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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CAMBRIDGE UNIVERSITY PRESS,)	
ET AL.,)	DOCKET NO. 1:08-CV-1425-ODE
)	
PLAINTIFFS,)	ATLANTA, GEORGIA
)	MAY 18, 2011
V.)	
)	
MARK P. BECKER, IN HIS)	
OFFICIAL CAPACITY AS GEORGIA)	
STATE UNIVERSITY PRESIDENT,)	
ET AL.,)	
)	
DEFENDANTS.)	

VOLUME 2
TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE ORINDA D. EVANS
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS:	JONATHAN BLOOM
	EDWARD B. KRUGMAN
	TODD D. LARSON
	JOHN H. RAINS.
	R. BRUCE RICH
	RANDI W. SINGER
FOR THE DEFENDANTS:	ANTHONY B. ASKEW
	JOHN W. HARBIN
	RICHARD MILLER
	NATASHA H. MOFFIT
	KATRINA M. QUICKER
	STEPHEN M. SCHAE TZEL
COURT REPORTER:	ANDY ASHLEY
	1949 U. S. COURTHOUSE
	ATLANTA, GEORGIA 30303-3361
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1 THROUGH CCC.

2 THE WITNESS: YES, YOUR HONOR.

3 THE COURT: AND YOU NAMED A 60 PERCENT FIGURE. WHAT
4 DID THAT RELATE TO; IS THAT STUFF OUT IN PAPERBACK OR
5 EVERYTHING?

6 THE WITNESS: NO, YOUR HONOR, IT WOULD BE POTENTIALLY
7 A MIX OF EVERYTHING. IT WOULDN'T BE A STRICT -- IT WOULDN'T BE
8 A PAPERBACK DIVIDE. IT WOULDN'T BE LIMITED TO PAPERBACKS.

9 THE COURT: ALL RIGHT. THANK YOU.

10 BY MR. HARBIN:

11 Q. MR. SMITH, I HAVE A QUESTION ABOUT THAT. I'LL GO BACK
12 INTO IT IN MORE DETAIL LATER, BUT I THOUGHT WHEN YOU TESTIFIED
13 ABOUT 60 PERCENT YESTERDAY, YOU WERE TALKING ABOUT REVENUE, BUT
14 YOU WERE TALKING ABOUT QUANTITY OR NUMBER OF WORKS AVAILABLE ON
15 CCC?

16 A. THE PERCENTAGE RELATES TO THE TOTAL CAMBRIDGE OFFERING OF
17 TITLES.

18 Q. I'VE GOT YOU. OKAY. BUT REGARDING CCC I BELIEVE YOU SAID
19 THAT ROUGHLY 95 PERCENT OF THE REQUESTS FOR PERMISSION FOR
20 PORTIONS OF WORKS GO THROUGH CCC?

21 A. YES, SIR.

22 Q. AND WOULD IT BE ROUGHLY 95 PERCENT OF THE INCOME THAT
23 CAMBRIDGE EARNS FROM PERMISSIONS COMES FROM CCC?

24 A. THAT I WOULDN'T FEEL QUALIFIED TO ANSWER.

25 Q. WOULD IT BE APPROXIMATELY CLOSE TO THAT?

1 A. I'M RELUCTANT SIMPLY BECAUSE I'M NOT CERTAIN. IT WOULD BE
2 HIGH.

3 Q. MUCH MORE THAN HALF?

4 A. YES, SIR.

5 Q. AND IF YOU LIMITED IT TO PERMISSIONS CONCERNING ACADEMIC
6 WORKS, WOULD YOU BE MORE COMFORTABLE THAT ABOUT 95 PERCENT OF
7 THE REVENUE CAMBRIDGE RECEIVES FOR PERMISSIONS REQUESTS FROM
8 ACADEMIC WORKS COMES THROUGH THE CCC?

9 A. IF WE'RE TALKING ABOUT PERMISSIONS REQUESTS IN THE UNITED
10 STATES ALONE, YES. I'M SORRY, AS A GLOBAL ORGANIZATION I HAVE
11 TO SHIFT BACK AND FORTH BETWEEN THINKING ABOUT THE UNITED
12 STATES AND OTHER JURISDICTIONS.

13 Q. OKAY. GOING BACK TO THE ISSUE OF PERMISSIONS, LET ME HAND
14 YOU A DOCUMENT THAT'S BEEN MARKED DEFENDANTS' EXHIBIT 723. IT
15 BEARS BATES NUMBERS CUP 15928 TO 35 SIGNIFYING A CAMBRIDGE
16 UNIVERSITY PRESS PRODUCTION.

17 THIS IS A WRITTEN DOCUMENT THAT CAMBRIDGE
18 DISSEMINATED AT SOME POINT ABOUT ANSWERING FREQUENTLY ASKED
19 QUESTIONS ON PERMISSIONS?

20 A. WELL, I'LL BE HONEST I DON'T RECOGNIZE THIS DOCUMENT.

21 Q. HAS CAMBRIDGE EVER HAD WRITTEN POLICIES OR WRITTEN
22 INSTRUCTIONS, GUIDELINES FOR PEOPLE CONCERNING HOW TO GET
23 PERMISSIONS AND WHAT YOU CAN USE AND FAIR USE?

24 A. I'M SURE THE ANSWER TO THAT IS YES.

25 Q. LET ME ASK YOU TO LOOK SPECIFICALLY REGARDING FAIR USE AT

1 THE BOTTOM OF THE FIRST PAGE?

2 THE COURT: WHAT IS THIS DOCUMENT, I MEAN THE
3 NUMBER?

4 MR. HARBIN: DEFENDANTS' EXHIBIT 723, I APOLOGIZE.

5 MS. SINGER: I HAVE AN OBJECTION AS TO LACK OF
6 FOUNDATION. THE WITNESS HAS TESTIFIED HE HASN'T SEEN THIS
7 DOCUMENT.

8 MR. HARBIN: YOUR HONOR, CAMBRIDGE PRODUCED THE
9 DOCUMENT. THEIR ONLY OBJECTION TO THE DOCUMENT WAS RELEVANCE
10 WHICH I THINK WE CAN EASILY OVERCOME. IT WAS NOT ON
11 FOUNDATION.

12 MS. SINGER: YOUR HONOR, WE DON'T OBJECT TO THE
13 DOCUMENT, BUT TO ASK THE WITNESS QUESTIONS ABOUT A DOCUMENT
14 THAT HE'S NEVER SEEN BEFORE, I DON'T SEE THAT THERE IS ANY
15 FOUNDATION AS TO THIS WITNESS.

16 THE COURT: I WILL GO AHEAD AND ADMIT DEFENDANTS'
17 EXHIBIT 723.

18 MR. HARBIN: IF I COULD ASK THE QUESTION --

19 THE COURT: WHAT IS THE QUESTION YOU WANT TO ASK?
20 BY MR. HARBIN:

21 Q. IF YOU LOOK DOWN AT THESE TWO PARAGRAPHS ABOUT FAIR USE
22 AND FAIR DEALINGS, IT TALKS ABOUT IN THE U.K. ACT THERE'S A
23 SPECIFIC STANDARD ISSUED ONE QUOTE SHOULD NOT EXCEED 400 WORDS
24 AND THAT MORE ONE QUOTATION FROM A SINGLE WORK SHOULD NOT
25 EXCEED 800 WORDS IN TOTAL; DO YOU SEE THAT?

1 A. YES, I DO.

2 MS. SINGER: YOUR HONOR, I OBJECT TO THE RELEVANCE OF
3 THE DOCUMENT --

4 MR. HARBIN: I HAVEN'T FINISHED THE QUESTION.

5 THE COURT: I NEED TO HEAR THE QUESTION. THE
6 DOCUMENT HAS BEEN ADMITTED, BUT I WILL NEED TO HEAR THE
7 QUESTION.

8 MS. SINGER: I'M SORRY, YOUR HONOR.

9 BY MR. HARBIN:

10 Q. THE NEXT PARAGRAPH SAYS HOWEVER CAMBRIDGE POLICY IS TO
11 FOLLOW THE SPIRIT OF THE ACT WHICH PERMITS MUCH GREATER
12 FLEXIBILITY RATHER THAN FAIRLY RIGID GUIDELINES.

13 NOW IS THAT YOUR UNDERSTANDING OF CAMBRIDGE'S POLICY
14 ABOUT APPLYING THE FAIR USE DOCTRINE?

15 MS. SINGER: YOUR HONOR, I OBJECT TO THE QUESTION.
16 THIS IS DEALING WITH U.K. COPYRIGHT POLICY WHICH ISN'T AT ISSUE
17 IN THIS LITIGATION.

18 THE COURT: OVERRULED.

19 THE WITNESS: CAN YOU REPEAT THE QUESTION?

20 BY MR. HARBIN:

21 Q. IS IT YOUR UNDERSTANDING THAT CAMBRIDGE'S POLICY IS TO
22 FOLLOW THE SPIRIT OF THE ACT WHICH PERMITS GREATER FLEXIBILITY
23 RATHER THAN FAIRLY RIGID GUIDELINES?

24 A. WELL, AS I LOOK AT THIS DOCUMENT, IT DOES RELATE TO AN
25 INTERPRETATION OF THE U.K. COPYRIGHT ACT, AND SO, THEREFORE, I

1 WOULD SAY THAT THIS DOCUMENT IS RELATING TO THE POLICY IN THE
2 UNITED KINGDOM.

3 Q. WELL IS IT YOUR UNDERSTANDING THAT THE POLICY IN THE
4 UNITED STATES IS DIFFERENT FROM CAMBRIDGE'S POLICY IN THE
5 UNITED KINGDOM?

6 A. WE DO TEND TO TAKE A DIFFERENT VIEW IN THE UNITED STATES,
7 YES.

8 Q. LET ME JUST ASK THIS QUESTION. YOU UNDERSTAND, DON'T YOU,
9 THAT -- AND I KNOW YOU'RE NOT A LAWYER, BUT IT'S A BLACK
10 LETTER PRINCIPLE THAT THE FAIR USE DOCTRINE IS TO BE FLEXIBLY
11 APPLIED?

12 A. YES.

13 Q. AND DOES CAMBRIDGE FOLLOW THAT POLICY IN APPLYING FAIR USE
14 PRINCIPLES ITSELF?

15 A. I WOULD SAY YES.

16 Q. THANK YOU. NOW REGARDING THE TESTIMONY YESTERDAY ABOUT
17 AUTHORS WORKING WITH CAMBRIDGE ON CAMBRIDGE PUBLICATIONS BEING
18 ABLE TO USE WORKS WITHOUT GETTING A PERMISSION BACK WHEN THEY
19 THINK A PERMISSION IS NEEDED, I ASKED YOU ABOUT ONE BOOK AND
20 YOU THOUGHT THAT WAS THE ONLY BOOK IT APPEARED IN.

21 LET ME SHOW YOU ANOTHER PUBLICATION AT ISSUE
22 ASSESSING WRITING, THIS IS THE DEFENDANTS' VERSION DEFENDANTS'
23 EXHIBIT 811, AND POINT YOU TO THE ACKNOWLEDGMENTS AGAIN PAGE
24 SMALL ROMAN NUMERAL 13. THIS AGAIN SAYS IT HAS NOT BEEN
25 POSSIBLE TO IDENTIFY OR TRACE SOURCES OF ALL THE MATERIALS USED

1 AND IN SUCH CASES THE PUBLISHERS WOULD WELCOME INFORMATION FROM
2 COPYRIGHT OWNERS.

3 SO IT APPEARS THAT IN THIS BOOK ALSO THEY USED
4 MATERIAL COPYRIGHTED OR ORIGINATED BY OTHERS WITHOUT GETTING
5 PERMISSION?

6 A. IT APPEARS THAT WAY, YES.

7 Q. AND, IN FACT, WOULD YOU LOOK AT PAGE 2 OF DEFENDANTS'
8 EXHIBIT 723. THERE IS A DISCUSSION OF PROCEDURES FOR GETTING
9 PERMISSIONS, AND THERE IS A SECTION IN THE MIDDLE IF THE
10 COPYRIGHT HOLDER FAILS TO REPLY'; DO YOU SEE THAT?

11 A. YES, I DO.

12 Q. AND DO YOU SEE THAT CAMBRIDGE INSTRUCTED AUTHORS IN THIS
13 PUBLICATION IDEALLY YOU SHOULD OMIT THE MATERIAL; HOWEVER, IF
14 THIS IS NOT POSSIBLE AND IF NO REPLY HAS BEEN RECEIVED TO TWO
15 REQUESTS SEND A FINAL LETTER SAYING IF WE DO NOT RECEIVE A
16 REPLY FROM YOU WITHIN FOUR WEEKS OF THE DATE OF THIS LETTER WE
17 SHALL ASSUME THAT THE PERMISSION REQUEST IS GRANTED, AND THAT
18 IF THERE IS STILL NO REPLY, IT IS REASONABLE TO GO AHEAD AND
19 PROVIDE THE MATERIAL AS ACKNOWLEDGED IN THE, QUOTE, USUAL WAY,
20 CLOSED QUOTE?

21 MS. SINGER: OBJECTION, I DON'T THINK WE HAVE
22 ESTABLISHED THAT THIS IS GUIDANCE THAT CAMBRIDGE IS GIVING
23 ANYBODY IN PARTICULAR PARTICULARLY NOT U.S. AUTHORS, AND I
24 DON'T SEE THE RELEVANCE.

25 THE COURT: WHAT IS THE RELEVANCE OF IT?

1 MR. HARBIN: DOES WHAT I JUST READ ACCURATELY REFLECT
2 CAMBRIDGE'S POLICY AS YOU UNDERSTAND IT THAT AUTHORS WORKING
3 WITH CAMBRIDGE IF THEY CAN'T GET PERMISSION FROM A PRIOR AUTHOR
4 OR RIGHTSHOLDER OF A WORK, THEY CAN SEND A LETTER AND IF THEY
5 DON'T GET AN ANSWER IN FOUR WEEKS ASSUME PERMISSION IS
6 GRANTED?

7 THE COURT: SIR, I DID ASK YOU A QUESTION AND I DON'T
8 THINK YOU ANSWERED IT.

9 MR. HARBIN: I'M SORRY.

10 THE COURT: I ASKED YOU ABOUT THE RELEVANCE.

11 MR. HARBIN: I'M SORRY, I APOLOGIZE, YOUR HONOR. I
12 THINK IT GETS TO THE POLICY OF THE TESTIMONY YESTERDAY AS I
13 UNDERSTAND THE WITNESS TO SAY THAT CAMBRIDGE REQUIRES AUTHORS
14 IF THEY THINK PERMISSION IS REQUIRED TO ALWAYS GET PERMISSION,
15 AND I DON'T REALLY THINK THAT'S THE FACT. IT DEALS WITH THE
16 OVERALL APPLICATION OF THE FAIR USE.

17 THE COURT: OBJECTION OVERRULED.

18 THE WITNESS: SORRY, COULD YOU STATE THE QUESTION
19 AGAIN?

20 BY MR. HARBIN:

21 Q. IT WAS A BAD LONG QUESTION.

22 IS IT CAMBRIDGE'S POLICY THAT AN AUTHOR WORKING WITH
23 YOU IS AUTHORIZED TO USE THE WORK OF A PRIOR AUTHOR THAT THEY
24 INITIALLY DECIDED THEY NEED TO GET PERMISSION FOR IF THEY WRITE
25 THE AUTHOR AND AFTER SOME PERIOD OF TIME THE AUTHOR DOESN'T

1 ANSWER, THEY CAN USE IT AND THEY JUST NEED TO ACKNOWLEDGE IT?

2 A. IT'S A POLICY APPLIED IN SOME CASES, BUT IT'S AT THE
3 DISCRETION OF THE EDITOR AND THE MANAGEMENT.

4 Q. THANK YOU. AND I WILL TURN YOU TO PAGE 6 OF THIS
5 DEFENDANTS' EXHIBIT 723, AND THERE'S A SECTION ON DO YOU NEED
6 PERMISSION AT THE BOTTOM OF THE PAGE TO REPRINT A CHAPTER --
7 MAYBE THE NEXT ONE, DO I NEED PERMISSION TO USE IN A
8 COLLABORATIVE VOLUME AND ESSAY THAT'S ALREADY BEEN PUBLISHED IN
9 A JOURNAL; DO YOU SEE THAT?

10 A. I DO SEE IT. JUST GIVE ME A MOMENT TO READ IT. OKAY.

11 Q. AND YOU CAN LOOK AT THAT WHOLE PARAGRAPH ANSWER, BUT WHAT
12 I WANT TO FOCUS IS THE LAST IF THE RIGHTS GRANTED TO THE
13 ORIGINAL PUBLISHER WERE NONEXCLUSIVE THEN THERE IS NO PROBLEM,
14 AND IS THAT YOUR UNDERSTANDING OF CURRENT CAMBRIDGE POLICY?

15 A. WELL, SIR, I THINK WHAT'S MEANT BY NONEXCLUSIVE IS OUT OF
16 COPYRIGHT, NONCOPYRIGHTED MATERIAL, IN OTHER WORDS PUBLIC
17 DOMAIN. I BELIEVE THAT'S THE MEANING OF THE WORD
18 "NONEXCLUSIVE" IN THIS CONTEXT.

19 Q. IF YOU LOOK AT THE PRIOR PARAGRAPH, IT'S TALKING ABOUT
20 THAT THE CONTRIBUTOR HAS ASSIGNED COPYRIGHTS TO THE ORIGINAL
21 PUBLISHER?

22 A. SORRY, WHERE IS THAT?

23 Q. IMMEDIATELY PRIOR PARAGRAPH OF THE ANSWER.

24 A. WELL, IT SAYS DO I -- IF YOU MEAN DO I NEED PERMISSION TO
25 REPRINT A CHAPTER FROM A WORK IN WHICH ANOTHER PUBLISHER HOLDS

1 EXCLUSIVE RIGHTS IF THE CHAPTER IS BEING REVISED; IS THAT WHAT
2 YOU'RE REFERRING TO?

3 Q. AND THEN THE ANSWER SAYS IN BOTH CASES YOU WILL NEED TO
4 ESTABLISH WITH THE CONTRIBUTOR WHAT RIGHTS HE OR SHE GRANTED TO
5 THE PREVIOUS PUBLISHER?

6 A. YES.

7 Q. HE OR SHE MAY HAVE ASSIGNED COPYRIGHTS IN WHICH CASE
8 PERMISSION FROM THE ORIGINAL PUBLISHER IS REQUIRED; DO YOU SEE
9 THAT?

10 A. YES.

11 Q. THEN IT SAYS IN THE NEXT LINE IF THE RIGHTS GRANTED TO THE
12 ORIGINAL PUBLISHER WERE NONEXCLUSIVE?

13 A. YES.

14 Q. SO WHAT THIS IS TALKING ABOUT IF THE ORIGINAL AUTHOR JUST
15 GAVE THE ORIGINAL PUBLISHER NONEXCLUSIVE RIGHTS, YOU'RE OKAY TO
16 USE THEM?

17 A. YES.

18 Q. THANK YOU.

19 A. YEAH.

20 Q. I WANT TO GO INTO SOME OF THE SPECIFIC WORKS WITH YOU AND
21 ASK YOU FIRST ABOUT ASSESSING SPEAKING, ONE OF THE WORKS AT
22 ISSUE, AND IT'S MY UNDERSTANDING AND I THINK THE STIPULATION IS
23 IN THE RECORD THAT THE PLAINTIFFS ARE COMPLAINING ABOUT THE USE
24 OF PAGES 59 TO 95 AND PAGES 139 TO 169. THIS WAS USED BY
25 PROFESSOR KIM, YOUR HONOR. THIS IS THE WORK WHERE THE

1 PLAINTIFFS BY THEIR CALCULATION PROFESSOR KIM USED 35 PERCENT,
2 AND I WANT TO TURN YOU TO THIS WORK.

3 THE FIRST PORTION BEGINNING AT PAGE 59 CHAPTER 4 IS A
4 DISCUSSION OF SPEAKING SCALES; DO YOU SEE THAT?

5 A. I CAN READ THE HEADING OF THE CHAPTER, YES.

6 Q. AND THEN THE AUTHOR BEGINS LOOKING AT PAGE 60 BY GIVING
7 EXAMPLES OF SPEAKING SCALES?

8 A. I CAN READ THE SUBHEAD. I CAN'T READ THE TEXT.

9 MS. SINGER: EXCUSE ME, COULD THE WITNESS BE GIVEN A
10 COPY OF THIS SO HE DOESN'T HAVE TO TRY TO READ ACROSS THE
11 ROOM?

12 THE COURT: I IMAGINE IT IS PRETTY HARD. DO YOU ALL
13 HAVE AN EXTRA COPY?

14 MS. SINGER: THIS IS A DEFENDANTS' EXHIBIT, I
15 BELIEVE, AND WE WEREN'T PROVIDED WITH ORIGINALS OF THE BOOKS.

16 THE COURT: AND YOU PROBABLY DON'T HAVE AN EXTRA ONE
17 EITHER?

18 MR. HARBIN: I DON'T. SOME OF THESE I HAVE EXCERPTS
19 FROM. I'M NOT GOING TO GO INTO GREAT DETAIL, AND IF THERE'S A
20 PROBLEM, I CAN ALSO BLOW IT UP.

21 THE COURT: MAYBE YOU COULD JUST READ OUT THE PART
22 THAT YOU'RE ASKING HIM ABOUT.

23 MR. HARBIN: OKAY.

24 BY MR. HARBIN:

25 Q. SHE BEGINS BY TALKING ABOUT THE NATIONAL -- BOTTOM OF PAGE

1 60, THE NATIONAL CERTIFICATE SCALE, THE FINNISH NATIONAL
2 CERTIFICATE SCALE; DO YOU SEE THAT?

3 A. BARELY BUT YES.

4 Q. AND THEN SHE HAS A TABLE THAT HAS THE FINNISH NATIONAL
5 CERTIFICATE SCALE; DO YOU SEE THAT?

6 A. I SEE A TABLE. I CAN'T PRETEND I CAN READ IT.

7 THE COURT: GO AHEAD TOWARD YOUR QUESTION, AND THEN
8 MAYBE YOU CAN HAND HIM THE BOOK.

9 BY MR. HARBIN:

10 Q. YOU'RE NOT CLAIMING THAT -- CAMBRIDGE IS NOT CLAIMING
11 COPYRIGHT IN THE FINNISH NATIONAL CERTIFICATE SCALE, IS IT?

12 THE COURT: DO YOU WANT TO SEE WHAT'S ON THE PAGE?

13 THE WITNESS: SIR, I WOULD HAVE TO LOOK MORE CLOSELY
14 AT THE PAGE, YES.

15 MR. HARBIN: DO YOU SEE THAT?

16 THE COURT: NOW IS THAT MATERIAL ON THE PAGE THAT YOU
17 ALL ARE LOOKING AT SOMETHING THAT DESCRIBES THE FINNISH
18 CERTIFICATE OR IS IT A PICTURE OF THE FINNISH CERTIFICATE?

19 MR. HARBIN: I BELIEVE -- AND WE CAN HAVE PROFESSOR
20 KIM ADDRESS THIS IS MORE DETAIL, BUT I THINK IT'S PRETTY CLEAR
21 FROM THE WORK IT'S ACTUALLY SIMPLY A REPRINT OF THE SCALES.

22 THE WITNESS: WELL, I HONESTLY DON'T FEEL QUALIFIED
23 TO RULE ON THIS NOR TO GIVE MY JUDGMENT. I'D HAVE TO READ THE
24 BOOK IN MUCH MORE DETAIL, AND EVEN THEN I'M NOT SURE I FEEL
25 QUALIFIED.

1 IT COULD HAVE BEEN REWRITTEN. IT COULD HAVE BEEN
2 REDACTED. IT COULD HAVE BEEN SUMMARIZED. I DON'T KNOW.
3 BY MR. HARBIN:

4 Q. LET ME ASK THIS TO EXPEDITE IT. I WOULD REPRESENT TO YOU
5 THAT -- AND, YOUR HONOR, JUST BRIEFLY SOME OF THESE -- SHE THEN
6 TALKS ABOUT ANOTHER SCALE FROM A THIRD PARTY AMERICAN COUNCIL
7 FOR TEACHING OF FOREIGN LANGUAGES, AND TABLE 4.2 ATTRIBUTED TO
8 THAT GROUP ACTFL AT THE TOP -- IN FACT THIS GOES ON FOR FOUR OR
9 FIVE PAGES TO PAGE 67 TALKS ABOUT THAT SCALE.

10 AND THEN SHE DISCUSSES ANOTHER THIRD PARTY'S TEST OR
11 SCALE, THE TEST OF SPOKEN ENGLISH SCALE, AND THERE'S A TABLE ON
12 THE NEXT PAGE 69 OF THAT TABLE, AND THERE'S A TABLE ON PAGE 70
13 OF THIS COMPLAINED OF EXCERPT THE TEST OF SPOKEN ENGLISH. THEN
14 THERE'S A DISCUSSION, 71, OF COMMON EUROPEAN FRAMEWORK SPEAKING
15 SCALES, AND ANOTHER TABLE FROM THE COUNCIL OF EUROPE; DO YOU
16 SEE THAT?

17 NOW IF YOU LOOK AT THE ACKNOWLEDGMENT, SIR, TO START
18 SHE ACKNOWLEDGES, AMONG OTHERS, SPEECH SAMPLES FROM THE FINNISH
19 NATIONAL FOREIGN LANGUAGE CERTIFICATE, THE FIRST ONE I
20 REFERENCED; DO YOU RECALL THAT?

21 A. YES.

22 Q. SHE ACKNOWLEDGES THE ACTFL PROFICIENCY GUIDELINES FROM
23 THAT GROUP; DO YOU SEE THAT?

24 A. YES.

25 Q. SHE TALKS ABOUT TABLE 4.5; DO YOU SEE THAT?

1 A. YES.

2 Q. NOW TO THE EXTENT THIS AUTHOR TOOK TABLES PUBLISHED FROM
3 THIRD PARTIES AND REPRINTED THEM IN THIS BOOK WITH
4 ACKNOWLEDGMENTS TO THEM, CAMBRIDGE IS NOT CLAIMING COPYRIGHTS
5 IN THOSE SECTIONS OF THIS EXCERPT, ARE THEY?

6 MS. SINGER: OBJECTION, YOUR HONOR, IT'S A
7 HYPOTHETICAL QUESTION.

8 MR. HARBIN: I SUBMIT IT'S NOT --

9 MS. SINGER: LACK OF FOUNDATION AS WELL.

10 THE COURT: I THINK THE QUESTION WOULD BE PERMISSIBLE
11 BUT FOR THE FACT THAT I DON'T THINK THE WITNESS IS AN EXPERT ON
12 WHAT MIGHT BE CLAIMABLE, AND I DON'T KNOW WHETHER HE'S IN A
13 POSITION TO ANSWER YOUR QUESTION ABOUT WHAT CAMBRIDGE IS
14 CLAIMING.

15 MR. HARBIN: I WOULD SIMPLY ASK HIM AS SOMEONE WHO'S
16 WORKED IN CAMBRIDGE EDITING FOR 30 YEARS AND HAS DEALT WITH
17 COPYRIGHTS ON A WEEKLY BASIS.

18 THE WITNESS: I CAN ONLY GUESS --

19 MR. HARBIN: I'M NOT ASKING YOU TO ANSWER THE
20 QUESTION. THE JUDGE HASN'T RULED. I'M JUST ASKING FOR HIS
21 UNDERSTANDING.

22 THE COURT: I'M NOT SO SURE THAT HIS UNDERSTANDING IS
23 IMPORTANT. I'M GOING TO SUSTAIN THE OBJECTION. IT OCCURS TO
24 ME THAT THE ARGUMENT YOU WANT TO MAKE AND WHICH I ASSUME YOU
25 WILL ULTIMATELY MAKE THAT SOME OR PERHAPS MUCH, I DON'T KNOW

1 WHICH APPLIES, OF THE MATERIAL THAT PROFESSOR KIM COPIED IS NOT
2 PROTECTED BY COPYRIGHT. THAT IS AN ARGUMENT THAT CAN BE MADE
3 BASED ON EXAMINATION OF THE BOOK.

4 MR. HARBIN: AND I APPRECIATE THAT, YOUR HONOR. I
5 WOULD ASK TO ASK A SLIGHTLY DIFFERENT QUESTION AND SEE IF YOUR
6 HONOR STILL THINKS IT'S APPROPRIATE BECAUSE IT DOESN'T HAVE AN
7 ULTIMATE LEGAL CONCLUSION ON IT.

8 THE COURT: ALL RIGHT. WHAT'S THAT QUESTION?

9 BY MR. HARBIN:

10 Q. IF IT ENDS UP TO BE THE CASE -- LET ME JUST ASK IF AN
11 AUTHOR OF A CAMBRIDGE WORK -- OF A FACTUAL WORK REPRODUCES
12 TABLES AND TESTS FROM THIRD PARTIES IN THE WORK, IN YOUR
13 UNDERSTANDING WOULD YOU CONTEND THAT AS ORIGINAL TO THE
14 AUTHOR'S WORK?

15 MS. SINGER: OBJECTION, YOUR HONOR, THAT'S A LEGAL
16 QUESTION.

17 THE COURT: SUSTAINED.

18 MR. HARBIN: THANK YOU.

19 THE COURT: AGAIN, I KNOW WHERE YOU WANT TO GO WITH
20 THIS. YOU WANT TO SAY IT SOUNDS BAD THAT PROFESSOR KIM COPIED
21 35 PAGES, BUT IT'S REALLY NOT SO BAD BECAUSE A CERTAIN AMOUNT
22 OF IT IS THIRD PARTY STUFF THAT WOULD NOT BE COPYRIGHTABLE
23 BY CAMBRIDGE, BUT YOU DON'T NEED A WITNESS TO MAKE THAT
24 ARGUMENT.

25 MR. HARBIN: AND WE WOULD REPRESENT, YOUR HONOR, AND

1 I WON'T ASK ANY MORE QUESTIONS ABOUT THIS WORK, THAT THERE'S
2 SIMILAR ISSUES ABOUT THE SECOND EXCERPT THEY COMPLAIN ABOUT BUT
3 WE'LL ADDRESS THAT LATER.

4 THE COURT: OKAY.

5 MR. HARBIN: LET ME BRIEFLY CUT THIS SHORT BASED ON
6 YOUR HONOR'S COMMENTS. LOOK BRIEFLY AT ANOTHER WORK AT ISSUE A
7 HISTORY OF FEMINIST LITERARY CRITICISM WHICH IS PLAINTIFFS'
8 103, AND WE'LL REFER TO THE DEFENSE COPY WHICH IS DEFENDANTS'
9 EXHIBIT 812, AND, YOUR HONOR, FOR THE RECORD MY UNDERSTANDING
10 THE STIPULATION IS THE PORTION AT ISSUE IS CHAPTER 17 ENTITLED
11 FEMINIST CRITICISM AND TECHNOLOGIES OF THE BODY BY STACY
12 GILLIS, THE CHAPTER IS 14 PAGES BEGINNING AT PAGE 322 AND BY
13 THE PLAINTIFFS' CALCULATION 4.2 PERCENT OF THE WORK.

14 WE WOULD CONTEND THIS IS ONE OF THE ISSUES, AND I
15 DON'T NEED TO QUESTION THE WITNESS. THEY MADE THEIR RECORD.
16 THEY'RE MISSING, I BELIEVE, A CONTRACT FROM A CONTRIBUTING
17 AUTHOR, AND, THEREFORE, WE WOULD CONTEND THIS IS ONE OF THE
18 WORKS WHERE THEY HAVEN'T ESTABLISHED OWNERSHIP.

19 BY MR. HARBIN:

20 Q. BUT TO BRIEFLY LOOK AT THIS CHAPTER, MR. SMITH, HAVE YOU
21 LOOKED AT THIS EXCERPT BEFORE?

22 A. VERY BRIEFLY.

23 Q. OKAY. AND IT'S A DISCUSSION OF THE FIGURE OF THE CYBORG,
24 C Y B O R G; DO YOU SEE THAT ON PAGE 322?

25 A. AGAIN FAINTLY.

1 Q. AND THE AUTHOR TALKS ABOUT HOW DIFFERENT FEMINIST CRITICS
2 HAVE TREATED THE CYBORG INCLUDING ROSI BRAIDOTTI,
3 B R A I D O T T I, AND DONNA HARAWAY; DO YOU SEE THAT?

4 A. I DO SEE THAT.

5 Q. IT GOES ON TO DISCUSS AUTHOR KATHY HAYLES' REVIEW. SO
6 SHE'S REVIEWING OTHER AUTHORS AND SCHOLARS WORK, CORRECT?

7 A. I WOULDN'T CALL IT REVIEWING, SIR. I'D CALL IT
8 CRITICISM. IT'S COMMENTARY.

9 Q. OKAY. SHE GOES BACK ON PAGE 324 TO DISCUSS DONNA
10 HARAWAY'S ESSAY; DO YOU SEE THAT?

11 A. YES.

12 Q. THAT CONTINUES ONTO THE NEXT PAGE OF THE EXCERPT
13 COMPLAINED OF, AND THEN SHE TALKS ABOUT ANOTHER CRITIC'S WORK
14 ANN BALSAMO; DO YOU SEE THAT?

15 A. YES.

16 THE COURT: MAY I INTERRUPT YOU? I JUST DON'T THINK
17 THIS IS THAT HELPFUL. I MEAN ALL THESE THINGS YOU CAN POINT
18 OUT IN CLOSING ARGUMENT. YOU CAN PUT IT IN YOUR FINAL BRIEF.

19 WHAT YOU'RE REALLY DOING IS JUST USING THE WITNESS AS
20 A PROP TO PUBLISH WHAT'S IN EXHIBITS, AND THAT'S FAIR ENOUGH
21 WHEN WE GET TO THE CLOSING ARGUMENT FOR YOU TO COMMENT ABOUT
22 IT, BUT IT'S GOING TO SLOW DOWN THE TRIAL A LOT IF YOU USE THIS
23 TECHNIQUE.

24 MR. HARBIN: I APPRECIATE, YOUR HONOR. THE WITNESS
25 DID GIVE, ALTHOUGH HE STOPPED, HE GAVE SOME CONCLUSORY

1 TESTIMONY ABOUT BELIEVING WORKS WERE ORIGINAL, AND WE WOULD
2 ASK -- I'LL CUT THIS SHORT. WE WOULD ASK THAT SOME OF THE
3 PROFESSORS BE ALLOWED TO GO INTO IT BECAUSE TO US IT VERY
4 FUNDAMENTALLY ADDRESSES THEIR THOUGHT PROCESSES ON THE FAIR
5 USE.

6 THE COURT: RIGHT, WHEN YOU GET TO THE POINT WHERE
7 PROFESSORS ARE TESTIFYING ABOUT THEIR THINKING ON FAIR USE, YOU
8 MAY BE ENTITLED -- YOU PROBABLY WILL BE ENTITLED TO ASK THEM TO
9 LOOK AT THE WORK AND POINT OUT PARTS THAT AFFECTED THEIR
10 THINKING.

11 MR. HARBIN: THANK YOU, YOUR HONOR.

12 WELL, THEN WE CAN SKIP SEVERAL PAGES YOU'LL BE GLAD
13 TO KNOW, MR. SMITH. I WAS GOING TO GO, YOUR HONOR, AND THIS
14 DOES SPEAK TO THE WORK. WE CAN HAVE THE PROFESSOR ADDRESS IT
15 BRIEFLY. THERE ARE SOME WORKS PARTICULARLY THAT PROFESSOR
16 MURPHY USED WHERE THEY'RE COMPLAINING OF EXCERPTS. THEY HAVE
17 ACKNOWLEDGED ON A COUPLE OF THE WORKS THAT SEVERAL OF THE PAGES
18 SPECIFICALLY AUTHORIZED TEACHERS TO MAKE COPIES IN CLASS, BUT
19 THE RECORD WILL SHOW -- THE WORKS WILL SHOW THAT THERE ARE
20 SEVERAL OTHER PAGES THAT FALL WITHIN THAT CATEGORY, BUT WE'LL
21 ADDRESS THAT BRIEFLY WITH PROFESSOR MURPHY AND IN CLOSING
22 ARGUMENT.

23 BY MR. HARBIN:

24 Q. LET ME TURN TO THE QUESTION OF PERMISSIONS AND SALES OF
25 BOOKS. THERE IS GENERALLY, GENERALLY A FEE INVOLVED WHEN

- 1 CAMBRIDGE GRANTS A PERMISSION, CORRECT?
- 2 A. YES.
- 3 Q. BUT NOT ALWAYS?
- 4 A. IT WOULD BE SELDOM -- IT WOULD BE VERY RARE CASES WHERE WE
5 WOULD NOT ASK FOR A FEE.
- 6 Q. OKAY. AND CAMBRIDGE SOMETIMES DISTRIBUTES FREE -- I THINK
7 YOU MAY HAVE TESTIFIED FIRST THAT CAMBRIDGE SOMETIMES GIVES
8 TEACHERS OR PROFESSORS PDF BOOKS, ELECTRONIC COPIES?
- 9 A. IN VERY, VERY RARE INSTANCES.
- 10 Q. AND CAMBRIDGE SOMETIMES DISTRIBUTES FREE PRINT COPIES OF
11 BOOKS TO PROFESSORS OR INSTRUCTORS, CORRECT?
- 12 A. THAT'S CORRECT.
- 13 Q. AND THAT'S TO ENCOURAGE THEM TO SELL THE BOOK BECAUSE IF
14 THEY LIKE IT THEY MAY ASSIGN IT TO THEIR CLASS, CORRECT?
- 15 A. SORRY, YOU SAID TO SELL THE BOOK? NO, IT'S NOT TO
16 ENCOURAGE THEM TO SELL THE BOOK.
- 17 Q. NO, THE REASON YOU GIVE MOST OF THE PROFESSORS -- SOME
18 AUTHORS YOU HAVE TO GIVE THEM TO. SOMETIMES YOU GIVE THEM OUT
19 FOR REVIEWS FOR EXAMPLE?
- 20 A. YES.
- 21 Q. YOU ALSO GIVE THEM TO PROFESSORS IN THE HOPES THAT THE
22 PROFESSOR WILL LIKE THE BOOK AND MAYBE ASSIGN IT AS A REQUIRED
23 TEXTBOOK FOR THE CLASS?
- 24 A. CORRECT.
- 25 Q. AND SOMETIMES THE NUMBER OF BOOKS YOU GIVE OUT FREE IS

1 SIGNIFICANT COMPARED TO THE NUMBER SOLD, ISN'T IT?

2 A. OCCASIONALLY. IT'S PRETTY RARE. I SUPPOSE THE KEYWORD IS
3 SIGNIFICANT.

4 MR. HARBIN: IF I MAY APPROACH, YOUR HONOR?

5 THE COURT: YES.

6 BY MR. HARBIN:

7 Q. THIS IS A BOOK ABOUT THE FINANCIAL RECORDS OF CAMBRIDGE --
8 BY THE WAY, YOU COULD PRODUCE RECORDS OF HOW MANY BOOKS YOU
9 GIVE AWAY TOTAL; YOU HAVE THOSE RECORDS, DON'T YOU?

10 A. YES, WE DO.

11 Q. CAN YOU APPROXIMATE HOW MANY ON AN ANNUAL BASIS; DO YOU
12 GIVE AWAY THOUSANDS OF BOOKS?

13 A. WE GIVE AWAY -- WE CERTAINLY GIVE AWAY THOUSANDS OF BOOKS
14 ANNUALLY, YES.

15 Q. TENS OF THOUSANDS?

16 A. TENS OF THOUSANDS? WELL THE NUMBER THAT I HAVE IN MY HEAD
17 IS ABOUT 20,000, BUT I WOULD HAVE TO CHECK IT.

18 Q. AND IF YOU WOULD LOOK AT THIS NOTEBOOK OF FINANCIAL
19 RECORDS, THERE'S A GROUP OF PLAINTIFF'S EXHIBITS AT THE FRONT
20 AND A GROUP OF DEFENDANTS' EXHIBITS, AND I JUST WANT TO POINT
21 YOU TO DEFENDANTS' EXHIBIT 89?

22 A. WHERE WOULD I FIND THIS PLEASE? IT'S IN THE BOOK?

23 Q. YES, IT'S IN THE DEFENSE GROUP. THE PLAINTIFFS ARE
24 FIRST.

25 A. FOUND IT, YES, OKAY.

1 Q. AND THIS IS A RECORD FROM CAMBRIDGE ABOUT SALES OF WORK
2 THAT WAS AT ISSUE A LEGISLATIVE LEVIATHAN?

3 A. YES.

4 Q. AND UP TO -- IT APPEARS TO COVER 07, 08 AND 09, AND IT
5 SHOWS THAT PAPERBACK ON THE TOP COLUMN -- IS THE FIGURE ON THE
6 RIGHT TOTAL, IS THAT THE UNITS OR INCOME?

7 A. I JUST WANT TO KNOW WHAT YOU'RE POINTING AT. YOU'RE
8 POINTING AT THE SECOND TO THE RIGHT COLUMN, CORRECT?

9 Q. 684 TOTAL?

10 A. THAT WOULD BE THE TOTAL SALES THROUGH THAT PERIOD.

11 Q. OKAY. AND SO THE NUMBER ON THE RIGHT -- EXCUSE ME, ON THE
12 LEFT -- WHERE IS THE NUMBER OF UNITS SOLD?

13 A. ALL OF THESE NUMBERS ON THIS PAGE ARE UNITS. THERE IS NO
14 REFERENCE HERE TO DOLLAR AMOUNTS IN THIS PARTICULAR REPORT.

15 Q. SO FOR THOSE THREE YEARS CAMBRIDGE 684 VOLUMES OF THIS
16 BOOK?

17 A. WE SOLD 684 PAPERBACK COPIES.

18 Q. AND GAVE AWAY FREE 227?

19 A. THAT'S CORRECT.

20 Q. AND A HARDCOPY TOTAL, YOU SOLD 102 BOOKS?

21 A. THAT'S CORRECT.

22 Q. AND GAVE AWAY 29?

23 A. YES.

24 Q. THANK YOU. AND CAMBRIDGE ALSO HAS A RELATIONSHIP WITH
25 GOOGLE BOOKS WHERE IT PUTS -- WHERE MANY OF ITS BOOKS ARE PUT

1 ON GOOGLE, CORRECT?

2 A. WE HAVE A RELATIONSHIP WITH GOOGLE BOOKS IN WHICH WE ALLOW
3 THE DISPLAY OF A PORTION OF BOOKS THAT WE CHOOSE.

4 Q. AND UP TO 5 PERCENT OF THE BOOKS CAN BE SEEN?

5 A. IN FACT THE CURRENT POLICY IS 10 PERCENT.

6 Q. 10 PERCENT?

7 A. YES.

8 Q. AND THAT'S JUST BY ANYBODY LOGGING INTO GOOGLE, CORRECT?

9 A. THAT'S CORRECT.

10 Q. AND YOU ALSO HAVE A RELATIONSHIP WITH AMAZON BOOKS WHERE
11 YOU PUT SOME OF YOUR WORKS ONLINE WITH AMAZON?

12 A. WE HAVE A RELATIONSHIP WITH AMAZON, YES.

13 Q. AND IS IT CORRECT ABOUT GOOGLE, TO GO BACK, IT USED TO
14 BE 5 PERCENT AND NOW IT'S MOVED UP TO 10 PERCENT?

15 A. NO, IT'S ALWAYS BEEN 10 PERCENT. I WAS IN ERROR IN MY
16 DEPOSITION WHEN I SAID IT WAS 5 PERCENT.

17 Q. OKAY. THANK YOU.

18 THE COURT: IS IT THE SAME THING FOR AMAZON?

19 THE WITNESS: NO, AMAZON I BELIEVE IT'S LIMITED TO 10
20 PAGES.

21 THE COURT: AND YOU SAID YOU ALL SELECT THE
22 PARTICULAR BOOKS THAT ARE GOING TO BE USED?

23 THE WITNESS: YES, YOUR HONOR.

24 THE COURT: HOW DO YOU DO THAT?

25 THE WITNESS: IN ESSENCE THOSE BOOKS WHERE WE THINK

1 THAT THE DISPLAY OF SOME MATERIAL AT RANDOM MAY ENCOURAGE
2 SALES. IT'S A JUDGMENT.

3 BY MR. HARBIN:

4 Q. YOU TESTIFIED YESTERDAY ABOUT A CONCERN ABOUT WHAT WOULD
5 HAPPEN IF WHAT YOU PERCEIVE AS A MISUSE OR IMPROPER PRACTICES
6 AT GEORGIA STATE WOULD SPREAD.

7 YOU HAVE NOT DONE AN ECONOMIC ANALYSIS OF MARKET HARM
8 CONCERNING GEORGIA STATE UNIVERSITY'S ACTIONS, HAVE YOU?

9 A. WELL, IT DEPENDS ON WHAT YOU WOULD TERM AN ECONOMIC
10 ANALYSIS.

11 Q. YOU CERTAINLY HAVEN'T DONE AN ECONOMIC ANALYSIS, HAVE YOU,
12 SIR; YOU'RE NOT AN ECONOMIST?

13 A. I'M NOT AN ECONOMIST, NO.

14 Q. AND IF YOU LOOK AT DEFENDANTS' EXHIBIT 70, YOU WERE A
15 DESIGNATED REPRESENTATIVE OF CAMBRIDGE UNIVERSITY TESTIFYING ON
16 CAMBRIDGE'S BEHALF ON SEVERAL TOPICS?

17 A. YES.

18 Q. AND ONE OF THOSE TOPICS, IF YOU LOOK AT NUMBER 8, WAS
19 WHETHER PLAINTIFF CONTENDS THE MARKETS OR POTENTIAL MARKETS FOR
20 PLAINTIFFS' COPYRIGHTS HAVE SUFFERED OR ARE SUFFERING FROM THE
21 POSTING OF EXCERPTS OF WORKS, ET CETERA, INCLUDING BUT NOT
22 LIMITED TO THE AMOUNT OF HARM IN U.S. DOLLARS AND HOW SUCH
23 AMOUNT WAS CALCULATED; DO YOU SEE THAT?

24 A. YES, I DO.

25 Q. AND YOU WERE ASKED IN YOUR DEPOSITION IF CAMBRIDGE HAD

1 PERFORMED AN ANALYSIS -- EXCUSE ME, YOU WERE ASKED IN YOUR
2 DEPOSITION AS A 30(B)(6) REPRESENTATIVE OF CAMBRIDGE WHETHER
3 GEORGIA STATE UNIVERSITY'S ALLEGED USES OF CAMBRIDGE'S WORKS
4 HAD AFFECTED THE MARKET OR POTENTIAL MARKETS FOR THOSE WORKS,
5 AND YOU DIDN'T SAY YES. YOU SAID ARE YOU ASKING ME TO PERFORM
6 AN ECONOMIC ANALYSIS; DO YOU RECALL THAT?

7 A. YES.

8 Q. AND AS OF 2009 CAMBRIDGE HAD NOT DONE AN ECONOMIC
9 ANALYSIS, HAD IT?

10 A. THAT'S CORRECT.

11 Q. AND YOU HAVE NOT PRODUCED ANY ECONOMIC ANALYSIS, CAMBRIDGE
12 HAS NOT TO DATE IN THIS CASE, HAVE YOU?

13 A. NO, WE HAVE NOT.

14 Q. OKAY. HAVE YOU BEEN THE PERSON OR ONE OF THE PEOPLE
15 WITHIN CAMBRIDGE WHO'S BEEN RESPONSIBLE FOR MONITORING THIS
16 LAWSUIT?

17 A. YES, I HAVE.

18 Q. YOU'RE AWARE THAT THE PLAINTIFFS RETAINED AN EXPERT WHO'S
19 AN EMPLOYEE OF CCC MS. MARINIELLO, IF I'M PRONOUNCING THAT
20 CORRECTLY?

21 A. I'M AWARE OF IT, YES.

22 Q. WHO GAVE SOME OPINIONS SIMPLY ABOUT PERMISSIONS USE,
23 CORRECT?

24 A. I'M NOT AWARE OF WHAT SHE'S SAID. THAT I HAVE TO PLEAD
25 IGNORANCE THERE.

1 Q. YOU WERE THEN ASKED IF CAMBRIDGE HAD PERFORMED AN
2 ANALYSIS, AND YOU SAID IN A SENSE THE ANSWER IS YES BECAUSE WE
3 PERCEIVE THAT USE WITHOUT PERMISSION OR FEES IS HARMING US,
4 DEPRIVING US OF REVENUE. I CAN GET OUT A CALCULATOR AND EASILY
5 DETERMINE WHAT THAT MIGHT BE, BUT IT'S ALMOST AN AUTOMATIC
6 CALCULATION THAT ONE MAKES IN ONE'S HEAD.

7 DO YOU RECALL THAT TESTIMONY?

8 A. YES, I DO.

9 Q. AND THE CALCULATION YOU WERE TALKING ABOUT IS TO TAKE THE
10 NUMBER OF STUDENTS AT GEORGIA STATE AND THE NUMBER OF PAGES AND
11 APPLY YOUR PERMISSIONS FEE SCHEDULE?

12 A. YES.

13 Q. AND YOU DIDN'T MENTION ANYTHING IN YOUR DEPOSITION ABOUT
14 LOSS SALES OF BOOKS, DID YOU?

15 THE COURT: I DON'T KNOW HOW HELPFUL THIS IS. THE
16 WITNESS DID NOT GIVE ANY TESTIMONY ON DIRECT ABOUT ECONOMIC
17 ANALYSIS, AND YOUR POINT HERE SEEMS TO BE THAT THEY HAVEN'T
18 DONE ONE. THIS IS JUST KIND OF GOING WAY OUT ON A LIMB.

19 MR. HARBIN: IT WAS MY INTERPRETATION THE WITNESS DID
20 NOT EVER GO SO FAR AS TO SAY THERE HAS BEEN HARM BUT IF
21 SOMETHING HAPPENED THEY WERE CONCERNED IT MIGHT BE.

22 THE COURT: WELL, I THINK HE IS SAYING THERE HAS BEEN
23 HARM, BUT YOU WERE ADDRESSING ECONOMIC ANALYSIS I THOUGHT, AND
24 SINCE THE WITNESS DIDN'T TESTIFY THAT THERE WAS AN ECONOMIC
25 ANALYSIS, I DON'T KNOW WHAT THE POINT IS OF PINNING HIM DOWN

1 NOW ON THE FACT THAT THERE IS TO HIS KNOWLEDGE NOT AN ECONOMIC
2 ANALYSIS.

3 MR. HARBIN: LET ME REPHRASE WHAT I SAID. I
4 APOLOGIZE FOR BEING IMPRECISE. CLEARLY THE PLAINTIFFS ARE
5 CLAIMING GEORGIA STATE SHOULD HAVE PAID PERMISSION FEES FOR
6 THAT STUFF.

7 THE COURT: RIGHT.

8 MR. HARBIN: AND THAT'S WHEN HE WAS TESTIFYING IN HIS
9 DEPOSITION HE SAID YOU CAN DO A SIMPLE CALCULATION. WE
10 OBVIOUSLY CAN TEST THAT, BUT BEYOND THAT THERE'S BEEN NO
11 EVIDENCE OF ANY CAUSATION OR HARM, AND YESTERDAY HE MENTIONED A
12 CONCERN ABOUT LOSS OF SALES OF BOOKS, BUT THERE'S BEEN NO
13 EVIDENCE OF ANY LOST SALES OF BOOKS OR ANALYSIS TO SUPPORT IT,
14 AND THAT'S WHAT I WAS TRYING TO GET AT.

15 THE ISSUE OF THE PERMISSIONS AT GEORGIA STATE IS WHAT
16 IT IS. THAT'S MY CONCERN. HE DIDN'T SAY WE HAVE AND TO MY
17 UNDERSTANDING I KNOW WE HAVE LOST THE SALE OF A BOOK. THAT WAS
18 MY UNDERSTANDING OF THE RECORD AND --

19 THE COURT: RIGHT, I THINK IT IS FAIR TO SAY THAT HE
20 SAID THAT THEY WERE LOSING BOOK SALES OR WELL CERTAINLY LOSING
21 PERMISSIONS INCOME, BUT I DON'T SEE HOW THE QUESTIONS YOU'VE
22 BEEN ASKING REALLY REFUTE THAT OR UNDERMINE IT.

23 MR. HARBIN: LET ME GO INTO THE BOOK SALES, YOUR
24 HONOR. I MEAN THE PERMISSIONS FEE AT GEORGIA STATE IS WHAT --
25 THAT'S UP TO YOUR HONOR TO DECIDE IF THAT SHOULD BE PAID OR

1 NOT.

2 THE COURT: ALL RIGHT.

3 BY MR. HARBIN:

4 Q. YOU HAVE NOT PRODUCED, CAMBRIDGE HAS NOT PRODUCED ANY
5 EVIDENCE IN THIS CASE OF A SALE OF A SINGLE BOOK LOST BECAUSE
6 OF GEORGIA STATE'S PRACTICES, HAVE YOU?

7 A. THAT'S CORRECT.

8 Q. AND YOU DON'T KNOW OF YOUR PERSONAL KNOWLEDGE OF A SINGLE
9 BOOK SALE THAT CAMBRIDGE HAS LOST BECAUSE OF WHAT'S HAPPENED AT
10 GEORGIA STATE, DO YOU?

11 A. THAT'S CORRECT.

12 Q. AND, IN FACT, IT'S YOUR BELIEF, BY THE WAY, THAT THE
13 POSTING OF PORTIONS OF BOOKS ON GOOGLE HAS INCREASED THE SALES
14 OF YOUR BOOKS SOMEWHAT?

15 A. YES.

16 Q. OKAY. AND IT'S POSSIBLE THAT A STUDENT RECEIVED AN
17 EXCERPT OF A BOOK LIKE FEMINISTS CRITICISM AND DECIDED TO
18 PURCHASE THE BOOK, ISN'T IT?

19 MS. SINGER: OBJECTION, THESE ARE JUST HYPOTHETICALS.

20 THE COURT: IT IS POSSIBLE, BUT AGAIN IT SOUNDS LIKE
21 CLOSING ARGUMENT TO ME. SUSTAINED.

22 BY MR. HARBIN:

23 Q. AND CAMBRIDGE HAS SEEN AN INCREASE IN TOTAL REVENUES OVER
24 THE PAST FIVE YEARS; IS THAT CORRECT?

25 A. THAT'S CORRECT.

1 Q. AND AS OF YOUR DEPOSITION AT LEAST, YOU DIDN'T KNOW AT THE
2 TIME IF CAMBRIDGE HAD SEEN A DECLINE IN ITS REVENUES FROM
3 PERMISSIONS IN THE PAST FIVE YEARS, DID YOU?

4 A. AT THE TIME OF THE DEPOSITION, I DID NOT.

5 Q. AND, IN FACT, YOU'VE HAD AN INCREASE IN PERMISSIONS
6 REVENUE?

7 A. AT THE TIME OF THE DEPOSITION, YES.

8 Q. BY THE WAY, LET ME -- IF I UNDERSTOOD YOUR TESTIMONY
9 YESTERDAY, YOU SAID THAT OVERALL EXPENSES AT CAMBRIDGE ARE IN
10 THE ORDER OF 240 MILLION DOLLARS?

11 A. YES.

12 Q. U.S. DOLLARS?

13 A. THAT'S A GLOBAL NUMBER.

14 Q. THAT'S WHAT I WAS GOING TO ASK.

15 A. YES.

16 Q. THE INFORMATION WE HAVE PROVIDED BY CAMBRIDGE IS FOR
17 AMERICA'S NUMBERS, CORRECT?

18 A. YES.

19 Q. OKAY. AND DO YOU RECALL, AND WE CAN PULL UP THE
20 DOCUMENTS, BUT RIGHTS REVENUE INCLUDES PERMISSIONS AT
21 CAMBRIDGE?

22 A. CORRECT.

23 Q. IT WAS 874,000 IN FY 2007, AND A LITTLE OVER ONE MILLION,
24 ONE MILLION SIX THOUSAND IN FISCAL YEAR 08, CORRECT?

25 A. I'LL HAVE TO TAKE YOUR WORD. I DON'T REMEMBER THOSE

1 NUMBERS.

2 Q. OKAY. IF YOU CAN LOOK, SIR, IN YOUR NOTEBOOK THERE OF
3 FINANCIAL DOCUMENTS, FIRST OFF IF YOU LOOK AT PLAINTIFF'S
4 EXHIBIT 1 THAT IS A DETAILED INCOME STATEMENT FOR THE AMERICA'S
5 BRANCH FOR FISCAL YEAR 2009?

6 A. YES.

7 Q. AND THAT AT CAMBRIDGE ENDS APRIL 09?

8 A. APRIL 30TH, 09, CORRECT.

9 Q. AND THAT I BELIEVE IS THE LAST FINANCIAL INFORMATION, MOST
10 CURRENT THAT CAMBRIDGE HAS PRODUCED FOR THE DEFENDANTS; IS THAT
11 RIGHT?

12 A. WELL, I'M NOT CERTAIN, BUT WE HAVE PRODUCED WHATEVER WE
13 WERE REQUESTED TO PRODUCE, I'M SURE.

14 Q. LET ME ASK YOU TO LOOK AT PLAINTIFF'S EXHIBIT 2. THIS IS
15 AN INTERNAL DOCUMENT AT CAMBRIDGE ABOUT RIGHTS AND PERMISSIONS
16 INCOME, CORRECT?

17 A. YES, IT IS.

18 Q. AND IF YOU LOOK AT THIS, IT APPEARS A COUPLE OF TIMES, BUT
19 IF YOU LOOK WHERE I'M POINTING TOWARD THE MIDDLE OF THE FIRST
20 PAGE OF PLAINTIFF'S EXHIBIT 2, IT TALKS ABOUT RIGHTS AND
21 PERMISSIONS REVENUE IN THE AMERICAS, AND IT SAYS FY07 874,000,
22 FY08 ONE MILLION SIX THOUSAND, FY09 1.2 MILLION; DO YOU SEE
23 THAT?

24 A. YES.

25 Q. NOW THE RIGHTS REVENUE INCLUDES MORE THAN PERMISSIONS FOR

1 ACADEMIC BOOKS, DOESN'T IT, IN ITS STUDIES?
2 A. THAT'S CORRECT.
3 Q. IT INCLUDES REVENUE FROM PURCHASERS OUTSIDE THE U.S.?
4 A. NO, I DON'T BELIEVE IT DOES. IF YOU'RE TALKING ABOUT
5 WHAT'S RECORDED ON THIS REPORT, NO, IT WOULD NOT INCLUDE IT. I
6 DON'T BELIEVE SO.
7 Q. IF YOU LOOK AT THE THIRD PAGE BATES STAMPED CPU 16905
8 STILL ON PLAINTIFFS' EXHIBIT 2?
9 A. YES.
10 Q. DO YOU SEE THE DISCUSSION OF REASONS FOR FY09 REVENUE
11 INCREASE?
12 A. UH-HUH (AFFIRMATIVE).
13 Q. AND IT SAYS UNEXPECTED AND UNPREDICTABLE INCOME FROM
14 FOREIGN COUNTRIES THAT WERE MAKING CATCH-UP PAYMENTS TO CCC?
15 A. YES.
16 Q. SO YOU DO GET -- THE AMERICA'S BRANCH DOES GET PERMISSIONS
17 REVENUE FROM FOREIGN COUNTRIES?
18 A. THROUGH CCC, YES, THAT'S CORRECT.
19 Q. AND THAT'S A COMPONENT OF THOSE FIGURES UP TO 1.2 MILLION
20 IN FISCAL YEAR 09; IS THAT CORRECT?
21 A. YES, THAT WOULD BE CORRECT.
22 Q. AND CAMBRIDGE ALSO RECEIVES RIGHTS AND PERMISSIONS REVENUE
23 FROM CORPORATIONS, PRIVATE BUSINESSES, CORRECT?
24 A. YES.
25 Q. AND THAT'S PRIMARILY FOR JOURNALS, CORRECT?

1 A. YES.

2 Q. AND THAT IS A SIGNIFICANT, THAT BEING PAYMENTS BY
3 CORPORATIONS, PRIVATE BUSINESSES TO CAMBRIDGE DIRECTLY OR
4 THROUGH CCC IS A SIGNIFICANT PART OF YOUR PERMISSIONS REVENUE?

5 A. IT'S SIGNIFICANT, YES.

6 Q. IS IT MORE THAN HALF?

7 A. I DON'T BELIEVE IT IS. I'D HAVE TO CHECK.

8 Q. THE JOURNAL REVENUES IF YOU LOOK AT THE NEXT PAGE OF
9 PLAINTIFF'S EXHIBIT 2 IS A SIGNIFICANT PORTION, 39 PERCENT FOR
10 FISCAL YEAR 09 OF YOUR RIGHTS REVENUE, CORRECT?

11 A. YES.

12 Q. NOW, IF YOU LOOK AT -- LET ME DIGRESS. IS IT CORRECT
13 THAT CCC AND THE AAP ARE PAYING CAMBRIDGE'S LEGAL FEES IN THIS
14 CASE?

15 A. THAT IS CORRECT.

16 THE COURT: WHO IS AAP?

17 MR. HARBIN: AMERICAN ASSOCIATION OF PUBLISHERS OR
18 THE ASSOCIATION OF AMERICAN PUBLISHERS.

19 MR. RICH: FOR THE RECORD, YOUR HONOR, THE
20 ASSOCIATION OF AMERICAN PUBLISHERS.

21 MR. HARBIN: THANK YOU.

22 THE COURT: HOW IS THAT SPLIT UP? THEY EACH PAY
23 HALF? I GUESS THEY'RE PAYING HALF OF THE WHOLE LITIGATION,
24 RIGHT?

25 THE WITNESS: THE TWO PARTIES ARE EACH PAYING 50

1 PERCENT. SO TOGETHER THEY PAY A HUNDRED PERCENT. AAP IS
2 PAYING HALF. CCC IS PAYING HALF. I BELIEVE.

3 THE COURT: WHAT ABOUT PLAINTIFFS?

4 THE WITNESS: THE PLAINTIFFS ARE NOT PAYING FOR THE
5 LEGAL FEES.

6 THE COURT: OKAY.

7 BY MR. HARBIN:

8 Q. LET ME TURN YOU, SIR, TO PLAINTIFFS' 184.

9 A. YES.

10 Q. THIS IS A TOTAL OF THE RIGHTS REVENUES RECEIVED FROM --
11 PERMISSIONS REVENUE RECEIVED FROM CAMBRIDGE -- EXCUSE ME, FROM
12 CCC IN FY07, 08 AND 09?

13 A. YES.

14 Q. I DON'T WANT TO BELABOR THIS, BUT THE REVENUE -- THE FIRST
15 PAGE IS REVENUE FROM BOOKS, THE PERMISSION FEES FOR BOOKS?

16 A. THE FIRST -- NO, I'M SORRY.

17 Q. U.S. BOOKS. DO YOU SEE BOOKS AND THE NEXT PAGE IS FOR
18 JOURNALS?

19 A. I GUESS THE COPY I HAVE IS SO -- I'M SORRY, THE PHOTOCOPY
20 IS SO DARK I CAN'T READ IT. IT'S JUST TOO DARK.

21 IF YOU TELL ME IT'S BOOKS, I'LL AGREE.

22 Q. YOU CAN'T READ BOOKS THERE --

23 A. I CAN'T. IT'S TOTALLY DARK -- I BEG YOUR PARDON. I SEE
24 IT NOW.

25 THE COURT: WHAT IS THIS EXHIBIT NUMBER?

1 MR. HARBIN: PLAINTIFFS' 184.

2 THE WITNESS: I DO SEE IT NOW.

3 THE COURT: AND COULD THE WITNESS EXPLAIN OR SOMEBODY
4 WHAT DO THESE COLUMNS REPRESENT?

5 THE WITNESS: THEY -- WOULD YOU LIKE ME TO EXPLAIN?

6 THE COURT: THAT WOULD BE GOOD.

7 THE WITNESS: THEY REPRESENT THE INCOME WE RECEIVED
8 FROM CCC FOR TWO OF THEIR SERVICES. THE FIRST ONE UNDER THE
9 TAB APS IS ESSENTIALLY RIGHTS AND PERMISSIONS INCOME FOR
10 PHOTOCOPIES FOR COURSEPACKS, AND THE SECOND TAB ECC IS THE
11 PERMISSIONS INCOME FOR THE ELECTRONIC PERMISSIONS, SO FOR
12 ELECTRONIC REPRODUCTION.

13 THE COURT: SO ALL OF THIS INCOME IS FROM CCC?

14 THE WITNESS: YES.

15 BY MR. HARBIN:

16 Q. AND THEN THE SECOND PAGE IS FOR INCOME FOR JOURNALS?

17 A. YES.

18 Q. AND DOES THIS COMPRISE ALL OF THE INCOME YOU RECEIVED FROM
19 CCC FOR THESE YEARS?

20 A. NO, IT WOULD NOT BE ALL THE INCOME FROM CCC. THIS WOULD
21 NOT COVER, FOR EXAMPLE, CORPORATE PERMISSIONS.

22 Q. BUT THIS IS THE INCOME YOU RECEIVED FOR ACADEMIC
23 PERMISSIONS?

24 A. THIS IS FOR ACADEMIC, YES, FROM THE ACADEMIC MARKETPLACE,
25 YES.

1 Q. AND THAT'S THE DEFENDANTS' POINT. LOOKING AT BOOKS AND
2 THE TOTAL FOR BOOKS IF YOU LOOK AT FY09, IF YOU REMEMBER FY09
3 PERMISSIONS INCOME OVERALL WAS 1.2 MILLION, RIGHT?

4 A. YES.

5 Q. THE TOTAL FOR ACADEMIC JOURNALS FROM CCC WAS 64,000,
6 CORRECT?

7 A. YES.

8 Q. THE TOTAL RECEIVED BY CAMBRIDGE FROM CCC FOR PERMISSIONS
9 FOR ACADEMIC BOOKS USING EXCERPTS OF ACADEMIC BOOKS WAS
10 338,700?

11 A. YES.

12 Q. AND YOUR INCOME IF YOU LOOK BACK AT PLAINTIFFS' 1, YOUR
13 OVERALL INCOME IN FISCAL YEAR 2009 FOR THE AMERICA'S BRANCH WAS
14 108.5 MILLION?

15 A. YES, THAT IS CORRECT, WITH A SLIGHT EXPLANATION THAT IT
16 DOES INCLUDE INTERCOMPANY TRANSFERS. THAT NUMBER DOESN'T
17 REPRESENT ENTIRELY SALES OUT THE DOOR.

18 Q. INTERCOMPANY TRANSFERS OF ABOUT 20 MILLION?

19 A. YES, RIGHT.

20 Q. SO WHEN YOU TESTIFIED THAT -- REGARDING YOUR TESTIMONY
21 ABOUT RIGHTS INCOME OVERALL BEING 3 TO 5 PERCENT, IN 2009 THE
22 OVERALL 1.2 MILLION PERMISSIONS FROM RIGHTS REVENUE WAS ABOUT
23 1 PERCENT OF YOUR -- MAYBE A LITTLE OVER 1 PERCENT OF YOUR
24 OVERALL REVENUE, CORRECT?

25 A. YES.

1 Q. AND THE PORTION YOU GOT FOR PERMISSION FEES FOR USERS OF
2 ACADEMIC BOOKS WAS ABOUT ONE-THIRD OF 1 PERCENT, THREE HUNDRED
3 AND SOMETHING THOUSAND, CORRECT?

4 A. CORRECT.

5 MR. HARBIN: THANK YOU. THAT'S ALL I HAVE.

6 THE COURT: SHALL THE WITNESS STEP DOWN?

7 MS. SINGER: UNFORTUNATELY, NO, YOUR HONOR. I HAVE A
8 FEW FOLLOW-UP QUESTIONS.

9 REDIRECT EXAMINATION

10 BY MS. SINGER:

11 Q. MR. SMITH, LET'S JUST TAKE FROM WHERE WE JUST LEFT OFF.
12 WE WERE LOOKING AT PLAINTIFFS' EXHIBIT 184, AND WE WERE LOOKING
13 AT THAT NUMBER ECC. WHAT IS COMPRISED IN THE ECC FOR
14 PERMISSIONS FROM THE CCC?

15 A. THAT'S THE INCOME WE RECEIVE FOR ELECTRONIC REPRODUCTIONS,
16 PERMISSIONS FOR ELECTRONIC REPRODUCTIONS.

17 Q. WOULD PERMISSIONS TO USE SOMETHING ON AN ERESERVE SYSTEM
18 BE INCLUDED IN THAT?

19 A. YES.

20 Q. SO IF GSU WERE MAKING PROPER PAYMENTS ON THE WORK AT ISSUE
21 HERE, WOULD YOU EXPECT THAT NUMBER TO INCREASE?

22 A. YES.

23 Q. IF SCHOOLS NATIONALLY WERE MAKING PROPER PAYMENTS ON THEIR
24 USE OF CAMBRIDGE WORKS IN THEIR ERESERVE SYSTEM AND THEIR
25 ULEARN LIKE SYSTEMS WOULD YOU EXPECT THAT NUMBER TO INCREASE?

1 A. YES.

2 MR. HARBIN: OBJECT TO THE FORM, IT ASSUMES FACTS,
3 YOUR HONOR.

4 THE COURT: OVERRULED.

5 BY MS. SINGER:

6 Q. MR. SMITH, YOU WERE TALKING WITH MR. HARBIN ABOUT THE
7 ARRANGEMENT THAT CAMBRIDGE HAS WITH GOOGLE AND WITH AMAZON; DO
8 YOU REMEMBER THAT?

9 A. YES.

10 Q. WHY DO YOU HAVE AN ARRANGEMENT WITH GOOGLE THAT ALLOWS
11 GOOGLE TO DISPLAY UP TO A CERTAIN PERCENTAGE OF CAMBRIDGE
12 WORKS?

13 A. THE ARRANGEMENT IS TO ENCOURAGE SALES IN THE HOPE THAT
14 THROUGH DISCOVERY THROUGH GOOGLE SEARCHES READERS WILL SEE A
15 PORTION OF THE BOOK AND THEREFORE WISH TO PURCHASE IT.

16 Q. AND HOW DOES THAT WORK IF SOMEONE GOES ONTO GOOGLE OR
17 AMAZON AND WANTS TO LOOK AT A PORTION OF A CAMBRIDGE WORK; WHAT
18 DO THEY SEE?

19 A. THEY WILL COME -- THE GOOGLE SEARCH IN MOST CASES WILL
20 TAKE THEM TO A PARTICULAR PAGE IN THE BOOK. THEIR ABILITY --
21 I'M TALKING ABOUT GOOGLE NOW. THEIR ABILITY THEN TO READ ANY
22 PORTION OF THE BOOK IS CONTROLLED BY THE COMPUTER FROM THAT
23 PAGE WHERE THE SEARCH TAKES THEM.

24 SO IF YOUR SEARCH RESULT SAYS PAGE 30, YOU'LL OPEN AT
25 PAGE 30. YOU CAN THEN READ 10 PERCENT ON EITHER SIDE OF PAGE

1 30, BUT WITH RANDOM PAGES BLANKED OUT. SO YOU MIGHT BE ABLE TO
2 READ 30, 31, 32. 33 WON'T APPEAR. 34, 35 AND 36. 37 WON'T
3 APPEAR AND SO FORTH. SO IT'S AN ALGORITHM THAT ALLOWS A PERSON
4 TO LOOK AT A PORTION OF THE BOOK BUT NOT ALL. THEY CAN'T
5 COPY. THEY CAN'T PRINT.

6 IN OUR MIND IT'S EQUIVALENT TO SOMEONE GOING IN A
7 BOOKSTORE AND STANDING THERE WITH A BOOK LOOKING AT FEW PAGES
8 AND THEN DECIDING WHETHER TO PURCHASE IT.

9 Q. SO IF I WANTED TO DO ALL OF MY READINGS FOR A PARTICULAR
10 COURSE ON GOOGLE, COULD I DO THAT?

11 A. IN PRACTICAL TERMS, NO.

12 Q. THAT WAS THE GOOGLE ARRANGEMENT. HOW DOES THE AMAZON
13 ARRANGEMENT WORK?

14 A. THE AMAZON ARRANGEMENT IS MUCH STRICTER. WE ONLY ALLOW A
15 READER TO SEE THE FIRST PORTION OF THE BOOK. SO IT'S
16 RESTRICTED TO THE FIRST 5 PERCENT. SO IT'S IMPOSSIBLE TO READ
17 BEYOND THAT. THAT'S IT.

18 Q. AND YOU GIVE GOOGLE AND AMAZON AS PART OF YOUR
19 ARRANGEMENTS WITH THEM, THEY HAVE PERMISSION TO USE THESE
20 PORTIONS OF CAMBRIDGE WORKS; IS THAT CORRECT?

21 A. THAT IS CORRECT.

22 Q. HOW IS THE GOOGLE AND THE AMAZON ARRANGEMENTS DIFFERENT
23 THAN THE PRACTICES AT GSU WITH RESPECT TO ERESERVES?

24 A. WELL, WE GIVE THEM PERMISSION IN THE FIRST PLACE, THAT IS,
25 WE GIVE GOOGLE AND AMAZON PERMISSION, AND AT ANY TIME WE CAN

1 TAKE A BOOK OFF OF THE SERVICE, AND WE DO, FROM TIME TO TIME WE
2 REMOVE BOOKS.

3 WE DON'T PUT ALL OF OUR BOOKS THERE, AND AS I SAID
4 THE ABILITY OF THE READER TO READ EXACTLY WHAT THEY WANT IS
5 GOING TO BE VERY, VERY DIFFICULT.

6 YOU CERTAINLY COULDN'T EXPECT TO SEE AN ENTIRE
7 CHAPTER, AND YOU COULDN'T EXPECT TO SEE -- YOU COULDN'T BE
8 CERTAIN OF SEEING PARTICULAR PAGES.

9 Q. YOU SPOKE WITH MR. HARBIN ABOUT HOW THESE ARRANGEMENTS
10 WITH GOOGLE AND AMAZON WERE MEANT TO STIMULATE SALES; DO YOU
11 REMEMBER THAT?

12 A. YES.

13 Q. HOW DO THOSE ARRANGEMENTS IN TERMS OF STIMULATING SALES
14 DIFFERENT THAN GSU GIVING AWAY A CHAPTER OF A BOOK ON
15 ERESERVES?

16 A. WELL, IN BOTH CASES AMAZON AND GOOGLE AN INDIVIDUAL IS
17 GOING TO A SITE THAT ALLOWS THEM WITH A COUPLE MORE CLICKS ON
18 THEIR COMPUTER TO PURCHASE A BOOK. SO ON ONE LEVEL THERE'S THE
19 LEVEL OF EASE FOR THE CONSUMER. YOU FOUND IT, NOW YOU CAN BUY
20 IT.

21 IN THE CASE OF PROFESSORS RECOMMENDING OR GIVING OUT
22 PORTIONS OF BOOKS AND THINKING THAT THAT MIGHT STIMULATE SALES,
23 WELL, IT MAY OR IT MAY NOT, BUT IT'S NOT DONE WITH OUR
24 PERMISSION OF COURSE.

25 Q. DO YOU AGREE WITH MR. HARBIN'S PREMISE THAT BY HAVING A

1 GSU PROFESSOR GIVE AWAY A CHAPTER OF A CAMBRIDGE WORK IT MAKES
2 THAT STUDENT MORE LIKELY TO BUY THE WHOLE BOOK?

3 A. NO, I GUESS I WOULDN'T AGREE WITH THAT.

4 Q. WHY IS THAT?

5 A. WE DON'T KNOW IN THE END, AND IT'S A -- HOW TO PUT IT?

6 IT'S NOT AN ACTIVITY THAT HAS BEEN DONE FOR THE PURPOSE OF
7 STIMULATING SALES, AND IT CERTAINLY HASN'T BEEN DONE WITH OUR
8 PERMISSION, AND IT'S NOT ONE THAT WE WOULD SANCTION.

9 Q. THERE WAS SOME TALK ABOUT A 60 PERCENT NUMBER, 60 PERCENT
10 OF CAMBRIDGE WORKS ARE AVAILABLE THROUGH CCC. DOES THAT 60
11 PERCENT, IS THAT ALL WORKS WORLDWIDE; WHAT IS THAT 60 PERCENT?

12 A. WELL THAT WOULD BE OUT OF THE TOTAL NUMBER OF TITLES THAT
13 WE HAVE IN PRINT.

14 Q. WORLDWIDE?

15 A. YES.

16 Q. AND IF SOMEBODY WANTS TO GET PERMISSION TO USE AN EXCERPT
17 FROM A CAMBRIDGE WORK THAT'S NOT PART OF THAT 60 PERCENT, THEY
18 COULD ALWAYS COME DIRECTLY TO CAMBRIDGE AND ASK FOR PERMISSION,
19 COULDN'T THEY?

20 A. YES, THEY CAN.

21 Q. GENERALLY WHAT IS THE ACKNOWLEDGMENT IN THE FRONT OF THE
22 BOOK; WHAT'S THE PURPOSE OF THOSE ACKNOWLEDGMENTS?

23 A. IT'S A CONVENTION. IT'S NOT A REQUIREMENT IN THE FIRST
24 PLACE. THE PURPOSE IS IN MOST BOOKS IT'S A PLACE WHERE THE
25 AUTHOR ACKNOWLEDGES THE DIRECT OR INDIRECT HELP OF OTHER

1 INDIVIDUALS GENERALLY SCHOLARS WHO HAVE IN SOME WAY GIVEN THEM
2 ASSISTANCE IN THE RESEARCH AND WRITING OF THE BOOK.

3 Q. SO IF SOMEBODY APPEARS IN AN ACKNOWLEDGMENT DOES THAT
4 NECESSARILY MEAN THAT THE AUTHOR HAS USED A PORTION OF A
5 COPYRIGHTED EXCERPT FROM WHOEVER IS ACKNOWLEDGED?

6 A. NO.

7 Q. IF AN AUTHOR USES A SOURCE TO PUT TOGETHER A CAMBRIDGE
8 WORK, DOES THAT NECESSARILY MEAN THEY HAVE TAKEN COPIES OF A
9 COPYRIGHTED EXCERPT FROM THAT SOURCE AND INCORPORATED IT INTO
10 THEIR BOOK?

11 A. NO.

12 Q. HOW ELSE COULD A CAMBRIDGE AUTHOR WORK WITH A SOURCE?

13 A. WELL IN MY EXPERIENCE IN MOST CASES IT WILL HAVE BEEN
14 TRANSFORMED IN SOME WAY THROUGH REWRITING, SUMMARIZING. THERE
15 WILL BE AN ELEMENT OF THE AUTHOR'S OWN INTERPRETATION OF THE
16 MATERIAL THEY'RE PUTTING FORTH.

17 Q. ARE ALL THE SOURCES USED BY CAMBRIDGE AUTHORS COPYRIGHTED
18 MATERIALS BELONGING TO THIRD PARTIES?

19 A. NO.

20 Q. WHAT OTHER -- CAN YOU GIVE ME AN EXAMPLE OF ANOTHER SOURCE
21 THAT A CAMBRIDGE AUTHOR MIGHT USE?

22 A. WELL FOR MANY BOOKS IT WILL BE -- THERE IS, OF COURSE, A
23 VAST AMOUNT OF MATERIAL IN THE PUBLIC DOMAINS THAT WOULD BE
24 USED, AND THAT'S ENTIRELY LEGAL AND PROPER.

25 Q. YOU WERE LOOKING AT DEFENDANTS' EXHIBIT 723 WITH MR.

1 HARBIN, AND WE WERE LOOKING ON PAGE 6. WE WERE TALKING ABOUT
2 PREVIOUSLY -- NOT WE, YOU AND MR. HARBIN WERE TALKING ABOUT
3 PREVIOUSLY PUBLISHED ESSAYS, AND HE DIRECTED YOUR ATTENTION TO
4 THE QUESTIONS REGARDING WHETHER PERMISSION WAS REQUIRED TO USE
5 AN ESSAY THAT HAD ALREADY BEEN PUBLISHED -- I'M SORRY, THE
6 QUESTION WAS DO I NEED PERMISSION TO USE IN A COLLABORATIVE
7 VOLUME AN ESSAY SLIGHTLY REVISED AND EXPANDED THAT HAS ALREADY
8 BEEN PUBLISHED AS A JOURNAL ARTICLE THAT'S BEEN PUBLISHED IN
9 TRANSLATION, AND THE SECOND PART OF THAT ANSWER SAID IF THE
10 RIGHTS GRANTED TO THE ORIGINAL PUBLISHER WERE NONEXCLUSIVE,
11 THEN THERE IS NO PROBLEM.

12 DO YOU SEE THAT?

13 A. YES, I DO.

14 Q. AND ISN'T IT TRUE THAT THAT REFERS TO A CASE WHERE THE
15 ORIGINAL AUTHOR KEPT THEIR COPYRIGHT AND GAVE ONLY A
16 NONEXCLUSIVE RIGHT TO THE PUBLISHER, SO THEY STILL CONTROL THE
17 COPYRIGHT?

18 A. YOU'RE TALKING ABOUT THE LAST LINE?

19 Q. YES.

20 A. POSSIBLY YES AND POSSIBLY NO IS THE ANSWER.

21 Q. AND ANOTHER POSSIBILITY WOULD BE THAT THE WORK WAS IN THE
22 PUBLIC DOMAIN AND THERE WAS NO REQUIREMENT, CORRECT?

23 A. CORRECT.

24 Q. YOU WERE TALKING TO MR. HARBIN ABOUT HOW THE PERMISSIONS
25 INCOME WAS UP IN 2009; DO YOU RECALL THAT?

1 A. YES.

2 Q. AND YOU WERE LOOKING WITH HIM AT ALL KINDS OF SOURCES FROM
3 PERMISSIONS INCOME FROM FOREIGN SOURCES, VARIOUS OTHER THINGS,
4 REMEMBER THAT?

5 A. YES.

6 Q. SO THE FACT THAT THE PERMISSIONS INCOME WENT UP BECAUSE
7 THERE WAS ALL THESE ANCILLARY SOURCES IN IT, DOES THAT MEAN
8 THAT THERE WAS NO HARM TO CAMBRIDGE FROM GSU'S PRACTICES --

9 MR. HARBIN: I OBJECT AGAIN, YOUR HONOR, OUTSIDE THE
10 SCOPE OF THE ISSUE OF DIRECTLY SHOULD GSU HAVE PAID PERMISSIONS
11 FOR WHAT ITS STUDENTS USED. HE DOES NOT HAVE A BASIS FOR
12 TESTIFYING ABOUT OTHER HARM. THEY HAVE NOT PROVIDED ANY
13 EVIDENCE IN DISCOVERY ON THAT, SO I DON'T THERE'S ANY
14 FOUNDATION, AND IT'S FUNDAMENTALLY UNFAIR.

15 THE COURT: I'M GOING TO SUSTAIN THE OBJECTION. I
16 KNOW WHAT THE WITNESS IS GOING TO SAY, BUT IT DOESN'T REALLY
17 ADVANCE OUR DISCUSSION. LET'S GO AHEAD.

18 MS. SINGER: FAIR ENOUGH. THANK YOU, YOUR HONOR.

19 BY MS. SINGER:

20 Q. MR. SMITH, IS CAMBRIDGE A MEMBER OF THE ASSOCIATION OF
21 AMERICAN PUBLISHERS?

22 A. YES.

23 Q. DO YOU PAY DUES TO AAP?

24 A. YES, WE DO.

25 Q. COULD CAMBRIDGE FUND THIS LAWSUIT OUT OF ITS OWN FUNDS?

1 A. WELL THE QUESTION IS COULD, THE ANSWER IS YES, BUT THE
2 ANSWER IS NO, IN ESSENCE WE WOULD NOT HAVE THE RESOURCES.

3 THE COURT: WELL YOU DO HAVE THE RESOURCES. YOU JUST
4 WOULDN'T WANT TO SPEND IT ON THAT, RIGHT?

5 THE WITNESS: YES, YOUR HONOR.

6 THE COURT: OKAY.

7 MS. SINGER: YOUR HONOR, YOU'LL BE PLEASED TO KNOW
8 THAT I HAVE SPOKEN WITH OPPOSING COUNSEL, AND TOGETHER WE HAVE
9 AGREED, I BELIEVE, THAT THERE ARE ONLY FOUR OR FIVE ADDITIONAL
10 WORKS TO WHICH THERE IS A QUESTION AS TO THE COPYRIGHT
11 OWNERSHIP. SO LET ME BRIEFLY JUST GO THROUGH THOSE ISSUES.

12 THE COURT: ALL RIGHT.

13 MS. SINGER: AND THEN I HAVE A COUPLE OF ADDITIONAL
14 DOCUMENTS AS A HOUSEKEEPING MATTER TO PUT IN, AND THEN WE'LL BE
15 DONE.

16 BY MS. SINGER:

17 Q. MR. SMITH, IF YOU WOULD PLEASE TURN TO TAB J IN YOUR
18 BINDER, AND THIS INVOLVES THE WORK INTERNATIONAL HEALTH
19 ORGANIZATION AND MOVEMENTS, AND IF WE COULD TAKE A LOOK AT
20 JOINT EXHIBIT 5 AND PAGE C-7, WE SEE THAT PROFESSOR MCCOMBIE
21 USED PAGES 222 TO 243 OF INTERNATIONAL HEALTH ORGANIZATIONS AND
22 MOVEMENTS 1918 TO 1939 AND THIS IS THE FALL 09 SEMESTER.

23 SO IF YOU COULD TURN TO THE TABLE OF CONTENTS WHICH
24 IS PART OF PLAINTIFFS' EXHIBIT 108 ALREADY IN EVIDENCE, YOU
25 HAVE IN YOUR BOOK JUST THE TITLE PAGE AND TABLE OF CONTENTS,

1 WHAT DOES PAGES 222 TO 243 REFER TO?

2 A. THAT'S THE ENTIRETY OF CHAPTER 11, THE CYCLES OF
3 ERADICATION; THE ROCKEFELLER FOUNDATION AND LATIN AMERICAN
4 PUBLIC HEALTH, 1918-1940 BY MARCOS CUETO.

5 Q. OKAY. IF YOU WOULD PLEASE TAKE A LOOK AT PLAINTIFFS'
6 EXHIBIT 109 ALREADY IN EVIDENCE, AND IF YOU TAKE A LOOK AT
7 PARAGRAPH 3, THIS IS THE AGREEMENT WITH THE EDITORS OF
8 INTERNATIONAL HEALTH ORGANIZATIONS AND MOVEMENTS, WHAT ARE
9 CAMBRIDGE'S RIGHTS IN INTERNATIONAL HEALTH ORGANIZATIONS AND
10 MOVEMENTS?

11 A. CAMBRIDGE HAS THE FULL COPYRIGHT IN THE COLLECTION AND
12 INDIVIDUAL CONTRIBUTORS ARE ASSIGNING THEIR COPYRIGHT TO THE
13 PRESS AS WELL.

14 Q. AND IF YOU WOULD PLEASE TURN TO PLAINTIFFS' EXHIBIT 110
15 ALREADY IN EVIDENCE --

16 MR. HARBIN: YOUR HONOR, THIS MAY BE APPROPRIATE TO
17 DO IT ON CROSS, BUT I DO THINK THAT THIS VIOLATES THE COURT'S
18 ORDER ON MOTION IN LIMINES.

19 THE COURT: BE MORE SPECIFIC.

20 MR. HARBIN: WELL, OUR POINT ABOUT THIS WORK IS THEY
21 DON'T HAVE A WRITTEN ASSIGNMENT FROM THIS AUTHOR OF THIS
22 CHAPTER, AND I CAN DO IT ON CROSS, BUT THEY MAY HAVE TOLD THE
23 EDITORS TO GO GET IT, BUT THERE'S NO EVIDENCE THEY GOT IT.

24 BY MS. SINGER:

25 Q. IF I MAY, YOUR HONOR, IF YOU WOULD TAKE A LOOK AT

1 PLAINTIFFS' EXHIBIT 110 ALREADY IN EVIDENCE, WHAT IS

2 PLAINTIFFS' EXHIBIT 110?

3 A. THIS IS A CONTRACT WITH MARCOS CUETO.

4 Q. OKAY. NOW PERHAPS THE CONFUSION IS THE TITLE HERE IN

5 PLAINTIFFS' EXHIBIT 110, THE TITLE OF HIS CONTRIBUTION SAYS

6 LATIN AMERICAN MEDICAL ORGANIZATIONS; DO YOU SEE THAT?

7 A. YES.

8 Q. BUT THE CHAPTER IN THE BOOK, AND THIS MAY BE THE SOURCE OF

9 THE CONFUSION, IS ACTUALLY CALLED CYCLES OF ERADICATION; IS

10 THAT THE SAME WORK?

11 A. I FEEL SURE THAT IT IS.

12 Q. AND WHY IS THAT?

13 A. BECAUSE IT'S --

14 MR. HARBIN: I DON'T MEAN TO INTERPRET. MY

15 UNDERSTANDING OF THIS WAS INCORRECT, YOUR HONOR. WE WITHDRAW

16 THE OBJECTION ABOUT THIS.

17 MS. SINGER: OKAY.

18 BY MS. SINGER:

19 Q. THE NEXT ONE THAT I THINK WE HAVE AN ISSUE WITH IS

20 CAMBRIDGE COMPANION TO BEETHOVEN. SO IF YOU WOULD LOOK AT

21 TAB Y OF YOUR BINDER, AND IF WE LOOK AT JOINT FILING WHICH IS

22 JOINT EXHIBIT 5, PAGE B-4, WE SEE THAT PROFESSOR ORR USED PAGES

23 165 TO 185. THIS IS THE SUMMER 09 TERM. HE USED THOSE 20

24 PAGES FROM THE CAMBRIDGE COMPANION TO BEETHOVEN.

25 IF YOU TAKE A LOOK AT PLAINTIFFS' EXHIBIT 53 ALREADY

1 IN EVIDENCE, AND IF WE TAKE A LOOK AT THE TABLE OF CONTENTS,
2 WHAT DOES PAGES 165 TO 185 CORRESPOND TO?

3 A. THAT'S THE ENTIRETY OF CHAPTER 10, SOUND AND STRUCTURE IN
4 BEETHOVEN'S ORCHESTRAL MUSIC BY LEON BOTSTEIN.

5 Q. OKAY. IF YOU'D TAKE A LOOK AT PLAINTIFFS' EXHIBIT 53
6 ALREADY IN EVIDENCE, AND IF YOU TAKE A LOOK AT PARAGRAPH 3 OF
7 PLAINTIFFS' EXHIBIT 54, THIS IS THE AGREEMENT WITH THE EDITOR.
8 WHAT RIGHTS DOES CAMBRIDGE HAVE IN THE CAMBRIDGE COMPANION TO
9 BEETHOVEN?

10 A. CAMBRIDGE HAS THE FULL COPYRIGHT IN THE COLLECTION, AND
11 THE INDIVIDUAL CONTRIBUTORS HAVE ASSIGNED COPYRIGHT TO THE
12 PRESS.

13 Q. IF YOU WOULD TURN TO PLAINTIFFS' EXHIBIT 55 ALREADY IN
14 EVIDENCE, WHAT IS PLAINTIFFS' 55?

15 A. THIS IS THE CONTRACT WITH LEON BOTSTEIN FOR HIS
16 CONTRIBUTION TO THE CAMBRIDGE COMPANION TO BEETHOVEN.

17 Q. AND LEON BOTSTEIN WAS THE AUTHOR OF THE CHAPTER THAT
18 PROFESSOR ORR USED IN THE SUMMER OF 09, CORRECT?

19 A. CORRECT.

20 Q. AND IF WE TAKE A LOOK AT PARAGRAPH 2 OF PLAINTIFFS'
21 EXHIBIT 55, WHAT ARE CAMBRIDGE'S RIGHTS IN THE BOTSTEIN
22 CHAPTER?

23 A. PROFESSOR BOTSTEIN ASSIGNED FULL COPYRIGHT IN THE CHAPTER
24 TO THE PRESS.

25 Q. IF WE GO BACK THE PROVISIONAL TITLE OF DR. BOTSTEIN'S

1 CHAPTER IN PLAINTIFFS' EXHIBIT 55 WAS SYMPHONY AND OVERTURE; DO
2 YOU SEE THAT?

3 A. YES, I DO.

4 Q. AND IF WE GO BACK TO THE TABLE OF CONTENTS FOR PLAINTIFFS'
5 EXHIBIT 53, WE SEE THAT THE BOTSTEIN CHAPTER IN THE FINAL BOOK
6 WAS ENTITLED -- AT PAGE 165 WAS ENTITLED SOUND AND STRUCTURE IN
7 BEETHOVEN ORCHESTRAL MUSIC. IS THAT THE SAME CHAPTER AS THE
8 PROVISIONALLY ENTITLED CHAPTER REFERRED TO IN PLAINTIFFS'
9 EXHIBIT 55?

10 A. I'M SURE THAT IT IS, YES.

11 Q. THE CONTRACTS THAT ARE SIGNED WITH THE AUTHORS,
12 CONTRIBUTING AUTHORS TO A WORK, AT WHAT STAGE IN THE PUBLISHING
13 PROCESS ARE THOSE SIGNED?

14 A. THEY ARE SIGNED EARLY IN THE MOST -- FOR THE MOST PART.
15 IT'S POSSIBLE THAT THE CHAPTER WILL NOT HAVE YET BEEN WRITTEN.
16 IT'S CERTAINLY THE CASE IN THIS BOOK.

17 Q. AND IN YOUR EXPERIENCE IS IT A COMMON OCCURRENCE THAT THE
18 PROVISIONAL TITLE AND THE CONTRIBUTING AGREEMENT CHANGES BY THE
19 TIME THE WORK IS FINALLY PUBLISHED?

20 A. YES, PROBABLY HALF THE TIME.

21 Q. LET'S TAKE A LOOK AT THE LISZT SONATA IN B MINOR BY
22 KENNETH HAMILTON. THIS IS AT TAB V OF YOUR BINDER. IF WE
23 TAKE A LOOK AT JOINT EXHIBIT 5, PAGE B-3, WE SEE THAT
24 PROFESSOR ORR USED PAGES 28 TO 48 IN THE SUMMER 09 TERM; DO YOU
25 SEE THAT?

1 A. YES.

2 Q. OKAY. IF YOU TAKE A LOOK AT PLAINTIFFS' EXHIBIT 130
3 ALREADY IN EVIDENCE AND IF WE LOOK AT THE TABLE OF CONTENTS,
4 WHAT DOES PAGES 28 TO 48 CORRESPOND TO?

5 A. THAT'S THE ENTIRETY OF CHAPTER 3, UNDERSTANDING SONATA IN
6 B MINOR.

7 MR. HARBIN: NOT TO INTERRUPT, BUT THE ONLY ISSUE I
8 POINTED OUT ABOUT THIS WE'RE GOING TO RAISE IS THE REGISTRATION
9 AFTER FIVE YEARS.

10 MS. SINGER: OKAY.

11 BY MS. SINGER:

12 Q. AND DR. KENNETH HAMILTON IS THE ONLY AUTHOR OF THIS WORK;
13 IS THAT CORRECT? THIS IS NOT -- THERE'S NO CONTRIBUTING
14 AUTHORS? HE WROTE THE ENTIRE THING. IT'S A SINGLE AUTHOR
15 WORK?

16 A. THAT'S CORRECT.

17 Q. AND JUST TO CONNECT ALL THE DOTS, IF YOU TAKE A LOOK AT
18 PLAINTIFFS' EXHIBIT 133 ALREADY IN EVIDENCE, THAT'S THE
19 AGREEMENT WITH DR. KENNETH HAMILTON FOR THIS WORK -- 131, I'M
20 SORRY, 131 ALREADY IN EVIDENCE, AND IF YOU TAKE A LOOK AT
21 PARAGRAPH 8 OF PLAINTIFFS' EXHIBIT 131, WHAT RIGHTS DOES
22 CAMBRIDGE HAVE IN DR. HAMILTON'S WORK?

23 A. CAMBRIDGE HAS THE FULL COPYRIGHT IN THE WORK.

24 Q. AND, FINALLY, LET'S TAKE A LOOK AT THE HISTORY OF FEMINIST
25 LITERARY CRITICISM. IF YOU TAKE A LOOK ON THE JOINT FILING

1 JOINT EXHIBIT 5 AT PAGE C-8, WE SEE THAT PROFESSOR GABLER-HOVER
2 USED PAGES 322 TO 335 AND THIS IS THE FALL 09 SEMESTER; DO YOU
3 SEE THAT?

4 A. WHERE IS THAT IN THE BOOK?

5 Q. YOU CAN SEE IT UP HERE, 322 TO 335.

6 A. YES.

7 Q. IF YOU TAKE A LOOK AT PLAINTIFFS' EXHIBIT 103 ALREADY IN
8 EVIDENCE, THIS IS TAB K.

9 A. YES.

10 Q. WHAT DOES PAGES 322 TO 335 CORRESPOND TO?

11 A. THAT'S THE ENTIRETY OF CHAPTER 17, FEMINIST CRITICISM AND
12 TECHNOLOGIES OF THE BODY BY STACY GILLIS.

13 Q. OKAY. AND IF YOU TAKE A LOOK AT PLAINTIFFS' EXHIBIT 105,
14 THIS IS THE AGREEMENT WITH THE EDITORS FOR HISTORY OF FEMINIST
15 LITERARY CRITICISM, IF YOU TAKE A LOOK PARAGRAPH 3, WHAT ARE
16 CAMBRIDGE'S RIGHTS IN THIS WORK?

17 A. CAMBRIDGE HAS THE FULL COPYRIGHT IN THE WORK.

18 Q. OKAY. NOW IF YOU TAKE A LOOK AT PAGE 7 OF EXHIBIT 105,
19 THE BATES LABEL AT THE BOTTOM IS CUPX 98.

20 A. YES.

21 Q. AND WHAT ARE WE LOOKING AT HERE; WHAT IS PAGE 7 OF
22 PLAINTIFFS' EXHIBIT 105?

23 A. THIS IS -- I BELIEVE WE'RE LOOKING AT THE SAME THING,
24 YES. THIS IS A COPY OF THE CONTRIBUTOR AGREEMENT WITH DR.
25 ELIZABETH FALLAIZE FOR A CHAPTER ON SIMONE DE BEAUVOIR.

1 Q. AND ARE THESE STANDARD CONTRIBUTOR AGREEMENTS?

2 A. YES.

3 Q. WHO SIGNS THEM?

4 A. WELL, THEY ARE SIGNED BY THE AUTHOR, THE CONTRIBUTOR AND
5 THEN THEY'LL BE COSIGNED BY THE LEGAL DIRECTOR OF THE PRESS.

6 Q. AND WHAT'S THE BASIS FOR THAT ANSWER; HOW DO YOU KNOW
7 THAT?

8 A. HOW DO I KNOW THAT? MY EXPERIENCE OVER 30 YEARS.

9 Q. WOULD CAMBRIDGE EVER PUBLISH A WORK IN WHICH IT DID NOT
10 HAVE A SIGNED CONTRIBUTOR AGREEMENT FOR A PARTICULAR CHAPTER?

11 MR. HARBIN: YOUR HONOR, I OBJECT. THIS EXCEEDS THE
12 COURT'S RULING. THEY HAVE NOT PRODUCED A CONTRACT THAT I'M
13 AWARE OF BY THE AUTHOR OF THE CHAPTER AT ISSUE PROFESSOR
14 GILLIS.

15 THE COURT: WHAT'S YOUR RESPONSE?

16 MS. SINGER: MY RESPONSE IS THAT HIS TESTIMONY WILL
17 BE THAT THEIR FILING SYSTEM WHILE VERY GOOD IS NOT EXACTLY WHAT
18 IT WOULD BE, BUT THAT THE POLICY AND PRACTICE IS THAT EVERYBODY
19 SIGNS A CONTRIBUTOR AGREEMENT.

20 THEY WOULD NEVER PUBLISH A BOOK WITHOUT IT, AND THE
21 FACT THAT THEY HAVE MISFILED THIS PARTICULAR CONTRIBUTOR
22 AGREEMENT, THIS IS THE ONLY WORK IN WHICH WE HAVE THIS
23 SITUATION. HE FEELS SURE FROM HIS EXPERIENCE THAT IT WAS
24 SIGNED AND IT DOES EXIST.

25 THE COURT: THE OBJECTION IS SUSTAINED.

1 MS. SINGER: ONE MOMENT, YOUR HONOR.

2 (PAUSE IN THE PROCEEDINGS.)

3 MS. SINGER: YOUR HONOR, I BELIEVE THAT WE ARE
4 FINISHED WITH MR. SMITH.

5 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

6 MR. HARBIN: THERE IS ONE OTHER WORK I WANTED TO SEE
7 IF SHE WANTED TO ADDRESS THAT I WANT TO BRIEFLY ADDRESS ONCE
8 SHE'S DONE IF SHE'S DONE.

9 THE COURT: ARE YOU SAYING THERE'S SOME OTHER WORK
10 THAT SHE HAS NOT ASKED ABOUT; WHY WOULD YOU WANT TO ASK ABOUT
11 IT?

12 MR. HARBIN: YES, I THINK IT FALLS IN THAT SAME
13 CATEGORY OF THEY DON'T HAVE A CONTRACT FROM THE AUTHOR. I CAN
14 JUST -- WE CAN JUST PRESENT THAT TO THE COURT.

15 MS. SINGER: YOUR HONOR, THAT IS A WORK THAT WE'RE
16 ACTUALLY NOT PRESSING. SO IF HE WANTS -- OBVIOUSLY WHATEVER HE
17 WANTS, BUT WE'RE NOT PRESSING THE WORK. SO WE DON'T BELIEVE
18 THERE'S ANY NEED.

19 MR. HARBIN: YOUR HONOR, IT'S PLAINTIFFS' EXHIBIT 49,
20 THE CAMBRIDGE COMPANION TO BACH.

21 THE COURT: ALL RIGHT. SO LET'S JUST CUT IT OFF
22 HERE. YOU CAN STEP DOWN, SIR. LET'S GO AHEAD AND TAKE A 20
23 MINUTE BREAK, LADIES AND GENTLEMEN.

24 (RECESS)

25 MS. SINGER: PLAINTIFFS CALL CAROL RICHMAN.

1 THE CLERK: PLEASE RAISE YOUR RIGHT HAND TO TAKE THE
2 OATH.

3 CAROL RICHMAN,
4 HAVING BEEN DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

5 THE CLERK: IF YOU WILL HAVE A SEAT, PLEASE, AND
6 STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST NAME
7 ALSO.

8 THE WITNESS: CAROL RICHMAN.

9 MR. HARBIN: YOUR HONOR, MAY I TAKE UP A BRIEF
10 HOUSEKEEPING MATTER BEFORE WE GET STARTED WITH THIS WITNESS? I
11 WANT TO OFFER INTO EVIDENCE THE FINANCIAL DOCUMENTS I REFERRED
12 TO IN THE NOTICE, PLAINTIFFS' EXHIBIT 1, 2 AND 84 AND
13 DEFENDANT'S EXHIBIT 70 WHICH IS THE NOTICE OF DEPOSITION AND
14 89, AND THEN I THINK YOUR HONOR ALREADY ADMITTED -- I KNOW YOU
15 OVERRULED THE OBJECTIONS TO DEFENDANTS' EXHIBIT 723. SO IT
16 WOULD BE PLAINTIFFS' EXHIBITS 1, 2 AND 84.

17 THE COURT: SO YOU'RE OFFERING THEM INTO EVIDENCE
18 NOW?

19 MR. HARBIN: YES, YOUR HONOR.

20 THE COURT: ARE THERE ANY OBJECTIONS?

21 MS. SINGER: THEY'RE OUR EXHIBITS, YOUR HONOR, SO NO.

22 THE COURT: THEY'RE ADMITTED.

23 MR. HARBIN: AND DEFENDANTS' EXHIBITS 70, 80 AND 89.

24 THE COURT: SO YOU'RE OFFERING THEM NOW?

25 MR. HARBIN: YES, YOUR HONOR.

1 MS. SINGER: AS LONG AS WE'RE DOING HOUSEKEEPING --

2 THE COURT: DO YOU HAVE ANY OBJECTIONS TO THEM?

3 MS. SINGER: NO, YOUR HONOR.

4 THE COURT: THEY ARE ADMITTED 70, 80 AND 89.

5 MS. SINGER: AT THIS TIME THE PLAINTIFFS WOULD LIKE
6 TO OFFER INTO EVIDENCE A NUMBER OF EXHIBITS. I WILL LET YOU
7 KNOW WHICH ONES HAD OBJECTIONS IN THE JOINT PRETRIAL ORDER, BUT
8 IT IS MY UNDERSTANDING, AND, MR. SCHAETZEL, CORRECT ME IF I'M
9 WRONG, BUT IT'S MY UNDERSTANDING THESE OBJECTIONS HAVE ALL BEEN
10 WITHDRAWN. THEY'RE IN THE CATEGORY OF WHAT WE TALKED
11 ABOUT YESTERDAY, THE SALES FIGURES BEING LONGER THAN 2009.

12 PLAINTIFFS' EXHIBIT 198 I BELIEVE THE OBJECTION IS
13 WITHDRAWN?

14 MR. SCHAETZEL: I TRUST YOU.

15 MS. SINGER: PLAINTIFFS' EXHIBIT 198 THE OBJECTION
16 HAS BEEN WITHDRAWN. PLAINTIFFS' EXHIBIT 199 THERE WAS NO
17 OBJECTION. PLAINTIFF'S EXHIBIT 200 AND 201 THE OBJECTIONS HAVE
18 BEEN WITHDRAWN. PLAINTIFF'S EXHIBITS 202, 203, 204, 205 THERE
19 WAS NO OBJECTION. PLAINTIFF'S EXHIBITS 206, 207, 208 THE
20 OBJECTIONS HAVE BEEN WITHDRAWN. 209, 210, 211, 212, 213 NO
21 OBJECTIONS. 214, 215, 216 THE OBJECTIONS HAVE BEEN WITHDRAWN.
22 217, 218, 219, 220, 221, 222, 223, 224 THE OBJECTIONS HAVE BEEN
23 WITHDRAWN. 226, 227, 228 NO OBJECTIONS. 229, 230 THE
24 OBJECTIONS HAVE BEEN WITHDRAWN. 231, 232, 224, 235, 236 NO
25 OBJECTIONS. 237 AND 238 THE OBJECTIONS HAVE BEEN WITHDRAWN.

1 239 AND 240 THERE WAS NO OBJECTION. 241 AND 242 THE OBJECTIONS
2 HAVE BEEN WITHDRAWN. 243, 244, 245, 246, 247 NO OBJECTIONS.
3 248 THE OBJECTION HAS BEEN WITHDRAWN. 251, 252, 253, 254 NO
4 OBJECTIONS. 255, 256, 257 THE OBJECTIONS HAVE BEEN WITHDRAWN.
5 258, 259, 260, 261 NO OBJECTIONS. 262, 263, 264 THE OBJECTIONS
6 HAVE BEEN WITHDRAWN. 265, 267, 268, 269, 270, 271, 272, 273,
7 274, 275, 276, 277, 278, 279, 280, 281, 282 NO OBJECTIONS.
8 283, 284, 285, 286, 287 THE OBJECTIONS HAVE BEEN WITHDRAWN.
9 288, 289, 290 NO OBJECTIONS. 291, 292 THE OBJECTIONS HAVE BEEN
10 WITHDRAWN. 293, 294, 295, NO OBJECTIONS. 296, 297 THE
11 OBJECTIONS HAVE BEEN WITHDRAWN. 298, 299, 300 NO OBJECTION.
12 302, 303, 304 THE OBJECTIONS HAVE BEEN WITHDRAWN. 305, 306,
13 307 NO OBJECTION. 308, 309 THE OBJECTIONS HAVE BEEN
14 WITHDRAWN. 311, 312, 313 NO OBJECTION. 314, 315 THE
15 OBJECTIONS HAVE BEEN WITHDRAWN. 316, 317, 318 NO OBJECTION.
16 319, 320, 321 THE OBJECTIONS HAVE BEEN WITHDRAWN AND 324 AND
17 JUST TO THROW A CURVE BALL 516 NO OBJECTION.

18 THE COURT: THEY ARE ADMITTED.

19 MS. SINGER: THANK YOU, YOUR HONOR.

20 DIRECT EXAMINATION

21 BY MS. SINGER:

22 Q. GOOD MORNING, MS. RICHMAN.

23 A. GOOD MORNING.

24 Q. BY WHOM ARE YOU CURRENTLY EMPLOYED?

25 A. SAGE PUBLICATIONS.

1 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED AT SAGE PUBLICATIONS?

2 A. TEN YEARS.

3 Q. WHAT IS YOUR CURRENT POSITION AT SAGE?

4 A. I AM THE DIRECTOR OF LICENSING.

5 Q. HAVE YOU EVER HELD ANY OTHER POSITIONS AT SAGE?

6 A. NO.

7 Q. WHAT ARE YOUR PRIMARY RESPONSIBILITIES AS THE DIRECTOR OF
8 LICENSING?

9 A. MY PRIMARY RESPONSIBILITIES REVOLVE AROUND HELPING OUR
10 SALES TEAM NEGOTIATE SALES AGREEMENTS, LICENSE AGREEMENTS FOR
11 OUR CONTENT AND LICENSING CONTENT TO THIRD PARTIES.

12 Q. HOW LONG HAVE YOU BEEN INVOLVED IN THE PUBLISHING
13 INDUSTRY?

14 A. OVER TWENTY YEARS.

15 Q. AND PRIOR TO SAGE WHERE WERE YOU EMPLOYED?

16 A. I WORKED FOR WOLTERS KLUWER AND LIPPINCOTT WILLIAMS &
17 WILKINS.

18 Q. WHAT POSITIONS --

19 THE COURT: I'M SORRY, I MISSED THOSE NAMES.

20 THE WITNESS: WOLTERS KLUWER AND LIPPINCOTT WILLIAMS
21 & WILKINS.

22 THE COURT: SPELL THE FIRST ONE?

23 THE WITNESS: W O L T E R S , K L U W E R .

24 BY MS. SINGER:

25 Q. AND WHAT POSITION DID YOU HOLD AT WOLTERS KLUWER?

1 A. SEVERAL. I HELD A LICENSING MANAGER POSITION, AND THEN
2 THE DIRECTOR OF LICENSING POSITION.

3 Q. CAN YOU BRIEFLY DESCRIBE YOUR EDUCATIONAL BACKGROUND FOR
4 US?

5 A. YES, I HAVE A B.A. IN ENGLISH LITERATURE, AND I HAVE A
6 MASTER OF ARTS IN ENGLISH LITERATURE AND CREATIVE WRITING FROM
7 THE UNIVERSITY OF CHICAGO.

8 Q. MS. RICHMAN, WERE YOU INVOLVED WITH THE DECISION BY SAGE
9 TO JOIN THIS LITIGATION?

10 A. YES.

11 Q. WHY DID SAGE DECIDE TO JOIN THE LITIGATION?

12 A. WE FELT IT WAS NECESSARY TO PROTECT OUR PUBLISHING
13 PROGRAM, TO PROTECT OUR COPYRIGHTS AND SORT OF DEFEND OUR
14 COPYRIGHTS, BUT MOSTLY TO PROTECT OUR PUBLISHING PROGRAM SO
15 THAT WE WOULD BE ABLE TO CONTINUE THAT PUBLISHING PROGRAM.

16 THE COURT: SO WHO DID YOU SAY INVITED YOU ALL TO
17 JOIN THE LITIGATION?

18 THE WITNESS: THE AAP.

19 THE COURT: OKAY.

20 BY MS. SINGER:

21 Q. AND IS SAGE A MEMBER OF THE AAP?

22 A. YES.

23 Q. DOES SAGE PAY DUES TO THE AAP?

24 A. YES, WE PAY ANNUAL MEMBERSHIP DUES.

25 Q. WHAT DID YOU MEAN WHEN YOU SAID SAGE DECIDED TO JOIN THE

1 LAWSUIT IN ORDER TO PROTECT ITS PUBLISHING PROGRAM AND PROTECT
2 ITS COPYRIGHTS?

3 A. WELL, WE FEEL THAT IF THE USE OF UNPERMISSIONED WORKS OR
4 UNPERMISSIONED BOOKS BECAME WIDESPREAD, OUR PUBLISHING PROGRAM
5 WOULD DECREASE. WE WOULDN'T EARN THE SAME KIND OF REVENUE. WE
6 WOULD POSSIBLY HAVE TO LAYOFF PEOPLE. THE NUMBER OF BOOKS WE
7 PUBLISH WOULD PROBABLY DECREASE.

8 Q. CAN YOU TELL US BRIEFLY WHAT SAGE PUBLICATIONS IS?

9 A. SAGE PUBLICATIONS IS A PUBLISHING COMPANY PRIMARILY
10 DEDICATED TO PUBLISHING IN THE SOCIAL SCIENCES SPECIFICALLY IN
11 THE BOOK AREA. WE ALSO PUBLISH JOURNALS IN VARIOUS
12 DISCIPLINES.

13 Q. AND WHO IS YOUR PRIMARY TARGET MARKET?

14 A. OUR PRIMARY TARGET MARKET ARE ACADEMIC INSTITUTIONS.

15 Q. DOES SAGE HAVE A VISION STATEMENT?

16 A. YES. OUR VISION STATEMENT INCLUDES ENGAGING IN
17 SCHOLARSHIP AND PUBLISHING THE BEST OF AUTHOR'S WORKS TO
18 RECOGNIZE THE MARKETPLACE AND WORK WITH THE MARKET, WORK WITH
19 ACADEMIC INSTITUTIONS, RECOGNIZE THEIR NEEDS, TO THINK
20 CREATIVELY ABOUT THE MARKET AND DEVELOP THE TOOLS THAT CAN BE
21 USED GLOBALLY FOR EDUCATIONAL PURPOSES.

22 Q. APPROXIMATELY HOW MANY TITLES DOES SAGE PUBLISH EACH YEAR?

23 A. SAGE PUBLISHES OVER 500 BOOKS AND OVER 550 JOURNALS.

24 Q. AND WHAT KINDS OF WORKS ARE THESE?

25 A. MOSTLY THEY'RE ACADEMIC BOOKS. THE BOOKS ARE MOSTLY

1 ACADEMIC WORKS SPECIFICALLY IN THE SAGE HIGHER EDUCATION GROUP.

2 Q. WHEN WAS SAGE FOUNDED?

3 A. APPROXIMATELY 45 YEARS AGO.

4 Q. AND CAN YOU JUST BRIEFLY DESCRIBE SAGE'S HISTORY AS A
5 COMPANY, VERY BRIEFLY?

6 A. YES, SAGE IS PRIVATELY OWNED. IT WAS FOUNDED BY TWO
7 OWNERS, THE MCCUNES. IT WAS FOUNDED IN NEW YORK, AND THEN IT
8 TRANSFERRED TO LOS ANGELES AND THEN TO THOUSAND OAKS.

9 THE COURT: TO THOUSAND OAKS?

10 THE WITNESS: TO THOUSAND OAKS, CALIFORNIA.

11 BY MS. SINGER:

12 Q. AND WHAT IS AT A VERY GENERAL LEVEL WHAT IS SAGE'S
13 OWNERSHIP STRUCTURE?

14 A. SAGE IS OWNED BY SARA MCCUNE, AND SHE OWNS THE MAJORITY OF
15 THE COMPANY, AND HER SON HAS PARTIAL OWNERSHIP, DAVID.

16 Q. HOW MANY DIVISIONS DOES SAGE HAVE?

17 A. SAGE HAS A DIVISION CALLED CORWIN PRESS, PINE FORGE PRESS,
18 PINE FORGE IS AN IMPRINT. CORWIN IS A DIVISION. CQ PRESS IS
19 ALSO A DIVISION.

20 Q. WHAT KINDS OF WORKS DO CORWIN AND PINE FORGE PRESS
21 PUBLISH?

22 A. CORWIN AND PINE FORGE PUBLISH BOOKS FOR TEACHER TRAINING
23 PRIMARILY. SO THEY ARE USUALLY GEARED TOWARD PEOPLE IN A
24 FOUR YEAR ACADEMIC INSTITUTION WHO ARE STUDYING TO BECOME
25 TEACHERS.

1 Q. AND WHAT IS CQ PRESS?

2 A. CQ PRESS IS A COMPANY THAT WE BOUGHT IN 2009 AND IT
3 PUBLISHES MOSTLY GOVERNMENTAL WORKS. SO PEOPLE WHO ARE
4 MAJORING IN GOVERNMENT OR POLICY WOULD USE CQ PRESS TEXTBOOKS.

5 Q. AND DO YOU KNOW WHAT CQ USED TO STAND FOR?

6 A. YES, CQ USED TO STAND FOR CONGRESSIONAL QUARTERLY.
7 CONGRESSIONAL QUARTERLY WAS THE PARENT COMPANY AND CQ PRESS WAS
8 THE DIVISION.

9 Q. AND YOU MENTIONED BEFORE THE HIGHER EDUCATION DIVISION,
10 WHAT DOES THE HIGHER EDUCATION DIVISION AT SAGE DO?

11 A. THE HIGHER EDUCATION DIVISION PUBLISHES MOSTLY ACADEMIC
12 WORKS GEARED TOWARD THE ACADEMIC MARKET FOR JUNIORS AND SENIORS
13 IN COLLEGE AND TO THE GRADUATE MARKET.

14 Q. IS SAGE A FOR PROFIT CORPORATION?

15 A. YES.

16 Q. IF SAGE EARNS A PROFIT IN ANY GIVEN YEAR, WHAT DOES IT DO
17 WITH THOSE PROFITS?

18 A. WE REINVEST IT IN THE COMPANY. WE ALSO MAKE DONATIONS.

19 Q. WHAT DO YOU MEAN BY MAKE DONATIONS?

20 A. JUST RECENTLY WE MADE A DONATION OF 1.26 MILLION DOLLARS
21 TO THE UNIVERSITY OF CALIFORNIA AT SANTA BARBARA FOR THE CENTER
22 OF THE STUDY OF THE MINDS, AND WE HAD PREVIOUSLY MADE A
23 DONATION TO THEM IN 2005.

24 Q. WHAT IS THE CENTER OF THE STUDY FOR THE MINDS BRIEFLY?

25 A. IT'S AN EDUCATIONAL CENTER. IT'S MEANT FOR GRADUATE STUDY

1 FOR STUDIES OF THE MIND.

2 Q. WHAT IS THE SSP TRAVEL GRANT?

3 A. THE SSP TRAVEL GRANT IS A GRANT THAT WE MAKE TO THE
4 SOCIETY FOR SCHOLARLY PUBLISHING TO ENABLE A LIBRARIAN TO
5 ATTEND THEIR ANNUAL MEETING OR SEVERAL LIBRARIANS.

6 Q. MS. RICHMAN, WHAT ARE THE MAIN AREAS OF STUDY IN WHICH
7 SAGE PUBLISHES ACADEMIC WORKS?

8 A. THE OVERALL NAME WE WOULD GIVE IT IS SOCIAL SCIENCES, BUT
9 THAT ENCOMPASSES PSYCHOLOGY, COMMUNICATION, CRIMINOLOGY,
10 METHODS RESEARCH, QUALITATIVE ANALYSIS. IT'S A WIDE GAMBIT OF
11 AREAS IN SOCIAL SCIENCE.

12 Q. WHAT IS SAGE'S RELATIONSHIP TO THE FIELD OF QUALITATIVE
13 RESEARCH?

14 A. THAT'S INTERESTING. SAGE ACTUALLY -- THIS WAS ONE OF THE
15 FIRST JOURNALS THAT WE PUBLISHED WHEN THE COMPANY WAS FOUNDED.
16 SO TO MAKE A LONG STORY SHORT, THERE WAS A PROFESSOR IN NEW
17 YORK WHO APPROACHED THE OWNER AND SAID I HAVE THIS IDEA, IT'S
18 NOT REALLY A FIELD OF STUDY BUT I'D LIKE TO START THIS JOURNAL,
19 AND THE JOURNAL ACTUALLY TOOK OFF, AND SAGE WAS ACTUALLY
20 INSTRUMENTAL IN DEVELOPING THIS FIELD OF STUDY.

21 Q. FOR THOSE OF US WHO ARE NOT QUALITATIVE RESEARCHERS, WHAT
22 IS THE FIELD OF QUALITATIVE RESEARCH?

23 A. BASICALLY IT IS WHAT IT SAYS. IT'S HOW TO STUDY RESEARCH,
24 HOW TO QUANTIFY IT, HOW TO APPLY STATISTICAL ANALYSIS TO THE
25 VARIOUS FIELDS IN QUALITATIVE RESEARCH AND HOW TO CONDUCT

1 RESEARCH BASICALLY.

2 Q. AND DOES SAGE PUBLISH ANY IMPORTANT WORKS IN THE FIELD OF
3 QUALITATIVE RESEARCH?

4 A. YES, SAGE HANDBOOK OF QUALITATIVE RESEARCH, AND IT'S
5 CURRENTLY IN ITS THIRD EDITION.

6 THE COURT: I'M SORRY, WHAT IS IN THE THIRD EDITION?

7 THE WITNESS: THE SAGE HANDBOOK OF QUALITATIVE
8 RESEARCH.

9 BY MS. SINGER:

10 Q. WE DID A LOT OF THIS WITH MR. SMITH YESTERDAY SO WE'LL DO
11 IT VERY QUICKLY, BUT LET'S TALK BRIEFLY ABOUT THE ACADEMIC
12 PUBLISHING PROCESS.

13 HOW DOES SAGE ACQUIRE MANUSCRIPTS FOR PUBLICATION?

14 A. BASICALLY WE HAVE A TEAM OF EDITORS. THERE ARE 15 EDITORS
15 AT SAGE WHO CONCENTRATE ON BOOK PUBLISHING IN THE ACADEMIC
16 MARKET, AND THEY ATTEND PROFESSIONAL MEETINGS, AND THEY DO A
17 LOT OF RESEARCH TO FIND OUT WHO SPECIALIZES IN WHAT FIELD.
18 THEY MIGHT LOOK AT JOURNALS PUBLISHED IN THE FIELD AND FIND OUT
19 WHO'S WRITING AND THEN WHAT THEY'RE WRITING.

20 SO THEY DO A LOT OF LEGWORK. THEY TRAVEL TO A LOT OF
21 ACADEMIC MEETINGS. THEY TRY TO MEET AS MANY PEOPLE AS THEY CAN
22 AND INTERVIEW AS MANY PEOPLE AS THEY CAN, AND THEN FROM THERE
23 THEY TRY TO FIND SOMEONE WHO -- THEY ALSO WORK WITH OUR
24 MARKETING TEAM AND OUR SALES TEAM TO SORT OF GET OUT WHAT'S
25 NEEDED IN THE MARKET, WHAT THEY'RE HEARING FROM PROFESSORS AND

1 WHAT'S NEEDED IN THE CLASSROOM.

2 Q. SO ONCE THE EDITOR FINDS SOMEBODY, HOW DOES THE
3 SOLICITATION OF THE MANUSCRIPT PROCESS WORK?

4 A. THEY WILL WORK TOGETHER, AND THEY WILL WORK ON A PROPOSAL,
5 AND IT MIGHT BE NOT YET A FULL-BLOWN PROPOSAL, BUT THEY WILL
6 WORK ON AN OUTLINE. THEY WILL DISCUSS IT INTERNALLY, AND THEN
7 THEY WILL COME UP WITH A FULL OUTLINE AND A FULL PROPOSAL.

8 Q. WHAT WOULD BE PART OF THAT PROPOSAL?

9 A. THEY WOULD TALK TO RESEARCHERS IN THE FIELD. THEY WOULD
10 LOOK AT OTHER PREVIOUS WORKS. WE MIGHT LOOK AT COMPETITION IN
11 ORDER TO DEVELOP SORT OF A TABLE OF CONTENTS, IF YOU WILL, OR
12 AN OUTLINE ON WHAT WOULD BE INCLUDED IN THIS WORK.

13 Q. HOW LONG DOES THE PROCESS OF PUTTING TOGETHER A PROPOSAL
14 TAKE?

15 A. IT COULD TAKE ANYWHERE FROM THREE TO SIX TO NINE MONTHS.

16 Q. WHO DECIDES WHAT BOOKS WILL ULTIMATELY BE PUBLISHED BY
17 SAGE?

18 A. THE PROCESS IS THAT ONCE AN OUTLINE HAS BEEN DEVELOPED AND
19 A PROPOSAL HAS BEEN WRITTEN, THIS PROPOSAL WILL THEN GO TO THE
20 PUBLISHING COMMITTEE, AND THAT COMMITTEE IS HEADED UP BY OUR
21 VICE-PRESIDENT AND EDITORIAL DIRECTOR FOR ACADEMIC BOOKS.

22 Q. AND WHAT FACTORS DOES THE PUBLISHING COMMITTEE CONSIDER?

23 A. THEY LOOK AT THE VALUE OF WHAT THE AUTHOR IS GOING TO
24 BRING TO THE TABLE. THEY LOOK AT THE ORGANIZATION OF THE
25 BOOK. THEY DISCUSS WITH SALES. THEY DISCUSS WITH MARKETING.

1 IF IT'S A SECOND EDITION, THEY'LL LOOK AT PREVIOUS
2 EDITIONS AND HOW IT DID IN THE MARKET. THEY WILL LOOK AT THE
3 SIZE OF THE MARKET, BUT THEY WILL ALSO DO SOME HOMEWORK ON THE
4 AUTHOR AND POSSIBLY THE CHAPTER AUTHORS IF INVITED.

5 Q. AND IF THE PUBLISHING COMMITTEE GREEN LIGHTS THE BOOK,
6 WHAT'S THE NEXT STEP?

7 A. THE NEXT STEP IS A CONTRACT IS DEVELOPED WITH THE AUTHOR
8 OR EDITOR AND THE ONES THAT'S SIGNED. THE EDITOR OR AUTHOR
9 WILL THEN FIND THE CHAPTER AUTHORS, AND THEY'LL GO INTO THE
10 WRITING MODE.

11 Q. AND TYPICALLY WHAT ARE TERMS VIS-A-VIS COPYRIGHT IN SAGE'S
12 CONTRACTS WITH ITS AUTHORS?

13 A. IN THE BOOK PROGRAMS, SAGE OWNS THE COPYRIGHTS TO THE
14 WORKS.

15 Q. AND WHAT ARE TERMS OF SAGE'S CONTRACTS WITH CONTRIBUTING
16 AUTHORS?

17 A. WE ALSO OWN THE COPYRIGHT TO CONTRIBUTING AUTHOR'S WORKS.

18 Q. AND ARE THE CONTRACTS WITH AUTHORS DIFFERENT THAN THE
19 CONTRACTS WITH CONTRIBUTING AUTHORS?

20 A. NOT USUALLY.

21 Q. OKAY. AND THE CONTRACTS WITH CONTRIBUTING EDITORS, ARE
22 THOSE FORM CONTRACTS OR ARE THOSE INDIVIDUALLY NEGOTIATED?

23 A. THOSE ARE FORM CONTRACTS.

24 Q. AND DOES EVERY CONTRIBUTING AUTHOR HAVE TO SIGN A
25 CONTRACT?

1 A. YES, WE HAVE A POLICY THAT'S STATES --

2 Q. YOU CAN FINISH. DON'T WORRY ABOUT HIM.

3 A. WE HAVE A POLICY THAT STATES THAT EVERY CONTRIBUTING
4 AUTHOR MUST SIGN AN AGREEMENT WITH US.

5 Q. AND WHY IS THAT?

6 MR. SCHAETZEL: YOUR HONOR, I WILL OBJECT TO THE NEXT
7 QUESTION. WE DON'T WANT TO NIBBLE AROUND THE CORNERS OF THE
8 ORDER ON THE MOTION IN LIMINE, AND WE'RE GETTING AWFULLY CLOSE
9 TO DO DOING THAT.

10 THE COURT: I THINK THE QUESTION THAT SHE JUST
11 ANSWERED IS FAIR DO YOU ALL HAVE A POLICY. SO THAT'S
12 ALLOWABLE. LET'S GO ON AND YOU SPEAK UP WHEN YOU'RE READY.

13 BY MS. SINGER:

14 Q. AND WHY DO YOU HAVE THAT POLICY?

15 A. WELL, WE REALLY WOULDN'T WANT TO PUBLISH ANYTHING IN WHICH
16 WE DON'T HAVE THE RIGHT TO PUBLISH BASICALLY.

17 Q. ARE THERE ANY EXCEPTIONS TO THE SCENARIO WHERE THE AUTHOR
18 TRANSFERS THE COPYRIGHT RIGHTS TO SAGE?

19 A. NO, I MEAN, NO, NOT REALLY.

20 Q. WHERE ARE THE CONTRACTS SIGNED -- STORED AFTER THEY ARE
21 SIGNED?

22 A. THEY ARE STORED IN A WAREHOUSE CLOSE TO THE THOUSAND OAKS
23 AREA.

24 Q. AFTER THE CONTRACT IS SIGNED, WHAT'S THE NEXT STAGE OF THE
25 PROCESS?

1 A. THE AUTHOR OR THE EDITOR WILL START COMPILING HOPEFULLY
2 CHAPTERS AND THAT MIGHT TAKE ANYWHERE FROM SIX MONTHS TO A YEAR
3 TO EIGHTEEN MONTHS, BUT THERE'S USUALLY AN AGREED UPON TIME IN
4 WHICH A CONTRIBUTING AUTHOR WOULD SUBMIT A CHAPTER.

5 Q. WHAT HAPPENS NEXT?

6 A. AND THEN ONCE THE CHAPTERS START COMING IN, ONCE MOST OF
7 THE CHAPTERS ARE IN, THE BOOK WILL GO OUT FOR CRITICAL ANALYSIS
8 TO SEVERAL INDIVIDUALS, RESEARCHERS, SPECIALISTS IN THE FIELD
9 TWO TO FOUR DEPENDING UPON THE SIZE OF THE BOOK.

10 Q. WOULD THOSE BE WHAT WE'VE REFERRED TO IN THE COURTROOM AS
11 PEER REVIEWERS?

12 A. YES.

13 Q. OKAY. SO WHAT PERCENTAGE OF SAGE WORKS ARE PEER REVIEWED?

14 A. ALL, ALL WORKS.

15 Q. WHY IS THAT?

16 A. IT'S IMPORTANT THAT WE KNOW THAT WE'RE PUBLISHING WHAT'S
17 NEEDED, THAT WHAT WE'RE PUBLISHING IS CORRECT AND APPLICABLE TO
18 THE DISCIPLINE, AND THAT WE NEED TO KNOW IF ANY OF THE AUTHORS
19 HAVE TO MAKE ANY CHANGES.

20 Q. WHAT DO YOU GET BACK FROM PEER REVIEWERS; IS THERE A WORK
21 PRODUCT OR SOMETHING THAT COMES BACK TO YOU?

22 A. YEAH, IN SOME INSTANCES WE SEND OUT A QUESTIONNAIRE FOR
23 THE REVIEWER. IN OTHER INSTANCES WE JUST ASK THEM TO REVIEW
24 CERTAIN ASPECTS OF A CHAPTER, AND THEN THEY SEND BACK A
25 CRITIQUE WRITTEN USUALLY IN ELECTRONIC FORM THESE DAYS.

1 Q. AND I THINK YOU MIGHT HAVE SAID THIS, BUT HOW MANY PEER
2 REVIEWERS ARE THERE FOR EACH SAGE WORK?

3 A. TWO TO FOUR DEPENDING UPON THE SIZE OF THE WORK.

4 Q. SO AFTER THE PEER REVIEWS COME BACK, WHAT HAPPENS NEXT?

5 A. SO THE EDITOR/AUTHOR TAKES A LOOK AT THEM. IF THERE ARE
6 TWO EDITORS, THEY SHARE THAT WORKLOAD. THEY WILL REVIEW WHAT
7 THEY'VE RECEIVED BACK FROM THOSE REVIEWERS, AND THEN THEY WILL
8 GET IN TOUCH WITH THE CHAPTER AUTHORS, AND IF THEY DEEM THAT
9 THE CRITICISM IS APPROPRIATE, THEY WILL ASK THOSE CHAPTER
10 AUTHORS TO MAKE CHANGES.

11 Q. AND AFTER ALL THE EDITING IS FINISHED, WHAT'S THE NEXT
12 STEP IN THE PROCESS?

13 A. THE MANUSCRIPT COMES BACK AGAIN. THE INTERNAL EDITOR
14 LOOKS AT IT. THE EXTERNAL AUTHOR/EDITOR LOOKS AT IT. IF
15 EVERYTHING IS OKAY, THEY SIGN OFF, AND THEN IT GOES TO THE
16 PRODUCTION PHASE.

17 Q. AND WHAT'S INVOLVED IN THE PRODUCTION PHASE?

18 A. TYPESETTING, PROOFREADING, COPY EDITING AND DEPENDING IN
19 PART ON WHETHER IT'S SLATED FOR E-PUBLICATION OR ELECTRONIC
20 PUBLICATION THAT DEPENDS ON THE FORMAT CHOICE. SO IF IT'S
21 SLATED FOR E-PUBLICATION, IT GETS TYPESET IN XML.

22 Q. WHAT IS XML?

23 A. IT'S EXTENSIBLE MARKUP LANGUAGE, AND IT ALLOWS A BOOK TO
24 BE SEARCHED. IT ALLOWS AN INDEX TO BE SEARCHED, TABLE OF
25 CONTENTS. SO THAT A USER OF THAT WORK CAN GO BACK AND FORTH

1 FROM DIFFERENT CHAPTERS, GO BACK AND FORTH FROM REFERENCES.

2 Q. IS XML DIFFERENT THAN A REGULAR PDF?

3 A. YES, PDF GENERALLY ARE NOT SEARCHABLE DEPENDING. I MEAN
4 YOU CAN SEARCH VARIOUS ASPECTS OF A PDF, BUT YOU CAN'T BOUNCE
5 BACK AND FORTH FROM DIFFERENT WORKS.

6 Q. IS IT IMPORTANT TO BE ABLE TO SEARCH OR BOUNCE BACK AND
7 FORTH?

8 A. IF YOU'RE DOING RESEARCH, YES, IT'S VERY IMPORTANT.

9 Q. WHY IS THAT?

10 A. WELL SAY YOU'RE WRITING A PAPER FOR SCHOOL OR YOU'RE
11 TEACHING A COURSE AND YOU WANT TO DO A SEARCH ON A SPECIFIC
12 AREA, IN XML YOU CAN ENTER A TERM AND YOU CAN FIND IT
13 THROUGHOUT A WORK. YOU CAN FIND ALL THE TERMS YOU NEED.

14 Q. HOW LONG DOES THIS PRODUCTION PROCESS TAKE?

15 A. 210 DAYS.

16 Q. WHAT IS THERE AT THE END OF 210 DAYS?

17 A. AT THE END OF 210 DAYS THE PUBLISHED BOOK IS IN OUR
18 WAREHOUSE READY FOR DELIVERY, AND THE ELECTRONIC VERSION IS
19 ALSO AVAILABLE.

20 Q. ALL RIGHT. SO WHAT HAPPENS WHEN -- AT THE END OF THE 210
21 DAYS, WHAT'S THE NEXT STEP IN THE PROCESS?

22 A. WELL, THE WORK IS IN THE WAREHOUSE, AND HOPEFULLY WE HAVE
23 ORDERS PLACED FROM OUR DISTRIBUTORS FOR THAT WORK, AND THOSE
24 GET SHIPPED OUT TO OUR DISTRIBUTORS.

25 Q. OKAY. OF SAGE'S BOOKS -- WHO'S THE TARGET MARKET?

1 A. THE TARGET MARKET IS THE ACADEMIC SETTING, ACADEMIC
2 INSTITUTIONS, SO STUDENTS.

3 Q. AND HOW ARE SAGE'S BOOKS SALES SPLIT AS BETWEEN STUDENTS
4 AND LIBRARIES?

5 A. I WOULD SAY 80 PERCENT OF OUR SALES GO TO STUDENTS. 20
6 PERCENT GO TO LIBRARIES.

7 Q. HOW DO YOU KNOW THAT?

8 A. I KNOW THAT BECAUSE WE HAVE AN INSIDE SALES FORCE WHO
9 WORKS ON SELLING BOOKS TO PROFESSORS, PROMOTING THEM TO
10 PROFESSORS, OFFERING WHAT WE CALL COMP COPIES OR DESK COPIES
11 FOR REVIEW.

12 ACTUALLY MOST OF THE BOOKS OBVIOUSLY THAT GO TO
13 DISTRIBUTORS ARE TARGETED TO GO TO THE COLLEGE BOOKSTORE.

14 Q. WHEN YOU SAY YOU SHIP BOOKS TO DISTRIBUTORS AND THEY GO TO
15 THE COLLEGE BOOKSTORE, CAN YOU TELL US HOW THAT WORKS?

16 A. SO A PROFESSOR WOULD RECOMMEND A TEXTBOOK AS A REQUIRED
17 READING OR ANCILLARY TEXTBOOK, AND SHE WOULD ASK THE COLLEGE
18 BOOKSTORE TO PLACE AN ORDER.

19 USUALLY THE COLLEGE BOOKSTORE PLACES AN ORDER NOT
20 WITH SAGE DIRECTLY BUT WITH A DISTRIBUTOR BECAUSE NINE TIMES
21 OUT OF TEN THEY'RE ORDERING OTHER BOOKS FROM OTHER PUBLISHERS,
22 AND THEY WANT TO DO ONE DROP SHIPMENT.

23 Q. AND SO HOW DOES SAGE GET BOOKS -- WHO DOES SAGE SHIP BOOKS
24 TO?

25 A. TO THE DISTRIBUTORS.

1 Q. OKAY. AND HOW DOES SAGE KNOW THAT BOOKS THAT GO TO
2 DISTRIBUTORS ARE GOING TO STUDENTS?

3 A. PRIMARILY THAT'S THE 80 PERCENT. THEY'RE USUALLY INTENDED
4 FOR THE COLLEGE BOOKSTORE FOR PURCHASE BY A STUDENT.

5 Q. WHAT IF STUDENTS DON'T BUY THE BOOKS AT THE COLLEGE BOOK
6 STORE, WHAT HAPPENS TO THEM?

7 A. THEY GET RETURNED USUALLY, AND WE USUALLY GET RETURNS IN
8 DECEMBER OR JUNE.

9 Q. AND DO YOU TRACK THE NUMBER OF RETURNS?

10 A. ABSOLUTELY, YES.

11 Q. HOW DO PROFESSORS BECOME AWARE OF SAGE WORKS?

12 A. SO AS I SAID WE HAVE AN INSIDE SALES TEAM. THEY EACH HAVE
13 A REGION. THEY HAVE INSTITUTIONS THAT THEY TARGET. THEY HAVE
14 A LIST OF PROFESSORS TO CONTACT WHO ARE TEACHING WITHIN A
15 DISCIPLINE, AND THEY WILL CALL A PROFESSOR AND SAY HEY, WE'VE
16 GOT THIS NEW BOOK, WOULD YOU LIKE A PREVIEW COPY, WOULD YOU
17 LIKE TO LOOK AT A DESK COPY IN HOPES THAT THEY WOULD ADOPT THE
18 BOOK FOR CLASSROOM USE.

19 Q. AND ARE THOSE -- THE COPIES THAT ARE SENT TO PROFESSORS,
20 ARE THOSE HARD COPIES, ARE THOSE ELECTRONIC COPIES --

21 A. WE DON'T SEND ELECTRONIC DIGITAL COPIES OUT AS DESK
22 COPIES. WE ONLY SEND HARD COPIES.

23 Q. DO YOU TRACK THE COPIES THAT YOU SEND OUT?

24 A. ABSOLUTELY.

25 Q. WHAT IS THE TYPICAL RANGE OF A FIRST PRINT RUN FOR A BOOK?

1 A. IT DEPENDS ON THE SIZE OF THE MARKET, BUT TYPICALLY ONE TO
2 3,000.

3 Q. AND HOW DO YOU DECIDE WHAT THE SIZE OF THAT FIRST PRINT
4 RUN WILL BE?

5 A. THAT'S DIFFICULT. SO WE TRY NOW TO BE CONSERVATIVE. SO
6 OBVIOUSLY OUR SALES TEAM HAS DONE A LOT OF WORK. THEY MIGHT
7 KNOW IN ADVANCE WHO'S GOING TO PLACE AN ORDER, AND THEY HAVE
8 DONE A LOT OF PROMOTION. SO THEY MIGHT HAVE A FEEL THAT A BOOK
9 IS GOING TO BE ADOPTED FOR CLASSROOM USE.

10 Q. ARE YOU FAMILIAR WITH THE TERM SHELF LIFE?

11 A. YES.

12 Q. WHAT DOES THAT MEAN?

13 A. SO SHELF LIFE IS BASICALLY HOW LONG A BOOK WOULD BE USED
14 OR IS AN APPROPRIATE USE IN A CLASSROOM BEFORE IT NEEDS TO BE
15 CHANGED, AND TYPICALLY IT'S THREE TO FIVE YEARS. IT DEPENDS ON
16 THE DISCIPLINE.

17 Q. WHAT HAPPENS AFTER THAT THREE TO FIVE YEARS?

18 A. USUALLY BEFORE THE THREE YEARS, WE START LOOKING AT THE
19 SALES HISTORY OF THE BOOK, THE USE OF THE BOOK. WE LOOK AT ALL
20 THE FACTORS, THE REVENUE, AND WE DECIDE WHETHER OR NOT A SECOND
21 EDITION SHOULD BE PUBLISHED, AND WE WOULD PROBABLY IF WE
22 ELECTED TO DO THAT GO RIGHT INTO THAT MODE.

23 Q. IF THERE IS A SUBSEQUENT EDITION, HOW IS THAT DIFFERENT
24 THAN THE FIRST EDITION?

25 A. SUBSEQUENT EDITIONS USUALLY HAVE 50 PERCENT OR MORE OF

1 DIFFERENT CONTENT.

2 Q. WHY IS THAT?

3 A. BECAUSE THINGS HAVE CHANGED IN THE DISCIPLINE. NEW
4 RESEARCH HAS DEVELOPED. THERE MIGHT BE FACTORS THAT GO INTO
5 THAT DISCIPLINE.

6 Q. ONCE A SUBSEQUENT EDITION COMES OUT, ARE PRIOR EDITIONS
7 EVER STILL USED?

8 A. YES. PRIOR EDITIONS ARE STILL USED BECAUSE SOME OF THE
9 CHAPTERS MAY NOT BE IN THE NEW EDITION. TYPICALLY PROFESSORS
10 LIKE TO LOOK BACK AT THE OLDER WORK AND DO A COMPARISON, AND IF
11 THEY'RE TEACHING IN ONE SPECIFIC DISCIPLINE, THEY MIGHT WANT
12 TO LOOK BACK AND SAY HERE'S AN HISTORIC OVERVIEW OF THE
13 FIELD.

14 Q. WHAT HAPPENS TO THE SALES OF A PRIOR EDITION ONCE A
15 SUBSEQUENT EDITION IS PUBLISHED?

16 A. IT USUALLY GOES WAY DOWN.

17 Q. SO IF SOMEBODY IS -- YOU MENTIONED THAT PROFESSORS ARE
18 STILL REFERRING BACK. HOW DO THEY GO ABOUT GETTING THE CONTENT
19 FROM THE PRIOR EDITION?

20 A. SOME WILL ASK FOR PERMISSION TO USE IT. THEY ACTUALLY
21 COULD ASK FOR A COPY. WE TYPICALLY HAVE ADDITIONAL COPIES IN
22 OUR WAREHOUSE IF SOMEONE REALLY WANTS TO BUY AN OLDER EDITION.
23 WE ALSO HAVE ELECTRONIC COPIES.

24 Q. ARE YOU FAMILIAR PRINT ON DEMAND?

25 A. YES.

1 Q. WHAT IS PRINT ON DEMAND?

2 A. PRINT ON DEMAND WOULD BE SOMEONE ORDERING ONE COPY OF ONE
3 BOOK WHICH WOULD BE PRINTED FROM A DIGITAL FILE AND THEN
4 DELIVERED TO THE CUSTOMER, AND WE WORK WITH A VENDOR IN ORDER
5 TO DO THAT.

6 Q. WHAT SORTS OF BOOKS ARE GENERALLY ORDERED THROUGH THE
7 PRINT ON DEMAND SYSTEM?

8 A. ALL KINDS, TEXTBOOKS USUALLY FIRST AND SECOND EDITIONS,
9 YOU KNOW, IT RUNS THE GAMBIT. ANYTHING THAT WE MIGHT NOT HAVE
10 A HARDCOPY OF ANY LONGER IN OUR WAREHOUSE.

11 Q. OKAY. HOW IMPORTANT IS THE REVENUE FROM PERMISSIONS OF
12 EARLIER EDITIONS TO SAGE?

13 A. WE LOOK AT THE PERMISSIONS REVENUE. WE INCLUDE THAT IN
14 OUR PROFIT AND LOSS STATEMENTS WHEN WE'RE LOOKING AT PUBLISHING
15 ANOTHER EDITION OF A BOOK. SO WE TRACK THAT. I THINK IT'S
16 IMPORTANT TO THE PUBLISHING PROGRAM, YES.

17 Q. DO YOU CONSIDER -- THIS PERMISSIONS AFTER THERE'S A
18 SUBSEQUENT EDITION IS THAT CONSIDERED WHEN SAGE IS DECIDING
19 WHETHER OR NOT TO PUBLISH A BOOK?

20 A. WE ABSOLUTELY CONSIDER PERMISSIONS REVENUE.

21 Q. IN THE TEN YEARS THAT YOU HAVE BEEN AT SAGE AS DIRECTOR OF
22 LICENSING HAVE YOU NOTICED ANY TRENDS WITH RESPECT TO HOW
23 SAGE'S CUSTOMERS WANT TO ACCESS CONTENT FROM SAGE?

24 A. YES, A LOT OF CUSTOMERS NOW WANT TO ACCESS CONTENT
25 ELECTRONICALLY. SO WE'VE DEVELOPED RECENTLY A CUSTOM

1 PUBLISHING OPERATION WITHIN OUR CQ PRESS DIVISION.

2 Q. WHAT IS A CUSTOM PUBLISHING DIVISION?

3 A. SO IN THE CUSTOM PUBLISHING WORLD, A PROFESSOR CAN, IF YOU
4 WILL, DESIGN HIS OR OWN BOOK, AND THEY WOULD PICK CERTAIN
5 CHAPTERS FROM BOOKS TO BE INCLUDED. THEY'RE USUALLY FULL
6 CHAPTERS. THEY COULD PICK JOURNAL ARTICLES WITHIN A
7 DISCIPLINE.

8 SO IN OTHER WORDS THEY'RE DEVELOPING A COURSE WHERE
9 THEY HAVE THIS DISCIPLINE AND THEY CAN SEARCH ALL KINDS OF
10 MATERIALS THAT SAGE OR CQ PRESS PUBLISHES AND PUT THEM TOGETHER
11 AND CREATE THIS CUSTOM PUBLISHED WORK.

12 THEY GIVE IT A TITLE. THEY GIVE IT A COVER, AND
13 USUALLY WHAT HAPPENS IS THE BOOK IS DELIVERED TO THE CUSTOMER.
14 THE CUSTOMER CAN DECIDE WHETHER OR NOT THEY WANT TO PAY FOR US
15 TO PRINT IT. USUALLY THE CUSTOMER PRINTS IT THEMSELVES.

16 Q. OKAY. LET'S TAKE AN EXAMPLE OF A POTENTIAL CUSTOM
17 PUBLISHED ORDER. IF WE COULD TAKE A LOOK AT PLAINTIFFS'
18 EXHIBIT 516 ALREADY IN EVIDENCE, AND PLAINTIFFS' EXHIBIT 516 IS
19 PROFESSOR KAUFMANN'S SYLLABUS FOR EPRS 8500, QUALITATIVE
20 INTERPRETIVE RESEARCH IN EDUCATION.

21 IF YOU LOOK AT PLAINTIFF'S EXHIBIT 516, IT APPEARS
22 THAT PROFESSOR KAUFMANN ASKS HER STUDENTS TO READ SEVERAL SAGE
23 WORKS. WE SEE THAT SHE RECOMMENDS BUT DOESN'T REQUIRE CRITICAL
24 READING AND WRITING FOR POST GRADUATES. THAT'S A SAGE WORK,
25 CORRECT?

1 A. THAT'S CORRECT.

2 Q. AND THEN SHE HAS SOME ADDITIONAL READINGS WHICH ARE
3 AVAILABLE FROM THE LIBRARY IN ELECTRONIC FORMAT. SHE SCANNED
4 THE ARTICLES AND MADE THEM AVAILABLE AS A PDF FILE AND TO
5 ACCESS THEM GO TO COURSE RESERVES LOCATED ON THE LIBRARY HOME
6 PAGE.

7 LET'S TAKE A LOOK AS WE FLIP THROUGH HER SYLLABUS, WE
8 SEE THAT SHE'S ASKED STUDENTS TO READ INTRODUCTION, THE
9 DISCIPLINE AND PRACTICE OF QUALITATIVE RESEARCH. IT'S IN THE
10 SAGE HANDBOOK OF QUALITATIVE RESEARCH THIRD EDITION, AND SHE'S
11 ASKED HER STUDENTS TO READ FEMINIST RESEARCH ETHICS FROM THE
12 HANDBOOK OF FEMINIST RESEARCH, AND BOTH THE HANDBOOK OF
13 FEMINIST RESEARCH AND THE SAGE HANDBOOK OF QUALITATIVE RESEARCH
14 ARE BOTH SAGE PRODUCTIONS, CORRECT?

15 A. CORRECT.

16 Q. OKAY. AND IF WE CONTINUE TO FLIP THROUGH PLAINTIFFS'
17 EXHIBIT 516 -- THIS IS PAGES 1 TO 32, SO HOW MANY PAGES IS
18 THAT?

19 A. 32.

20 Q. OKAY. AND PAGES 515 TO 543, NOW THIS IS A DIFFERENT BOOK,
21 RIGHT?

22 A. RIGHT.

23 Q. IF THROUGH THE CUSTOM PUBLISHING PROGRAM IF SHE WANTED ONE
24 CHAPTER FROM THE HANDBOOK OF QUALITATIVE RESEARCH AND ONE
25 CHAPTER FROM A DIFFERENT SAGE BOOK THE HANDBOOK OF FEMINIST

1 RESEARCH, COULD SHE DO THAT?

2 A. YES.

3 Q. OKAY. SO THEN WE HAVE PAGES 515 TO 534 FROM THE HANDBOOK

4 OF FEMINIST RESEARCH; HOW MANY PAGES IS THAT?

5 A. 19 -- 20, ROUGHLY.

6 Q. OKAY. SO THAT'S 51 PAGES. LET'S LOOK THROUGH THE REST OF

7 PROFESSOR KAUFMANN'S SYLLABUS. SHE ALSO WANTS STUDENTS TO READ

8 SYMBOLIC INTERACTIONISM AT THE END OF THE CENTURY, AND THAT'S

9 IN HANDBOOK OF SOCIAL THEORY; THAT'S ANOTHER SAGE WORK,

10 CORRECT?

11 A. CORRECT.

12 Q. AND YOU COULD GET THE CHAPTER FROM THAT, AS WELL, EVEN

13 THOUGH IT'S AN ENTIRELY DIFFERENT BOOK?

14 A. YES.

15 Q. SHE WANTS HER STUDENTS TO READ QUALITATIVE CASE STUDIES.

16 THIS IS IN THE SAGE HANDBOOK OF QUALITATIVE RESEARCH; DO YOU

17 SEE THAT?

18 A. YES.

19 Q. AND THAT WOULD BE AVAILABLE FOR CUSTOM PUBLISHING?

20 A. YES, IT WOULD.

21 Q. AND SHE WANTS HER STUDENTS TO READ CRITICAL RACE THEORY

22 AND INDIGENOUS METHODOLOGIES. THIS IS FROM THE HANDBOOK OF

23 CRITICAL AND INDIGENOUS METHODOLOGIES AND THAT'S A SAGE WORK AS

24 WELL?

25 A. THAT'S CORRECT.

1 Q. AND THAT WOULD BE AVAILABLE THROUGH THE CUSTOM PUBLISHING
2 PROGRAM?

3 A. YES, IT WOULD.

4 Q. OKAY. SO LET'S ADD UP THESE ADDITIONAL PAGE NUMBERS --

5 THE COURT: DID YOU SAY THESE ARE PART OF THE
6 SUGGESTED READINGS?

7 MS. SINGER: THESE ARE ADDITIONAL READINGS. IT
8 DOESN'T SAY BEYOND THAT. THEY ARE ALL AVAILABLE ON ERESERVES.

9 MS. SINGER: SO WE HAVE --

10 THE COURT: I WAS NOT SURE JUST AT A GLANCE THAT
11 THE ADDITIONAL READINGS WERE DIFFERENT FROM THE SUGGESTED
12 READINGS.

13 MS. SINGER: WELL, YOUR HONOR, WHEN WE HAVE PROFESSOR
14 KAUFMANN HERE, PERHAPS WE CAN CLARIFY THAT.

15 THE COURT: OKAY.

16 BY MS. SINGER:

17 Q. SO WE HAVE PAGES 217 TO 228 FROM THE HANDBOOK OF SOCIAL
18 THEORY; HOW MANY PAGES IS THAT?

19 A. ELEVEN PAGES.

20 Q. WE HAVE PAGES 443 TO 465 FROM THE HANDBOOK OF QUALITATIVE
21 RESEARCH. HOW MANY PAGES?

22 A. TWENTY-TWO.

23 Q. AND PAGES 85 TO 99 FROM THE HANDBOOK OF CRITICAL AND
24 INDIGENOUS METHODOLOGIES; HOW MANY PAGES IS THAT?

25 A. NINETEEN.

- 1 Q. LET'S CONTINUE TO FLIP THROUGH PROFESSOR KAUFMANN'S
2 SYLLABUS. GOING BACK TO PLAINTIFFS' EXHIBIT 516, WE SEE ALSO A
3 CHAPTER ON NARRATIVE INQUIRY, MULTIPLE LENSES, APPROACHES AND
4 VOICES FROM THE SAGE HANDBOOK. THAT WOULD BE AVAILABLE?
- 5 A. YES.
- 6 Q. LOCATING NARRATIVE INQUIRY HISTORICALLY IN THE HANDBOOK OF
7 NARRATIVE INQUIRY, WOULD THAT BE AVAILABLE?
- 8 A. YES.
- 9 Q. AND A CHAPTER ON CRITICAL HUMANISM AND QUEER THEORY FROM
10 THE HANDBOOK OF QUALITATIVE RESEARCH. THAT WOULD ALSO BE
11 AVAILABLE?
- 12 A. YES.
- 13 Q. A CHAPTER ON AUTOETHNOGRAPHY, PERSONAL NARRATIVE FROM THE
14 HANDBOOK OF QUALITATIVE RESEARCH, THAT WOULD BE AVAILABLE?
- 15 A. YES.
- 16 Q. AND A CHAPTER ON INDIGENOUS KNOWLEDGES IN EDUCATION, AND
17 THAT'S FROM THE HANDBOOK OF CRITICAL AND INDIGENOUS
18 METHODOLOGIES AS WELL; THOSE WOULD BE AVAILABLE?
- 19 A. YES.
- 20 Q. OKAY. LET'S ADD UP THE PAGES FOR THOSE. WE LEFT OFF WITH
21 NARRATIVE INQUIRY, SO PAGES 651 TO 679; HOW MANY PAGES IS THAT?
- 22 A. I'M SORRY WHERE -- I SEE, 28.
- 23 Q. TWENTY-EIGHT PAGES. THE PENNIGER CHAPTER ON LOCATING
24 NARRATIVE INQUIRY HISTORICALLY?
- 25 A. THIRTY-ONE.

1 Q. A PLUMMER CHAPTER ON CRITICAL AND QUEER THEORY?
2 A. TWENTY-THREE.
3 Q. ACTUALLY I THINK THAT'S 18?
4 A. EIGHTEEN, SORRY.
5 Q. THAT'S IMPRESSIVE BECAUSE LAWYERS GENERALLY CAN'T DO
6 MATH.
7 THE ELLIS CHAPTER IS PAGES 733 TO 768?
8 A. THAT WOULD BE 34.
9 Q. THIRTY-FOUR, THIRTY-FIVE PAGES, AND THE KINCHOLE CHAPTER
10 135 TO 156, ANOTHER 21 PAGES?
11 A. TWENTY-ONE.
12 Q. OKAY. SO PROFESSOR KAUFMANN'S BOOK IF CUSTOM PUBLISHED
13 WOULD BE 235 PAGES; DO YOU SEE THAT?
14 A. THAT'S CORRECT, YES.
15 THE COURT: DID YOU SAY PROFESSOR KAUFMANN'S BOOK?
16 MS. SINGER: I'M SORRY, IF THIS WERE A CUSTOM
17 PUBLISHED -- SORRY, YOUR HONOR, I'LL WITHDRAW THAT.
18 BY MS. SINGER:
19 Q. IF THERE WERE A CUSTOM PUBLISHING ORDER TO SAGE FOR THIS
20 SELECTION OF WORKS, IT WOULD BE 235 PAGES; IS THAT CORRECT?
21 A. THAT'S CORRECT.
22 Q. HOW MUCH WOULD THAT COST THROUGH SAGE'S CUSTOM PUBLISHING
23 PROGRAM?
24 A. TWELVE CENTS PER PAGE TIMES THE NUMBER OF STUDENTS.
25 Q. OKAY. SO 12 CENTS. IF WE COULD MULTIPLY 235 TIMES 12

1 CENTS A PAGE. SO IT'S ABOUT 28 DOLLARS FOR EACH COPY?

2 A. THAT'S CORRECT.

3 THE COURT: WHAT IS THE EXHIBIT NUMBER OF THE
4 DOCUMENT WHICH LISTS THE SUGGESTED READINGS AND THE ADDITIONAL
5 READINGS?

6 MS. SINGER: IT'S PLAINTIFFS' EXHIBIT 516. IT'S
7 PROFESSOR KAUFMANN'S SYLLABUS.

8 THE COURT: PLAINTIFFS' EXHIBIT 516?

9 MS. SINGER: YES.

10 THE COURT: THANK YOU.

11 BY MS. SINGER:

12 Q. NOW, HOW MUCH DOES SAGE CHARGE PER PAGE FOR PERMISSIONS TO
13 USE ITS WORKS THROUGH CCC?

14 A. FOURTEEN CENTS.

15 Q. SO IT'S ACTUALLY CHEAPER --

16 A. THIS IS CHEAPER, YEAH.

17 Q. HOW WOULD THIS BOOK -- HOW WOULD THIS CUSTOM PUBLISHING
18 PRODUCT BE MADE AVAILABLE TO A CUSTOMER?

19 A. SO WE WOULD COMPILE THIS. WE WOULD PUT A COVER ON IT. WE
20 WOULD ORGANIZE IT AS THE PROFESSOR ORDERED IT. SO WE WOULD
21 CREATE A TABLE OF CONTENTS.

22 WE WOULDN'T CREATE AN INDEX, BUT WE WOULD PUT THIS
23 TOGETHER AS A PDF AND SEND IT TO THE PROFESSOR OR WHOEVER
24 ORDERED FROM THE ACADEMIC INSTITUTION. THEY COULD ELECT TO
25 HAVE US PRINT IT OR NOT. THEY COULD PRINT IT ON THEIR OWN.

1 Q. IF THEY PRINT IT ON THEIR OWN, DOES SAGE CHARGE ANYTHING
2 ADDITIONAL FOR PRINTING?

3 A. NO, NO ADDITIONAL CHARGE.

4 Q. SO WHOEVER ORDERED IT AND PRINTED IT THEMSELVES, THEY
5 WOULD RECEIVE THE PDF AT 12 CENTS A PAGE?

6 A. THAT'S CORRECT.

7 Q. HOW LONG COULD THEY KEEP THIS FOR?

8 A. FOREVER.

9 Q. SO IN ADDITION TO THE CUSTOM PUBLISHING, IS THERE ANY
10 OTHER WAY TO GET EXCERPTS OF SAGE WORKS THAT A PROFESSOR WANTED
11 TO MAKE AVAILABLE TO THEIR STUDENTS?

12 A. WELL, THEY COULD ASK PERMISSION FROM THE COPYRIGHT
13 CLEARANCE CENTER OR DIRECTLY WITH SAGE.

14 Q. HOW DOES IT WORK TO ASK FOR PERMISSION THROUGH THE
15 COPYRIGHT CLEARANCE CENTER?

16 A. THERE'S A FORM TO FILL OUT AND A PAYMENT TO BE MADE.
17 PERMISSION IS GRANTED IN A MATTER OF HOURS OR LESS.

18 Q. WHO SETS THE FEE TO BE PAID?

19 A. SAGE DOES.

20 Q. AND THAT'S THE 14 CENTS WE WERE TALKING ABOUT?

21 A. CORRECT.

22 Q. IS THAT 14 CENTS TO ANYBODY WHO EVER WANTED TO USE IT, OR
23 IS THAT 14 CENTS --

24 A. NO, THAT 14 CENTS IS AN EDUCATIONAL FEE. WE HAVE MUCH
25 HIGHER FEES FOR OUR CORPORATE CUSTOMERS.

1 Q. AND WHAT USES DOES -- IF SOMEBODY PAYS A PERMISSIONS FEE,
2 WHAT DOES THAT ENTITLE THEM TO DO?

3 A. SO USUALLY WHEN SOMEONE IS ORDERING A PERMISSION IN THIS
4 FORM THAT THEY WOULD FILL OUT AND THERE'S ACTUALLY A DROPDOWN
5 MENU, YOU COULD ASK FOR ELECTRONIC PERMISSION. YOU COULD ASK
6 FOR PHOTOCOPYING PERMISSION, THINGS ALONG THOSE LININGS. YOU
7 COULD ALSO ASK FOR PERMISSION TO REUSE IN ANOTHER WORK.

8 Q. SO DOES THE PERMISSIONS FEES COVER THE KINDS OF DIGITAL
9 DISTRIBUTION COURSE READING MATERIAL THAT'S TAKING PLACE AT GSU
10 IN THE ERES AND ULEARN SYSTEMS?

11 A. I'M NOT SURE.

12 Q. IF A PROFESSOR POSTED A WORK -- IF A PROFESSOR GOT A
13 PERMISSIONS FEE THROUGH CCC OR THROUGH SAGE DIRECTLY FOR A SAGE
14 WORK, WOULD THEY BE ABLE TO POST IT -- MAKE IT AVAILABLE TO
15 STUDENTS THROUGH THEIR ERESERVE OR ULEARN SYSTEM?

16 A. YES, ABSOLUTELY.

17 Q. MS. RICHMAN, HOW DOES SAGE EARN REVENUES?

18 A. THROUGH ITS SALES. THROUGH BOOK SALES, THROUGH
19 PERMISSIONS, THROUGH LICENSING.

20 Q. OKAY. IF THERE'S A DECLINE IN SALES REVENUE FOR SAGE,
21 WHAT'S THE AFFECT?

22 A. THE AFFECT IS WE'D HAVE TO REVAMP OUR PUBLISHING PROGRAM.
23 WE'D PROBABLY HAVE TO PUBLISH LESS BOOKS. WE MIGHT HAVE
24 LAYOFFS.

25 Q. HOW DO THE PRACTICES AT GSU WITH RESPECT TO ERESERVES

1 AFFECT SAGE?

2 MR. SCHAETZEL: OBJECTION, YOUR HONOR. I THINK WE'RE
3 BACK INTO THIS AREA WHERE THERE WAS AN EXPERT PROPOSED FOR
4 MARKET HARM TESTIMONY. WE ARE NOW GETTING INTO MARKET HARM
5 TESTIMONY ASKING FOR THIS WITNESS' OPINION AS TO HOW SOMETHING
6 MIGHT AFFECT THE COMPANY.

7 THE COURT: I DON'T THINK IT IS. I WILL ALLOW IT AT
8 THIS POINT. OVERRULED.

9 MS. SINGER: THANK YOU, YOUR HONOR.

10 BY MS. SINGER:

11 Q. HOW DO THE PRACTICES OF ERESERVES TAKING AT GSU AFFECT
12 SAGE?

13 A. IT AFFECTS US A BIT. SO WE HAVE SEEN A DECLINE IN
14 PERMISSIONS FOR THE LAST TWO YEARS 10 PERCENT YEAR ON YEAR, BUT
15 THE WIDER QUESTION IS IF THIS WERE WIDESPREAD, SO TAKE INTO
16 ACCOUNT -- AND I DON'T KNOW HOW MANY ACADEMIC INSTITUTIONS
17 WOULD USE THIS WORK IN THE UNITED STATES BUT SAY THERE WERE
18 4,000 OF THEM AND SAY THERE WERE X NUMBER OF PROFESSORS, AND IF
19 YOU MULTIPLY THAT OUT YEAR AFTER YEAR, SEMESTER AFTER SEMESTER
20 THAT NUMBER INCREMENTALLY GROWS.

21 Q. DO THE PRACTICES AT GSU, THE ERESERVES PRACTICES AT GSU,
22 DO THEY AFFECT SALES OF BOOKS AT SAGE?

23 A. PROBABLY.

24 MR. SCHAETZEL: SAME OBJECTION, YOUR HONOR.

25 THE COURT: OVERRULED.

1 THE WITNESS: YES, I WOULD SAY THAT THEY DO.

2 BY MS. SINGER:

3 Q. AND DO THEY AFFECT THE PERMISSIONS REVENUE THAT SAGE
4 RECEIVES?

5 A. YES.

6 Q. OKAY. LET'S WALK THROUGH A SPECIFIC EXAMPLE. ONE OF THE
7 SAGE BOOKS WE'VE JUST BEEN TALKING ABOUT IS ON THE JOINT FILING
8 REPEATEDLY. IT IS THE SAGE HANDBOOK OF QUALITATIVE RESEARCH.

9 NOW IF PROFESSOR KAUFMANN HAD 21 STUDENTS WHICH IS ON
10 THE JOINT FILING JX-5, I BELIEVE C8 OR C9, WE SEE THAT
11 PROFESSOR KAUFMANN'S FALL 2009 COURSE EPRS 8500, AND IF YOU GO
12 ALL THE OVER TO THE CLASS SIZE COLUMN, YOU SEE THAT THERE WAS
13 21 STUDENTS. THAT NUMBER 21 IS UNDER THE COLUMN CLASS SIZE.

14 SO IF THE 21 STUDENTS IN HER CLASS HAD INSTEAD
15 PURCHASED OR BEEN REQUIRED TO PURCHASE THE ENTIRE SAGE HANDBOOK
16 OF QUALITATIVE RESEARCH, WE SEE THAT THE LIST PRICE IS ABOUT
17 156 DOLLARS; DOES THAT SOUND ABOUT RIGHT?

18 A. THAT'S CORRECT.

19 Q. SO IF WE TAKE THAT 156 TIMES THE 21 STUDENTS, SO HOW MUCH
20 REVENUE WOULD SAGE HAVE GOTTEN?

21 A. 3,276 DOLLARS.

22 Q. AND THAT'S JUST FOR ONE SEMESTER, RIGHT?

23 A. CORRECT.

24 Q. FOR ONE CLASS?

25 A. ONE CLASS.

1 Q. ONE INSTITUTION?

2 A. ONE.

3 Q. NOW YOU MENTIONED ALSO PERMISSIONS FEES, CORRECT?

4 A. CORRECT.

5 Q. OKAY. AND SO IF WE TAKE A LOOK -- IF INSTEAD PROFESSOR

6 KAUFMANN HAD SOUGHT PERMISSION TO POST -- I WILL -- TO POST

7 THESE 187 PAGES FROM THIS EDITION AT 14 CENTS A PAGE; IS THAT

8 WHAT YOU SAID?

9 A. CORRECT.

10 Q. SO 187 TIMES 14 CENTS A PAGE, SO THAT WOULD HAVE BEEN THE

11 26 DOLLARS PER STUDENT?

12 A. THAT'S CORRECT.

13 Q. AND SO IF THAT WAS MULTIPLIED ACROSS 21 STUDENTS IN THAT

14 CLASS?

15 A. 549.78.

16 Q. OKAY. AND THEN AGAIN THAT'S ONE SEMESTER, ONE CLASS?

17 A. CORRECT.

18 Q. ONE INSTITUTION?

19 A. CORRECT.

20 Q. MS. RICHMAN, WHAT IS SAGE'S VIEW OF FAIR USE?

21 A. WE BELIEVE IN FAIR USE. WE SUPPORT FAIR USE. WE HAVE

22 FAIR USE GUIDELINES FOR OUR BOOK AUTHORS.

23 Q. WHAT DO YOUR FAIR USE GUIDELINES FOR SAGE AUTHORS LOOK AT?

24 A. WE LOOK AT THE FOUR FACTORS, BUT WE ALSO LOOK AT THE

25 CONTEXT OF WHAT AN AUTHOR MIGHT USE IN A WORK TO MAKE SURE THAT

1 IT ACTUALLY IS FAIR USE.

2 Q. WHO MAKES IN THE FIRST INSTANCE THE DETERMINATION ABOUT
3 WHETHER A USE OF COPYRIGHTED MATERIAL IN A SAGE WORK IS FAIR
4 USE?

5 A. THE AUTHOR.

6 Q. AND DO YOU JUST TAKE THE AUTHOR'S WORD FOR IT THAT IT'S
7 FAIR USE?

8 A. NO. SO WE HAVE PERMISSIONS EDITORS. WE MIGHT HAVE AN
9 OUTSIDE FREELANCER WHO IS HELPING WORK ON THIS BOOK. THEY
10 MIGHT BE ASKED TO CHECK THAT AS WELL. WE HAVE AN EDITORIAL
11 ASSISTANT USUALLY ASSIGNED TO THE BOOK WHO WILL ALSO CHECK.
12 SO THERE ARE MANY CHECKS AND BALANCES IN PLACE TO
13 MAKE SURE THAT IF AN AUTHOR MAKES A DETERMINATION OF FAIR USE,
14 WE DOUBLE-CHECK IT.

15 Q. WHAT SORT OF TRAINING DO THE EDITORIAL FOLKS WHO ARE
16 HELPING DOUBLE-CHECK, WHAT KIND OF TRAINING DO THEY HAVE?

17 A. SO EACH YEAR WE HAVE TWO INTERNAL SEMINARS. THEY ARE A
18 DAY LONG, AND THEY TEACH PEOPLE ABOUT COPYRIGHT AND ABOUT FAIR
19 USE, AND ESPECIALLY WHEN A NEW EDITORIAL ASSISTANT COMES ON
20 BOARD, IT'S VERY IMPORTANT FOR THAT PERSON TO BE TRAINED.

21 Q. IF WHILE AN AUTHOR IS TRYING TO MAKE THE FAIR USE
22 DETERMINATION, IF THEY NEED HELP WHAT KINDS OF HELP DO YOU
23 PROVIDE FOR YOUR AUTHORS?

24 A. THE AUTHOR CAN CALL AN INTERNAL EDITOR. THEY CAN CALL THE
25 PERMISSIONS EDITORS. THEY CAN CALL ON THE FREELANCER, THE

1 EDITORIAL ASSISTANT, AND IF THEY HAVE TO, THEY CAN SPEAK TO OUR
2 ATTORNEYS.

3 Q. LET'S SWITCH GEARS AND LET'S TALK ABOUT THE SAGE WORKS
4 THAT ARE AT ISSUE IN THE LITIGATION. I'M GO GOING TO PUT UP ON
5 THE SCREEN THE JOINT EXHIBIT 5, AND WE'RE JUST GOING TO FLIP
6 QUICKLY THROUGH THIS AT THE SAGE WORKS.

7 IF WE TAKE A LOOK HERE, JUST GO THROUGH IT PAGE BY
8 PAGE AND LOOK AT THE SAGE WORKS JUST SO WE CAN CONFIRM THAT
9 SAGE IS THE OWNER OR EXCLUSIVE LICENSEE OF ALL THESE WORKS.

10 LOOKING AT PAGE A-3, HIGHLIGHT THE TITLES, HANDBOOK
11 OF FEMINIST RESEARCH THEORY AND PRAXIS, JUST SCROLL THROUGH
12 THEM SO WE CAN LOOK AT THE TITLES, HANDBOOK OF SOCIAL THEORY,
13 THAT'S A SAGE WORK?

14 A. YES.

15 Q. SAGE HANDBOOK OF QUALITATIVE RESEARCH THIRD EDITION?

16 A. YES.

17 Q. SAGE HANDBOOK OF QUALITATIVE RESEARCH SECOND EDITION?

18 A. YES.

19 Q. HANDBOOK OF CRITICAL AND INDIGENOUS METHODOLOGIES?

20 A. YES.

21 Q. PAGE A4 OF THE JOINT FILING, QUALITATIVE RESEARCH
22 PRACTICE?

23 A. YES.

24 Q. AND HANDBOOK OF NARRATIVE INQUIRY?

25 A. YES.

- 1 Q. AND SAGE IS THE OWNER AND THE EXCLUSIVE LICENSEE OF
2 COPYRIGHTS FOR ALL OF THOSE WORKS?
3 A. YES, WE ARE.
4 Q. LET'S TAKE A LOOK AT SUMMER OF 09, SAGE HANDBOOK OF
5 QUALITATIVE RESEARCH AGAIN --
6 A. YES.
7 Q. -- SECOND EDITION, INSIDE INTERVIEWING NEW LENSES, NEW
8 CONCERNS, HANDBOOK OF ETHNOGRAPHY?
9 A. YES.
10 Q. HANDBOOK OF FEMINIST RESEARCH THEORY AND PRAXIS?
11 A. YES.
12 Q. HANDBOOK OF QUALITATIVE RESEARCH AGAIN SECOND EDITION?
13 A. YES.
14 Q. AND HANDBOOK OF QUALITATIVE RESEARCH FIRST EDITION?
15 A. YES.
16 Q. AND SAGE IS THE OWNER AND EXCLUSIVE LICENSEE OF COPYRIGHTS
17 FOR ALL OF THOSE SAGE WORKS?
18 A. YES.
19 Q. FALL 09, AFRICAN-AMERICAN SINGLE MOTHERS UNDERSTANDING
20 THEIR LIVES AND FAMILIES?
21 A. YES.
22 Q. BLACK CHILDREN?
23 A. YES.
24 Q. BLACK FAMILIES?
25 A. YES.

1 Q. I THINK THIS IS THE SAME ONE THE HANDBOOK OF FEMINIST
2 THEORY AND PRAXIS RESEARCH AND PRACTICE THAT WE ALREADY SAW?
3 A. YES.
4 Q. THE HANDBOOK OF NARRATIVE INQUIRY?
5 A. YES.
6 Q. THE HANDBOOK OF QUALITATIVE THIRD EDITION, WE'VE SEEN?
7 A. YES.
8 Q. HANDBOOK OF SOCIAL THEORY?
9 A. YES.
10 Q. THEORETICAL FRAMEWORKS IN QUALITATIVE RESEARCH?
11 A. YES.
12 Q. HANDBOOK OF MIXED METHODS IN SOCIAL AND BEHAVIORAL
13 RESEARCH?
14 A. YES.
15 Q. CONTEMPORARY CASES IN U.S. FOREIGN POLICY FROM TERRORISM
16 TO TRADE?
17 A. YES.
18 Q. AND U.S. FOREIGN POLICY, THE PARADOX OF WORLD POWER?
19 A. YES.
20 Q. THE SAGE HANDBOOK OF QUALITATIVE RESEARCH SECOND EDITION
21 WE'VE SEEN, AND UTILIZATION FOCUSED EVALUATION THE NEW CENTURY
22 TEXT THIRD EDITION?
23 A. YES.
24 Q. IS SAGE THE OWNER AND EXCLUSIVE LICENSEE OF THE COPYRIGHTS
25 OF ALL OF THE SAGE WORKS THAT WE'VE SEEN?

1 A. YES.

2 Q. ARE ALL OF THE WORKS IN THE JOINT FILING GENERALLY
3 AVAILABLE FOR SALE OR PERMISSIONS?

4 A. YES.

5 THE COURT: WHAT DO YOU MEAN ARE ALL OF THEM
6 GENERALLY AVAILABLE?

7 MS. SINGER: I'M SORRY, ARE THEY ALL AVAILABLE FOR
8 SALE?

9 THE WITNESS: YES.

10 THE COURT: YOU MEAN WITH PERMISSIONS?

11 MS. SINGER: WELL, THERE'S BOOKS AVAILABLE FOR SALE
12 IS THE FIRST QUESTION.

13 THE COURT: OKAY.

14 BY MS. SINGER:

15 Q. AND THEN ARE THEY ALL AVAILABLE -- IF SOMEBODY REQUESTED
16 PERMISSION TO USE AN EXCERPT FROM THOSE, ARE THE PERMISSIONS
17 RIGHTS AVAILABLE FOR ALL OF THE WORKS?

18 A. YES.

19 Q. HAVE YOU CONSULTED SAGE'S RECORDS CONCERNING PERMISSIONS
20 FOR 2009?

21 A. YES.

22 Q. DID GSU SEEK PERMISSION FROM SAGE OR CCC TO USE ANY OF THE
23 WORKS ON THE JOINT FILING?

24 A. NO.

25 Q. ARE ALL OF SAGE'S WORKS ON THE JOINT FILING REGISTERED

1 WITH THE U.S. COPYRIGHT OFFICE OR PROTECTED BY THE BERNE
2 CONVENTION?

3 MR. SCHAETZEL: OBJECTION, YOUR HONOR, I WOULD LIKE
4 TO KNOW THE BASIS FOR THE WITNESS' OPINION.

5 THE COURT: SUSTAINED.

6 MS. SINGER: WE'LL GO THROUGH IT. NO WORRIES.

7 BY MS. SINGER:

8 Q. WHAT IS THE MARKET FOR THE WORKS ON THE JOINT FILING;

9 WHAT'S THE PRIMARY MARKET FOR ALL OF THOSE WORKS?

10 A. ACADEMIC INSTITUTIONS.

11 MS. SINGER: MAY I APPROACH, YOUR HONOR?

12 THE COURT: YES.

13 BY MS. SINGER:

14 Q. MS. RICHMAN, YOU HAVE BEEN HANDED PLAINTIFFS' EXHIBIT 265

15 ALREADY IN EVIDENCE WHICH IS THE SAGE HANDBOOK OF QUALITATIVE

16 RESEARCH SECOND EDITION, RIGHT?

17 A. CORRECT.

18 Q. AND I'M ALSO GOING TO HAND YOU PLAINTIFFS' EXHIBIT 267

19 ALREADY IN EVIDENCE WHICH IS THE THIRD EDITION.

20 LET'S TAKE A LOOK AT JOINT EXHIBIT 5 ON PAGE A-3 THE

21 MAYMESTER 09, WE SEE THAT PROFESSOR KAUFMANN USED PAGES 717 TO

22 732, 733 TO 768 AND 923 TO 948; DO YOU SEE THAT?

23 A. YES.

24 Q. AND IF YOU SCROLL UP A LITTLE BIT, IN THE THIRD EDITION

25 SHE USED PAGES 1 TO 32, 357 TO 375, 443 TO 465 AND 661 TO 671;

1 DO YOU SEE THAT?

2 A. YES.

3 Q. OKAY. IF YOU LOOK AT PAGE B1 OF THE JOINT FILING, WE SEE
4 THAT PROFESSOR KAUFMANN USED PAGES 717 TO 732 AGAIN AND 923 TO
5 948 OF THE SECOND EDITION AGAIN; DO YOU SEE THAT?

6 A. YES.

7 Q. AND IF YOU LOOK AT PAGE B-2, WE SEE THAT PROFESSOR
8 ESPOSITO USED PAGES 455 TO 486 OF THE SECOND EDITION; DO YOU
9 SEE THAT?

10 A. YES.

11 Q. AND PROFESSOR ESPOSITO ALSO USED PAGES 70 TO 82 OF THE
12 FIRST EDITION?

13 A. YES.

14 Q. OKAY. IN THE FALL OF 09 IF WE LOOK AT PAGE C-9 OF THE
15 JOINT FILING --

16 MR. SCHAETZEL: EXCUSE ME, I WANT TO BE CERTAIN. DO
17 WE HAVE THE FIRST EDITION BEFORE US?

18 MS. SINGER: WE DO NOT HAVE THE FIRST EDITION BEFORE
19 US.

20 MR. SCHAETZEL: THANK YOU.

21 BY MS. SINGER:

22 Q. WE SEE IN FALL OF 09 PROFESSOR KAUFMANN USED PAGES 1 TO
23 32, 109 TO 138, 357 TO 373, 443 TO 465, 547 TO 557, 733 TO 768,
24 915 TO 932 AND 959 TO 978 OF THE THIRD EDITION; DO YOU SEE
25 THAT?

1 A. YES.

2 Q. AND IF WE TAKE A LOOK ON PAGE C-21, WE SEE THAT PROFESSOR
3 OHMER USED PAGES 803 TO 820 OF THE SECOND EDITION; DO YOU SEE
4 THAT?

5 A. YES.

6 Q. SO LET'S START WITH THE SECOND EDITION, PLAINTIFFS'
7 EXHIBIT 265 ALREADY IN EVIDENCE, HOW MANY PAGES DOES THAT
8 HAVE?

9 A. SO IT HAS --

10 Q. LOOK AT THE ACTUAL PAGES --

11 THE COURT: HOW MANY PAGES DOES WHAT HAVE?

12 MS. SINGER: HOW MANY PAGES DOES THE SECOND EDITION
13 HAVE.

14 THE COURT: THE WHOLE BOOK?

15 MS. SINGER: THE WHOLE BOOK.

16 BY MS. SINGER:

17 Q. HOW MANY PAGES?

18 A. IT HAS 10,065 -- 1,065.

19 Q. OKAY. LET'S TAKE A LOOK AT PLAINTIFFS' EXHIBIT 324
20 ALREADY IN EVIDENCE. WHAT IS PLAINTIFFS' EXHIBIT 324?

21 A. THIS IS THE EDITOR AGREEMENT TO PUBLISH THIS WORK. IT'S
22 THE EDITOR/AUTHOR AGREEMENT. THERE ARE TWO AUTHORS HERE DENZIN
23 AND LINCOLN.

24 Q. OKAY. AND IF YOU TAKE A LOOK AT PARAGRAPH 1, WHAT
25 COPYRIGHT RIGHTS DOES SAGE HAVE IN THE SAGE HANDBOOK OF

1 QUALITATIVE RESEARCH SECOND EDITION?

2 A. SAGE OWNS THE COPYRIGHT. ALL RIGHTS WERE ASSIGNED TO
3 SAGE.

4 Q. OKAY. LET'S TAKE A LOOK AT THE TABLE OF CONTENTS OF
5 PLAINTIFFS' EXHIBIT 265 AND LET'S TRY TO MATCH UP THOSE PAGES,
6 OKAY?

7 ON PAGE A-3 OF THE JOINT FILING FROM MAYMESTER 09 WE
8 SAW THAT PROFESSOR KAUFMANN USED PAGES 717 TO 732, 733 TO 768
9 AND 923 TO 948.

10 SO LET'S GO BACK TO THE TABLE OF CONTENTS OF
11 PLAINTIFFS' EXHIBIT 265. WHAT DO PAGES 717 TO 732 CORRESPOND
12 TO?

13 A. THAT'S CHAPTER 27, THE ENTIRE CHAPTER REIMAGINING VISUAL
14 METHODS BY HARPER.

15 Q. OKAY. THE NEXT RANGE WAS 733 TO 768, WHAT IS THAT?

16 A. THAT IS CHAPTER 23, AUTOETHNOGRAPHY PERSONAL NARRATIVE
17 REFLEXIVITY. IT'S THE ENTIRE CHAPTER.

18 Q. OKAY. AND THE LAST ONE FOR THE SECOND EDITION IN
19 MAYMESTER 09 WAS 923 TO 948?

20 A. THAT'S CHAPTER 36 WRITING, A METHOD OF INQUIRY BY
21 RICHARDSON. IT'S THE ENTIRE CHAPTER.

22 Q. WOULD THOSE PAGE RANGES, WOULD THAT INCLUDE THE HEART OF
23 THE WORK?

24 A. ABSOLUTELY.

25 THE COURT: THE HEART OF WHAT WORK?

1 BY MS. SINGER:

2 Q. LET'S TAKE THE RICHARDSON CHAPTER. WOULD THE TAKING OF
3 923 TO 948 INCLUDE THE HEART OF THE RICHARDSON CHAPTER?

4 A. YES, IT'S THE ENTIRE CHAPTER.

5 Q. WOULD THE TAKING OF THE AUTOETHNOGRAPHY CHAPTER, WOULD
6 THAT INCLUDE THE HEART OF THE WORK?

7 A. YES, IT'S THE ENTIRE CHAPTER.

8 Q. WOULD THE HARPER CHAPTER 717 TO 732, WOULD THAT INCLUDE
9 THE HEART OF THE WORK?

10 A. YES, IT'S THE ENTIRE CHAPTER.

11 Q. WE SAW IN SUMMER 09 PROFESSOR KAUFMANN AGAIN USED 717 TO
12 732 AND 923 TO 948, SO THAT'S THE SAME AS WE JUST LOOKED AT.

13 PAGE B-2 OF THE JOINT FILING, WE SAW THAT PROFESSOR
14 ESPOSITO USED PAGES 455 TO 486. SO IF WE LOOK BACK AT THE
15 TABLE OF CONTENTS OF PX-265, WHAT DOES PAGES 455 TO 486
16 CORRESPOND TO?

17 A. THAT IS CHAPTER 17, ETHNOGRAPHY AND ETHNOGRAPHIC
18 REPRESENTATION BY TEDLOCK. IT'S THE ENTIRE CHAPTER.

19 Q. WOULD THAT INCLUDE THE HEART OF THE TEDLOCK CHAPTER?

20 A. YES, IT'S THE ENTIRE WORK.

21 Q. AND LOOK AT PAGE C-21 OF THE JOINT EXHIBIT, WE SEE THAT
22 PROFESSOR OHMER USED PAGES 803 TO 820. SO IF WE GO BACK TO THE
23 TABLE OF CONTENTS OF PX-265, WHAT DOES PAGES 803 TO 820
24 CORRESPOND TO?

25 A. THAT IS THE ENTIRE CHAPTER 30, SOFTWARE AND QUALITATIVE

1 RESEARCH BY WEITZMAN.

2 Q. DOES THAT INCLUDE THE HEART OF THE WEITZMAN CHAPTER?

3 A. YES, IT WOULD.

4 Q. OKAY. LET'S MATCH SOME OF THESE UP TO THE CONTRIBUTOR
5 AGREEMENTS. IF YOU WOULD PLEASE TURN TO PLAINTIFFS' EXHIBIT
6 272 ALREADY IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 272?

7 A. THIS IS THE CONTRIBUTOR AGREEMENT FROM HARPER FOR THE
8 CHAPTER REIMAGINING VISUAL METHODS.

9 Q. AND IF WE LOOK AT PARAGRAPH 1, WHAT COPYRIGHT RIGHTS DOES
10 SAGE HAVE?

11 A. THE COPYRIGHT WAS ASSIGNED TO SAGE. SAGE OWNS ALL RIGHTS.

12 Q. OKAY. AND IF WE LOOK BACK AT A-3 OF THE JOINT FILING, WE
13 SEE THAT THE HARPER CHAPTER AT 717 TO 732 IS PART OF WHAT
14 PROFESSOR KAUFMANN USED; DO YOU SEE THAT?

15 A. YES.

16 Q. OKAY. TAKE A LOOK AT PLAINTIFFS' EXHIBIT 275 ALREADY IN
17 EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 275?

18 A. THAT IS A CONTRIBUTOR AGREEMENT FROM RICHARDSON FOR THE
19 CHAPTER WRITING, A METHOD OF INQUIRY.

20 Q. AND ACCORDING TO PARAGRAPH 1, WHAT COPYRIGHT RIGHTS DOES
21 SAGE HAVE IN THE RICHARDSON CHAPTER?

22 A. SAGE OWNS THE COPYRIGHT TO THIS WORK, OWNS ALL RIGHTS.

23 Q. OKAY. AND THE RICHARDSON CHAPTER WHICH IS AT 923 TO 948,
24 IF WE LOOK AT A-3 OF THE JOINT FILING, WE SEE THAT THIS
25 RICHARDSON CHAPTER WAS PART OF WHAT PROFESSOR KAUFMANN USED FOR

1 THE SECOND EDITION, CORRECT?

2 A. CORRECT.

3 Q. TAKE A LOOK AT PLAINTIFFS' EXHIBIT 278 ALREADY IN

4 EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 278?

5 A. THIS IS THE CONTRIBUTOR AGREEMENT FROM TEDLOCK FOR THE

6 CHAPTER ETHNOGRAPHY AND PARTICIPANT OBSERVATION.

7 Q. AND ACCORDING TO PARAGRAPH 1, WHAT COPYRIGHT RIGHTS DOES

8 SAGE HAVE IN THE TEDLOCK CHAPTER?

9 A. SAGE OWNS ALL RIGHTS. SAGE OWNS THE COPYRIGHT TO THE

10 WORK.

11 Q. OKAY. AND IF YOU LOOK AT PAGE B-2 OF THE JOINT FILING,

12 THE TEDLOCK CHAPTER AT PAGES 455 TO 486 IS WHAT PROFESSOR

13 ESPOSITO USED, CORRECT?

14 A. CORRECT.

15 Q. TAKE A LOOK AT PLAINTIFFS' EXHIBIT 279 ALREADY IN

16 EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 279?

17 A. THIS IS THE CONTRIBUTOR AGREEMENT FROM WEITZMAN FOR THE

18 CHAPTER SOFTWARE AND QUALITATIVE RESEARCH.

19 Q. AND ACCORDING TO PARAGRAPH 1, WHAT COPYRIGHT RIGHTS DOES

20 SAGE HAVE IN THE WEITZMAN CHAPTER?

21 A. SAGE OWNS THE COPYRIGHT, OWNS ALL RIGHTS.

22 Q. AND IF WE TAKE A LOOK BACK AT C21 OF THE JOINT FILING, THE

23 WEITZMAN CHAPTER AT PAGE 803 TO 820 IS WHAT PROFESSOR OHMER

24 USED, CORRECT?

25 A. CORRECT.

1 Q. OKAY. LET'S TAKE A LOOK -- YOU HAVE IN FRONT OF YOU
2 PLAINTIFFS' EXHIBIT 267 ALREADY IN EVIDENCE. THAT'S THE THIRD
3 EDITION, OKAY? HOW MANY PAGES DOES PX-267 THE THIRD EDITION OF
4 SAGE HANDBOOK OF QUALITATIVE RESEARCH HAVE?

5 A. 1,111 PAGES.

6 Q. PLEASE TURN TO PLAINTIFFS' EXHIBIT 268 ALREADY IN
7 EVIDENCE. WHAT IS PLAINTIFFS' EXHIBIT 268?

8 A. THIS IS THE AGREEMENT TO PUBLISH THE WORK BY DENZIN AND
9 LINCOLN, THE THIRD EDITION.

10 Q. OKAY. AND IF WE TAKE A LOOK AT PARAGRAPH 1A WHAT RIGHTS
11 DOES SAGE -- COPYRIGHTS HAVE DOES SAGE HAVE IN THE SAGE
12 HANDBOOK OF QUALITATIVE RESEARCH THIRD EDITION?

13 A. SAGE HAS EXCLUSIVE RIGHTS. SAGE OWNS THE COPYRIGHT TO THE
14 WORK.

15 Q. OKAY. IF YOU WOULD TAKE A LOOK PLEASE AT THE TABLE OF
16 CONTENTS OF PLAINTIFFS' EXHIBIT 267 THE THIRD EDITION, LET'S
17 TRY TO MATCH UP THESE NUMBERS.

18 IF WE LOOK AT PAGE A-3 OF THE JOINT FILING, WE SEE
19 THAT PROFESSOR KAUFMANN USED PAGES 1 TO 32, 357 TO 375, 443 TO
20 465 AND 651 TO 679.

21 LET'S TAKE A LOOK AT THE TABLE OF CONTENTS. WHAT
22 DOES PAGES 1 TO 32 CORRESPOND TO?

23 A. THAT CORRESPONDS TO THE INTRODUCTION THE DISCIPLINE AND
24 PRACTICE OF QUALITATIVE RESEARCH BY DENZIN AND LINCOLN.

25 Q. OKAY. AND DENZIN AND LINCOLN ARE THE EDITORS OF THIS

1 BOOK?

2 A. THAT'S CORRECT.

3 Q. SO LET'S GO BACK AND TAKE A LOOK AT PLAINTIFFS' EXHIBIT

4 268 ALREADY IN EVIDENCE. THIS IS THE AGREEMENT WITH DENZIN AND

5 LINCOLN. WOULD THIS AGREEMENT COVER THE INTRODUCTION?

6 A. YES, IT WOULD.

7 Q. SO WHAT COPYRIGHT RIGHTS DOES SAGE HAVE TO THE HANDBOOK

8 THIRD EDITION?

9 A. SAGE OWNS THE COPYRIGHT TO THE INTRODUCTION.

10 Q. OKAY. PROFESSOR KAUFMANN IN MAYMESTER 09 ALSO USED PAGES

11 357 TO 375. WHAT DOES THAT CORRESPOND TO?

12 A. THAT'S CHAPTER 14, THE ENTIRE CHAPTER CRITICAL HUMANISM

13 AND QUEER THEORY BY PLUMMER.

14 Q. OKAY. AND THE NEXT THING SHE USED WAS PAGES 443 TO 465.

15 WHAT DOES THAT CORRESPOND TO?

16 A. THAT'S CHAPTER 17, THE ENTIRE CHAPTER QUALITATIVE CASE

17 STUDIES BY STAKE.

18 Q. DOES THAT INCLUDE THE HEART OF THE STAKE CHAPTER?

19 A. YES, ABSOLUTELY, THIS IS VERY IMPORTANT TO THE FIELD THIS

20 CHAPTER.

21 Q. AND I SHOULD HAVE ASKED WOULD PAGES 357 TO 375, WOULD THAT

22 HAVE INCLUDED THE HEART OF THE PLUMMER CHAPTER?

23 A. YES.

24 Q. SHE ALSO USED PAGES 651 TO 679?

25 A. THAT CORRESPONDS TO CHAPTER 25, NARRATIVE INQUIRY BY

1 CHASE.

2 Q. AND WOULD THAT INCLUDE THE HEART OF THE CHASE CHAPTER?

3 A. YES, IT'S THE ENTIRE CHAPTER.

4 Q. AND THEN WE SEE AT PAGE C-9 OF THE JOINT FILING PROFESSOR

5 KAUFMANN, THIS IS FALL 09, IS USING PAGES 1 TO 32, SO THAT'S

6 THE INTRODUCTION AGAIN?

7 A. INTRODUCTION.

8 Q. OKAY. SHE'S USING PAGES 357 TO 373 AGAIN, THAT'S WHAT WE

9 JUST LOOKED AT. THAT'S THE PLUMMER CHAPTER.

10 A. THE PLUMMER CHAPTER.

11 Q. SHE'S USING 443 TO 465 AGAIN, THAT'S THE QUALITATIVE CASE

12 STUDIES CHAPTER?

13 A. YES.

14 Q. SHE'S ALSO USING 109 TO 138. WHAT DOES THAT CORRESPOND

15 TO?

16 A. THAT IS CHAPTER 5, FREEING OURSELVES FROM NEOCOLONIAL

17 DOMINATION IN RESEARCH BY BISHOP. THAT'S THE ENTIRE CHAPTER.

18 Q. SO WOULD THAT INCLUDE THE HEART OF THE BISHOP CHAPTER?

19 A. YES, IT WOULD.

20 Q. OKAY. THE NEXT THING IS 547 TO 557. WHAT DOES THAT

21 CORRESPOND TO?

22 A. THAT IS CHAPTER 22, TESTIMONIO, SUBALTERNITY AND NARRATIVE

23 AUTHORITY BY BEVERLY.

24 Q. OKAY. AND THE NEXT ONE WAS 733 TO 768. TAKE A LOOK AT

25 THAT. THAT DOESN'T REALLY LINEUP. LET'S FLIP QUICKLY BACK --

1 MR. KRUGMAN: EXCUSE ME ONE MOMENT.

2 (PAUSE IN THE PROCEEDINGS.)

3 BY MS. SINGER:

4 Q. LET'S LOOK BACK TO THE JOINT FILING -- LET'S LOOK BACK TO
5 PLAINTIFFS' EXHIBIT 516 WHICH IS PROFESSOR KAUFMANN'S SYLLABUS,
6 AND IF WE LOOK AT PAGE 9 UNDER CLASS 11 THE MAY 28TH, WHAT'S
7 THE ENTRY THERE? PAGES 733 TO 768 DO YOU SEE THAT?

8 A. YES.

9 Q. AND WHAT EDITION IS THAT?

10 A. THAT'S THE SECOND EDITION.

11 Q. OKAY. AND THAT'S THE ELLIS AND BOCHNER CHAPTER WE ALREADY
12 LOOKED AT, RIGHT?

13 A. THAT'S CORRECT.

14 Q. SO THERE'S JUST A MISTAKE THERE IN THE U.S. REPORT WHICH
15 IS WHAT THE JOINT FILING IS BASED OFF. WE JUST HAVE THE WRONG
16 EDITION.

17 OKAY. SO LET'S GO BACK TO PAGE C-9 OF THE JOINT
18 FILING, WE ALSO SEE PAGES 915 TO 932 AND 959 TO 978. SO IF WE
19 GO BACK TO THE TABLE OF CONTENTS OF 267 THIRD EDITION, WHAT DO
20 PAGES 915 TO 932 RELATE TO?

21 A. THAT'S CHAPTER 36 RELATIVISM, CRITERIA AND POLITICS BY
22 SMITH AND HODKINSAN. IT'S THE ENTIRE CHAPTER.

23 Q. AND WOULD THAT BE THE HEART OF THE SMITH AND HODKINSAN
24 CHAPTER?

25 A. YES, IT WOULD.

1 Q. HOW ABOUT 959 TO 978?

2 A. THAT IS CHAPTER 38 WRITING, A METHOD OF INQUIRY BY
3 RICHARDSON AND ST. PIERRE. IT'S THE ENTIRE CHAPTER.

4 Q. OKAY. LET'S TURN TO PLAINTIFFS' EXHIBIT 269 ALREADY IN
5 EVIDENCE. WHAT IS PLAINTIFFS' EXHIBIT 269?

6 A. THIS IS THE CONTRIBUTOR AGREEMENT FOR CHASE'S CHAPTER.

7 Q. AND WHAT RIGHTS DOES -- WHAT COPYRIGHT RIGHTS DOES SAGE
8 HAVE IN THE SAGE CHAPTER?

9 A. IT'S A WORK MADE FOR HIRE FOR SAGE, AND SAGE OWNS ALL
10 RIGHTS IN THE CHAPTER.

11 Q. OKAY. AND SO WE SEE IT'S A WORK MADE FOR HIRE, AND IF WE
12 SCROLL DOWN A LITTLE BIT TO THE TEXT BELOW THE BOX, WE SEE THAT
13 IT'S A WORK MADE FOR HIRE WHICH MEANS THAT ALL EXCLUSIVE RIGHTS
14 SHALL VEST INITIALLY IN AND BE OWNED BY SAGE; IS THAT CORRECT?

15 A. THAT'S CORRECT, YES.

16 Q. AND THE CHASE CHAPTER FROM 651 TO 679 WE SAW AT A-3 OF THE
17 JOINT FILING WAS ONE OF THE ONES THAT PROFESSOR KAUFMANN USED
18 IN MAYMESTER 09, AND IF WE LOOK AT C9 OF THE -- NO. OKAY.

19 LET'S TAKE A LOOK AT PLAINTIFFS' EXHIBIT 274 ALREADY
20 IN EVIDENCE. WHAT IS PLAINTIFFS' EXHIBIT 274.

21 A. THIS IS THE CONTRIBUTOR AGREEMENT FOR PLUMMER FOR HIS
22 CHAPTER CRITICAL HUMANISM AND QUEER THEORY.

23 Q. OKAY. AND ACCORDING TO THIS PLUMMER AGREEMENT, WHAT
24 COPYRIGHT RIGHTS DOES SAGE HAVE IN THE PLUMMER CONTRIBUTION?

25 A. SAGE OWNS ALL RIGHTS TO THE WORK. OWNS THE COPYRIGHT.

1 Q. AND IF WE LOOK BACK AT PAGE A-3 OF THE JOINT FILING, WE
2 SEE THAT THE PLUMMER CHAPTER AT PAGES 357 TO 375 IS WHAT
3 PROFESSOR KAUFMANN USED FROM THE THIRD EDITION; DO YOU SEE
4 THAT?

5 A. YES.

6 Q. LET'S TAKE A LOOK AT PLAINTIFFS' EXHIBIT 276 ALREADY IN
7 EVIDENCE. WHAT IS PLAINTIFFS' EXHIBIT 276?

8 A. THIS IS ALSO A CONTRIBUTOR AGREEMENT FROM SMITH FOR THE
9 CHAPTER RELATIVISM, CRITERIA AND POLITICS.

10 Q. AND WE SEE AT THE BOTTOM OF THAT CONTRIBUTOR PARAGRAPH
11 THERE THE LAST SENTENCE, WHAT DOES THE LAST SENTENCE READ?

12 A. I'M SORRY, WHERE?

13 Q. IT SAYS CONTRIBUTOR JOHN K. SMITH, AND IF WE LOOK AT THE
14 LAST SENTENCE IT SAYS IF THERE IS MORE THAN ONE CONTRIBUTOR,
15 THEY ARE JOINTLY AND SEVERALLY REFERRED TO HEREIN AS
16 CONTRIBUTOR AND JOHN K. SMITH IS HEREBY DESIGNATED --

17 A. CORRESPONDING AUTHOR AUTHORIZED TO COMMUNICATE WITH SAGE.

18 Q. ON BEHALF OF ALL THE CONTRIBUTORS?

19 A. RIGHT.

20 Q. THIS CONTRIBUTOR AGREEMENT WOULD BE ENOUGH TO GIVE SAGE
21 ALL THE RIGHTS EVEN THOUGH HE HAD A COAUTHOR FOR HIS
22 CONTRIBUTION?

23 A. THAT'S CORRECT.

24 Q. IF WE LOOK BACK AT PAGE A-3 OF THE JOINT FILING, WE SEE
25 THAT THE SMITH AND HODKINSAN CHAPTER AT PAGES 355 TO 375 IS

1 PART OF WHAT PROFESSOR KAUFMANN USED; DO YOU SEE THAT?

2 A. YES.

3 Q. OKAY. TAKE A LOOK AT PLAINTIFFS' EXHIBIT 277 ALREADY IN
4 EVIDENCE. WHAT IS PLAINTIFFS' EXHIBIT 277.

5 A. THIS IS STAKE'S CONTRIBUTOR AGREEMENT FOR THE CHAPTER
6 QUALITATIVE CASE STUDIES.

7 Q. AND ACCORDING TO PLAINTIFFS' EXHIBIT 277, WHAT COPYRIGHT
8 RIGHTS DOES SAGE HAVE IN THE STAKE CHAPTER?

9 A. SAGE OWNS THE COPYRIGHT. SAGE OWNS ALL RIGHTS.

10 Q. OKAY. AND IF WE LOOK BACK AT THE JOINT FILING PAGE C-9
11 AND A-3, WE WOULD SEE THAT PROFESSOR KAUFMANN USED THE STAKE
12 CHAPTER PAGES 443 TO 465 IN BOTH OF THOSE SEMESTERS?

13 A. YES.

14 Q. OKAY. LET'S TURN TO PLAINTIFFS' EXHIBIT 280 ALREADY IN
15 EVIDENCE. WHAT IS PLAINTIFFS' EXHIBIT 280?

16 A. SO THIS IS BEVERLY'S CONTRIBUTOR AGREEMENT FOR TESTIMONIO,
17 SUBALTERNITY AND NARRATIVE AUTHORITY.

18 Q. AND ACCORDING TO EXHIBIT 280 WHAT COPYRIGHT RIGHTS DOES
19 SAGE HAVE IN THE BEVERLY CHAPTER?

20 A. SAGE OWNS THE COPYRIGHT. OWNS ALL RIGHTS.

21 Q. OKAY. AND IF WE WERE TO LOOK BACK AT PAGE C-9 OF THE
22 JOINT FILING, WE WOULD SEE THAT THE BEVERLY CHAPTER 547 TO 557
23 IS PART OF WHAT PROFESSOR KAUFMANN USED; DO YOU SEE THAT?

24 A. YES.

25 Q. IF YOU WOULD TAKE A LOOK AT PLAINTIFFS' EXHIBIT 281

1 ALREADY IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 281?

2 A. THIS IS BISHOP'S CONTRIBUTOR AGREEMENT FOR THE CHAPTER
3 FREEING OURSELVES FROM NEO-COLONIAL DOMINATION IN RESEARCH.

4 Q. AND WHAT COPYRIGHT RIGHTS DOES SAGE HAVE IN THE BISHOP
5 CHAPTER?

6 A. SAGE OWNS THE COPYRIGHT AND OWNS ALL RIGHTS.

7 Q. AND IF WE TAKE A LOOK BACK AT PAGE C-9 OF THE JOINT
8 FILING, WE WOULD SEE THAT THE BISHOP CHAPTER WAS SOMETHING THAT
9 PROFESSOR KAUFMANN USED IN EPRS 8500 FOR THE FALL OF 09.

10 IF YOU WOULD TAKE A LOOK AT PLAINTIFFS' EXHIBIT 270
11 PLEASE, ALREADY IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 270?

12 A. THIS IS THE AUTHOR DENZIN'S AGREEMENT TO PUBLISH THE ART
13 AND POLITICS OF INTERPRETATION.

14 Q. OKAY. AND WHAT RIGHTS DOES SAGE OWN IN THE DENZIN CHAPTER
15 THE ART AND POLITICS OF INTERPRETATION?

16 A. SAGE OWNS ALL RIGHTS.

17 Q. CAN WE TAKE A LOOK AT PLAINTIFFS' EXHIBIT 282 -- WE'RE
18 HAVING TECHNICAL DIFFICULTY.

19 WOULD YOU LIKE A HARD COPY?

20 THE COURT: GO AHEAD.

21 BY MS. SINGER:

22 Q. WHAT IS PLAINTIFFS' EXHIBIT 282 ALREADY IN EVIDENCE? WHY
23 DON'T WE FLIP THROUGH THIS BECAUSE IT'S GOT A BUNCH OF THINGS
24 IN IT.

25 IF YOU TAKE A LOOK AT PAGE 4 OF PLAINTIFFS' EXHIBIT

1 282 WHICH HAS THE BATES NUMBER AT THE BOTTOM SAGEX 000387, WHAT
2 ARE WE LOOKING AT?
3 A. THIS IS THE CERTIFICATE OF REGISTRATION WITH THE COPYRIGHT
4 OFFICE FOR THE HANDBOOK OF QUALITATIVE RESEARCH PUBLISHED IN
5 1993.
6 Q. OKAY. AND WHAT IS THE DATE OF THE REGISTRATION?
7 A. FEBRUARY 2ND, 1994.
8 Q. AND WHICH EDITION OF THE HANDBOOK OF QUALITATIVE RESEARCH
9 IS THIS?
10 A. THE FIRST EDITION.
11 Q. OKAY. AND IF YOU FLIP A COUPLE OF MORE PAGES TO THE ONE
12 THAT HAS THE BATES STAMP AT THE BOTTOM SAGEX 000392?
13 A. YES.
14 Q. WHAT ARE WE LOOKING AT HERE?
15 A. THIS IS THE CERTIFICATE OF REGISTRATION FOR THE SAGE
16 HANDBOOK OF QUALITATIVE RESEARCH THIRD EDITION.
17 Q. WHEN WAS THE THIRD EDITION PUBLISHED?
18 A. THIS WAS PUBLISHED IN 2005.
19 Q. AND WHEN WAS IT REGISTERED?
20 A. JULY 26TH OF 2005.
21 Q. OKAY. AND IF YOU FLIP A COUPLE OF MORE PAGES TO THE ONE
22 THAT HAS -- SECOND TO THE LAST PAGE BATES NUMBER SAGEX 000398,
23 WHAT ARE WE LOOKING AT HERE?
24 A. THIS IS THE CERTIFICATE OF REGISTRATION FOR THE HANDBOOK
25 OF QUALITATIVE RESEARCH SECOND EDITION.

1 Q. WHEN WAS THAT PUBLISHED?

2 A. THAT WAS PUBLISHED IN 2000.

3 Q. WHEN WAS IT REGISTERED?

4 A. JUNE 15TH OF 2000.

5 MS. SINGER: YOUR HONOR, WOULD THIS BE A GOOD TIME TO
6 TAKE A LUNCH BREAK?

7 THE COURT: SURE, WE'LL TAKE A LUNCH BREAK UNTIL
8 1:45.

9 MR. KRUGMAN: YOUR HONOR, IF WE MAY ASK HOW LATE
10 YOU'RE PLANNING ON GOING?

11 THE COURT: I'M THINKING AROUND THREE, SOMETHING LIKE
12 THAT.

13 MR. KRUGMAN: THANK YOU.

14 (NOON RECESS)

15 THE COURT: ONE OF YOU WAS INQUIRING WITH MY LAW
16 CLERK ABOUT DO WE WANT COPIES OF THE BINDERS THAT YOU ALL ARE
17 USING?

18 MS. SINGER: YES.

19 THE COURT: I DON'T NEED ONE RIGHT NOW, BUT IT MIGHT
20 BE HELPFUL DOWN THE ROAD IF WE HAD THOSE BINDERS. SO TO THE
21 EXTENT THAT YOU ALL HAVE THEM, MAKE SURE THAT A COPY IS LEFT
22 WITH US.

23 MS. SINGER: WE CERTAINLY WILL. I'VE ACTUALLY LEFT
24 YOU VOLUME 1.

25 THE COURT: OKAY. ALL RIGHT. YOU MAY PROCEED.

1 MS. SINGER: THANK YOU, YOUR HONOR.

2 BY MS. SINGER:

3 Q. GOOD AFTERNOON, MS. RICHMAN.

4 A. GOOD AFTERNOON.

5 Q. IF YOU WOULD PLEASE TAKE A LOOK AT PLAINTIFFS' EXHIBIT 283

6 ALREADY IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 283?

7 A. THIS IS THE LIFE OF SALES OF THE HANDBOOK OF QUALITATIVE

8 RESEARCH SECOND EDITION.

9 Q. OKAY. AND IF WE TAKE A LOOK AT THIS, WHEN WAS THIS

10 PUBLISHED?

11 A. 2000.

12 Q. AND SO GENERALLY WHAT HAPPENS TO THE SALES OF THE BOOK

13 FROM 2000?

14 A. WELL IN THE ENTRY YEAR 2000, THE SALES DID VERY WELL.

15 THEY DID EXTREMELY WELL IN THE SECOND YEAR, AND THEN THEY

16 DECREASED AFTER THAT.

17 Q. AND WHAT HAPPENS TO THE PERMISSION AND LICENSING? THIS IS

18 THE SECOND EDITION, RIGHT?

19 A. RIGHT. SO IN 2000 THERE WERE PERMISSIONS AND THE REVENUE

20 ACTUALLY GROWS A GREAT DEAL UP UNTIL 2007 AND THEN IT DECREASES

21 A LITTLE BIT THEREAFTER.

22 Q. AND IF YOU COULD TURN TO THE SECOND PAGE OF PLAINTIFFS'

23 EXHIBIT 283?

24 A. YES.

25 Q. AND WHAT IS THE SECOND PAGE OF PLAINTIFFS' EXHIBIT 283?

1 A. THIS IS LIFE OF SALES FOR THE HANDBOOK OF QUALITATIVE
2 RESEARCH THIRD EDITION.

3 Q. OKAY. WHEN WAS THE THIRD EDITION PUBLISHED?

4 A. 2005.

5 Q. SO IF WE COULD JUXTAPOSE THE SECOND AND THE THIRD EDITIONS
6 HERE? OKAY. SO WHAT HAPPENS TO THE SALES OF THE THIRD
7 EDITION?

8 A. SO IN THE FIRST YEAR IT DID EXTREMELY WELL. SECOND YEAR
9 DECREASED A BIT AND THEN DECREASED THEREAFTER.

10 Q. WHAT HAPPENS TO THE PERMISSIONS REVENUE FROM THE THIRD
11 EDITION?

12 A. PERMISSIONS WAS VERY LITTLE IN THE FIRST COUPLE OF YEARS,
13 AND THEN IT STEADILY GREW UNTIL 2009, AND THERE WAS A BIG YEAR
14 IN 2009.

15 Q. AND WHAT HAPPENED TO THE PERMISSIONS FOR THE SECOND
16 EDITION IN 2005, 6, 7 AFTER THE THIRD EDITION COMES OUT?

17 A. IT ACTUALLY GREW QUITE A BIT.

18 Q. WHY IS THAT?

19 A. I THINK AS I SAID BEFORE, PROFESSORS WOULD LIKELY WANT TO
20 USE MATERIALS FROM THE SECOND EDITION THAT MIGHT NOT BE
21 INCLUDED IN THE THIRD EDITION.

22 Q. BUT THEY'RE NOT GOING TO BUY THE SECOND EDITION ONCE THE
23 THIRD EDITION IS OUT?

24 A. NO, THEY WON'T BUY THE SECOND EDITION TYPICALLY ONCE THE
25 THIRD EDITION COMES OUT.

1 Q. AND IS THIS PATTERN OF A LOT OF SALES IN THE FIRST COUPLE
2 OF YEARS AND IT DECREASES AND THEN THE PERMISSIONS START OUT
3 SMALL AND INCREASES; IS THAT FAIRLY TYPICAL?

4 A. VERY TYPICAL OF A TEXTBOOK.

5 Q. ARE THESE FIGURES, THESE NUMBERS TYPICAL?

6 A. YES -- WELL, THESE NUMBERS AREN'T TYPICAL. SO THIS IS
7 VERY HIGH. WE CAN CONSIDER THIS A SEMINAL TEXTBOOK.

8 Q. AND YOU CONSIDER THE HANDBOOK OF QUALITATIVE RESEARCH AS A
9 TEXTBOOK?

10 A. YES.

11 Q. AND JUST TO BE CLEAR WHEN WE TALK ABOUT PERMISSIONS FEES,
12 IF I'M A PROFESSOR AND I GO TO CCC AND/OR THE LIBRARY AND I GET
13 PERMISSION TO USE AN EXCERPT OF A SAGE WORK, THAT'S JUST FOR
14 ONE SEMESTER; IS THAT CORRECT?

15 A. YES, THAT'S CORRECT.

16 Q. IF I GET PERMISSION ONCE AND I WANT TO USE IT AGAIN IN
17 ANOTHER SEMESTER, DO I HAVE TO GET PERMISSION AGAIN?

18 A. YES, YOU HAVE TO REPEAT THE PERMISSION.

19 Q. OKAY.

20 MS. SINGER: MAY I APPROACH, YOUR HONOR?

21 THE COURT: YOU MAY.

22 BY MS. SINGER:

23 Q. MS. RICHMAN, WE'VE HANDED YOU PLAINTIFFS' EXHIBIT 305
24 ALREADY IN EVIDENCE WHICH SHOULD BE THEORETICAL FRAMEWORKS IN
25 QUALITATIVE RESEARCH; DO YOU HAVE THAT?

1 A. YES.

2 Q. AND HOW MANY PAGES DOES PLAINTIFFS' EXHIBIT 305 HAVE?

3 A. SO THIS ONE HAS 195 PAGES.

4 Q. OKAY. IF WE COULD TAKE A LOOK AT JOINT EXHIBIT 5 OF THE

5 JOINT FILING, AND IF WE TAKE A LOOK AT PAGE C-9 WHICH IS

6 PROFESSOR ESPOSITO IN THE FALL OF 09, AND WE SEE THAT PROFESSOR

7 ESPOSITO USED ROMANETTE 12 TO ROMANETTE 30 AND THEN 189 TO 196

8 OF THEORETICAL FRAMEWORKS IN QUALITATIVE RESEARCH; DO YOU SEE

9 THAT?

10 A. YES.

11 Q. IF YOU COULD TAKE A LOOK AT THE TABLE OF CONTENTS OF

12 EXHIBIT 305 OF THE BOOK, WHAT DOES ROMANETTE 12 TO 30

13 CORRESPOND TO?

14 A. THAT'S THE INTRODUCTION.

15 Q. WHO WOULD WRITE THE INTRODUCTION TO A BOOK?

16 A. IN THIS INSTANCE THE COAUTHORS DID ANFARA AND MERTZ.

17 Q. OKAY. AND AS WE SAW FROM PAGE C-9, PROFESSOR ESPOSITO

18 ALSO USED PAGES 189 TO 196. WHAT DOES THAT CORRESPOND TO?

19 A. 189 TO 196 IS THE CONCLUSION OF THE WORK.

20 Q. AND WHO WRITES THE CONCLUSION OF A WORK?

21 A. THE TWO COAUTHORS.

22 Q. OKAY. LET'S TAKE A LOOK AT PLAINTIFFS' EXHIBIT 307

23 ALREADY IN EVIDENCE. IT SHOULD BE IN YOUR BIG BINDER THERE IN

24 FRONT OF YOU. WHAT IS PLAINTIFFS' EXHIBIT 307?

25 A. THIS IS AN AMENDMENT TO THE PUBLISHING AGREEMENT WITH

1 ANFARA AND MERTZ.

2 Q. AND SKIP TO THE SECOND PAGE, WHAT IS THIS?

3 A. THIS WAS THEIR ORIGINAL AGREEMENT TO PUBLISH THE WORK.

4 Q. OKAY. AND TURN TO PAGE 4, PARAGRAPH 6, WHAT RIGHTS DOES
5 SAGE HAVE IN THEORETICAL FRAMEWORKS IN QUALITATIVE RESEARCH?

6 A. SAGE OWNS ALL RIGHTS TO THE WORK INCLUDING ANY REVISION
7 EDITIONS, ALL LICENSING AND CONTRIBUTIONS.

8 Q. AND YOU SEE IN THAT 6.1 THERE, IT SAYS THE SUPPLEMENTARY
9 MATERIALS AND ALL OTHER COPYRIGHTABLE MATERIAL PREPARED BY
10 EDITOR IN THE COURSE OF PERFORMING EDITORIAL SERVICES AND ANY
11 CONTRIBUTIONS PREPARED BY EDITOR FOR THE WORK OR A REVISED
12 EDITION SHALL BE DEEMED SPECIALLY ORDERED OR COMMISSIONED AND
13 SHALL BE CONSIDERED WORKS FOR HIRE. SO THAT WOULD INCLUDE THE
14 INTRODUCTION AND CONCLUSION; IS THAT CORRECT?

15 A. YES, THAT'S CORRECT.

16 Q. AND IF YOU WOULD TAKE A LOOK AT PLAINTIFFS' EXHIBIT 306
17 ALREADY IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT?

18 THE COURT: LET ME ASK A QUESTION HERE THAT I'VE BEEN
19 THINKING ABOUT. WHAT DOES WORK MADE FOR HIRE MEAN?

20 THE WITNESS: USUALLY IT'S A WORK THAT WE
21 COMMISSIONED TO BE PUBLISHED, BUT IT IS A WORK THAT WOULD BE
22 OWNED BY SAGE.

23 THE COURT: SO YOU ASK SOMEBODY TO CREATE IT FOR
24 YOU?

25 THE WITNESS: YES.

1 THE COURT: IT'S NOT LIKE THE SITUATION WHERE THEY
2 COME IN WITH SOMETHING THAT THEY'VE DONE AND YOU TAKE A LOOK
3 AND SAY YES, WE'D LIKE TO HAVE IT?

4 THE WITNESS: THAT'S CORRECT.

5 THE COURT: AND ARE THEY PAID AT THE TIME THEY DO
6 CREATE THE ITEM?

7 THE WITNESS: THERE ARE DIFFERENT ARRANGEMENTS, BUT
8 TYPICALLY THEY WOULD RECEIVE A ROYALTY ON SALES MADE OF THE
9 WORK.

10 THE COURT: THANK YOU.

11 BY MS. SINGER:

12 Q. WHAT IS PLAINTIFFS' EXHIBIT 306?

13 A. THIS IS A CERTIFICATE OF REGISTRATION FOR THE THEORETICAL
14 FRAMEWORKS IN QUALITATIVE RESEARCH.

15 Q. OKAY. WHEN WAS THIS FIRST PUBLISHED?

16 A. THIS WAS PUBLISHED IN 2006.

17 Q. AND WHEN WAS IT REGISTERED?

18 A. 2009.

19 Q. OKAY. AND WHO IS THE COPYRIGHT OWNER?

20 A. SAGE PUBLICATIONS.

21 Q. IF WE COULD TAKE A LOOK -- THIS IS BEHIND TAB D IN THE
22 BINDER. IF YOU CAN TAKE A LOOK AT PLAINTIFFS' EXHIBIT 202.

23 THAT'S ONE OF THE BOOKS I JUST HANDED YOU. HOW MANY PAGES DOES
24 PLAINTIFFS' EXHIBIT 202 HAVE?

25 A. THIS ONE HAS 191 PAGES.

1 Q. IF WE TAKE A LOOK AT PAGE C1 OF THE JOINT FILING, JOINT
2 EXHIBIT 5, WE SEE THAT PROFESSOR DIXON USED PAGES 117 TO 145 OF
3 AFRICAN-AMERICAN SINGLE MOTHERS UNDERSTANDING THEIR LIVES AND
4 FAMILY; DO YOU SEE THAT?

5 A. YES.

6 Q. IF YOU TAKE A LOOK AT THE TABLE OF CONTENTS OF PLAINTIFFS'
7 EXHIBIT 202, WHAT DOES 117 TO 145 CORRESPOND TO?

8 A. THIS IS CHAPTER 7 AFRICAN-AMERICAN CHILDREN IN SINGLE-
9 MOTHER FAMILIES BY RANDOLPH. IT'S THE ENTIRE CHAPTER.

10 Q. SO WOULD THAT INCLUDE THE HEART OF THE RANDOLPH CHAPTER?

11 A. YES, IT WOULD.

12 Q. IF YOU WOULD PLEASE TAKE A LOOK AT PLAINTIFFS' EXHIBIT 203
13 ALREADY IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 203?

14 A. THIS IS THE AUTHOR AGREEMENT FOR AFRICAN-AMERICAN SINGLE
15 MOTHERS BY DICKERSON.

16 Q. OKAY. IF YOU TAKE A LOOK AT PARAGRAPH 1, WHAT RIGHTS DOES
17 SAGE HAVE IN THE WORK AFRICAN-AMERICAN SINGLE MOTHERS?

18 A. SAGE PUBLICATIONS OWNS ALL EXCLUSIVE RIGHTS, ALL COPYRIGHT
19 TO THE WORK.

20 Q. IF YOU CAN TAKE A LOOK AT PLAINTIFFS' EXHIBIT 204 ALREADY
21 IN EVIDENCE, AND IF WE LOOK AT PLAINTIFFS' EXHIBIT 204, WE SEE
22 THAT IT IS AN AGREEMENT WITH SUZANNE RANDOLPH AND LINDA JAMES
23 MEYERS FOR A WORK TENTATIVELY ENTITLED FOSTERING VERY YOUNG
24 CHILDREN'S DEVELOPMENT IN HOUSEHOLDS HEADED BY AFRICAN-AMERICAN
25 SINGLE WOMEN; DO YOU SEE THAT?

1 A. YES, I DO.

2 Q. AND THE CHAPTER -- GOING BACK TO THE TABLE OF CONTENTS IN
3 202, THE CHAPTER THERE WAS CALLED AFRICAN-AMERICAN CHILDREN IN
4 SINGLE-MOTHER FAMILIES, CORRECT?

5 A. THAT'S RIGHT.

6 Q. SO DOES THE AGREEMENT PLAINTIFFS' EXHIBIT 204, DOES THAT
7 CORRESPOND TO THAT CHAPTER?

8 A. WELL, THE CHAPTER NAME IS DIFFERENT, AND SO THAT WOULD
9 HAPPEN BECAUSE THEY MAY HAVE AGREED PRIOR TO RECEIVING THE
10 ENTIRE MANUSCRIPT THAT THIS WAS PROBABLY -- THE ONE IN THE
11 AGREEMENT IS PROBABLY THE WORKING TITLE, BUT THIS WAS THE
12 CONCLUSION TITLE.

13 Q. AND THAT IS A COMMON PRACTICE THAT THE TITLE CHANGES FROM
14 THE TIME OF THE AGREEMENT?

15 A. SOMETIMES, YES.

16 Q. OKAY. SO IF WE TAKE A LOOK AT PARAGRAPH 1 OF PLAINTIFFS'
17 EXHIBIT 204, WHAT RIGHTS DOES SAGE HAVE IN THE RANDOLPH
18 CHAPTER?

19 A. ALL RIGHTS. THE COPYRIGHT IS OWNED BY SAGE.

20 Q. OKAY. IF YOU COULD TAKE A LOOK AT PLAINTIFFS' EXHIBIT 205
21 ALREADY IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 205?

22 A. THIS IS THE CERTIFICATE OF REGISTRATION FOR
23 AFRICAN-AMERICAN SINGLE MOTHERS.

24 Q. AND WHAT RIGHTS DOES SAGE HAVE IN AFRICAN-AMERICAN SINGLE
25 MOTHERS?

1 A. ALL RIGHTS.

2 Q. WHEN WAS AFRICAN-AMERICAN SINGLE MOTHERS FIRST PUBLISHED?

3 A. 1995.

4 Q. AND WHEN WAS IT REGISTERED?

5 A. 1995.

6 Q. OKAY. HOPEFULLY I HAVE HANDED YOU PLAINTIFFS' EXHIBIT 209

7 WHICH IS BLACK CHILDREN?

8 A. YES.

9 Q. EXCELLENT. IF WE TAKE A LOOK AT PAGE C1 -- PLAINTIFFS'

10 EXHIBIT 209 ALREADY IN EVIDENCE. IF WE TAKE A LOOK AT JOINT

11 EXHIBIT 5, PAGE C1, WE SEE THAT PROFESSOR DIXON ALSO USED PAGES

12 73 TO 96 OF BLACK CHILDREN IN THE FALL OF 2009; DO YOU SEE

13 THAT?

14 A. YES.

15 Q. OKAY. IF WE TAKE A LOOK AT PLAINTIFFS' EXHIBIT 209 WHICH

16 IS THE BOOK, HOW MANY PAGES DOES IT HAVE?

17 A. IT HAS 218 PAGES.

18 Q. OKAY. AND IF YOU TAKE A LOOK AT THE TABLE OF CONTENTS,

19 WHAT DOES PAGES 73 TO 96 CORRESPOND TO?

20 A. THAT IS CHAPTER 6, THE ENTIRE CHAPTER RACIAL IDENTITY

21 DEVELOPMENT IN AFRICAN-AMERICAN CHILDREN BY BENNETT AND

22 MANDARA.

23 Q. OKAY. IF YOU WOULD PLEASE TAKE A LOOK AT PLAINTIFFS'

24 EXHIBIT 210 ALREADY IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT

25 210?

1 A. THIS IS THE MCADOO PUBLICATION AGREEMENT FOR BLACK
2 CHILDREN, SOCIAL, EDUCATIONAL AND PARENTAL ENVIRONMENTS, SECOND
3 EDITION.

4 Q. AND MCADOO IS THE AUTHOR?

5 A. YES.

6 Q. AND IF WE TAKE A LOOK AT PARAGRAPH 1 OF PLAINTIFFS'
7 EXHIBIT 210, WHAT COPYRIGHT RIGHTS DOES SAGE HAVE IN THE MCADOO
8 BOOK?

9 A. SAGE OWNS THE COPYRIGHT TO THIS BOOK.

10 Q. OKAY. IF YOU WOULD PLEASE TAKE A LOOK AT PLAINTIFFS'
11 EXHIBIT 212 ALREADY IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT
12 212?

13 A. THIS IS THE CONTRIBUTING AUTHOR AGREEMENT FOR MURRAY AND
14 MANDARA FOR THE CHAPTER RACIAL IDENTITY DEVELOPMENT IN
15 AFRICAN-AMERICAN CHILDREN.

16 Q. AND IF WE TAKE A LOOK AT PARAGRAPH 1 THERE, WHAT RIGHTS
17 DOES SAGE HAVE IN THE MURRAY AND MANDARA CHAPTER?

18 A. SAGE OWNS THE COPYRIGHT TO THIS CHAPTER.

19 Q. IF YOU COULD PLEASE TAKE A LOOK AT PLAINTIFFS' EXHIBIT 213
20 ALREADY IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 213?

21 A. THIS IS THE CERTIFICATE OF REGISTRATION FOR BLACK CHILDREN
22 SECOND EDITION.

23 Q. WHAT IS THE -- WHO IS THE COPYRIGHT OWNER?

24 A. THE COPYRIGHT OWNER IS SAGE PUBLICATIONS.

25 Q. WHEN WAS THIS PUBLISHED?

1 A. THIS WAS PUBLISHED IN 2001.

2 Q. WHEN WAS IT REGISTERED?

3 A. SEPTEMBER 17TH, 2001.

4 MS. SINGER: MAY I APPROACH, YOUR HONOR?

5 THE COURT: YES.

6 BY MS. SINGER:

7 Q. WE'RE GOING TO FIRST LOOK AT PLAINTIFFS' EXHIBIT 243 WHICH
8 SHOULD BE THE HANDBOOK OF FEMINIST RESEARCH, AND WE'RE MOVING
9 TO BINDER 2 FOR THOSE OF YOU FOLLOWING ALONG.

10 A. OKAY.

11 Q. HOW MANY PAGES DOES PLAINTIFFS' EXHIBIT 243 ALREADY IN
12 EVIDENCE HAVE?

13 A. 711.

14 Q. IF WE TAKE A LOOK AT THE JOINT FILING JOINT EXHIBIT 5,
15 PAGE B1, WE SEE THAT PROFESSOR ESPOSITO USED PAGES 155 TO 172.
16 THIS IS THE SUMMER 09 TERM; DO YOU SEE THAT?

17 A. YES.

18 Q. AND IF WE TURN TO PAGE C-8 I BELIEVE OF JOINT EXHIBIT 5,
19 WE SHOULD SEE THAT PROFESSOR KAUFMANN USED PAGES 71 TO 106, 155
20 TO 172, THAT'S THE SAME PAGES THAT PROFESSOR ESPOSITO USED,
21 CORRECT?

22 A. CORRECT.

23 Q. AND SHE ALSO USED PAGES 515 TO 534 OF THE HANDBOOK OF
24 FEMINIST RESEARCH THEORY AND PRAXIS, THIS IS FALL OF 09; DO YOU
25 SEE THAT?

1 A. YES.

2 Q. IF YOU WOULD PLEASE TAKE A LOOK AT THE TABLE OF CONTENTS
3 OF PLAINTIFFS' EXHIBIT 243, THE BOOK, WHAT DOES PAGES 71 TO 106
4 CORRESPOND TO?

5 A. THAT IS THE ENTIRE CHAPTER 4, POSTMODERN, POSTSTRUCTURAL
6 AND CRITICAL THEORIES BY GANNON AND DAVIES.

7 Q. HOW ABOUT PAGES 155 TO 172, THAT'S THE SECTION THAT BOTH
8 PROFESSOR ESPOSITO AND PROFESSOR KAUFMANN USED?

9 A. THAT IS THE ENTIRE CHAPTER TOWARD UNDERSTANDINGS OF
10 FEMINIST ETHNOGRAPHY BY PILLOW AND MAYO.

11 Q. AND WOULD THAT INCLUDE THE HEART OF THE PILLOW AND MAYO
12 CHAPTER?

13 A. YES, IT WOULD.

14 Q. HOW ABOUT PAGES 515 TO 543, WHAT DOES THAT CORRESPOND TO?

15 A. THAT IS CHAPTER 26, FEMINIST RESEARCH ETHICS, THE ENTIRE
16 CHAPTER BY PREISSE.

17 Q. OKAY. LET'S TAKE A LOOK AT PLAINTIFFS' EXHIBIT 244
18 ALREADY IN EVIDENCE. WHAT ARE WE LOOKING AT IN PLAINTIFFS'
19 EXHIBIT 244?

20 A. THIS IS THE EDITOR AGREEMENT BETWEEN HESSE-BIBER FOR THE
21 PUBLICATION HANDBOOK OF FEMINIST RESEARCH, THEORY AND PRAXIS.

22 Q. AND TAKE A LOOK AT PARAGRAPH 6, WHAT RIGHTS DOES SAGE HAVE
23 IN THE HANDBOOK OF FEMINIST RESEARCH?

24 A. SAGE OWNS ALL RIGHTS AND THE COPYRIGHT TO THE WORK.

25 Q. AND IF YOU WILL TAKE A LOOK AT PLAINTIFFS' EXHIBIT 245

1 ALREADY IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 245?
2 A. THIS IS THE CONTRIBUTOR AGREEMENT.
3 Q. WHO IS THE CONTRIBUTORS IN THIS ONE?
4 A. IT'S PILLOW AND MAYO.
5 Q. OKAY. AND IF WE TAKE A LOOK DOWN, WHAT RIGHTS DO PILLOW
6 AND MAYO GIVE TO SAGE?
7 A. ALL RIGHTS.
8 Q. THIS IS A WORK MADE FOR HIRE?
9 A. YES.
10 Q. AND THE PILLOW AND MAYO CHAPTER CORRESPONDS TO 155 TO 172
11 USED BY ESPOSITO AND KAUFMANN?
12 A. YES, IT DOES.
13 Q. IF YOU WOULD PLEASE TAKE A LOOK AT PLAINTIFFS' EXHIBIT 246
14 ALREADY IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 246?
15 A. THIS IS A CONTRIBUTOR AGREEMENT FROM PREISSE FOR THE
16 CONTRIBUTION WHICH HAS THE PROVISIONAL TITLE FEMINIST
17 CONTRIBUTIONS TO THE THEORY AND PRACTICE OF ETHICS IN THE
18 RESEARCH PROCESS.
19 Q. AND IF WE GO BACK TO THE TABLE OF CONTENTS, WE SEE THAT
20 THE PROVISIONAL TITLE IN THE CONTRIBUTOR AGREEMENT IS A LITTLE
21 DIFFERENT THAN THE FINAL TITLE?
22 A. WHAT PAGES, SORRY?
23 Q. IT'S 515 TO 534.
24 A. YES, IT WAS SHORTENED TO FEMINIST RESEARCH ETHICS.
25 Q. BUT THAT'S THE SAME CHAPTER --

1 A. CORRECT.

2 Q. -- THAT PREISSLE SIGNED THE CONTRIBUTOR AGREEMENT FOR,
3 RIGHT?

4 A. RIGHT.

5 Q. AND WHAT RIGHTS DID PREISSLE GIVE SAGE -- GRANT TO SAGE IN
6 PLAINTIFFS' EXHIBIT 246?

7 A. IT'S A WORK MADE FOR HIRE FOR SAGE. SAGE OWNS ALL RIGHTS
8 AND OWNS THE COPYRIGHT.

9 Q. LET'S TAKE A LOOK AT PLAINTIFFS' EXHIBIT 247. WHAT IS
10 PLAINTIFFS' EXHIBIT 247?

11 A. IT'S THE CERTIFICATE OF REGISTRATION FOR HANDBOOK OF
12 FEMINIST RESEARCH THEORY AND PRAXIS.

13 Q. WHO OWNS THE COPYRIGHT REGISTRATION IN HANDBOOK OF
14 FEMINIST RESEARCH THEORY AND PRAXIS?

15 A. SAGE PUBLICATIONS.

16 Q. WHAT YEAR WAS THE HANDBOOK OF FEMINIST RESEARCH FIRST
17 PUBLISHED?

18 A. 2006.

19 Q. AND WHEN WAS IT REGISTERED?

20 A. 2006.

21 Q. OKAY. HOPEFULLY YOU HAVE UP THERE THE HANDBOOK OF
22 CRITICAL AND INDIGENOUS METHODOLOGIES; DO YOU HAVE THAT?

23 A. YES.

24 Q. WE'RE TAKING A LOOK AT PLAINTIFFS' EXHIBIT 231 ALREADY IN
25 EVIDENCE, AND IF WE TAKE A LOOK AT PAGE A-3 OF THE JOINT FILING

1 JOINT EXHIBIT 5, WE SEE THAT PROFESSOR KAUFMANN IN THE
2 MAYMESTER OF 09, PROFESSOR KAUFMANN IS USING PAGES 85 TO 99 AND
3 135 TO 156 FROM THE HANDBOOK OF CRITICAL AND INDIGENOUS
4 METHODOLOGIES; DO YOU SEE THAT?

5 A. YES.

6 Q. IF WE GO BACK TO PLAINTIFFS' EXHIBIT 231, THE BOOK, HOW
7 MANY PAGES DOES IT HAVE?

8 A. 571.

9 Q. OKAY. IF YOU COULD TAKE A LOOK AT THE TABLE OF CONTENTS
10 THERE, PROFESSOR KAUFMANN USED PAGES 85 TO 99. WHAT IS THAT?

11 A. 85 TO 99 IS CHAPTER 5, CRITICAL RACE THEORY AND INDIGENOUS
12 METHODOLOGIES BY DUNBAR.

13 Q. AND 85 TO 99 IS THAT THE WHOLE CHAPTER?

14 A. I BELIEVE IT IS. YES, IT IS.

15 Q. SO THAT WOULD BE THE HEART OF THE DUNBAR CHAPTER?

16 A. YES, IT WOULD.

17 Q. OKAY. PROFESSOR KAUFMANN ALSO USED PAGES 135 TO 156?

18 A. YES.

19 Q. AND SO IF WE LOOK AT THE TABLE OF CONTENTS, 135 TO 156
20 CORRESPONDS TO WHAT?

21 A. THE ENTIRE CHAPTER 7, INDIGENOUS KNOWLEDGES IN EDUCATION
22 BY KINCHELOE AND STEINBERG.

23 Q. IF YOU COULD PLEASE TAKE A LOOK AT PLAINTIFFS' EXHIBIT 233
24 ALREADY IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 233?

25 A. 233? SORRY, I'VE GOT IT.

1 Q. 232.

2 A. OKAY.

3 Q. LET'S COME BACK TO THIS WORK IN A SECOND. WE JUST HAVE
4 THE WRONG INFORMATION WRITTEN DOWN HERE.

5 IF YOU COULD TAKE A LOOK -- DO YOU HAVE IN FRONT OF
6 YOU QUALITATIVE RESEARCH PRACTICE BY CLIVE SEALE?

7 A. YES.

8 Q. OKAY. IT'S PLAINTIFFS' EXHIBIT 298 ALREADY IN EVIDENCE.
9 HOW MANY PAGES DOES PLAINTIFFS' EXHIBIT 298 HAVE?

10 A. THIS HAS 608 PAGES.

11 Q. IF WE GO TO THE JOINT FILINGS OF PROFESSOR KAUFMANN IN THE
12 MAYMESTER 09 TERM, A-3, QUALITATIVE RESEARCH PRACTICE, WE SEE
13 THAT PROFESSOR KAUFMANN USED PAGES 391 TO 406; DO YOU SEE THAT?

14 A. YES.

15 Q. IF WE TAKE A LOOK AT THE TABLE OF CONTENTS OF PLAINTIFFS'
16 EXHIBIT 298, WHAT DOES 391 TO 406 WHICH IS WHAT PROFESSOR
17 KAUFMANN USED IN MAYMESTER 09; WHAT DOES THAT CORRESPOND TO?

18 A. IT'S THE ENTIRE CHAPTER 25, VISUAL METHODS, BY PINK.

19 Q. IF YOU TAKE A LOOK AT PLAINTIFFS' EXHIBIT 299 ALREADY IN
20 EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 299?

21 A. THIS IS THE PUBLISHING AGREEMENT FOR SEALE, ET AL.

22 Q. IS SEALE, ET AL. THE EDITORS?

23 A. YES.

24 Q. IF WE TAKE A LOOK AT PARAGRAPH 1, WHAT RIGHTS DOES SAGE
25 HAVE IN THE QUALITATIVE RESEARCH PRACTICE?

1 A. EXCLUSIVE RIGHTS.

2 Q. IF YOU WOULD PLEASE TAKE A LOOK AT PLAINTIFFS' EXHIBIT 300
3 ALREADY IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 300?

4 A. THIS IS THE CONTRIBUTOR AGREEMENT BETWEEN SARAH PINK AND
5 SAGE PUBLICATIONS.

6 Q. AND AS WE KIND OF SCROLL DOWN HERE IN THE LETTER, WE SEE
7 FOR THE PRESENT I AM WRITING TO FORMALIZE THE ARRANGEMENT ON
8 COPYRIGHT, AND WHAT COPYRIGHT RIGHTS DOES SAGE HAVE IN THE PINK
9 CONTRIBUTION?

10 A. ALL RIGHTS.

11 Q. WAS QUALITATIVE RESEARCH PRACTICE PUBLISHED IN THE UNITED
12 STATES?

13 A. NO, IT WASN'T. IT WAS PUBLISHED IN THE UNITED KINGDOM.

14 Q. AND IS IT PROTECTED BY COPYRIGHT IN THE UNITED KINGDOM?

15 A. YES.

16 Q. THE HANDBOOK OF ETHNOGRAPHY IS THAT ONE OF THE ONES YOU
17 HAVE UP THERE?

18 A. YES.

19 Q. PLAINTIFFS' EXHIBIT 239, AND IF WE TAKE A LOOK AT PAGE B-1
20 OF THE JOINT FILING, WE SEE THAT PROFESSOR ESPOSITO USED PAGES
21 188 TO 203 FROM THE HANDBOOK OF ETHNOGRAPHY; DO YOU SEE THAT?

22 A. YES.

23 Q. WAS THE HANDBOOK OF ETHNOGRAPHY PUBLISHED IN THE UNITED
24 STATES?

25 A. NO, IT WASN'T.

1 Q. WHERE WAS IT PUBLISHED?

2 A. IT WAS PUBLISHED IN THE UNITED KINGDOM.

3 Q. IS IT PROTECTED BY COPYRIGHT IN THE UNITED KINGDOM?

4 A. YES, IT IS.

5 Q. IF YOU COULD TAKE A LOOK AT THE HANDBOOK OF NARRATIVE
6 INQUIRY WHICH IS PLAINTIFFS' EXHIBIT 258 ALREADY IN EVIDENCE,
7 AND IF WE TAKE A LOOK AT PAGE A-4 OF THE JOINT FILING JOINT
8 EXHIBIT 5, WE SEE THAT PROFESSOR KAUFMANN USED PAGES 3 TO 34 OF
9 THE HANDBOOK OF NARRATIVE INQUIRY IN MAYMESTER 09; DO YOU SEE
10 THAT?

11 A. YES.

12 Q. IF WE TAKE A LOOK AT PAGE C-9 OF THE FILING WE SEE THAT
13 PROFESSOR KAUFMANN USED PAGES 35 TO 75 OF THE HANDBOOK OF
14 NARRATIVE INQUIRY IN THE FALL OF 2009; DO YOU SEE THAT?

15 A. YES.

16 Q. HOW MANY PAGES DOES PLAINTIFFS' EXHIBIT 258, THE HANDBOOK
17 OF INQUIRY, HAVE?

18 A. 650.

19 Q. LET'S TAKE A LOOK AT THE TABLE OF CONTENTS PAGES 3 TO 34
20 WHICH IS WHAT PROFESSOR KAUFMANN USED IN MAYMESTER 09, WHAT
21 DOES THAT CORRESPOND TO?

22 A. THAT IS CHAPTER 1, LOCATING NARRATIVE INQUIRY HISTORICALLY
23 BY PINNEGAR AND DAYNES.

24 Q. AND WHILE YOU'RE ON THE TABLE OF CONTENTS, PAGES 35 TO 75
25 WHICH IS WHAT PROFESSOR KAUFMANN USED IN FALL OF 09, WHAT DOES

1 CORRESPOND TO?

2 A. THAT'S ENTIRE CHAPTER 2, MAPPING A LANDSCAPE OF NARRATIVE
3 INQUIRY BY CLANDININ AND ROSIEK.

4 Q. OKAY. IF YOU COULD TAKE A LOOK PLEASE AT PLAINTIFFS'
5 EXHIBIT 259 ALREADY IN EVIDENCE, IT'S IN VOLUME 2 OF THE
6 BINDER, TAB J?

7 A. OKAY.

8 Q. WHAT IS PLAINTIFFS' EXHIBIT 259 ALREADY IN EVIDENCE?

9 A. THIS IS THE EDITOR AGREEMENT BETWEEN CLANDININ FOR THIS
10 BOOK HANDBOOK OF NARRATIVE RESEARCH METHODOLOGIES.

11 Q. AND IF WE TAKE A LOOK AT PARAGRAPH 6 -- ACTUALLY LET'S GO
12 BACK A MINUTE THERE. THE AGREEMENT IS FOR THE HANDBOOK OF
13 NARRATIVE RESEARCH METHODOLOGIES, RIGHT, BUT THE BOOK IS
14 ACTUALLY CALLED HANDBOOK OF NARRATIVE INQUIRY, RIGHT?

15 A. RIGHT.

16 Q. IS THIS THE EDITOR AGREEMENT FOR THE HANDBOOK OF NARRATIVE
17 INQUIRY?

18 A. YES, THE TITLE WOULD HAVE CHANGED.

19 Q. IF WE COULD TAKE A LOOK AT PARAGRAPH 6 OF 259, WHAT RIGHTS
20 DOES SAGE HAVE IN THE HANDBOOK OF NARRATIVE INQUIRY?

21 A. SAGE HAS ALL RIGHTS AND OWNS THE COPYRIGHT TO THE WORK.

22 Q. AND LET'S TAKE A LOOK HERE IT SAYS THE SUPPLEMENTARY
23 MATERIALS AND ALL OTHER COPYRIGHTABLE MATERIALS PREPARED BY
24 EDITOR IN THE COURSE OF PERFORMING EDITORIAL SERVICES AND ANY
25 CONTRIBUTIONS PREPARED BY EDITOR FOR THE WORK OR A REVISED

1 EDITION SHALL BE DEEMED SPECIALLY ORDERED OR COMMISSIONED BY
2 PUBLISHER AND SHALL BE CONSIDERED WORKS MADE FOR HIRE; DO YOU
3 SEE THAT?

4 A. YES.

5 Q. SO PAGES 35 TO 75 WHICH WAS MAPPING A LANDSCAPE OF
6 NARRATIVE INQUIRY BY D. JEAN CLANDININ, RIGHT?

7 A. THAT'S CORRECT.

8 Q. JEAN CLANDININ IS THE-- THIS PLAINTIFFS' EXHIBIT 259 IS
9 WITH JEAN CLANDININ?

10 A. THAT'S CORRECT, YES.

11 Q. SO PLAINTIFFS' EXHIBIT 259 WOULD COVER THE CLANDININ
12 CHAPTER?

13 A. YES.

14 Q. OKAY. LET'S TAKE A LOOK AT PLAINTIFFS' EXHIBIT 260
15 ALREADY IN EVIDENCE. WHAT IS PLAINTIFFS' EXHIBIT 260?

16 A. THIS IS THE CONTRIBUTOR AGREEMENT FROM PINNEGAR FOR THE
17 CHAPTER.

18 Q. THIS IS PAGES 3 TO 34?

19 A. YES, AND THIS WOULD BE LOCATING NARRATIVE INQUIRY
20 HISTORICALLY.

21 Q. OKAY. AND WHAT RIGHTS DOES SAGE HAVE IN THE PINNEGAR
22 CHAPTER?

23 A. ALL RIGHTS. SAGE OWNS THE COPYRIGHT.

24 Q. IF YOU CAN TAKE A LOOK AT PLAINTIFFS' EXHIBIT 261 ALREADY
25 IN EVIDENCE, WHAT IS THE PLAINTIFFS' EXHIBIT 261?

1 A. THIS IS THE CERTIFICATE OF REGISTRATION FOR HANDBOOK OF
2 NARRATIVE INQUIRY.

3 Q. WHO OWNS THE COPYRIGHT IN HANDBOOK OF NARRATIVE INQUIRY?

4 A. SAGE PUBLICATIONS.

5 Q. WHEN WAS HANDBOOK OF NARRATIVE INQUIRY PUBLISHED?

6 A. 2006.

7 Q. AND WHEN WAS IT REGISTERED?

8 A. FEBRUARY 5TH, 2007.

9 Q. THE HANDBOOK OF SOCIAL THEORY I THINK YOU HAVE UP THERE?

10 A. YES.

11 Q. THIS IS PLAINTIFFS' EXHIBIT 288 ALREADY IN EVIDENCE. HOW
12 MANY PAGES DOES HANDBOOK OF SOCIAL THEORY HAVE?

13 A. 537.

14 Q. OKAY. IF WE TAKE A LOOK AT PAGE A-3 OF THE JOINT FILING,
15 WE SEE THAT PROFESSOR KAUFMANN USED PAGES 217 TO 228 OF THE
16 HANDBOOK OF SOCIAL THEORY IN MAYMESTER 09; DO YOU SEE THAT?

17 A. YES.

18 Q. THEN IF WE TAKE A LOOK AT PAGE C-9 OF THE JOINT FILING, WE
19 SEE THAT PROFESSOR KAUFMANN ALSO USED THIS SAME SECTION. SHE
20 USES IT AGAIN IN FALL 09; DO YOU SEE THAT?

21 A. YES.

22 Q. IF YOU WOULD PLEASE TAKE A LOOK AT THE TABLE OF CONTENTS
23 OF PLAINTIFFS' EXHIBIT 288, WHAT IS PAGES 217 TO 288?

24 A. THIS IS CHAPTER 17, THE ENTIRE CHAPTER ENTITLED SYMBOLIC
25 INTERACTIONISM AT THE END OF THE CENTURY.

1 Q. DOES THAT INCLUDE THE HEART OF THE SYMBOLIC INTERACTIONISM
2 CHAPTER?

3 A. YES, IT WOULD.

4 Q. WOULD YOU PLEASE TAKE A LOOK AT PLAINTIFFS' EXHIBIT 289
5 ALREADY IN EVIDENCE; WHAT IS PLAINTIFFS' EXHIBIT 289?

6 A. THIS IS THE AGREEMENT BETWEEN RITZER AND SMART FOR THE
7 HANDBOOK OF SOCIAL THEORY.

8 Q. AND ACCORDING TO PARAGRAPH 1, WHAT RIGHTS DOES SAGE HAVE
9 IN THE HANDBOOK OF SOCIAL THEORY?

10 A. ALL RIGHTS. SAGE OWNS THE COPYRIGHT.

11 Q. IF YOU WOULD PLEASE TAKE A LOOK AT PLAINTIFFS' EXHIBIT 290
12 ALREADY IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 290?

13 A. THIS IS THE CONTRIBUTOR AGREEMENT FROM GARY FINE.

14 Q. AND GARY FINE WAS ONE OF THE AUTHORS OF SYMBOLIC
15 INTERACTIONISM AT THE END OF THE CENTURY?

16 A. YES.

17 Q. AND IF WE LOOK AT THIS A LETTER, WHAT RIGHTS DOES SAGE
18 HAVE IN THE FINE, SANDSTROM, MARTIN CHAPTER?

19 A. ALL RIGHTS.

20 Q. OKAY. WHERE WAS THE HANDBOOK OF SOCIAL THEORY FIRST
21 PUBLISHED?

22 A. THIS WAS FIRST PUBLISHED IN THE UNITED KINGDOM IN 2001.

23 Q. WAS IT EVER PUBLISHED IN THE UNITED STATES?

24 A. YES, IT WAS PUBLISHED IN THE UNITED STATES IN 2003.

25 Q. IS IT PROTECTED BY COPYRIGHT IN THE UNITED KINGDOM?

1 A. YES, IT IS.

2 Q. DO YOU HAVE BLACK FAMILIES UP THERE? IT'S TAB M,
3 PLAINTIFFS' EXHIBIT 218. I'M SORRY, YOU WOULDN'T HAVE THAT.
4 MY BAD.

5 ACTUALLY DEFENDANTS' EXHIBIT 749 IS THE ACTUAL BOOK.
6 SO DON'T WORRY. YOU DON'T HAVE IT. MY BAD. IT WAS A TEST.

7 IF WE COULD PUT UP THERE AN EXCERPT FROM PROFESSOR
8 DIXON'S APRIL 20TH DEPOSITION PAGE 16, LINE 9 AND THE QUESTION
9 TO PROFESSOR DIXON IS: OKAY, AND THEN IN THE COURSE IN THE
10 FALL OF 2009 WE'RE DISCUSSING, DID YOU USE AN EXCERPT OF A BOOK
11 CALLED BLACK FAMILY? ANSWER: YES. PAGE 17, LINE 1, AND DID
12 YOU USE ONE CHAPTER BEGINNING AT PAGES 214 CHAPTER 12 OUT THERE
13 STRANDED. YES, BLACK FAMILIES IN WHITE COMMUNITIES.

14 DO YOU SEE THAT?

15 A. YES.

16 Q. LET'S TAKE A LOOK AT PLAINTIFFS' EXHIBIT 218 ALREADY IN
17 EVIDENCE?

18 A. YES.

19 Q. WHAT IS PLAINTIFFS' EXHIBIT 218?

20 A. THIS IS THE EDITOR AGREEMENT FOR BLACK FAMILIES THIRD
21 EDITION.

22 Q. AND IF WE TAKE A LOOK AT PARAGRAPH 1, WHAT RIGHTS DOES
23 SAGE HAVE IN BLACK FAMILIES?

24 A. ALL RIGHTS. SAGE OWNS THE COPYRIGHT.

25 Q. OKAY. IF YOU WOULD TURN PLEASE TO PLAINTIFFS' EXHIBIT 219

1 ALREADY IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 219?

2 A. THIS IS THE AUTHOR AGREEMENT FROM TATUM FOR OUT THERE
3 STRANDED? BLACK FAMILIES IN WHITE COMMUNITIES.

4 Q. OKAY. AND IF WE TAKE A LOOK AT PARAGRAPH 1 THERE, WHAT
5 RIGHTS DOES SAGE HAVE IN THE TATUM CHAPTER OUT THERE STRANDED?

6 A. SAGE OWNS ALL RIGHTS, THEREFORE OWNS THE COPYRIGHT.

7 Q. OKAY. IF YOU WOULD TAKE A LOOK AT PLAINTIFFS' EXHIBIT 221
8 ALREADY IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 221?

9 A. THIS IS THE CERTIFICATE OF REGISTRATION FOR BLACK FAMILIES
10 THIRD EDITION.

11 Q. OKAY. AND WHO OWNS THE COPYRIGHT IN BLACK FAMILIES?

12 A. SAGE PUBLICATIONS.

13 Q. WHEN WAS IT FIRST PUBLISHED?

14 A. 1996.

15 Q. AND WHEN WAS IT REGISTERED?

16 A. 1996.

17 Q. IF WE COULD PUT UP ON THE SCREEN PAGE 255 OF JOINT EXHIBIT
18 5 WHICH IS THE FALL 09 ERES REPORT, WE SEE HERE THAT PROFESSOR
19 MOLONEY IS USING A CHAPTER BY SHEILA TWINN, STATUS OF MIXED
20 METHODS RESEARCH IN NURSING IN THE HANDBOOK OF MIXED METHODS IN
21 SOCIAL AND BEHAVIORAL RESEARCH EDITED BY CHARLES TEDDLIE; DO
22 YOU SEE THAT?

23 A. YES.

24 Q. IF WE GO TO C-5 OF THE JOINT FILING JOINT EXHIBIT 5, WE'RE
25 LOOKING FOR PROFESSOR MOLONEY -- I'M SORRY C-15. MY BAD.

1 C-15, AND WE SEE THAT PROFESSOR MOLONEY USED 541 TO 556; DO YOU
2 SEE THAT?

3 A. YES.

4 Q. AND THE BOOK IS ACTUALLY ON DEFENDANTS' EXHIBIT LIST.
5 IT'S 773 IF ANYBODY WANTS TO CHECK THAT, BUT IF WE TAKE A LOOK
6 AT PLAINTIFFS' EXHIBIT 251 ALREADY IN EVIDENCE, WE'RE GOING TO
7 NEED TO LOOK AT THE SECOND PAGE OF PLAINTIFFS' EXHIBIT 251.

8 WHAT IS PLAINTIFFS' EXHIBIT 251?

9 A. THIS IS THE PUBLISHING AGREEMENT FOR HANDBOOK OF MIXED
10 METHODOLOGY.

11 Q. OKAY. AND IS THAT THE SAME AS THE HANDBOOK OF MIXED
12 METHODS IN SOCIAL AND BEHAVIORAL RESEARCH?

13 A. YES.

14 Q. AND ACCORDING TO PARAGRAPH 1 OF THAT AGREEMENT, WHAT
15 RIGHTS DOES SAGE HAVE IN THE HANDBOOK OF MIXED METHODS IN
16 SOCIAL AND BEHAVIORAL RESEARCH?

17 A. SAGE HAS ALL RIGHTS AND OWNS THE COPYRIGHT.

18 Q. OKAY. AND IF YOU WOULD PLEASE TAKE A LOOK AT PLAINTIFFS'
19 EXHIBIT 253 ALREADY IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT
20 253?

21 A. THIS IS TWINN'S CONTRIBUTOR AGREEMENT FOR THE CHAPTER
22 STATUS OF MIXED METHODS RESEARCH IN NURSING.

23 Q. AND THAT'S THE CHAPTER PROFESSOR MOLONEY USED, RIGHT?

24 A. THAT'S CORRECT.

25 Q. IF WE TAKE A LOOK AT PARAGRAPH, WHAT RIGHTS DOES SAGE HAVE

1 IN THE TWINN CHAPTER?

2 A. SAGE OWNS ALL RIGHTS AND OWNS THE COPYRIGHT.

3 Q. OKAY. IF YOU WOULD PLEASE TAKE A LOOK AT PLAINTIFFS'
4 EXHIBIT 254 ALREADY IN EVIDENCE, WHAT IS PLAINTIFF'S EXHIBIT
5 254?

6 A. THIS IS THE CERTIFICATE OF REGISTRATION FOR HANDBOOK OF
7 MIXED METHODS IN SOCIAL AND BEHAVIORAL RESEARCH.

8 Q. AND WHO OWNS THE COPYRIGHT IN THE HANDBOOK OF MIXED
9 METHODS IN SOCIAL AND BEHAVIORAL RESEARCH?

10 A. SAGE PUBLICATIONS.

11 Q. AND WHEN WAS THE HANDBOOK OF MIXED METHODS FIRST
12 PUBLISHED?

13 A. IN 2002.

14 Q. AND WHEN WAS IT REGISTERED?

15 A. IN 2002.

16 MS. SINGER: OKAY. IF YOU WILL GIVE ME JUST A
17 MOMENT, YOUR HONOR, I THINK WE'RE ALMOST DONE.

18 (PAUSE IN THE PROCEEDINGS.)

19 BY MS. SINGER:

20 Q. IF YOU COULD PLEASE GET OUT PLAINTIFFS' EXHIBIT 231, THE
21 HANDBOOK OF CRITICAL AND INDIGENOUS METHODOLOGIES, I THINK IT'S
22 231 ALREADY IN EVIDENCE, HOW MANY PAGES DOES THE HANDBOOK OF
23 CRITICAL AND INDIGENOUS METHODOLOGIES HAVE?

24 A. 571.

25 Q. OKAY. AND IF WE TAKE A LOOK AT PAGE A-3 OF THE JOINT

1 FILING, WE SEE THAT PROFESSOR KAUFMANN USED THE HANDBOOK OF
2 CRITICAL AND INDIGENOUS METHODOLOGIES. PROFESSOR KAUFMANN IN
3 MAYMESTER 09 USED PAGES 85 TO 99 AND 135 TO 156.

4 DO YOU SEE THAT?

5 A. YES.

6 Q. AND IF WE TAKE A LOOK AT PLAINTIFFS' EXHIBIT 233 ALREADY
7 IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 233?

8 A. THIS IS THE PUBLISHING AGREEMENT FOR HANDBOOK OF CRITICAL
9 METHODOLOGIES.

10 Q. AND WHO ARE THE EDITORS OF THIS?

11 A. DENZIN AND LINCOLN AND SMITH.

12 Q. SO DENZIN AND LINCOLN ARE THE SAME TWO AS THE SAGE
13 HANDBOOK OF QUALITATIVE RESEARCH, RIGHT?

14 A. THAT'S CORRECT.

15 Q. BUSY PEOPLE.

16 A. YES.

17 Q. AND IF WE TAKE A LOOK AT PARAGRAPH 6.1, WHAT RIGHTS DOES
18 SAGE HAVE IN THE HANDBOOK OF CRITICAL AND INDIGENOUS
19 METHODOLOGIES?

20 A. IT'S A WORK MADE FOR HIRE. SAGE OWNS ALL RIGHTS AND OWNS
21 THE COPYRIGHT.

22 Q. IF YOU COULD PLEASE TAKE A LOOK AT PLAINTIFFS' EXHIBIT
23 232, AND ACTUALLY RIGHT BEFORE WE GET THERE, LET'S GO BACK AND
24 LOOK AT THE BOOK 231 AND THE TABLE OF CONTENTS, AND WE SEE
25 PROFESSOR KAUFMANN USED 85 TO 99. I THINK THIS WAS THE DUNBAR

1 CHAPTER WE'VE ESTABLISHED?

2 A. YES, THAT'S CORRECT.

3 Q. SHE USED 135 TO 156 WHICH IS THE KINCHELOE AND STEINBERG

4 CHAPTER?

5 A. THAT'S CORRECT.

6 Q. SO IF WE TAKE A LOOK AT 232, WHAT IS PLAINTIFFS' EXHIBIT

7 232 ALREADY IN EVIDENCE?

8 A. THIS IS THE CONTRIBUTING AUTHOR AGREEMENT FOR DUNBAR.

9 Q. AND WHAT RIGHTS DOES SAGE HAVE IN THE DUNBAR CHAPTER?

10 A. ALL RIGHTS.

11 Q. AND IF WE TAKE A LOOK AT PLAINTIFFS' EXHIBIT 235 ALREADY

12 IN EVIDENCE, WHAT IS PLAINTIFFS' EXHIBIT 235?

13 A. THIS IS THE KINCHELOE CONTRIBUTING AUTHOR AGREEMENT.

14 Q. AND WHAT RIGHTS DOES SAGE HAVE IN THE KINCHELOE AND

15 STEINBERG CHAPTER?

16 A. ALL RIGHTS.

17 Q. WOULD YOU PLEASE TAKE A LOOK AT PLAINTIFFS' EXHIBIT 236

18 ALREADY IN EVIDENCE, AND WHAT IS PLAINTIFFS' EXHIBIT 236?

19 A. THIS IS THE CERTIFICATE OF REGISTRATION FOR THE WORK THE

20 HANDBOOK OF CRITICAL AND INDIGENOUS METHODOLOGIES.

21 Q. WHO OWNS THE COPYRIGHT IN THE HANDBOOK OF CRITICAL AND

22 INDIGENOUS METHODOLOGIES?

23 A. SAGE PUBLICATIONS.

24 Q. WHEN WAS IT FIRST PUBLISHED?

25 A. 2008.

1 Q. WHEN WAS IT REGISTERED?

2 A. 2010.

3 MS. SINGER: YOUR HONOR, IF YOU CAN GIVE ME
4 ONE MOMENT TO CONSULT WITH MY COLLEAGUES, WE MIGHT BE
5 DONE.

6 (PAUSE IN THE PROCEEDINGS.)

7 MS. SINGER: I HAVE MORE ONE MORE QUESTION. WHEN A
8 PROFESSOR -- I'M SORRY. STRIKE THAT.

9 WHEN SOMEONE GETS PERMISSION FROM THE CCC OR;
10 DIRECTLY FROM SAGE TO USE AN EXCERPT FROM A WORK, IS THAT
11 PERMISSION GOOD FOR ONE SEMESTER OR IS THAT GOOD FOR ALL
12 TIME?

13 A. IT DEPENDS ON THE REQUEST FOR USE. SO IF IT'S FOR COURSE
14 USE, IT'S FOR ONE SEMESTER.

15 Q. SO IF I WANTED TO USE IT AGAIN -- IF I GOT PERMISSION FOR
16 THE MAYMESTER AND I WANTED TO USE IT AGAIN IN THE FALL, I WOULD
17 HAVE TO GET PERMISSION AGAIN; IS THAT CORRECT?

18 A. YES, YOU COULD GET A SUBSEQUENT PERMISSION.

19 MS. SINGER: MS. RICHMAN, I REGRET TO INFORM YOU THAT
20 WE ARE DONE HERE. NO FURTHER QUESTIONS.

21 THE COURT: MR. SCHAETZEL, YOU MAY PROCEED.

22 MR. SCHAETZEL: THANK YOU.

23 CROSS-EXAMINATION

24 BY MR. SCHAETZEL:

25 Q. MS. RICHMAN, MY NAME IS STEVE SCHAETZEL. YOU'VE TESTIFIED

1 SOME ABOUT SAGE'S FAIR USE ANALYSIS. I'D LIKE TO ASK YOU SOME
2 MORE QUESTIONS ABOUT THAT FIRST.

3 I BELIEVE YOU TESTIFIED THAT SAGE USES THE FOUR
4 FACTOR TEST TO CONDUCT A FAIR USE ANALYSIS; ISN'T THAT CORRECT?

5 A. YES, MORE OR LESS IN A PARAPHRASED WAY.

6 Q. SO YOU DO NOT USE THE 1976 CLASSROOM GUIDELINES, DO YOU?

7 A. NO.

8 Q. IN APPLYING THE FOUR FACTOR TEST, DO YOU USE BRIGHT LINE
9 DIVISIONS, SOLID BLACK LINES?

10 A. NO -- CAN YOU CLARIFY?

11 Q. SURE. LET'S SAY, FOR EXAMPLE, YOU'RE TRYING TO DETERMINE
12 WHAT IS AN APPROPRIATE AMOUNT THAT MAY BE USED. IS THERE A
13 BLACK LINE TEST, A CERTAIN PERCENTAGE NUMBER, FOR EXAMPLE?

14 A. NO, WE WOULD LOOK AT THE USE.

15 Q. YOU MENTIONED THAT AN AUTHOR MIGHT BE ABLE TO CALL THE
16 PERMISSIONS FOLKS TO ASK QUESTIONS ABOUT FAIR USE; IS THAT
17 CORRECT?

18 A. YES, THAT'S CORRECT.

19 Q. HOW MANY PEOPLE ARE THERE THAT WHEN WE TALK ABOUT THE
20 PERMISSIONS PEOPLE, HOW MANY FOLKS ARE WE TALKING ABOUT?

21 A. THERE ARE CURRENTLY TWO PERMISSIONS EDITORS. THERE'S AN
22 EDITORIAL ASSISTANT OR THERE COULD BE TWO EDITORIAL ASSISTANTS,
23 AND THERE ARE FIVE OTHER PEOPLE IN THE LEGAL DEPARTMENT WHO
24 COULD ALSO HELP, THREE OF WHICH ARE ATTORNEYS.

25 Q. THE OTHER TWO PEOPLE WHO DO THE REAL WORK IN THE LEGAL

1 DEPARTMENT ARE WHOM?

2 A. THEY ARE THEIR AIDES.

3 Q. ARE THE PEOPLE THAT YOU IDENTIFIED THAT ARE THE

4 PERMISSIONS PEOPLE ARE THEY ATTORNEYS?

5 A. NO, THEY'RE NOT.

6 Q. DO YOU CONSIDER THEM TO BE EXPERTS IN COPYRIGHT LAW?

7 A. NO, I DON'T.

8 Q. OKAY. THE TWO PEOPLE THAT ARE EDITORIAL ASSISTANTS ARE

9 THEY ATTORNEYS?

10 A. NO, THEY ARE NOT.

11 Q. DO YOU CONSIDER THEM TO BE EXPERTS IN COPYRIGHT LAW?

12 A. NO, I DON'T.

13 Q. WHEN AN AUTHOR CALLS TO SAGE, COULD AN AUTHOR RAISE HIS OR

14 HER FAIR USE QUESTION WITH, FOR EXAMPLE, ONE OF THE EDITORIAL

15 ASSISTANTS?

16 A. HE OR SHE COULD. IT'S LIKELY THAT THE EDITORIAL ASSISTANT

17 WOULD THEN CONFER WITH OUR LEGAL COUNSEL.

18 Q. WOULD THEY ALSO PERHAPS CONFER WITH THE PERMISSIONS

19 PEOPLE?

20 A. THEY MIGHT BUT IN TURN THE PERMISSIONS EDITOR WOULD CONFER

21 WITH LEGAL COUNSEL.

22 Q. HAVE YOU EVER HAD ANY DISCUSSIONS -- NOW, FOR EXAMPLE, THE

23 AUTHOR IS A PERSON WHO MAY BE UNDER CONTRACT TO SAGE; ISN'T

24 THAT CORRECT?

25 A. THAT'S CORRECT.

1 Q. HAVE YOU EVER HAD ANY -- WITHOUT REVEALING THE SUBSTANCE
2 OF ANY CONVERSATIONS, I'D LIKE TO KNOW IF YOU'VE EVER HAD ANY
3 CONVERSATIONS ABOUT WHETHER OR NOT IN CONFERRING WITH THAT
4 AUTHOR THERE COULD BE SOME SORT OF ATTORNEY/CLIENT PRIVILEGE
5 ISSUE OR WAIVER ISSUE OF ANY SORT SINCE THAT PERSON IS ON THE
6 OTHER SIDE OF THE CONTRACT?

7 A. I'M NOT SURE I UNDERSTAND THE QUESTION. HAVE I
8 PERSONALLY?

9 Q. YES, I'D LIKE TO KNOW IF YOU'VE EVER PARTICIPATED OR IF
10 YOU'RE AWARE THAT ANYONE HAS PARTICIPATED IN CONVERSATIONS WHEN
11 AN AUTHOR MIGHT CALL IN WITH A QUESTION ABOUT FAIR USE THERE
12 WOULD BE A CONCERN WELL THAT PERSON IS ON THE OTHER SIDE OF THE
13 A CONTRACT FROM US, WE MIGHT HAVE SOME SORT OF A CONFLICT ISSUE
14 OR A WAIVER ISSUE OR SOMETHING LIKE THAT?

15 A. I'VE NEVER PARTICIPATED IN A CONVERSATION LIKE THAT.

16 Q. ARE YOU AWARE OF THERE BEING SUCH CONVERSATIONS?

17 A. NO.

18 Q. LET'S SAY, FOR EXAMPLE, ONE OF THE PERMISSIONS PEOPLE IS
19 LOOKING AT A FAIR USE QUESTION FROM AN AUTHOR THAT HAS CALLED,
20 IT'S TRUE, IS IT NOT, THAT THE PERMISSIONS PERSON WILL MOST
21 LIKELY NOT BE LOOKING AT THE ORIGINAL MATERIAL THAT THE AUTHOR
22 IS CALLING ABOUT; ISN'T THAT CORRECT?

23 A. THAT IS CORRECT MOST OF THE TIME.

24 Q. AND, INSTEAD, THE AUTHOR MIGHT PROVIDE YOU WITH A
25 DESCRIPTION OF THE MATERIAL THAT HE OR SHE IS CONSIDERING

1 MAKING A FAIR USE OF; ISN'T THAT CORRECT?

2 A. NOT A DESCRIPTION, THE AUTHOR WOULD PROVIDE THE MATERIAL.

3 Q. THE AUTHOR WOULD PROVIDE THE MATERIAL?

4 A. RIGHT.

5 Q. OKAY.

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

8 THE COURT: YOU MAY.

9 MS. SINGER: YOUR HONOR, IF I MAY, THIS IS NOT
10 ACTUALLY MS. RICHMAN'S DEPOSITION. SO I'M NOT SURE WHAT MR.
11 SCHAETZEL IS PLANNING TO DO WITH IT, BUT I THINK WE NEED TO
12 NOTE THAT.

13 MR. SCHAETZEL: THAT'S TRUE, IT IS NOT MS. RICHMAN'S
14 DEPOSITION BECAUSE SHE WAS NOT DEPOSED. IT IS HOWEVER THE
15 30(B)(6) AND THE DEPOSITION OF MS. SARA VAN VALKENBURG WHO WAS
16 THE WITNESS THAT WAS DESIGNATED UNDER RULE 30(B)(6).

17 THE COURT: I'LL NEED TO HEAR THE QUESTION.
18 BY MR. SCHAETZEL:

19 Q. IN PARTICULAR, MS. RICHMAN, I'D LIKE IF YOU COULD TAKE A
20 LOOK AT THE BOTTOM OF PAGE 35 TO START THERE, LINE 23, SO IF
21 SAGE WERE REVIEWING A PARTICULAR USE BY AN AUTHOR --

22 THE COURT: I CAN'T TELL -- WHERE ARE THESE PAGES?

23 MR. SCHAETZEL: THANK YOU, YOUR HONOR. LET ME SEE IF
24 I CAN WORK THIS. STARTING AT THE BOTTOM OF PAGE 35, LINE 23,
25 SO IF SAGE WERE REVIEWING A PARTICULAR USE BY AN AUTHOR, IS

1 THERE ANY CEILING TO THAT AMOUNT? FOR EXAMPLE, IF THE AUTHOR
2 WAS USING 25 PAGES FROM A WORK, WOULD THAT AUTOMATICALLY NOT BE
3 A FAIR USE?

4 ANSWER: OUR VIEW ON FAIR USE IS THAT IT'S CONTEXT
5 SPECIFIC. IT'S DIFFICULT TO HAVE A BLACK LINE QUANTITY FLOOR
6 OR CEILING WITHOUT LOOKING AT HOW THE CONTENT IS BEING USED.

7 SO WE PERFECTLY STAY AWAY FROM BLACK LINE LINES AND
8 SIMPLY SAY WHAT IS THE AMOUNT OF CONTENT BEING USED WITH
9 RESPECT TO THE WAY IT'S BEING USED.

10 NEXT QUESTION: WHEN YOU'RE REVIEWING HOW THIS
11 CONTENT IS BEING USED, DOES THE PERMISSIONS DEPARTMENT REVIEW
12 THE ORIGINAL WORK FROM WHICH THE EXCERPT IS BEING TAKEN?

13 NOT USUALLY.

14 AND WHY IS THAT?

15 THEY DON'T HAVE ACCESS TO THE ORIGINAL WORK. THEY
16 NEED TO RELY ON THE AUTHOR'S DESCRIPTION.

17 THAT WAS THE TESTIMONY OF THE COMPANY IN REGARDS TO
18 WHAT PERMISSIONS PURPOSE WAS USING. MY QUESTION TO YOU IS DOES
19 THIS CHANGE YOUR ANSWER AS TO WHETHER OR NOT THE PERMISSIONS
20 PERSON LOOKS OR IS LOOKING AT WHAT'S POTENTIALLY BEING MADE AS
21 FAIR USE THAT THEY ARE LOOKING AT A DESCRIPTION OF WHAT THE
22 AUTHOR PROVIDES RATHER THAN THE ORIGINAL WORK.

23 MS. SINGER: YOUR HONOR, I WOULD JUST NOTE THAT THIS
24 IS NOT A DESIGNATED PORTION. TO THE EXTENT HE'S TRYING TO USE
25 A 30(B)(6) OF SOMEBODY ELSE FOR IMPEACHMENT, IT'S NOT ACTUALLY

1 INCONSISTENT WITH HER TESTIMONY. SO I'M NOT SURE WHERE WE'RE
2 GOING, AND I WOULD OBJECT TO THE USE OF AN UNDESIGNATED PORTION
3 NOT FOR IMPEACHMENT.

4 MR. SCHAETZEL: I BELIEVE I AM USING IT FOR
5 IMPEACHMENT. THE WITNESS I BELIEVE HAS TESTIFIED THAT WHEN A
6 PERMISSIONS PERSON --

7 THE COURT: I'LL ALLOW IT.

8 BY MR. SCHAETZEL:

9 Q. DO YOU UNDERSTAND THE QUESTION, MS. RICHMAN?

10 A. CAN YOU EXPLAIN IT FURTHER?

11 Q. I'LL BE GLAD TO TRY.

12 A. SURE.

13 Q. I'M TRYING TO GET AT THE FACT THAT WHEN THE PERMISSIONS
14 PERSON AT SAGE HAS TAKEN THIS CALL FROM THE AUTHOR THAT THAT
15 PERMISSIONS PERSON IN FACT RARELY SEES THE ORIGINAL WORK THAT
16 THE AUTHOR IS REFERRING TO BUT RATHER RELIES ON A DESCRIPTION
17 OF THAT ORIGINAL WORK FROM THE AUTHOR?

18 A. AND YOUR QUESTION?

19 Q. AND MY QUESTION IS THAT'S HOW IT WORKS, IS IT NOT?

20 A. IT MIGHT WORK THAT WAY INITIALLY. I MEAN THEY MIGHT HAVE
21 TO ANSWER A QUESTION, BUT I BELIEVE I TESTIFIED EARLIER THAT
22 THERE ARE OTHER CHECKS AND BALANCES IN PLACE.

23 Q. I UNDERSTAND THAT YOU DID TESTIFY THAT THERE WERE OTHER
24 CHECKS AND BALANCES, BUT WHEN THE PERMISSIONS PEOPLE ARE
25 HELPING THAT AUTHOR WITH A FAIR USE QUESTION -- LET ME ASK THE

1 QUESTION THIS WAY.

2 PRESUME WITH ME THAT THE AUTHOR HAS SAID I'M LOOKING
3 AT ABC WORK, A MADE UP NAME, ABC WORK, AND I'M THINKING ABOUT
4 USING THIS PART, IT'S TRUE, ISN'T IT, THAT THE PERMISSIONS
5 PERSON AT SAGE DOESN'T HAVE THE ABC WORK IN FRONT OF THEM?

6 A. THAT'S CORRECT.

7 Q. OKAY. AND THE MOST THAT THAT PERMISSIONS PERSON WOULD
8 WORK FROM IS A DESCRIPTION OF WHAT'S IN ABC WORK THAT THEY GET
9 FROM THE AUTHOR; ISN'T THAT CORRECT?

10 A. PERHAPS THAT'S -- YES, THAT'S PROBABLY CORRECT.

11 Q. AND FROM THAT INFORMATION, THEN SAGE WILL, WHETHER IT
12 TALKS TO LEGAL COUNSEL OR OTHERWISE, SAGE WILL TRY TO HELP THAT
13 AUTHOR WITH THE FAIR USE QUESTION; ISN'T THAT CORRECT?

14 A. CORRECT.

15 Q. OKAY. SAGE PUBLISHES, AS YOU SAID, FOR THE ACADEMIC
16 MARKET, CORRECT?

17 A. CORRECT.

18 Q. THE TYPE OF WORKS OR THE TYPE OF BOOKS THAT YOU PUBLISH,
19 THEY ARE FACT-BASED WORKS; ARE THEY NOT?

20 A. THEY ARE FACT-BASED WORKS. THEY ARE CRITICISMS. THEY ARE
21 ALSO EXPERTS IN THE FIELD WRITING ABOUT THOSE FACTS.

22 Q. BUT YOU DO PUBLISH A FEW POETRY BOOKS, CORRECT?

23 A. NO, I THINK WE MIGHT HAVE ONE.

24 Q. AND YOU DON'T PUBLISH FICTION, FOR EXAMPLE?

25 A. NO, NO.

1 Q. YOU MENTIONED IN YOUR TESTIMONY THAT SOMETIMES YOU HAVE
2 INTERNAL EDITORS AND EXTERNAL EDITORS. WHAT'S THE DIFFERENCE
3 BETWEEN THOSE TWO?

4 A. AN INTERNAL EDITOR IS A PERSON WHO WORKS FOR SAGE AND
5 TYPICALLY IN THE FIELD. THEY'RE REALLY KNOWN AS ACQUISITION
6 EDITORS. THEY ARE THE ONES WHO GO OUT AND SEEK THE WORKS TO BE
7 PUBLISHED.

8 THE EXTERNAL EDITOR I WAS REFERRING TO IS THE AUTHOR
9 SLASH EDITOR OF A BOOK.

10 Q. OKAY. IT DOES GET A BIT CONFUSING TO ME BECAUSE SOMETIMES
11 EVEN IN THE AGREEMENTS THEY'RE REFERRED TO EDITORS AS OPPOSED
12 TO AUTHORS?

13 A. THAT'S RIGHT.

14 Q. SO IF YOU REFER TO EXTERNAL EDITOR THAT PERSON IS ALSO AN
15 AUTHOR; IS THAT CORRECT?

16 A. THAT'S CORRECT.

17 Q. OKAY. DOES THE INTERNAL EDITOR HELP AN AUTHOR OR AN
18 EXTERNAL EDITOR WITH FAIR USE QUESTIONS?

19 A. I DON'T KNOW.

20 Q. IS THAT POSSIBLE?

21 A. IT MIGHT BE.

22 Q. ARE THE INTERNAL EDITORS PEOPLE WHO HAVE SPECIAL TRAINING
23 IN COPYRIGHT LAW?

24 A. NO.

25 Q. ARE THE INTERNAL EDITORS LAWYERS?

1 A. NO.

2 Q. IT'S TRUE, IS IT NOT, THAT SAGE DOES NOT ALWAYS REQUIRE
3 THE AUTHOR TO ASSIGN HIS OR HER COPYRIGHT TO SAGE?

4 A. FOR THE MOST PART IN THE BOOK PUBLISHING DIVISION WE DO
5 ASK FOR THE COPYRIGHT TO BE REGISTERED TO SAGE. THERE ARE A
6 COUPLE OF EXCEPTIONS, BUT THEY ARE VERY FEW.

7 Q. WHAT WOULD BE SOME EXAMPLES OF THE EXCEPTIONS?

8 A. OFF THE TOP OF MY HEAD, I DON'T KNOW.

9 Q. OKAY. I HESITATE TO GIVE YOU ANOTHER BOOK. I THINK IN
10 THE PLAINTIFFS' MATERIALS -- IN THE PLAINTIFFS' BINDERS, CAN
11 YOU PLEASE FIND WHAT HAS BEEN ALREADY DISCUSSED AT PLAINTIFFS'
12 TRIAL EXHIBIT 232, PLAINTIFFS' EXHIBIT 232?

13 A. OKAY.

14 Q. IF YOU COULD PLEASE LOOK WITH ME, I'VE TRIED TO HIGHLIGHT
15 IT ON THE PAPER. DID YOU FIND THIS AGREEMENT?

16 A. I DID.

17 Q. OKAY. UNDER THE OWNERSHIP PARAGRAPH, THE LANGUAGE READS
18 THE AUTHORS REPRESENT THAT THE CONTRIBUTION IS AUTHOR-OWNED
19 UNLESS ONE OF THE FOLLOWING OPTIONS IS CHECKED.

20 NEITHER OF THESE OPTIONS ARE CHECKED. SO IN THIS
21 INSTANCE IS THIS NOT AN AUTHOR-OWNED CONTRIBUTOR AGREEMENT?

22 A. RIGHT.

23 Q. CAN YOU EXPLAIN TO THE COURT IN WHAT CIRCUMSTANCES SAGE
24 WOULD ENTER INTO AN AUTHOR-OWNED CONTRIBUTOR AGREEMENT SUCH AS
25 THIS ONE?

1 A. WELL IF THE EDITOR OF THE WORK ABSOLUTELY WANTED THIS
2 CHAPTER INCLUDED IN THE BOOK, WE MIGHT MAKE A SPECIAL
3 ARRANGEMENT TO HAVE THIS AUTHOR ON IT.

4 Q. AND HELP ME WITH THE WORD EDITOR?

5 A. THAT'S THE EXTERNAL EDITOR, THE EDITOR OF THE BOOK,
6 EDITOR/AUTHOR.

7 Q. THE EDITOR/AUTHOR REALLY WANTED TO INCLUDE THIS?

8 A. RIGHT. IF THEY FELT IT WAS CRUCIAL TO BE A PART OF THE
9 BOOK AND THERE WAS NO WAY OF GETTING AROUND THAT, YES, WE WOULD
10 MAKE AN EXCEPTION.

11 Q. OKAY. IF YOU WOULD ALSO TURN TO EXHIBIT 235, WERE YOU
12 ABLE TO FIND IT?

13 A. YES.

14 Q. THIS IS ANOTHER EXAMPLE OF AN AUTHOR-OWNED CONTRIBUTOR
15 AGREEMENT; IS IT NOT?

16 A. THAT'S CORRECT.

17 Q. AND THIS ONE IS FOR THE HANDBOOK OF CRITICAL
18 METHODOLOGIES, CORRECT?

19 A. YES.

20 Q. DO YOU BY CHANCE HAPPEN TO KNOW THE CIRCUMSTANCES OF WHY
21 IN THIS INSTANCE OF THE HANDBOOK OF CRITICAL METHODOLOGIES
22 THESE AUTHORS BELIEVED IT WAS SO IMPORTANT THAT IT HAD TO BE
23 INCLUDED AND THEREFORE THEY WANTED THE AUTHOR-OWNED
24 CONTRIBUTION TO BE IN THE BOOK?

25 A. NO, I DON'T.

1 Q. IN YOUR TESTIMONY TODAY, YOU WERE ASKED SEVERAL TIMES IN
2 REFERENCE TO SEVERAL DIFFERENT WORKS WHETHER OR NOT SOMETHING
3 INCLUDED THE HEART OF THE WORK?

4 A. CORRECT.

5 Q. AND YOU SAID YES, BECAUSE IT WAS THE ENTIRE SECTION OR
6 ENTIRE CHAPTER; DO YOU RECALL THAT?

7 A. YES.

8 Q. MY QUESTION IS HOW DO YOU DEFINE THE TERM AT SAGE HEART OF
9 THE WORK?

10 A. THE CHAPTERS IN THESE BOOKS ARE -- THEY REVOLVE AROUND A
11 SPECIFIC DISCIPLINE. EACH CHAPTER HAS A DIFFERENT SUBJECT
12 MATTER. SO IT'S ONE TOPIC WITHIN THE DISCIPLINE.

13 SO WE CONSIDER AN ENTIRE CHAPTER THEN TO BE THE HEART
14 OF THAT WORK, TO BE THE HEART OF THAT CHAPTER.

15 Q. OKAY. SO IT'S EVERYTHING THAT'S THERE IN OTHER WORDS?

16 A. IT'S EVERYTHING, RIGHT.

17 Q. YOU MENTIONED THAT THERE WAS TRAINING AT SAGE FOR VARIOUS
18 COPYRIGHT ISSUES. I BELIEVE YOU SAID THAT SOMEONE COMES IN AND
19 GIVES SOME TRAINING, BUT I MAY HAVE MISSED THAT.

20 HOW OFTEN DOES SOMEONE, IF ANYONE -- IF THEY DO COME
21 IN, HOW OFTEN DOES THAT OCCUR?

22 A. IN YEARS PAST WE WOULD HAVE AN ATTORNEY COME IN, OUTSIDE
23 COUNSEL TO GIVE TRAINING TWICE A YEAR ON COPYRIGHT REGULATIONS,
24 RULES, THINGS OF THAT NATURE. NOW IT'S CONDUCTED BY OUR
25 INTERNAL COUNSEL.

1 Q. AS OPPOSED TO TWICE A YEAR PERHAPS WASN'T IT ONCE EVERY
2 TWO YEARS?
3 A. TODAY IT'S TWICE A YEAR.
4 Q. IT USED TO BE ONCE EVERY TWO YEARS?
5 A. ONCE A YEAR, ONCE EVERY TWO YEARS.
6 Q. AT SAGE HOW DO YOU DISTINGUISH BETWEEN THE CONTRIBUTION
7 MADE BY THE EXTERNAL EDITOR'S WRITING AND INTERNAL EDITOR'S, IF
8 YOU WILL, I THINK YOU CALLED IT ACQUISITION, YOU KNOW,
9 COLLECTING THINGS, GETTING THEM TOGETHER TO PUT INTO THE BOOK?
10 A. I'M NOT SURE I FOLLOW YOU.
11 Q. WELL, FOR EXAMPLE, DO YOU DRAW A DISTINCTION BETWEEN THE
12 TYPE OF CONTRIBUTION THAT MAY BE MADE BY AN AUTHOR/EDITOR AS
13 OPPOSED TO AN INTERNAL EDITOR?
14 A. I'M STILL NOT SURE HOW TO ANSWER THAT QUESTION.
15 Q. LET ME COME AT IT THIS WAY. I THINK YOU HAVE THE BOOK
16 BLACK FAMILIES?
17 A. CORRECT.
18 Q. IF YOU COULD GRAB THAT FOR ME?
19 A. I DON'T KNOW IF I STILL HAVE THAT HERE.
20 MR. SCHAETZEL: YOU CAN HAVE MINE. IF I MAY
21 APPROACH?
22 THE COURT: YOU MAY.
23 BY MR. SCHAETZEL:
24 Q. AND AT THE SAME TIME IF YOU COULD PLEASE FIND WHAT YOU
25 JUST SPOKE WITH MS. SINGER ABOUT PLAINTIFFS' TRIAL EXHIBIT 221?

1 A. I GOT IT.

2 Q. VERY GOOD. IF YOU CAN I THINK I'VE ALREADY PAPERCLIPPED
3 THE CHAPTER AT ISSUE. WHAT IS THE TITLE OF THE CHAPTER?

4 A. OUT THERE STRANDED BY TATUM.

5 Q. PLEASE LOOK WITH ME NOW AT PLAINTIFFS' EXHIBIT 221. THIS
6 IS THE COPYRIGHT REGISTRATION FOR BLACK FAMILIES THIRD EDITION?

7 A. CORRECT.

8 Q. ALL RIGHT. AND WE COME DOWN AND LOOK AT THE NAME OF THE
9 AUTHOR WHICH IS HARRIETTE PIPES MCADOO; DO YOU SEE THAT?

10 A. YES.

11 Q. AND THEN IT SAYS NATURE OF THE AUTHORSHIP, THE EDITOR OF
12 THE WORK?

13 A. YES.

14 Q. MS. MCADOO IS THE ONE THAT IS, IF YOU WILL, THE INTERNAL
15 EDITOR. SHE COLLECTED EVERYTHING. SHE DIDN'T WRITE THAT
16 CHAPTER; ISN'T THAT CORRECT?

17 A. NO, INCORRECT. MCADOO IS THE AUTHOR OF THE BOOK. SHE IS
18 THE EDITOR WE COMMISSIONED TO ORGANIZE THIS BOOK AND TO FIND
19 CONTRIBUTING AUTHORS. SHE IS NOT AN INTERNAL ACQUISITIONS
20 EDITOR.

21 Q. MAY I HAVE THE BOOK BACK?

22 A. YES.

23 Q. CHAPTER 12, WHO WROTE CHAPTER 12?

24 A. TATUM.

25 Q. THE COPYRIGHT REGISTRATION IS IN THE NAME OF MS. MCADOO AS

1 EDITOR OF THE WORK. SHE DIDN'T WRITE CHAPTER 12, DID SHE, THAT
2 WAS WRITTEN BY TATUM?

3 A. THAT'S CORRECT.

4 Q. THIS COPYRIGHT REGISTRATION DOESN'T COVER WHAT BEVERLY
5 TATUM WROTE, DOES IT?

6 A. YES, IT DOES.

7 Q. HOW SO?

8 A. THE COPYRIGHT IS FOR THE REGISTRATION OF THE BOOK, AND
9 MCADOO IS THE EDITOR OF THE BOOK.

10 Q. SO AT SAGE YOU DON'T DRAW A DISTINCTION BETWEEN THE WORK
11 THAT MS. TATUM DID WRITING THIS CHAPTER AS OPPOSED TO THE WORK
12 THAT MS. MCADOO DID AS, IF YOU WILL, THE EDITOR OF THE BOOK; IS
13 THAT CORRECT?

14 A. MS. TATUM IS THE CONTRIBUTING AUTHOR FOR THE BOOK -- FOR
15 THAT CHAPTER.

16 THE COURT: IS IT TEN AFTER THREE?

17 MR. SCHAETZEL: YES, MA'AM.

18 THE COURT: THERE'S A REFLECTION ON THE CLOCK. WE
19 NEED TO STOP SOMEWHERE ALONG IN HERE. HOW MUCH LONGER WILL YOU
20 BE WITH THIS WITNESS?

21 MR. SCHAETZEL: PROBABLY A HALF HOUR.

22 THE COURT: I AM INCLINED TO QUIT FOR THE DAY THE

23 COURT: TOMORROW AND FRIDAY WE'LL RUN FROM 9:30 UNTIL 2:30.

24 YOU ALL HAVE A NICE EVENING. (PROCEEDINGS ADJOURNED)

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REPORTER'S CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

ANDRE G. ASHLEY
OFFICIAL COURT REPORTER
UNITED DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

DATE: