UNIVERSITY. SO, IT IS NOT  
12 SOMETHING THAT IS JUST KIND OF, LET'S HAVE ANOTHER FEE. IT  
13 GOES THROUGH A WHOLE LOT OF DELIBERATION AND VOTING AND  
14 VETTING AND HOW IT IS GOING TO IMPACT STUDENTS' COSTS. SO IT  
15 IS JUST NOT SOMETHING THAT IS AS STRAIGHTFORWARD AS ADDING A  
16 FEW.

17 Q. WOULD THAT HOLD TRUE WITH THE FOOTBALL FEE THAT WAS  
18 MENTIONED?

19 A. IT WOULD. IT WOULD. I THINK SOME OF THE RATIONALE  
20 FOR THAT, THOUGH, I WAS NOT INVOLVED IN IT, FOOTBALL DOES  
21 ENGAGE THE ALUMNI, IT BRINGS PEOPLE BACK IN THE CAMPUS IN  
22 DIFFERENT WAYS AND RESULTS IN ADDITIONAL CONTRIBUTIONS,  
23 DEVELOPMENT.

24 Q. IN REALITY, THE FOOTBALL TEAM WOULD GENERATE MONEY?

25 A. THAT IS THE HOPE. I WOULD THINK SO.

1 Q. YOU WERE ASKED ABOUT THE RED FLAG POLICY.

2 A. UH-HUH (AFFIRMATIVE RESPONSE).

3 Q. WHY DON'T WE FIRST BE CLEAR. WOULD YOU SAY WHAT IT IS  
4 -- WHAT YOUR UNDERSTANDING IS OF THE SO-CALLED RED FLAG  
5 POLICY?

6 A. IT IS NOT SOMETHING THAT IS ACTUALLY A POLICY. IT IS  
7 SOMETHING I WAS SAYING ABOUT GIVING STAFF THE PERMISSION TO  
8 QUESTION THINGS. IF THEY SEE SOMETHING THAT JUST DOESN'T  
9 SEEM RIGHT, THEY ARE GIVEN PERMISSION TO CONTACT LEGAL, THE  
10 OFFICE OF LEGAL AFFAIRS, AND POINT OUT THAT THERE IS A PROBLEM  
11 OR THEY PERCEIVE A POTENTIAL PROBLEM. SO IT IS SOMETHING  
12 THAT IS JUST PART OF PRACTICE ALMOST IN TERMS OF WHAT WE ARE  
13 ASKING THEM TO DO.

14 Q. AND YOU WERE THE PERSON WHO GAVE THEM, THE LIBRARY  
15 RESERVES PEOPLE, THAT AUTHORITY TO DO THAT, CORRECT?

16 A. I DID, YES.

17 Q. WHAT IS MS. DIMSDALE'S ROLE?

18 A. THEY IS THE PERSON WHO MANAGES THE RESERVE SYSTEM.

19 Q. AND WERE YOU IN COURT WHEN MS. DIMSDALE TESTIFIED THAT  
20 IN THE FALL OF 2009 SHE THOUGHT THAT SHE WAS EXERCISING THAT  
21 AUTHORITY PERHAPS AS MUCH AS ONCE A DAY?

22 A. I DID. I HEARD THAT.

23 Q. DO YOU HAVE ANY REASON TO DOUBT THAT TESTIMONY?

24 A. I WOULD PROBABLY CONSTRAIN IT A LITTLE BIT BECAUSE WE  
25 ARE BUSIEST WITH THE RESERVE SYSTEM DURING PROBABLY THE FIRST

1 MONTH OF THE SEMESTER. SO IT IS PROBABLY, I AM SPECULATING,  
2 THAT SHE MAY HAVE BEEN REFERRING TO DURING THAT FIRST MONTH OR  
3 SO.

4 Q. YOU WERE ASKED SEVERAL QUESTIONS ABOUT, YOU KNOW, WHAT  
5 PERCENTAGE OF THE FACULTY MAY HAVE ATTENDED TRAINING SESSION  
6 OR WHATEVER. I BELIEVE YOU TESTIFIED YOU DON'T KNOW; IS THAT  
7 CORRECT?

8 A. YES.

9 Q. DO YOU HAVE ANY IDEA WHAT PERCENTAGE OF THE FACULTY HAD  
10 ACCESS TO THE POLICY THAT IS ON THE WEBSITE?

11 A. ALL OF THEM.

12 Q. SO IT WOULD BE A HUNDRED PERCENT; IS THAT CORRECT?

13 A. YES.

14 Q. IS THAT WITHIN THE CONTEMPLATION OF THE COMMITTEE AS IT  
15 DID ITS WORK IN TERMS OF PRODUCING AND CREATING POLICY?

16 A. CERTAINLY THE NEED TO MAKE IT EASILY ACCESSIBLE WAS  
17 IMPORTANT.

18 Q. YOU WERE ASKED SEVERAL QUESTIONS ABOUT -- I BELIEVE THE  
19 WORD THAT WAS USED WAS FAITH IN THE FACULTY, DO YOU RECALL  
20 THOSE?

21 A. YES.

22 Q. DID THE COMMITTEE HAVE FAITH IN THE FACULTY?

23 A. YES.

24 Q. HAVE YOU SEEN ANYTHING AT THIS TRIAL THAT HAS BELIED  
25 THAT FAITH IN THE FACULTY?

1 A. NO.

2 Q. WHAT IS THAT FAITH IN THE FACULTY BUILT ON AT GEORGIA  
3 STATE?

4 A. WELL, IT IS THE KIND OF PROFESSIONAL RESPECT AND  
5 COLLEGIALITY YOU EXPECT IN AN ACADEMIC ENVIRONMENT. THAT  
6 PEOPLE ARE ACTING IN GOOD FAITH TO DO THEIR JOBS, TO TEACH AND  
7 EDUCATE AND DO RESEARCH.

8 Q. NOW, YOU WERE ASKED A SERIES OF QUESTIONS ABOUT THE  
9 IMPACT OF THE POLICY ON THE, QUOTE, NUMBER OF UNPERMISSIONED  
10 WORKS PLACED ON THE ERESERVE SYSTEM. HOW DO YOU UNDERSTAND  
11 THE TERM "UNPERMISSIONED WORKS"?

12 A. ONES THAT WERE DETERMINED TO BE A FAIR USE AND SO NO  
13 PERMISSIONS WERE SOUGHT.

14 Q. DO YOU HAVE ANY KNOWLEDGE OF WHAT THE IMPACT ACTUALLY  
15 WAS OF THE POLICY ON THE NUMBER OF EXCERPTS OR FAIR USES  
16 PLACED ON THE ERESERVE SYSTEM IN THE FALL OF 2008 AND THE FALL  
17 OF 2009?

18 MR. RICH: OBJECTION. SUBJECT YOUR HONOR RULED ON.

19 MR. SCHAETZEL: FIRST OF ALL, I HAVE ASKED, YOUR  
20 HONOR, IF SHE HAS ANY KNOWLEDGE.

21 THE COURT: OVERRULED.

22 THE WITNESS: YES.

23 MR. SCHAETZEL: WITH THAT, YOUR HONOR, I WOULD SUBMIT  
24 THAT QUESTIONS POSED BY THE OTHER SIDE HAVE OPENED THE DOOR  
25 FOR THIS WITNESS TO TESTIFY AS TO WHAT THAT KNOWLEDGE IS AS

1 OPPOSED TO MY PROFFER, AND, THEREFORE, I WOULD LIKE TO RE-ASK  
2 THE QUESTION.

3 THE COURT: I THOUGHT YOUR QUESTION WAS LIMITED TO  
4 2009.

5 MR. SCHAEZEL: THE QUESTION I JUST ASKED, YOUR  
6 HONOR?

7 THE COURT: YES.

8 MR. SCHAEZEL: NO. IT WAS, DID SHE HAVE KNOWLEDGE  
9 ABOUT THE EFFECT OF THE POLICY IN THE FALL 2008 PERIOD,  
10 POLICY THEN ADOPTED, AND THEN THE FALL 2009.

11 THE COURT: I MISSED YOUR REFERENCE TO 2008, SORRY  
12 ABOUT THAT. I WILL SUSTAIN THE OBJECTION.

13 BY MR. SCHAEZEL:

14 Q. DR. SEAMANS, YOU WERE ASKED SEVERAL QUESTIONS ABOUT THE  
15 FAIR USE FACTORS ONE, THREE, AND FOUR IN PARTICULAR. IN  
16 2009, DID YOU ASSIST A SINGLE PROFESSOR IN THE COMPLETION OF  
17 A FAIR USE CHECKLIST?

18 A. NO.

19 Q. ARE YOU AWARE OF ANY GEORGIA STATE LIBRARY STAFF MEMBER  
20 WHO ASSISTED A PROFESSOR IN THE COMPLETION OF A FAIR USE  
21 CHECKLIST?

22 A. ONCE THE NEW POLICY WAS IMPLEMENTED, NO. AND I WOULD  
23 HAVE NO KNOWLEDGE BEFORE THAT.

24 Q. BECAUSE YOU DIDN'T WORK THERE YET, RIGHT?

25 A. WELL, 2008, YES.

1 MR. SCHAETZEL: BEAR WITH ME FOR ONE MINUTE, YOUR  
2 HONOR.

3 WE HAVE NO FURTHER QUESTIONS.

4 THE COURT: SHALL THE WITNESS BE EXCUSED?

5 MR. RICH: YES.

6 THE COURT: THANK YOU. YOU ARE EXCUSED.

7 WHO IS NEXT?

8 MR. SCHAETZEL: OUR EXPERT WITNESS, DR. CREWS, IS  
9 NEXT, YOUR HONOR. IT IS LATE IN THE DAY, START AND GO FOR A  
10 WHILE OR START FIRST THING IN THE MORNING.

11 THE COURT: I AM PREPARED TO GO TO FOUR THIRTY.

12 KENNETH CREWS, HAVING BEEN FIRST DULY SWORN,  
13 TESTIFIED AS FOLLOWS:

14 THE CLERK: BE SEATED. STATE YOUR FULL NAME FOR THE  
15 RECORD.

16 THE WITNESS: MY NAME IS KENNETH INITIAL D CREWS.

17 DIRECT EXAM

18 BY MR. SCHAETZEL:

19 Q. PROFESSOR CREWS, MY NAME IS STEVE SCHAETZEL. GOOD TO  
20 SEE YOU AGAIN.

21 A. GOOD TO SEE YOU.

22 Q. I REPRESENT THE DEFENDANTS IN THIS CASE.

23 WHERE ARE YOU EMPLOYED?

24 A. EMPLOYED AT COLUMBIA UNIVERSITY.

25 Q. AND THAT IS LOCATED WHERE?

1 A. IN NEW YORK CITY.

2 Q. LET'S BRIEFLY REVIEW SOME OF YOUR RELEVANT EXPERIENCE  
3 AND QUALIFICATIONS. WOULD YOU PLEASE DESCRIBE YOUR  
4 EDUCATION?

5 A. COLLEGE EDUCATION, STARTING THERE?

6 Q. PLEASE.

7 A. STUDIED HISTORY AT NORTHWESTERN UNIVERSITY EARNING MY  
8 UNDERGRADUATE DEGREE THERE. THEN WENT TO LAW SCHOOL AT  
9 WASHINGTON UNIVERSITY IN ST. LOUIS, EARNED A J.D. RELOCATED  
10 TO LOS ANGELES, PRACTICED LAW, BUT THEN RETURNED TO SCHOOL TO  
11 EARN A MASTERS AND PH.D. IN LIBRARY AND INFORMATION SCIENCE  
12 FROM UCLA.

13 Q. IF YOU COULD, PUT SOME TIME FRAMES ON THAT FOR US.  
14 WHEN WERE YOU, FOR EXAMPLE, IN ST. LOUIS?

15 A. I WAS AT NORTHWESTERN FROM 1973 TO 1976. AT ST. LOUIS  
16 OF WASHINGTON UNIVERSITY FROM 1977 TO 1980. AND THEN  
17 ENROLLED AT UCLA STARTING IN 1984, BUT YOU KNOW HOW THOSE  
18 DISSERTATIONS GO, IT STRUNG OUT TO 1990 AND FINISHED IN 1990.

19 Q. HAVE YOU HAD ANY ACADEMIC APPOINTMENTS?

20 A. YES, I HAVE.

21 Q. WHAT ARE THEY?

22 A. MY FIRST ACADEMIC APPOINTMENT, STARTING IN 1990, WAS AS  
23 A PROFESSOR OF BUSINESS LAW AT A CAMPUS OF CALIFORNIA STATE  
24 UNIVERSITY IN SAN JOSE. I WAS THERE FOR FOUR YEARS. AND AT  
25 THAT TIME, 1994, WAS RECRUITED TO JOIN THE FACULTY AT INDIANA

1 UNIVERSITY TO JOIN THE LAW FACULTY THERE WITH A JOINT  
2 APPOINTMENT IN INFORMATION SCIENCE, BUT ALSO TO DIRECT WHAT  
3 WAS THE FIRST OFFICE OF ITS KIND IN THE COUNTRY, BAY CITY  
4 UNIVERSITY ADDRESSING UNIVERSITY COPYRIGHT AND POLICY ISSUES.  
5 AND I HELD THAT POSITION AT INDIANA FROM 1994 UNTIL THE END OF  
6 CALENDAR YEAR 2007, AT WHICH POINT I RELOCATED TO COLUMBIA  
7 UNIVERSITY IN NEW YORK. AND HAVE BEEN THERE EVER SINCE WHERE  
8 I SERVE AS DIRECTOR OF THE COPYRIGHT ADVISORY OFFICE AT  
9 COLUMBIA, AND I ALSO SERVE ON THE FACULTY AT THE LAW SCHOOL  
10 AND TEACH AT THE LAW SCHOOL, AS WELL.

11 Q. WOULD YOU BRIEFLY DESCRIBE YOUR RESPONSIBILITY OR YOUR  
12 DUTIES AS THE DIRECTOR OF THE FACILITY AT COLUMBIA?

13 A. CERTAINLY. THE OFFICE IS BASED IN THE UNIVERSITY  
14 LIBRARY, BUT IT IS AN OFFICE THAT IS OF SERVICE TO THE ENTIRE  
15 UNIVERSITY WHEREVER I AND THE PEOPLE WHO WORK WITH ME ARE ABLE  
16 TO FIND A WAY TO BE HELPFUL. BUT THE PRINCIPLE MISSION OF  
17 THE UNIVERSITY IS TO BETTER, MORE EFFECTIVELY, ADDRESS THE  
18 INTERRELATIONSHIP BETWEEN THE ACTIVITIES OF THE UNIVERSITY,  
19 TEACHING, RESEARCH, COMMUNITY SERVICE, AND THE ENVIRONMENT  
20 OF COPYRIGHT IN WHICH WE ALL LIVE. COPYRIGHT AFFECTS THE WAY  
21 WE CREATE WORKS AS WELL AS THE WAY WE USE WORKS.

22 Q. AND WITHIN THAT MISSION, WHAT ROLE DO YOU PLAY, SIR?

23 A. AS DIRECTOR OF THE OFFICE, I REALLY SEE MYSELF AS  
24 BEING IN A POSITION TO PROVIDE RESOURCES, TO HELP DECISION  
25 MAKERS, WHOEVER THEY MIGHT BE, AROUND THE UNIVERSITY TO MAKE

1 DECISIONS. MIGHT BE INDIVIDUAL FACULTY MEMBER, MIGHT BE A  
2 UNIT WITHIN THE UNIVERSITY. IT MIGHT BE AN OFFICIAL OR OTHER  
3 ADMINISTRATOR AT THE UNIVERSITY TO PROVIDE RESOURCES TO  
4 PROVIDE GUIDANCE, TO PROVIDE A WAY OF TALKING THROUGH SOME OF  
5 THE ISSUES EXPLORING POSSIBILITIES, AND THEN ALSO ULTIMATELY  
6 PROVIDING SOLUTIONS TO MANY OF THE ISSUES THAT WE FACE AT THE  
7 UNIVERSITY. THAT MAY INVOLVE RESEARCH IN THE LAW, GIVING  
8 SOME ADVICE AND SOME SUGGESTIONS, DRAFTING DOCUMENTS, A WIDE  
9 VARIETY OF SERVICES.

10 Q. HAVE YOU BEEN A PART OF ANY RESEARCH OR ACADEMIC  
11 INITIATIVES?

12 A. WELL, MANY OF THEM OVER THE YEARS.

13 Q. WOULD YOU GIVE US A FEW EXAMPLES?

14 A. I HAVE HAD AN ACADEMIC CAREER FOR 20 YEARS AND  
15 PARTICULARLY, MUCH OF IT HAS BEEN FOCUSED ON COPYRIGHT LAW.  
16 SO, EXAMPLES OF SOME INITIATIVES THAT I HAVE BEEN A PART OF,  
17 THINKING BACK TO EARLY YEARS CALIFORNIA STATE UNIVERSITY IS AN  
18 ENORMOUS, ENORMOUS UNIVERSITY OF 30 OR 10 CAMPUSES, PROBABLY  
19 A HUNDRED THOUSAND OR MORE STUDENTS. AND CAL STATE  
20 UNIVERSITY COMBINED THE SIMILARLY LARGE UNIT, THE STATE  
21 UNIVERSITY OF NEW YORK AND THE CITY UNIVERSITY OF NEW YORK,  
22 GOT TOGETHER IN THE EARLY 1990'S TO DEVELOP SOME GUIDANCE,  
23 MATERIALS TEMPLATES INFORMATION RESOURCES, AND I WAS A PART OF  
24 THAT, ADDRESSING ISSUES OF FAIR USE AS WELL AS ADDRESSING  
25 ISSUES OF OWNERSHIP OF NEW WORKS AT THE UNIVERSITY. AND

1 GETTING THAT MATERIAL OUT TO THE MANY THOUSANDS AND THOUSANDS  
2 OF FACULTY AND OTHER MEMBERS OF THOSE BIG UNIVERSITY  
3 ORGANIZATIONS.

4 Q. HAVE YOU BEEN INVOLVED IN ANY OTHER PROJECTS RELATED TO  
5 COPYRIGHT AND FAIR USE?

6 A. MANY OF THEM IN THE MID 1990'S. I WAS AN ACTIVE  
7 REGULAR PARTICIPANT IN WHAT WAS CALLED THE CONFERENCE ON FAIR  
8 USE, BETTER KNOWN AS CONFU. AND CONFU, THE CONFERENCE ON FAIR  
9 USE, WAS AN INITIATIVE OF THE INFORMATION INFRASTRUCTURE TASK  
10 FORCE, WHICH WAS PART OF THE U. S. GOVERNMENT ADDRESSING  
11 DIFFERENT ISSUES, POLICY LEGAL ISSUES THAT RELATE TO WHAT WAS  
12 THEN THE BIRTH OF AND EXPANSE OF THE INTERNET. COPYRIGHT WAS  
13 ONE OF THOSE ISSUES, FAIR USE WAS ONE OF THOSE COPYRIGHT  
14 ISSUES.

15 THE CONFERENCE ON FAIR USE WAS AN ATTEMPT TO BRING  
16 TOGETHER A WIDE VARIETY OF STAKEHOLDERS TO TRY TO DEVELOP SOME  
17 UNDERSTANDING OF FAIR USE IN THAT ENVIRONMENT. AND THEN  
18 SINCE THEN, JUMPING FORWARD MORE BRIEFLY, I HAVE BEEN INVOLVED  
19 IN SOME INTERNATIONAL INITIATIVES, ONE THAT IS BASED OUT OF  
20 THE NETHERLANDS THAT WAS AGAIN AN EFFORT TO BRING TOGETHER NOW  
21 PEOPLE FROM DIFFERENT COUNTRIES TO ADDRESS IT ON AN  
22 INTERNATIONAL SCALE, BRING IN PUBLISHERS, AUTHORS,  
23 LIBRARIANS, OTHER UNIVERSITY OFFICIALS TO ADDRESS THE ISSUES.  
24 AND IN VERY RECENT YEARS, I WAS COMMISSIONED BY WIPO, THE  
25 WORLD INTELLECTUAL PROPERTY ORGANIZATION, WHICH IS A UNIT OF

1 THE UNITED NATIONS. MEETS IN GENEVA, SWITZERLAND WITH A BIG  
2 ROOM THAT LOOKS LIKE THE GENERAL ASSEMBLY. AND I WAS  
3 COMMISSIONED BY WIPO TO DO A STUDY OF LIBRARY-RELATED  
4 COPYRIGHT STATUTES FROM THE 184 COUNTRIES AROUND THE WORLD  
5 THAT ARE MEMBERS OF THE WIPO AND TO PRESENT THOSE FINDINGS IN  
6 A WRITTEN REPORT, AS WELL AS ORAL PRESENTATION TO THE ASSEMBLY  
7 OF DELEGATES AND TO ANSWER THEIR QUESTIONS.

8 Q. WHEN WERE THOSE FINDINGS PRESENTED?

9 A. WELL, FORMAL PRESENTATION AND PRESENTATION IN QUESTIONS  
10 WAS IN NOVEMBER OF 2008.

11 Q. HAVE YOU DONE ANY WORK WITH THE ASSOCIATION OF RESEARCH  
12 LIBRARIES?

13 A. I HAVE OFF AND ON OVER THE PAST 20 YEARS. THEY HAVE  
14 ASKED ME TO PARTICIPATE IN DIFFERENT THINGS. SOMETIMES I AM  
15 WORKING ON SOMETHING WITH THEM, SOMETIMES I AM NOT. IT IS  
16 VARIED FROM GIVING PRESENTATIONS AT THEIR ANNUAL MEETINGS TO  
17 DOING SOME BACKGROUND STUDIES.

18 I REMEMBER WE HAD A SMALL GROUP OF US THROUGH THE ARL THAT  
19 PUT OUR HEADS TOGETHER TO THINK ABOUT AN AMICUS BRIEF BACK IN  
20 THE 1990'S IN A CASE. AND THEN IN VERY RECENT YEARS I HAVE  
21 WORKED WITH THEM ON THE PROJECT THAT IMMEDIATELY COMES TO MIND  
22 IS GOOGLE BOOK SETTLEMENT, PROPOSED SETTLEMENT OF GOOGLE FAIR  
23 USE LITIGATION. WHAT DOES THAT MEAN FOR THE MEMBERS OF ARL?  
24 IF YOU ARE NOT FAMILIAR WITH ARL, IT IS APPROXIMATELY 125 -- I  
25 THINK IT IS 126 NOW WITH A NEW MEMBER, 125 OR SO MAJOR

1 RESEARCH UNIVERSITIES, ALMOST ALL IN THE UNITED STATES, A  
2 COUPLE OF THEM IN CANADA.

3 Q. HAVE YOU PUBLISHED?

4 A. YES, I HAVE.

5 Q. WHAT HAVE YOU DONE?

6 A. I HAVE PUBLISHED FOUR BOOKS. IT DEPENDS ON HOW YOU  
7 COUNT THEM. THE FIRST TWO BOOKS WERE ON CONSTITUTIONAL  
8 HISTORY LONG TIME AGO BEFORE I GOT HOOKED ON COPYRIGHT. AND  
9 THEN MY FIRST COPYRIGHT BOOK WAS IN 1993, AND IT WAS AN  
10 UPDATE, REVISION EXPANSION ON THE WORK I DID ON MY DOCTORAL  
11 DISSERTATION. DOCTORAL DISSERTATION WAS THE STUDY OF  
12 UNIVERSITY POLICIES AND POLICY MAKING RELATING TO FAIR USE AT  
13 RESEARCH UNIVERSITIES AROUND THE COUNTRY. AND THEN SEVERAL  
14 YEARS LATER, PUBLISHED THE FIRST EDITION OF A BOOK THAT IS A  
15 GUIDE FOR UNIVERSITY EDUCATORS, LIBRARIANS, AND OTHERS  
16 EXPLAINING HOW -- WHAT IS THE LAW OF COPYRIGHT, HOW DOES IT  
17 WORK, AND HOW CAN THEY USE IT TO ADDRESS THEIR ISSUES. FIRST  
18 EDITION OF THAT WAS IN 2000, SECOND EDITION 2006, AND A THIRD  
19 EDITION A LITTLE BIT LATER THIS YEAR.

20 Q. HAVE YOU PUBLISHED ANY BOOK CHAPTERS?

21 A. YES, I HAVE. SEVERAL BOOK CHAPTERS, ONE ON  
22 COPYRIGHT IN DISTANCE ED, ANOTHER COPYRIGHT ON FAIR USE AND  
23 UNPUBLISHED MATERIALS, ANOTHER ONE ON COPYRIGHT AND SECTION  
24 108. SECTION 108 IS THE COPYRIGHT PROVISION RELATED TO  
25 LIBRARIES AND ITS APPLICATION AT LIBRARIES. AND I SUSPECT

1 THERE ARE A COUPLE OF OTHERS COMING TO MIND AT THE MOMENT.

2 Q. WHAT ABOUT ARTICLES AND ESSAYS?

3 A. TWENTY OR SO FORMAL ARTICLES AND ESSAYS. PUBLISHED A  
4 LENGTHY STUDY MOST RECENTLY, A STUDY OF MUSEUM POLICIES ABOUT  
5 THE USE OF ART IMAGES IN THE MUSEUM COLLECTIONS. AN ARTICLE  
6 ABOUT THE SO-CALLED MODEL FAIR USE GUIDELINES, THEIR ORIGIN,  
7 WHERE THEY CAME FROM, HOW THEY ARE USED. ANOTHER ARTICLE  
8 ABOUT FAIR USE. HAVE UNPUBLISHED MATERIALS. HAS BEEN AN  
9 INTERESTING SET OF COURT RULINGS ON SOME OF THOSE ISSUES.  
10 AND THE LIST GOES ON.

11 Q. HAVE YOU BEEN A SPEAKER AT CONFERENCES AND SUCH?

12 A. MANY. SOMETIMES I AM INVITED TO BE A PART OF A FORMAL  
13 CONFERENCE, YOU HAVE YOUR TIME SLOT AND I HAVE BEEN TO MANY OF  
14 THOSE OVER THE YEARS. I AM ALSO INVITED TO COME TO PROGRAMS,  
15 CONFERENCES, COLLEGES, UNIVERSITIES TO DO A STAND-ALONE  
16 WORKSHOP. TO TALK WITH FACULTY, LIBRARIANS, COMPUTER  
17 PEOPLE, ADMINISTRATORS, LEGAL COUNSEL, WIDE VARIETY OF  
18 PEOPLE WHO COME IN THE ROOM TO TALK ABOUT COPYRIGHT, TALK  
19 ABOUT WHAT IT MEANS AND TO BETTER UNDERSTAND.

20 Q. YOU MENTIONED THAT YOU TEACH COURSES NOW AT COLUMBIA.  
21 WHAT ARE YOU TEACHING?

22 A. AT COLUMBIA MY COURSE IS THE INTERNATIONAL COPYRIGHT  
23 LAW COURSE. AND THEN I ALSO SUPERVISE STUDENTS AND THEIR  
24 PAPERS AND LLM, ADVANCED DEGREE STUDENTS AND THEIR THESIS.

25 Q. WHAT DID YOU TEACH AT INDIANA?

1 A. AT INDIANA I HAD GREATER TEACHING DUTIES, MORE  
2 EXTENSIVE TEACHING DUTIES. I TAUGHT THE COPYRIGHT LAW COURSE  
3 THERE WHICH FOCUSES ON AMERICAN COPYRIGHT LAW. I ALSO TAUGHT  
4 THE SURVEY OF INTELLECTUAL PROPERTY, WHICH IS A SURVEY OF  
5 INTELLECTUAL PROPERTY LAW WHICH ENCOMPASSES COPYRIGHTS,  
6 PATENTS, TRADEMARKS AND MANY OTHER SUBJECTS. I ALSO TAUGHT  
7 AN INTERNATIONAL INTELLECTUAL LAW COURSE. I TAUGHT OTHER  
8 SEMINARS AND OTHER SUCH COURSES.

9 Q. DID YOU PREPARE AN UPDATED CV FOR THIS CASE?

10 A. WELL, I DON'T KNOW IF I PREPARED IT SPECIFICALLY FOR  
11 THIS CASE, BUT I HAVE A CV THAT I KEEP UP-TO-DATE AND I  
12 SUBMITTED WHATEVER WAS CURRENT AT THAT TIME.

13 MR. SCHAETZEL: IF I MAY APPROACH, YOUR HONOR.

14 THE COURT: YOU MAY.

15 MR. SCHAETZEL: I WOULD LIKE TO GET THIS MARKED.  
16 DEFENDANT'S EXHIBIT 910.

17 FOR THE RECORD, I HAD EXHIBIT A TO DR. CREWS'S EXPERT  
18 REPORT MARKED AS DEFENDANT'S EXHIBIT 910 FOR IDENTIFICATION.

19 BY MR. SCHAETZEL:

20 Q. DR. CREWS, IF I COULD ASK YOU PLEASE TO TURN TO  
21 APPENDIX X AT TAB ONE OF YOUR WITNESS NOTEBOOK.

22 A. (WITNESS COMPLIES.) THERE IT IS.

23 Q. WHAT IS THIS DOCUMENT?

24 A. IT IS THE CV, PRESUMABLY THE ONE THAT I SUBMITTED WITH  
25 THE EXPERT REPORT.

1 Q. DID YOU SUBMIT APPENDIX A TO YOUR EXPERT REPORT?

2 A. YES, I DID.

3 Q. IS THIS THAT APPENDIX A?

4 A. TO THE BEST OF MY AWARENESS, YES, IT IS.

5 Q. IS THIS AN ACCURATE STATEMENT OF YOUR BACKGROUND AS OF  
6 THE DATE IT WAS PREPARED IN 2009?

7 A. YES, IT IS.

8 MR. SCHAETZEL: YOUR HONOR, WE MOVE THE ADMISSION OF  
9 THIS EXHIBIT AS DEFENDANT'S EXHIBIT 910.

10 MR. RICH: WITHOUT PREJUDICE TO OUR IMMINENT RENEWED  
11 MOTION TO EXCLUDE THE WITNESS'S TESTIMONY, NO OBJECTION TO  
12 THE VITAE.

13 THE COURT: IT IS ADMITTED.  
14 BY MR. SCHAETZEL:

15 Q. DR. CREWS, HAVE YOU RECEIVED ANY HONORS OR AWARDS?

16 A. YES, I HAVE.

17 Q. PLEASE IDENTIFY A COUPLE.

18 A. I MENTIONED MY DOCTORAL DISSERTATION, THAT WAS A STUDY  
19 OF UNIVERSITY POLICIES ON THE QUESTION OF FAIR USE. AND I  
20 RECEIVED TWO NATIONAL AWARDS THAT ARE GIVEN BY NATIONAL  
21 ASSOCIATIONS FOR THE DISSERTATION OF THE YEAR, ONE FROM THE  
22 ASSOCIATION OF COLLEGE AND RESEARCH LIBRARIES AND ANOTHER ONE  
23 FROM THE ASSOCIATION OF THE STUDY OF HIGHER EDUCATION.  
24 VARIOUS OTHER AWARDS THROUGH THE YEARS. AND ANOTHER ONE THAT  
25 STANDS OUT IN MY MEMORY IS A FEW YEARS AGO RECEIVED FROM THE

1 AMERICAN LIBRARY ASSOCIATION THE L. RAY PATTERSON AWARD.

2 Q. WHAT IS THE L. RAY PATTERSON AWARD?

3 A. I WAS THE FIRST RECIPIENT OF THE AWARD. IT WAS THE  
4 BEGINNING OF AN ANNUAL SERIES OF GRANTING THE AWARD TO A  
5 PERSON WHO HAS DONE NOTABLE WORK IN THE AREA OF FAIR USE AND  
6 OTHER RIGHTS OF USE OF WORKS UNDER COPYRIGHT LAW.

7 Q. HAVE YOU BEEN INVOLVED IN DEVISING ANY POLICIES FOR  
8 FAIR USE AT ACADEMIC INSTITUTIONS?

9 A. YES, I HAVE.

10 Q. APPROXIMATELY HOW MANY?

11 A. WELL, THERE ARE GOING TO BE DIFFERENT LEVELS OF  
12 INVOLVEMENT, OF COURSE. AND, OF COURSE, FOR STARTERS, I HAVE  
13 HAD SOME INVOLVEMENT OF DEVELOPING SUCH POLICY AT THE  
14 INSTITUTIONS WHERE I HAVE BEEN EMPLOYED, FROM CALIFORNIA STATE  
15 UNIVERSITY, INDIANA UNIVERSITY, AND COLUMBIA.

16 I MENTIONED A FEW MINUTES AGO THAT I AM FREQUENTLY INVITED  
17 TO BE A GUEST AT DIFFERENT COLLEGES AND UNIVERSITIES, MOST  
18 OFTEN AS SPEAKING AND WORKSHOP ENGAGEMENTS, BUT SOMETIMES IT  
19 IS TO COME IN AND HELP THEM TALK THROUGH ISSUES RELATED TO  
20 DEVELOPMENT OF A NEW POLICY, AND SO THEY WANT TO BOUNCE SOME  
21 IDEAS AND HAVE QUESTIONS AND SHARE SOME IDEAS. AND SO I DO  
22 THAT OCCASIONALLY. SO I WOULD HAVE TO ESTIMATE OVER THE LAST  
23 TEN OR FIFTEEN YEARS I HAVE PROBABLY DONE THAT TEN OR SO  
24 TIMES.

25 Q. CAN YOU GIVE US SOME EXAMPLES OF TIMES THAT YOU HAVE

1 BEEN INVOLVED IN DEVISING POLICY, SPECIFICALLY INCLUDED FAIR  
2 USE ASPECT?

3 A. AND REALLY IT MEANS IN MY MIND, WHAT THAT MEANS, IS  
4 SOME INVOLVEMENT, EVEN IF IT IS JUST A GIVE AND TAKE  
5 COMMITTEE, THEN THEY TAKE IT FROM THERE, BUT, SURE, I HAVE  
6 HAD SUCH VISITS TO CAMPUSES AND SUCH MEETINGS AT PLACES SUCH  
7 AS RUTGERS UNIVERSITY, UNIVERSITY OF MINNESOTA, UNIVERSITY  
8 OF ILLINOIS, RETURNING EXTENSIVELY IN THE 1990'S TO  
9 CALIFORNIA STATE UNIVERSITY WHERE I DID SOME CONTINUED WORK  
10 WITH THEM, IN FACT, ALL THE WAY UP TO 2003 ON A PROJECT WITH  
11 THEM.

12 IN VERY RECENT YEARS, I WAS A GUEST AT BRIGHAM YOUNG  
13 UNIVERSITY AND THERE TO MEET WITH POLICY PEOPLE TO TALK ABOUT  
14 HOW THEY SHOULD APPROACH SOME OF THE ISSUES AND QUESTIONS THEY  
15 HAD AND EXPLORING THEIR ALTERNATIVE.

16 Q. AND DID THOSE INSTITUTIONS SUBSEQUENTLY ADOPT POLICIES  
17 THAT INCLUDED FAIR USE ASPECTS?

18 A. TO THE BEST OF MY KNOWLEDGE, YES, THEY DID.

19 Q. PROFESSOR CREWS, AT OUR REQUEST HAVE YOU REVIEWED THE  
20 CURRENT COPYRIGHT POLICIES AS ADOPTED BY THE UNIVERSITY SYSTEM  
21 OF GEORGIA?

22 MR. RICH: YOUR HONOR, HE HASN'T TENDERED HIM AS AN  
23 EXPERT. I DON'T KNOW WHAT THE PRACTICE IS, BUT HE IS MOVING  
24 INTO SUBSTANCE. I WOULD LIKE TO BE HEARD ON OUR RENEWED  
25 MOTION TO EXCLUDE HIM AS AN EXPERT WITNESS UNDER RULE 702.

1 THE COURT: LET'S'S DO THIS. I JUST NOTICED IT IS  
2 4:30. WHY DON'T WE BREAK FOR THE NIGHT, FIRST THING IN THE  
3 MORNING I WILL HEAR YOUR MOTION.

4 DR. CREWS, SINCE YOU WILL BE RETURNING TO TESTIFY FURTHER  
5 TOMORROW, YOU ARE INSTRUCTED NOT TO DISCUSS THIS CASE OR YOUR  
6 TESTIMONY WITH ANYONE. AND BY AGREEMENT OF COUNSEL FOR BOTH  
7 SIDES THAT DOES INCLUDE COUNSEL FOR BOTH SIDES.

8 MR. HARBIN: YOUR HONOR, CAN WE BE HEARD ON THAT?

9 THE COURT: YES.

10 MR. HARBIN: THE AGREEMENT WE AGREED TO, THEIR  
11 REQUEST THEY REPRESENTED THEY COMPLIED WITH IT IS WHEN THEIR  
12 WITNESS WAS ON -- WHEN OUR WITNESS WAS ON  
13 CROSS-EXAMINATION, WE COULDN'T CONFER WITH THAT WITNESS WHILE  
14 ON CROSS-EXAMINATION. I MEAN, WHAT WE WOULD PROPOSE IS BE  
15 ABLE TO TALK TO HIM TONIGHT, HE IS AN EXPERT WITNESS,  
16 CERTAINLY FACILITATE THE PRESENTATION TOMORROW, MAKE IT MORE  
17 EFFICIENT TO TALK TO HIM TONIGHT. WE NEVER AGREED, NEVER  
18 REQUESTED WE AGREE WE CAN'T TALK TO OUR WITNESSES ON DIRECT,  
19 MUCH LESS AN EXPERT WITNESS DURING A BREAK.

20 THE COURT: OKAY. I THINK I MAY HAVE MISUNDERSTOOD  
21 WHAT YOU SAID. I THOUGHT YOU HAD A BROADER AGREEMENT THAN  
22 THAT.

23 MR. RICH: WE ARE FINE WITH THAT POSITION, YOUR  
24 HONOR.

25 THE COURT: ALL RIGHT. THEN EXCEPT FOR COUNSEL,

1 YOU CAN'T DISCUSS THE CASE OVERNIGHT WITH ANYBODY. SEE YOU  
2 AT NINE THIRTY IN THE MORNING.

3 MR. KRUGMAN: YOUR HONOR, WE HAVE A COUPLE OF  
4 QUESTIONS BEFORE WE GO, BEFORE YOU GET AWAY.

5 THE COURT: YES, SIR.

6 MR. KRUGMAN: WE ARE NOT CERTAIN, MR. SCHAEZEL AND  
7 I SPOKE AT THE BREAK, I THINK HE IS LIKE UNDECIDED AS TO  
8 PRECISELY WHO IS COMING ON TOMORROW. YOUR HONOR HAD  
9 INDICATED THAT WE ARE GOING TO GO UNTIL 2:30 YOU MIGHT GO  
10 LATER. IF THE PARTIES WANTED, AND I HAVE NO IDEA IF TOMORROW  
11 AFTERNOON WE ARE GOING TO BE LIKE REAL CLOSE TO FINISHING OR  
12 NOT, AND IF WE WERE WITHIN 30 MINUTES OR 30, 45 MINUTES OF  
13 FINISHING, WOULD IT BE YOUR HONOR'S PLAN TO GO A LITTLE BIT  
14 LONGER TO ACCOMMODATE THAT?

15 THE COURT: YOU MEAN FINISHING THE EVIDENCE OR  
16 FINISHING THE CASE?

17 MR. KRUGMAN: FINISHING THE EVIDENCE. I DON'T KNOW  
18 THAT THAT WILL HAPPEN.

19 THE COURT: I THINK IF IT WOULD ENABLE EVERYBODY TO  
20 FINISH THE CASE TOMORROW, I WOULD BE WILLING TO GO LONGER.  
21 BUT IF FOLKS FROM OUT OF TOWN HAVE TO COME BACK MONDAY ANYWAY,  
22 I AM NOT SURE THAT I SEE THAT IT MAKES MUCH DIFFERENCE.

23 MR. KRUGMAN: I UNDERSTAND. I HAVE NO IDEA IF THAT  
24 IS GOING TO HAPPEN.

25 THE COURT: I HAVE SOME FLEXIBILITY. WE WILL SEE

1 HOW IT GOES. ALTHOUGH TO BE HONEST WITH YOU, I THINK WE ARE  
2 ALL A LITTLE BIT TIRED, I WILL INCLUDE MYSELF IN THIS, I  
3 WOULDN'T MIND GETTING OFF EARLY TOMORROW.

4 MR. KRUGMAN: I THINK WE ALL WOULD.

5 THE OTHER QUESTION IS, I THINK, WHAT ARE THE COURT'S  
6 INTENTIONS WITH RESPECT TO CLOSING ARGUMENTS?

7 THE COURT: I THOUGHT Y'ALL WOULD WANT TO PRESENT  
8 SOME. I WILL PROBABLY HAVE SOME QUESTIONS THAT I WANT TO  
9 ASK. DID YOU ALL -- WOULD YOU PREFER JUST TO DO WRITTEN  
10 ARGUMENTS?

11 MR. RICH: NO. I THINK WE WOULD PREFER CLOSING,  
12 YOUR HONOR.

13 THE COURT: I THINK I WOULD, TO.

14 MR. RICH: DO YOU HAVE AN ESTIMATE YOU WOULD FIND  
15 USEFUL PER SIDE?

16 THE COURT: WELL, I HADN'T EVEN THOUGHT ABOUT IT.  
17 I DON'T KNOW. YOU KNOW THE OLD SAYING THAT THE PREACHER SAYS  
18 THAT SAYS AFTER THE FIRST 20 MINUTES NOT MANY SOULS ARE SAVED.  
19 I AM CERTAIN THAT LONGER THAN 20 MINUTES WOULD BE FINE.

20 MR. KRUGMAN: I GUESS ONE FINAL QUESTION ON THAT,  
21 WOULD IT BE THE COURT'S PLAN TO CLOSE THE EVIDENCE ONE DAY AND  
22 THEN HAVE ARGUMENTS THE NEXT MORNING?

23 THE COURT: I HADN'T EVEN THOUGHT ABOUT IT.

24 MR. KRUGMAN: I THINK IT MAY HELP.

25 THE COURT: I WILL PROBABLY BE OPEN TO SUGGESTIONS

1 ON THAT.

2 MR. KRUGMAN: WE WILL CONFER AND REPORT BACK.

3 THE COURT: ALL RIGHT. GOOD NIGHT EVERYBODY.

4 \*\*\* END OF REQUESTED TRANSCRIPT \*\*\*

5 \* \* \* \* \*

6 CERTIFICATE OF REPORTER

7 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM  
8 MY STENOGRAPHIC NOTES IN THE ABOVE-ENTITLED MATTER.

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13 S/DEBRA R. BULL, RPR, CRR

JULY 3, 2011  
DATE

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