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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 19, 2011
V.	)	
	)	
MARK P. BECKER, IN HIS	)	
OFFICIAL CAPACITY AS GEORGIA	)	
STATE UNIVERSITY PRESIDENT,	)	
ET AL.,	)	
	)	
DEFENDANTS.	)	

VOLUME 3  
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. SCHAEZEL
COURT REPORTER:	ANDY ASHLEY
	1949 U. S. COURTHOUSE
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ANDRE G. ASHLEY, O.C.R.



1 Q. WHAT IS YOUR ROLE WITH THE PERMISSIONS DEPARTMENT?

2 A. I CONSULT WITH THEM, BUT I WOULDN'T KNOW THE ANSWER TO  
3 THAT.

4 Q. DO YOU KNOW IF ANYONE LOOKS TO MAKE A CONSIDERATION AS TO  
5 WHETHER OR NOT THAT AUTHOR IS TRYING TO USE AS YOU CALL IT THE  
6 HEART OF THE WORK?

7 A. I WOULD THINK -- I DON'T KNOW. I'M SPECULATING. I WOULD  
8 THINK AT SOME POINT SOMEONE WOULD.

9 THE COURT: LET ME ASK A QUESTION THAT I'VE BEEN  
10 THINKING ABOUT. HOW IMPORTANT IS IT TO KNOW ABOUT THE INTERNAL  
11 PROCESSING OF FAIR USE ISSUES WITHIN EACH OF THESE  
12 ORGANIZATIONS?

13 I MEAN WE'RE TALKING ABOUT WHAT THEY DO WITH  
14 ARTICLES, YOU KNOW, WHATEVER THAT THEY ARE THINKING ABOUT  
15 PUBLISHING. IT SEEMS PRETTY TANGENTIAL TO ME. I'LL JUST THROW  
16 THAT OUT TO YOU AND SEE WHAT YOU ALL THINK ABOUT IT.

17 MR. SCHAETZEL: IF I MAY RESPOND NOW?

18 THE COURT: YEAH, SURE.

19 MR. SCHAETZEL: WE THINK THAT IT'S REASONABLY  
20 IMPORTANT. FOR EXAMPLE, THE COURT IS BEING ASKED TO ENJOIN  
21 GEORGIA STATE UNIVERSITY BASED ON A PROPOSED INJUNCTION THAT  
22 DOES NOT GO THROUGH THE FOUR FACTORS; YET, THE PUBLISHERS IN  
23 MAKING FAIR USE DETERMINATIONS WOULD GO THROUGH THE FOUR FAIR  
24 USE FACTORS.

25 THE POINT THAT WE WOULD LIKE TO BE CERTAIN IS MADE IS

1 THAT THIS -- YOU KNOW, THE PROPOSED INJUNCTION CERTAINLY WOULD  
2 BE VERY UNUSUAL. IT WOULD NOT BE HOW THE FAIR USE  
3 DETERMINATION IS TYPICALLY DONE, AND IN OUR VIEW, IT'S NOT EVEN  
4 DOING A FAIR USE. IT'S NOT MAKING A FAIR USE DETERMINATION IN  
5 THE PROPOSED INJUNCTION.

6 THE OTHER REASON, IF YOU WILL, YOUR HONOR, IS WHAT'S  
7 GOOD FOR THE GOOSE IS GOOD FOR THE GANDER APPROACH.

8 THE COURT: WELL, I THOUGHT THAT'S WHAT YOU WERE  
9 MAINLY DOING, AND I DON'T KNOW WHETHER THAT'S REALLY TRUE. I  
10 DON'T KNOW. MR. RICH.

11 MR. RICH: MAY I RESPOND?

12 THE COURT: YES.

13 MR. RICH: WE'D BE HAPPY TO HAVE SAUCE FOR THE GOOSE,  
14 SAUCE FOR THE GANDER OXFORD UNIVERSITY PRESS. WE'RE NOT TRYING  
15 TO BURDEN YOUR HONOR WITH THEIR FAIR USE POLICY AT ALL SINCE  
16 THAT'S NOT WHAT WE BELIEVE THIS CASE IS ABOUT.

17 IT'S ABOUT THE GSU FAIR USE POLICY WHICH ALLOWS 1 TO  
18 3 PERCENT OF A WORK IF IT'S TRANSFORMATIVE AND ONLY IF IT'S  
19 TRANSFORMATIVE. WE'D BE MORE THAN HAPPY TO STIPULATE WITH THE  
20 OTHER SIDE THAT THEY TAKE OUR POLICY, BUT YOU'RE --

21 THE COURT: WELL, I'M SURE YOU WOULD BE HAPPY TO  
22 STIPULATE ABOUT THAT.

23 MR. RICH: THIS IS NOT ABOUT OUR POLICY. I THINK THE  
24 LIMITED RELEVANCE WE WOULD ASSERT FOR THEM IS TWOFOLD. NUMBER  
25 1, THAT OUR CLIENTS RESPECT AND UNDERSTAND THAT THERE IS A FAIR

1 USE DOCTRINE. THIS IS NOT AN ALL OR NOTHING PROPOSITION TO OUR  
2 CLIENTS EITHER. THEY ARE CONSUMERS OF INTELLECTUAL PROPERTY  
3 VERY MUCH AS THEY ARE PURVEYORS OF INTELLECTUAL PROPERTY, AND  
4 THAT THEY DO RESPECT IT, BUT THAT THEY DO HAVE GUIDELINES.

5 AND, SECONDLY, IT HAS COME OUT AND WILL COME OUT THEY  
6 DO PUT THEIR OWN MONEY WHERE THEIR MOUTH IS WHEN IT COMES TO  
7 THIS. FOR EXAMPLE, OXFORD, AS YOUR HONOR WILL HEAR, SPENDS  
8 HALF A MILLION A YEAR ON PERMISSIONS FEES RESPECTING COPYRIGHT  
9 WHEN IT'S USING THIRD PARTY PERMISSIONS.

10 BEYOND THAT OUR VIEW IS THIS IS NOT A CASE TURNING  
11 THE LENS ON OUR FAIR USE PRACTICES. IT'S ALL ABOUT GSU'S.

12 THE COURT: WELL, I DON'T INTEND TO MAKE ANY RULING  
13 ON THIS ISSUE AT THIS POINT. I JUST WOULD SAY IT SEEMS SORT OF  
14 TANGENTIAL TO ME AT THIS POINT. GO AHEAD.

15 MR. SCHAETZEL: WE APPRECIATE THE PERSPECTIVE, YOUR  
16 HONOR. THANK YOU.

17 BY MR. SCHAETZEL:

18 Q. IS IT SAGE'S POLICY -- IN TERMS OF LOOKING AT A WORK TO BE  
19 PUBLISHED, IS IT SAGE'S POLICY TO GET AN AGREEMENT WITH EACH OF  
20 THE CONTRIBUTING AUTHORS?

21 A. YES.

22 MR. SCHAETZEL: IF I MAY APPROACH, YOUR HONOR?

23 THE COURT: YES.

24 BY MR. SCHAETZEL:

25 Q. MS. RICHMAN, I HAND YOU AGAIN THE SAGE HANDBOOK OF

1 QUALITATIVE HANDBOOK THIRD EDITION. YOU WERE ASKED YESTERDAY  
2 HOW MANY PAGES WERE IN THE WORK; DO YOU RECALL THAT?

3 A. YES.

4 Q. AND YOU DID NOT MENTION, FOR EXAMPLE, PAGES THAT INCLUDE  
5 THE INDEX HERE STARTING AT PAGE 1161; IS THAT CORRECT?

6 A. THAT'S CORRECT.

7 Q. IF I CAN HAVE THAT BACK PLEASE. LET ME KNOW IF YOU HAVE  
8 TROUBLE SEEING THIS ON THE SCREEN?

9 A. YOU'RE GOING TO HAVE TO ENLARGE THAT.

10 Q. PLEASE LET ME KNOW IN JUST A SECOND.

11 THIS IS A PORTION OF PAGE 1161, THE FIRST PAGE OF THE  
12 INDEX. IF WE COULD LOOK DOWN TO JUST THE FOURTH ITEM WHICH IS  
13 ACADEMIA; DO YOU SEE THAT?

14 A. YES.

15 Q. AND JUST THE FIRST ITEM THERE IS CAREER AND WITH SEVERAL  
16 PAGES 295 AND SO ON; DO YOU SEE THAT?

17 A. YES.

18 Q. THE PAGE NUMBERS ALONE WOULD INDICATE, WOULD THEY NOT,  
19 THAT THOSE ARE REFERENCES TO DIFFERENT CHAPTERS OR DIFFERENT  
20 PARTS OF THE BOOK, AREN'T THEY?

21 A. YES.

22 Q. SO, IN OTHER WORDS, WE DON'T HAVE THE SAME AUTHOR WRITING  
23 WHAT'S AT PAGE 295 AS WHAT'S AT PAGES 923 TO 924; ISN'T THAT  
24 CORRECT?

25 A. PROBABLY NOT.

ANDRE G. ASHLEY, O.C.R.

1 Q. SOMEONE MUST GO THROUGH AND DETERMINE THAT THERE IS  
2 SOMETHING AT PAGE 295 AND PAGE 923 ABOUT CAREER IN ACADEMIA TO  
3 BUILD THIS INDEX; IS THAT CORRECT?  
4 A. YES.  
5 Q. WHO DOES THAT?  
6 A. AN INDEXER.  
7 Q. AND IS THE INDEXER EMPLOYED BY SAGE?  
8 A. THE INDEXER COULD BE A FREELANCER. THAT'S USUALLY THE  
9 CASE.  
10 Q. OKAY. AND ONCE THE INDEXER DOES THAT WORK, HOW DOES SAGE  
11 GET THAT INFORMATION PULLED TOGETHER?  
12 A. THE INDEXER WOULD SUPPLY BACK THE INDEX.  
13 Q. AND THEN IT'S JUST LOADED INTO THE BACK OF THE BOOK; IS  
14 THAT CORRECT?  
15 A. CORRECT.  
16 Q. IS IT SAGE'S PRACTICE TO GIVE SAMPLES TO PROFESSORS?  
17 A. WHAT KIND OF SAMPLES?  
18 Q. BOOKS?  
19 A. WE GIVE DESK COPIES AND REVIEWS COPIES.  
20 Q. AND I BELIEVE YOU SAID YOU TRACK THOSE?  
21 A. YES, WE DO.  
22 Q. HOW DO YOU TRACK THEM?  
23 A. WE HAVE AN INTERNAL SALES DEPARTMENT. THEY'RE THE ONES  
24 WHO CONTACT THE PROFESSORS. THEY'RE THE ONES WHO PROVIDE THE  
25 DESK COPIES TO THE PROFESSORS.

ANDRE G. ASHLEY, O.C.R.

1 Q. OKAY. HOW MANY DO YOU GIVE OUT IN A GIVEN YEAR?

2 A. PROBABLY OVER A THOUSAND. I DON'T ACTUALLY KNOW.

3 MR. SCHAETZEL: AT THIS TIME, YOUR HONOR, WITH THE  
4 AGREEMENT OF COUNSEL I'D LIKE TO MOVE INTO EVIDENCE I BELIEVE  
5 IT'S EXHIBIT 323.

6 THE COURT: YOU SAY THERE IS AN AGREEMENT?

7 MS. SINGER: NO OBJECTION, YOUR HONOR.

8 THE COURT: IT'S ADMITTED.

9 THE CLERK: IS THAT PLAINTIFFS'?

10 MR. SCHAETZEL: YES, MA'AM, PLAINTIFFS' EXHIBIT 323.

11 MS. SINGER: IT'S APPARENTLY ONE I MISSED YESTERDAY.

12 BY MR. SCHAETZEL:

13 Q. IF YOU COULD LOOK AT VOLUME 2 OF THE PLAINTIFFS' NOTEBOOK  
14 AND NEAR THE BACK YOU'LL FIND EXHIBIT NUMBER 199, A DOCUMENT  
15 ENTITLED ROYALTIES BY PROGRAM?

16 A. YES.

17 Q. THE FOURTH ITEM DOWN INDICATES ACADEMIC PERMISSIONS  
18 SERVICE OR APS; DO YOU SEE THAT?

19 A. YES.

20 Q. WHAT DO YOU UNDERSTAND THAT TO BE?

21 A. THOSE ARE PERMISSIONS FEES FOR PHOTOCOPYING.

22 Q. AND IF WE GET DOWN TO ELECTRONIC COURSE CONTEXT --

23 A. MAY I INTERRUPT, SORRY?

24 Q. OF COURSE.

25 A. SO THOSE ARE FEES FOR PHOTOCOPYING FOR JOURNALS.



1 Q. OKAY. AND IF WE GET DOWN TO ELECTRONIC COURSE CONTENT  
2 SERVICE, WHAT ARE THOSE?

3 A. THOSE ARE ELECTRONIC PERMISSION FEES FOR ELECTRONIC USE OF  
4 JOURNALS.

5 Q. DO YOU HAVE ANY IDEA OF -- AND THOSE ARE FEES RECEIVED  
6 BY --

7 A. YES, THOSE ARE ROYALTIES PAID TO SAGE.

8 Q. ROYALTIES PAID TO SAGE. DO YOU HAVE ANY SENSE OF WHAT THE  
9 PERCENTAGE IS OF THOSE FEES AS COMPARED TO TOTAL REVENUE IN A  
10 GIVEN YEAR FOR SAGE, THIS YEAR BEING 2009?

11 A. NO, I DON'T.

12 Q. YOU MENTIONED YESTERDAY THAT THE COMPANY HAS CERTAIN --  
13 HAS A WEBSITE, AND ON THE WEBSITE IT PROVIDES CERTAIN  
14 GUIDELINES FOR FAIR USE PRINCIPLES; IS THAT CORRECT?

15 A. THAT'S CORRECT.

16 Q. AND THAT WOULD BE THE COPYRIGHT AND PERMISSIONS GUIDELINES  
17 THAT ARE ON THE SAGE WEBSITE, CORRECT?

18 A. CORRECT.

19 MR. SCHAETZEL: IF I MAY APPROACH?

20 THE COURT: YOU MAY.

21 MR. SCHAETZEL: YOUR HONOR, IN LIGHT OF THE COMMENTS  
22 MADE THIS MORNING IN YOUR PERSPECTIVE, RATHER THAN ASKING  
23 QUESTIONS ABOUT THIS, THIS IS A DOCUMENT THAT IS NOT ON OUR  
24 EXHIBIT LIST. WE HAVE A DOCUMENT THAT GOES TO ITEMS THAT ARE  
25 ON THE WEBSITE, BUT THIS WAS PRINTED OFF THIS MORNING. I THINK

1 IT'S MORE RECENT.

2 WE WOULD USE THIS DOCUMENT TO IMPEACH THE WITNESS,  
3 AND IN VIEW OF YOUR COMMENTS, RATHER THAN GO THROUGH THAT IF I  
4 COULD GET THE WITNESS MERELY TO CONFIRM THAT THIS IS THE  
5 DOCUMENT THAT'S ON THE WEBSITE, I WOULD TENDER IT AS A DOCUMENT  
6 OFFERED THROUGH IMPEACHMENT.

7 THE COURT: WHAT IS THE EXHIBIT NUMBER?

8 MR. SCHAETZEL: IT'S NOT ON OUR EXHIBIT LIST.

9 THE COURT: YOU NEED TO GIVE IT AN EXHIBIT NUMBER.

10 MS. SINGER: AND, YOUR HONOR, WE WOULD OBJECT TO THE  
11 INTRODUCTION OF ANYTHING THAT WASN'T ON THE EXHIBIT LIST, AND  
12 ALSO RELEVANCE IN LIGHT OF YOUR HONOR'S COMMENTS.

13 THE COURT: I DON'T WANT YOU ALL TO TAKE MY COMMENTS  
14 TOO SERIOUSLY AT THIS POINT. I MEAN I REALIZE THE CASE IS ON-  
15 GOING. I JUST THOUGHT FOR WHATEVER USE IT MIGHT BE I'LL TELL  
16 YOU WHAT I'M THINKING AT THAT POINT, UNDERLINE AT THIS POINT.

17 MS. SINGER: UNDERSTOOD. WE WOULD HAVE A RELATIVE  
18 OBJECTION IN ANY EVENT BECAUSE WE DON'T BELIEVE THAT THESE  
19 POLICIES HAVE ANYTHING TO DO WITH THE CASE.

20 THE COURT: RIGHT. SO WHAT NUMBER IS IT?

21 MR. SCHAETZEL: 905, YOUR HONOR.

22 THE COURT: YOU MAY SHOW IT TO THE WITNESS AND TO USE  
23 YOUR TERM SEEK TO IMPEACH HER WITH THE DOCUMENT. I DON'T  
24 BELIEVE THE DOCUMENT IS GOING TO BE ADMISSIBLE BUT WE'LL SEE.  
25 BY MR. SCHAETZEL:

1 Q. ARE YOU FAMILIAR WITH THE -- LET ME BACK UP.

2 THE SAGE COPYRIGHT AND PERMISSION GUIDELINES PROVIDES  
3 A FAIR USE QUICK GUIDE; DOES IT NOT?

4 A. YES, IT DOES.

5 Q. OKAY. DO YOU RECALL THE SPECIFICS OF THE POSITIONS TAKEN  
6 BY SAGE IN THE FAIR USE QUICK GUIDE?

7 A. I'M NOT SURE I FOLLOW YOUR QUESTION.

8 Q. I'D SIMPLY LIKE TO KNOW IF FROM MEMORY DO YOU RECALL THE  
9 POSITIONS TAKEN ON THE VARIOUS FACTORS OF FAIR USE IN THE SAGE  
10 FAIR USE QUICK GUIDE?

11 MS. SINGER: OBJECTION, LACK OF FOUNDATION.

12 THE COURT: OVERRULED.

13 THE WITNESS: I'M SORRY BUT I AM STILL NOT FOLLOWING  
14 YOUR QUESTION.

15 BY MR. SCHAEZEL:

16 Q. I SIMPLY WANT TO KNOW IF FROM MEMORY DO YOU RECALL THE  
17 POSITIONS TAKEN, FOR EXAMPLE, AS TO THE FIRST FACTOR OF FAIR  
18 USE -- LET'S TRY IT THIS WAY, MS. RICHMAN.

19 WHAT DOES THE FAIR USE QUICK GUIDE STATE ABOUT  
20 WHETHER OR NOT FAIR USE IS MORE FREQUENTLY FOUND IF THE AUTHOR  
21 TAKES MORE THAN HE OR SHE NEEDS?

22 I'M SORRY, MA'AM, WITHOUT READING IT. I JUST WANT TO  
23 KNOW IF YOU KNOW?

24 A. I DON'T KNOW.

25 Q. IF YOU LOOKED AT THE DOCUMENT WOULD THAT REFRESH YOUR

1 RECOLLECTION?

2 A. IT WOULD HELP ME.

3 Q. OKAY. IF YOU WOULD THEN PLEASE TURN TO PAGE 5 OF THIS  
4 DOCUMENT. IF YOU LOOK DOWN AT ITEM 3, THE FIRST BULLET POINT,  
5 IT'S TRUE, IS IT NOT, THAT --

6 THE COURT: NOW, WHAT IS THIS WE'RE LOOKING AT?

7 MR. SCHAETZEL: YES, YOUR HONOR. THIS IS THE SAGE  
8 FAIR USE QUICK GUIDE FOUND AT THE WEBSITE.

9 THE COURT: WHAT'S THE EXHIBIT NUMBER?

10 MR. SCHAETZEL: 905.

11 MS. SINGER: OBJECTION, THIS ONE IS NOT IN EVIDENCE.

12 THE COURT: IT IS NOT IN EVIDENCE, YOU'RE CORRECT.

13 I'LL OVERRULE THE OBJECTION AT THIS TIME.

14 BY MR. SCHAETZEL:

15 Q. DOES THIS REFRESH YOUR RECOLLECTION THAT THE COMPANY'S  
16 POSITION IS THAT FAIR USE IS MORE FREQUENTLY FOUND IF YOU DO  
17 NOT TAKE MORE THAN YOU NEED?

18 A. THAT'S WHAT IT SAYS.

19 Q. AND THAT IS IN FACT THE COMPANY'S POSITION, IS IT NOT?

20 A. YES BUT I THINK EACH CASE IS INDIVIDUAL.

21 Q. AND THAT IS CERTAINLY A PART OF THE COMPANY'S POSITION AS  
22 WELL, RIGHT, THAT EACH FAIR USE DETERMINATION HAS TO BE MADE ON  
23 ITS OWN MERITS?

24 A. YES.

25 Q. WHAT IS THE COMPANY'S POSITION REGARDING THE FIRST FAIR

1 USE FACTOR IN TERMS OF WHETHER A USE IS COMMERCIAL OR FOR  
2 NONPROFIT PURPOSES; DO YOU RECALL?  
3 A. NO.  
4 Q. WOULD IT REFRESH YOUR RECOLLECTION TO LOOK AT THE GUIDE?  
5 A. YES.  
6 Q. IN FACT IT'S TRUE, IS IT NOT, THAT THE COMPANY'S POSITION  
7 IS IT DOESN'T MATTER IF IT'S COMMERCIAL OR FOR NONPROFIT  
8 EDUCATIONAL USE, ISN'T IT?  
9 A. I'M NOT SURE.  
10 Q. THE COMPANY'S POSITION IS DOES THE WORK ADD SOMETHING NEW  
11 TO THE COPYRIGHTED MATERIAL? IF YES, THEN DOES IT TRANSFORM  
12 THE WORK WITH THOSE EXAMPLES?  
13 A. RIGHT.  
14 Q. ISN'T IT TRUE THAT FOR THE FIRST FACTOR OF FAIR USE THE  
15 ONLY THING YOU CONSIDER IS WHETHER OR NOT THE USE IS  
16 TRANSFORMATIVE?  
17 A. THAT'S CORRECT.  
18 Q. YOU DO NOT CONSIDER WHETHER OR NOT THE USE IS FOR  
19 NONPROFIT EDUCATIONAL USE?  
20 A. I SUPPOSE.  
21 Q. IT'S CERTAINLY NOT IN THE GUIDE, IS IT?  
22 A. NO.  
23 Q. ARE YOU AWARE THAT THE COPYRIGHT AND PERMISSION GUIDELINES  
24 REFERS TO THE UNIVERSITY OF MINNESOTA WEBSITE?  
25 A. NO.

1 MS. SINGER: OBJECT, YOUR HONOR. SHE DIDN'T WRITE  
2 THIS, AND I'M NOT SURE HOW MUCH WE'RE REFRESHING HER  
3 RECOLLECTION BY SHOWING HER SOMETHING THAT SHE DIDN'T WRITE.

4 THE COURT: THE RULE IS THAT ALMOST ANYTHING CAN BE  
5 USED TO REFRESH RECOLLECTION AND SO I'LL ALLOW IT.

6 BY MR. SCHAETZEL:

7 Q. IF YOU WOULD PLEASE TURN TO PAGE 16 -- I'M SORRY, 17 OF  
8 THE GUIDE; HAVE YOU FOUND IT?

9 A. YES.

10 Q. DOES THIS REFRESH YOUR RECOLLECTION THAT HERE ARE TWO  
11 CITES THAT OFFER FAIR USE ANALYSIS WORKSHEETS THAT MAY BE OF  
12 ASSISTANCE WITH THE TWO WEBSITES THERE; DO YOU SEE THAT?

13 A. I DO.

14 Q. I'LL REPRESENT TO YOU THAT THAT'S FOR THE LIBRARY AT THE  
15 UNIVERSITY OF MINNESOTA?

16 A. I BELIEVE THAT'S CORRECT.

17 Q. OKAY. ARE YOU AWARE THAT THE UNIVERSITY OF MINNESOTA'S  
18 WEBSITE IN TURN REFERENCES THE COLUMBIA UNIVERSITY WEBSITE?

19 A. NO.

20 Q. IT'S TRUE, IS IT NOT, MS. RICHMAN, THAT BEFORE THIS  
21 LAWSUIT WAS FILED NO ONE AT SAGE APPLIED THOSE FOUR FAIR USE  
22 FACTORS AS SET FORTH IN THE GUIDE TO ANY OF THE WORKS, THE SAGE  
23 WORKS THAT ARE AT USE AT GSU; ISN'T THAT CORRECT?

24 A. I DON'T KNOW THAT.

25 Q. I DON'T KNOW IF IT'S STILL THERE, IF YOU HAVE A COPY OF

1 MS. VAN VALKENBURG'S DEPOSITION?

2 A. YES.

3 Q. IF YOU WOULD PLEASE TURN TO PAGE 17, IF YOU'D LOOK AT LINE  
4 2, THE QUESTION IS DID SAGE PERFORM ANY FAIR USE ANALYSIS OF  
5 THE ALLEGEDLY INFRINGING MATERIALS TO DETERMINE IF THEY WERE A  
6 FAIR USE?

7 ANSWER: NO.

8 IT'S CORRECT, ISN'T IT, THAT NO ONE AT SAGE DID A  
9 FAIR USE ANALYSIS OF ANY OF THE ALLEGEDLY INFRINGING MATERIALS  
10 ON BEHALF OF SAGE PRIOR TO THE LAWSUIT, ISN'T IT?

11 A. THAT'S WHAT MS. VAN VALKENBURG SAID.

12 Q. YOU HAVE NO KNOWLEDGE TO THE CONTRARY, DO YOU?

13 A. NO.

14 Q. AND IT'S ALSO TRUE, IS IT NOT, THAT THE PERMISSIONS STAFF  
15 DOES NOT ALWAYS DO A FAIR USE CHECK IN THE CASE OF JOURNAL  
16 PREPARATION, ISN'T IT?

17 A. NO.

18 Q. IS IT YOUR TESTIMONY THEY ALWAYS --

19 A. ASK THE QUESTION AGAIN?

20 Q. SURE. ISN'T IT TRUE THAT WITH RESPECT TO JOURNALS, THE  
21 PEOPLE IN THE PERMISSIONS OFFICE DO NOT ALWAYS DO A FAIR USE  
22 CHECK BASED ON WHAT THE AUTHOR GIVES THEM?

23 A. THE AUTHOR DOES NOT PROVIDE INFORMATION TO THE PERMISSIONS  
24 EDITORS FOR JOURNALS. THAT GOES THROUGH AN EDITORIAL OFFICE  
25 USUALLY EXTERNAL.

ANDRE G. ASHLEY, O.C.R.

1 Q. IF YOU WOULD PLEASE TAKE AGAIN A LOOK AT MS. VAN  
2 VALKENBURG'S DEPOSITION PAGE 31 STARTING AT LINE 22, IF YOU CAN  
3 SEE DOWN AT THE BOTTOM OF THIS PAGE PAGE 22?

4 A. UH-HUH (AFFIRMATIVE).

5 Q. NOW THAT LEADS ME TO THE QUESTION WHAT AUTHORS WOULD YOU  
6 NOT BE REVIEWING EVERY TIME THEY DETERMINE WHETHER A USE IS  
7 FAIR OR NOT, MOVING TO THE NEXT PAGE?

8 ANSWER: AUTHORS OF JOURNAL CONTRIBUTIONS.

9 DO YOU SEE THAT?

10 A. YES.

11 Q. IT'S TRUE THAT YOU DO NOT ALWAYS REVIEW FAIR USE  
12 DETERMINATIONS WHEN IT'S BY THE AUTHOR OF A JOURNAL  
13 CONTRIBUTION, ISN'T IT?

14 A. YES.

15 Q. ARE YOU -- YOU MENTIONED PERMISSIONS. YOU RECEIVE  
16 PERMISSIONS FOR BOTH BOOKS AND JOURNALS, CORRECT?

17 A. CORRECT.

18 Q. HOW DO YOU ACCOUNT FOR PERMISSIONS LET'S SAY OF A BOOK; IN  
19 OTHER WORDS, PRESUME THAT THERE IS A CLASS OF 20 STUDENTS AND A  
20 PROFESSOR AT GEORGIA STATE HAS POSTED A SAGE WORK ON THE ERES  
21 SYSTEM AND PERMISSIONS WERE TO BE PAID FOR THIS. IT WAS NOT A  
22 FAIR USE. HOW WOULD YOU CALCULATE THE AMOUNT OF MONEY THAT  
23 SAGE IS ENTITLED TO FOR THAT POSTING?

24 A. WE WOULD COUNT THE NUMBER OF PAGES TO BE USED. WE WOULD  
25 MULTIPLY THAT BY THE PERMISSION FEE PER PAGE WHICH IS 14 CENTS



1 TIMES THE NUMBER OF STUDENTS.

2 Q. OKAY. LET'S PRESUME THAT OF THOSE 20 STUDENTS THAT ONLY  
3 TWO OF THEM EVER LOOK AT THE WORK. YOU'RE STILL GOING TO GET  
4 MONEY FOR THE OTHER 18; ARE YOU NOT?

5 A. THAT'S CORRECT, BECAUSE PERMISSIONS IS REQUIRED IN ADVANCE  
6 OF THE USE.

7 Q. IF I GO INTO THE SCHOOL BOOKSTORE HOWEVER AND I LOOK  
8 THROUGH THE BOOK AND I DECIDE NOT TO BUY IT, SAGE DOESN'T GET  
9 ANY MONEY FOR THAT, DO THEY?

10 A. THAT'S CORRECT.

11 Q. I'D LIKE TO SHOW YOU AGAIN THE FIRST PAGE OF THE SYLLABUS  
12 THAT WAS SHOWN TO YOU PLAINTIFFS' EXHIBIT 516 FOR MS.  
13 KAUFMANN'S CLASS. DO YOU RECALL GIVING TESTIMONY ABOUT THIS?

14 A. I RECALL ANSWERING QUESTIONS REGARDING THE MATERIALS BEING  
15 USED.

16 Q. OKAY. IT'S TRUE, IS IT NOT, THAT TWO OF PROFESSOR  
17 KAUFMANN'S REQUIRED TEXTS WERE IN FACT SAGE WORKS, ISN'T IT?

18 A. YES.

19 Q. THE CROTTY REFERENCE THE FOUNDATIONS OF SOCIAL RESEARCH,  
20 MEANING AND PERSPECTIVE IN THE RESEARCH PROJECT, THAT WAS A  
21 SAGE WORK?

22 A. THAT'S A SAGE WORK.

23 Q. RECOMMENDED ALTHOUGH NOT REQUIRED WALLACE AND WRAY  
24 CRITICAL READING AND WRITING FOR POSTGRADUATES, THOUSAND OAKS,  
25 SAGE PUBLISHING, THAT'S ALSO IS A SAGE WORK, ISN'T IT?

1 A. YES.

2 THE COURT: COULD YOU ALL SCROLL UP SO I COULD LOOK  
3 AT THE ADDITIONAL READING LINES?

4 MR. SCHAETZEL: YES, MA'AM.

5 BY MR. SCHAETZEL:

6 Q. MS. RICHMAN, BY CHANCE DO YOU HAPPEN TO KNOW HOW MUCH  
7 THOSE TWO SAGE PUBLICATIONS COST?

8 A. NO, I DON'T.

9 MR. SCHAETZEL: WE HAVE NO FURTHER QUESTIONS AT THIS  
10 TIME, YOUR HONOR.

11 THE COURT: SHALL THE WITNESS STEP DOWN?

12 MS. SINGER: JUST A FEW QUESTIONS, YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 REDIRECT EXAMINATION

15 BY MS. SINGER:

16 Q. MS. RICHMAN, IN THE BOOKSTORE EXAMPLE THAT YOU JUST  
17 DISCUSSED WITH MR. SCHAETZEL, IF THE STUDENT INSTEAD OF JUST  
18 BROWSING THROUGH THE BOOK TOOK IT OVER TO A PHOTOCOPIER AND  
19 MADE A COPY, WOULD SAGE BE ENTITLED TO A FEE FOR THE COPY THAT  
20 THE STUDENT HAS MADE?

21 A. THE STUDENT DOESN'T OWN THE BOOK. SO HE PROBABLY  
22 SHOULDN'T BE MAKING A COPY FOR PERSONAL USE.

23 Q. BUT IF THEY DID THAT'S USING SAGE'S COPY, ISN'T IT?

24 A. IT IS, YES.

25 Q. AND THAT'S TRUE EVEN IF THE STUDENT TAKES HOME THAT COPY

1 AND NEVER LOOKS AT IT; IS THAT RIGHT?

2 A. NEVER LOOKS AT IT.

3 Q. BEFORE THIS CASE WAS BROUGHT WHEN SAGE LEARNED ABOUT THE  
4 EXCERPTS THAT WERE BEING USED ON THE ERES SYSTEM AT GEORGIA  
5 STATE UNIVERSITY, DID SAGE HAVE A OCCASION TO CONSULT WITH  
6 EXPERT COPYRIGHT COUNSEL IN DETERMINING WHETHER OR NOT TO BRING  
7 THIS CASE?

8 A. YES.

9 Q. IF YOU COULD TAKE A LOOK AT PLAINTIFFS' EXHIBIT 232  
10 ALREADY IN EVIDENCE. IT'S IN VOLUME 2, AND WE CAN PUT IT UP ON  
11 THE SCREEN IF THAT'S EASIER?

12 A. YES, THAT'S PROBABLY EASIER.

13 Q. AND BLOW IT UP HERE. THIS IS ONE OF THE CONTRIBUTOR  
14 AGREEMENTS TO CRITICAL RACE THEORY AND INDIGENOUS METHODOLOGIES  
15 THAT YOU TALKED ABOUT WITH MR. SCHAEZEL YESTERDAY?

16 A. YES.

17 Q. AND WE TOOK A LOOK AT THE -- THIS IS THE CONTRIBUTOR  
18 AGREEMENT FOR THE DUNBAR CHAPTER, RIGHT?

19 A. RIGHT.

20 Q. AND WITH MR. SCHAEZEL YOU TOOK A LOOK AT THE FACT THAT  
21 THERE WAS NOTHING CHECKED IN THE WORK FOR HIRE, THAT BIG BOX IN  
22 THE MIDDLE OF THE PAGE --

23 A. YES.

24 Q. -- THERE WAS NOTHING CHECKED, RIGHT?

25 A. THAT'S CORRECT.

1 Q. OKAY. AND THERE IS NOTHING CHECKED HERE BECAUSE THE  
2 CONTRIBUTION WAS PREPARED BY THE AUTHOR NOT FOR THE AUTHOR'S  
3 EMPLOYER, NOT FOR ANYBODY ELSE, RIGHT?  
4 A. NOT FOR ANYBODY ELSE.  
5 Q. AND IT'S NOT A U.S. GOVERNMENT WORK, RIGHT?  
6 A. NO, IT ISN'T.  
7 Q. SO IF WE TAKE A LOOK ABOVE THAT BOX, WE SEE THAT THE TEXT  
8 SAYS ON THIS 22ND DAY OF 2008, SAGE PUBLICATIONS HEREBY  
9 SPECIFICALLY REQUESTS CONTRIBUTOR TO PREPARE FOR SAGE AN  
10 ORIGINAL AND PREVIOUSLY UNPUBLISHED CONTRIBUTION TEXT, ET  
11 CETERA, AS DESCRIBED ABOVE THE CONTRIBUTION FOR INCLUSION IN  
12 THE COLLECTIVE WORK IDENTIFIED ABOVE INTENDED TO BE PUBLISHED  
13 BY SAGE THE WORK; DO YOU SEE THAT?  
14 A. YES.  
15 Q. IS THAT WHERE SAGE IS COMMISSIONING THE CONTRIBUTORY?  
16 A. YES.  
17 Q. AND IF WE TAKE A LOOK BELOW THE BOX IN THE MIDDLE THERE,  
18 AND THEN WHAT HAPPENS THE CONTRIBUTOR DOESN'T CHECK ANYTHING  
19 ELSE BECAUSE NOBODY ELSE OWNS THIS, RIGHT?  
20 A. THAT'S CORRECT.  
21 Q. THEN AT THE BOTTOM HERE WE SEE ALL THE AUTHORS AND THE  
22 CONTRIBUTORS, AND WE SEE THE CONTRIBUTION SHALL BE CONSIDERED A  
23 WORK MADE FOR HIRE FOR SAGE UNDER THE UNITED STATES COPYRIGHT  
24 ACT OF 1976 AS AMENDED AND THE COPYRIGHT IN THE CONTRIBUTION,  
25 ALL EXCLUSIVE RIGHTS COMPRISED THEREIN AND ALL OTHER RIGHT,

1 TITLE AND INTEREST IN AND TO THE CONTRIBUTION SHALL VEST  
2 INITIALLY IN AND BE OWNED BY SAGE; DO YOU SEE THAT?  
3 A. YES.  
4 Q. WHAT DOES THAT MEAN?  
5 A. THAT MEANS THAT SAGE OWNS THE COPYRIGHT.  
6 Q. AND THEN WE SAY TO THE EXTENT, IF ANY, THAT THE  
7 CONTRIBUTION DOES NOT QUALIFY AS A WORK MADE FOR HIRE OR THE  
8 COPYRIGHT DOES NOT BY OPERATION OF LAW VEST IN SAGE,  
9 CONTRIBUTOR HEREBY TRANSFERS AND ASSIGNS TO SAGE DURING THE  
10 FULL TERM OF COPYRIGHT AND ALL EXTENSIONS THEREOF OF ALL  
11 EXCLUSIVE RIGHTS COMPRISED IN THE COPYRIGHT AND THE  
12 CONTRIBUTION AND ANY REVISIONS THEREOF, ET CETERA, ET CETERA;  
13 WHAT DOES THAT MEAN?  
14 A. THAT WOULD MEAN -- DOES MEAN THAT SAGE OWNS THE COPYRIGHT.  
15 Q. IF WE COULD TAKE A LOOK AT PLAINTIFFS' EXHIBIT 235 ALREADY  
16 IN EVIDENCE, WE'LL PUT IT UP THERE SO YOU DON'T HAVE FLIP. YOU  
17 SPOKE WITH MR. SCHAEZEL ABOUT THIS ONE, TOO. THIS IS THE  
18 CONTRIBUTOR CONTRACT FOR THE KINCHELOE AND STEINBERG CHAPTER TO  
19 INDIGENOUS KNOWLEDGE HANDBOOK, RIGHT?  
20 A. CORRECT.  
21 Q. OKAY. IF WE SCROLL DOWN THROUGH HERE WE SEE IN THE TEXT  
22 ABOVE THE BOX AND WE SEE SAGE SPECIFICALLY REQUESTING THE  
23 CONTRIBUTOR TO PREPARE FOR SAGE AN ORIGINAL AND PREVIOUSLY  
24 UNPUBLISHED CONTRIBUTION, RIGHT?  
25 A. THAT'S CORRECT.

1 Q. WHAT'S GOING ON IN THIS PARAGRAPH OF PLAINTIFFS' EXHIBIT  
2 235?

3 A. IT GOES ON TO SPEAK ABOUT INCLUSION IN THE COLLECTIVE WORK  
4 IDENTIFIED ABOVE INTENDED TO BE PUBLISHED BY SAGE UPON THE  
5 FOLLOWING TERMS.

6 Q. SO, AGAIN, THIS IS SAGE COMMISSIONING THE CONTRIBUTING  
7 AUTHORS?

8 A. RIGHT, THIS IS SAGE HIRING THE AUTHORS TO DO THIS WORK.

9 Q. OKAY. AND THEN IF WE LOOK IN THE BOX IN THE MIDDLE OF THE  
10 PAGE THERE, WE SEE AGAIN THE AUTHORS AREN'T CHECKING NO OTHER  
11 EMPLOYER OWNS THIS WORK AND THE GOVERNMENT DOESN'T OWN THIS  
12 WORK, RIGHT?

13 A. RIGHT.

14 Q. IF WE TAKE A LOOK IN THE TEXT BELOW THE BOX, WE SEE AGAIN  
15 THE CONTRIBUTION SHALL BE CONSIDERED A WORK MADE FOR HIRE; DO  
16 YOU SEE THAT?

17 A. YES, I DO.

18 Q. AND IN THE EVENT THAT THE CONTRIBUTION DOES NOT QUALIFY AS  
19 A WORK MADE FOR HIRE, THE CONTRIBUTOR IS TRANSFERRING AND  
20 ASSIGNING TO SAGE THE FULL COPYRIGHT?

21 A. YES.

22 Q. SO WHO OWNS THE COPYRIGHT IN THE KINCHELOE AND STEINBERG  
23 CONTRIBUTION?

24 A. SAGE.

25 Q. YOU AND MR. SCHAEZEL SPOKE ABOUT PLAINTIFFS' EXHIBIT 221

1 ALREADY IN EVIDENCE. IT'S THE COPYRIGHT REGISTRATION  
2 CERTIFICATE FOR BLACK FAMILIES THIRD EDITION; DO YOU SEE THAT?

3 A. YES.

4 Q. YOU ALL WERE TALKING A LITTLE BIT ABOUT A CONTRIBUTION AND  
5 WHO OWNS THE COPYRIGHT IN THE CONTRIBUTION; DO YOU REMEMBER  
6 THAT?

7 A. YES.

8 Q. LET'S TAKE A LOOK AT THE BOTTOM THERE AND WHO THE  
9 COPYRIGHT CLAIMANT IS; WHO IS THE COPYRIGHT CLAIMANT?

10 A. SAGE PUBLICATIONS.

11 Q. WHO OWNS THE COPYRIGHT IN THE BOOK?

12 A. SAGE PUBLICATIONS.

13 Q. WHO OWNS THE COPYRIGHT AND ALL THE CONTRIBUTIONS TO THE  
14 BOOK?

15 A. SAGE PUBLICATIONS.

16 Q. AND THAT'S BECAUSE EACH CONTRIBUTOR ASSIGNED --

17 A. ASSIGNED COPYRIGHT TO SAGE.

18 MS. SINGER: YOUR HONOR, I HAVE NO MORE QUESTIONS,  
19 BUT I HAVE A HANDFUL OF EXHIBITS THAT I'D LIKE TO READ IN WITH  
20 NO OBJECTION, BUT WE'RE DONE WITH MS. RICHMAN I BELIEVE.

21 THE COURT: SHALL MS. RICHMAN STEP DOWN?

22 MR. SCHAEZEL: NO FURTHER QUESTIONS, YOUR HONOR.

23 THE COURT: YOU'RE EXCUSED. THANK YOU.

24 MS. SINGER: YOUR HONOR, AT THIS TIME PLAINTIFFS  
25 WOULD LIKE TO MOVE INTO EVIDENCE PLAINTIFFS' EXHIBITS 47 AND

1 48. THE OBJECTIONS TO THOSE HAVE BEEN WITHDRAWN, AND  
2 PLAINTIFFS WOULD ALSO LIKE TO MOVE PLAINTIFFS' EXHIBITS 134,  
3 135 AND 136 TO WHICH THERE WAS NO OBJECTION.

4 THE COURT: THEY ARE ADMITTED.

5 MS. SINGER: THANK YOU, YOUR HONOR.

6 THE COURT: WHAT HAPPENED TO I THINK IT WAS  
7 PLAINTIFFS' 975; DID WE EVER DEAL WITH THAT?

8 MS. SINGER: YOUR HONOR, I THINK THE PROBLEM WAS THAT  
9 THE SERVICE COPY WAS -- THE COPY OF DEFENDANTS' RESPONSES, THE  
10 WAY THE PDF WENT IT WAS MISSING SOME TEXT, SO WE WERE WAITING  
11 FOR DEFENDANTS TO SORT THAT OUT.

12 MR. SCHAETZEL: AND WE THINK WE SORTED IT OUT THIS  
13 MORNING, AND RATHER THAN GIVING YOU TWO DOCUMENTS IF WE COULD  
14 KIND OF BLEED IT TOGETHER IN SOME FASHION.

15 THE PROBLEM IS ONE OF THE QUESTIONS GOT CAUGHT OFF,  
16 AND IT'S KIND OF -- SINCE IT'S AN ADMISSION WE'D LIKE THE WHOLE  
17 QUESTION AND ANSWER BE THERE.

18 THE COURT: SO YOU ALL ARE RECONSTITUTING THE EXHIBIT  
19 IS I THINK WHAT YOU'RE SAYING?

20 MR. SCHAETZEL: THAT'S ESSENTIALLY THE PROPOSAL.

21 THE COURT: I DON'T THINK I HAVE ADMITTED IT.

22 MR. SCHAETZEL: NOT YET.

23 THE COURT: ALL RIGHT. LET'S KEEP IT IN MIND. THANK  
24 YOU. ALL RIGHT. WHO'S NEXT?

25 MR. RICH: YOUR HONOR, WE CALL NIKO PFUND OF OXFORD



1 UNIVERSITY PRESS.

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

4 NIKO PFUND,  
5 HAVING BEEN DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

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

9 THE WITNESS: MY NAME IS NIKO PFUND. LAST NAME IS  
10 SPELLED P F AS IN FRANK U N D.

11 MR. RICH: YOUR HONOR, JUST AS A PREFATORY MATTER  
12 SINCE YOU ASKED YESTERDAY ABOUT THE CONCEPT OF WORK FOR HIRE  
13 AND YOU'VE SEEN A FEW REFERENCES, I THOUGHT IT MIGHT BE USEFUL  
14 TO SIMPLY INDICATE TO YOUR HONOR AS YOU DELVE INTO THIS IN MORE  
15 DEPTH THAT THERE ARE TWO BASIC WAYS IN WHICH A PUBLISHER WOULD  
16 ACQUIRE COPYRIGHT RIGHTS, AND UNDER THE COPYRIGHT LAW THERE IS  
17 SOME TECHNICAL DISTINCTIONS.

18 IF THERE IS A WRITTEN ASSIGNMENT FROM AN AUTHOR TO A  
19 PUBLISHER, THEN THE PUBLISHER ACQUIRES THE COPYRIGHT IN THAT  
20 BASIS, AND THAT'S VERY COMMON.

21 THE COPYRIGHT ACT OF 1976 AND SECTION 101 ALSO SETS  
22 FORTH A MORE LIMITED CATEGORY OF CIRCUMSTANCES IN WHICH WORKS  
23 CAN BE COMMISSIONED AS OR TREATED AS A MATTER OF LAW AS WORKS  
24 MADE FOR HIRE, AND THE EFFECT OF THAT IS THAT IN A WORK FOR  
25 HIRE RELATIONSHIP, THE LAW DOESN'T TREAT IT AS ASSIGNMENT. IT

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1 TREATS IT AS THE COMMISSIONER PARTY IS ITSELF THE AUTHOR.

2           THERE IS NO RELEVANT DIFFERENCE HERE IN TERMS OF THE  
3 RIGHTS IMPOSED ON THE PUBLISHER, BUT WHEN ONE TALKS ABOUT WORKS  
4 MADE FOR HIRE, THAT'S SORT OF AN ASPECT OF OWNERSHIP OF  
5 COPYRIGHT THAT AS A MATTER OF LAW HAS CERTAIN DIFFERENT IMPACTS  
6 IN TERMS OF DURATION OF OWNERSHIP AND THE LIKE, AND I JUST  
7 WANTED TO CLARIFY THAT FOR YOUR HONOR'S BENEFIT.

8           THE COURT: THANK YOU.

9           MR. RICH: MAY I PROCEED?

10          THE COURT: YES.

11   DIRECT EXAMINATION

12 BY MR. RICH:

13 Q. BY WHOM ARE YOU EMPLOYED?

14 A. OXFORD UNIVERSITY PRESS.

15 Q. AND HOW LONG HAVE YOU BEEN AT OXFORD?

16 A. I'VE BEEN AT OXFORD SINCE AUGUST OF 2000. ALTHOUGH, THAT  
17 WAS MY SECOND STINT AT OXFORD. I ALSO WORKED AS AN EDITORIAL  
18 ASSISTANT FROM 1987 TO 1990.

19 Q. BUT ON A CONTINUOUS BASIS YOU'VE BEEN THERE SINCE?

20 A. SINCE AUGUST OF 2000.

21 Q. WHAT IS YOUR CURRENT POSITION OR WHAT ARE YOUR CURRENT  
22 POSITIONS THERE?

23 A. I AM THE PUBLISHER FOR THE ACADEMIC AND TRADE DIVISION. I  
24 AM ALSO THE ACTING PRESIDENT.

25 Q. AND WHAT ARE YOUR PRIMARY RESPONSIBILITIES AS ACTING

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1 PRESIDENT OF OXFORD UNIVERSITY PRESS?

2 A. THOSE RESPONSIBILITIES INVOLVE DEVISING AND IMPLEMENTING  
3 STRATEGY FOR OUR PUBLISHING PROGRAM, AND IT ALSO INVOLVES  
4 HAVING RESPONSIBILITY FOR THE PROFIT AND LOSS STATEMENT AND THE  
5 PERFORMANCE OF THE PRESS.

6 Q. AND YOU HAVE CONTINUING RESPONSIBILITY I TAKE IT AS YOU  
7 MENTIONED FOR THE ACADEMIC AND TRADE SIDE OF THE PRACTICE?

8 A. I DO.

9 Q. AND WHAT DOES THAT COMPREHEND?

10 A. THAT INVOLVES WORKING WITH APPROXIMATELY 17 OR SO EDITORS  
11 ACROSS A RANGE OF DISCIPLINES TO HELP THEM DEVISE THEIR  
12 PUBLISHING PROGRAMS IN THESE DIFFERENT DISCIPLINES IN MAKING  
13 DECISIONS ABOUT WHICH BOOKS WE WANT TO PUBLISH, HOW MUCH WE  
14 WANT TO OFFER IN THE FORM OF ADVANCES, HOW WE IMPLEMENT  
15 MARKETING STRATEGIES, PUBLICITY STRATEGIES, THE FULL GAMUT OF  
16 PUBLISHING.

17 Q. AND WHAT IS THE FOCUS OF THE ACTIVITIES OF THIS ACADEMIC  
18 AND TRADE DIVISION; WHAT SORTS OF PUBLICATIONS DOES IT INVOLVE  
19 ITSELF WITH?

20 A. WE PUBLISH PRIMARILY ACADEMIC MONOGRAPHS FOR THE SCHOLARLY  
21 AUDIENCE. WE ALSO HAVE A SMALL WHAT WE CALL TRADE DIVISION  
22 WHICH IS A GENERAL INTEREST PUBLISHING PROGRAM WHERE WE TRY TO  
23 TAKE ACADEMIC WORKS AND IN EFFECT MAKE THEM PALATABLE TO  
24 GENERAL INTEREST READERS WHO ARE NOT ACADEMICS.

25 Q. AND WE'LL COME TO SOME OF THIS IN MORE DETAIL. JUST TO

1 ROUND OUT YOUR BACKGROUND, PRIOR TO YOUR TWO STINTS AT OXFORD  
2 OR SURROUNDING THOSE, HAVE YOU ALSO HELD OTHER POSITIONS IN THE  
3 PUBLISHING INDUSTRY?

4 A. YES, I SPENT A DECADE AT NEW YORK UNIVERSITY PRESS. FOR  
5 THE FIRST FIVE YEARS I WAS AN EDITOR, AND THEN FOR THE SECOND  
6 FIVE YEARS AS THE EDITOR IN CHIEF AND THE PRESIDENT OR DIRECTOR  
7 IN THAT CASE.

8 Q. DIRECTOR. AND IN YOUR CAPACITY AS DIRECTOR TO WHOM DID  
9 YOU REPORT AT NYU PRESS?

10 A. I REPORTED TO THE DEAN OF THE LIBRARIES.

11 Q. OF NYU?

12 A. YES.

13 Q. SO IN A SENSE FROM YOUR STINTS AT NYU AND AT OXFORD  
14 UNIVERSITY PRESS IT SOUNDS YOU'VE ALWAYS WORKED FOR A  
15 UNIVERSITY; IS THAT BASICALLY RIGHT?

16 A. THAT'S EXACTLY RIGHT. I HAVE NEVER WORKED FOR ANY OTHER  
17 ORGANIZATION OTHER THAN A UNIVERSITY SINCE GRADUATING FROM  
18 COLLEGE.

19 Q. AND WOULD YOU PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND?

20 A. I WENT TO HIGH SCHOOL IN VIRGINIA. IT'S THE ROBINSON  
21 SECONDARY SCHOOL, AND THEN WENT TO COLLEGE AT AMHERST COLLEGE  
22 IN MASSACHUSETTS AND GRADUATED FROM AMHERST IN 1987 WITH A B.A.  
23 IN ENGLISH.

24 Q. WHY DID OXFORD DECIDE TO JOIN THIS LITIGATION?

25 A. WELL, IT WOULD TAKE A LOT FOR ME TO AGREE TO BE IN AN

1 ADVERSARIAL POSITION WITH THE UNIVERSITY, BUT WHEN WE SAW THE  
2 EXTENT OF THE MATERIALS THAT WERE BEING USED ON ERESERVE AT  
3 GEORGIA STATE AND THE DEGREE OF THOSE MATERIALS, THE LENGTH,  
4 THE RANGE OF MATERIALS BEING USED, I DID FIND IT EXTREMELY  
5 ALARMING, AND IT STRUCK ME THAT IF THIS EXTENDED OUT FURTHER IT  
6 WOULD GENUINELY JEOPARDIZE THE ENTIRE NATURE OF THE ACADEMIC  
7 PUBLISHING PROCESS AND THE ACADEMIC REVIEW PROCESS.

8 Q. HOW COMMON IS IT IN YOUR EXPERIENCE FOR OXFORD TO ACTUALLY  
9 STEP FORWARD AND SERVE AS A PLAINTIFF IN LITIGATION OF THIS  
10 SORT?

11 A. IT'S RELATIVELY UNCOMMON. THE ONLY SUCH ACTIONS I THINK  
12 THAT WE'VE TAKEN IN THE PAST HAS INVOLVED COMMERCIAL  
13 COPYSHOPS. WE HAVE NOT TO MY KNOWLEDGE TAKEN A SIMILAR ACTION  
14 AGAINST A UNIVERSITY.

15 Q. IS THERE ANY COMMONALITY OR OVERLAP AS YOU THINK ABOUT IT  
16 BETWEEN THOSE DECISIONS TO MOVE AGAINST COPYSHOPS AND WHAT  
17 YOU -- WHAT MOTIVATED OXFORD TO JOIN AS A PLAINTIFF IN THIS  
18 LITIGATION?

19 A. YES, THEY BOTH INVOLVE THE CREATION AND DUPLICATION OF  
20 COURSEPACKS.

21 Q. AND IN A NONTECHNICAL SENSE, I DON'T MEAN IN TERMS OF  
22 WORDS OF AN INJUNCTION, BUT IN A GENERAL SENSE WHEN I USE THE  
23 TERM RELIEF, WHAT RELIEF IS OXFORD SEEKING BY WAY OF SERVING AS  
24 A PLAINTIFF IN THIS CASE?

25 A. WE SIMPLY HOPE AND WISH THAT GEORGIA STATE WOULD CONFORM

1 TO EXISTING COPYRIGHT PRACTICES. WE ARE NOT SEEKING ANY SORT  
2 OF DAMAGES OF ANY KIND.

3 Q. AND IS OXFORD OPPOSED IN PRINCIPLE TO SCHOOLS LIKE GSU  
4 MAKING THE SORTS OF DIGITIZED COPYING AND USES OF OXFORD  
5 UNIVERSITY PRESS MATERIALS THAT THE COMPLAINT IS CONCERNED  
6 ABOUT?

7 A. NO, QUITE THE OPPOSITE.

8 Q. YOU'RE PREPARED TO PERMIT THAT CONDUCT TO GO FORWARD?

9 A. YES AND ENTHUSIASTICALLY.

10 Q. ON WHAT BASIS?

11 A. IN WHAT SENSE?

12 Q. ON WHAT BASIS ARE YOU PREPARED TO SEE IT GO FORWARD?

13 A. WELL, THERE ARE A WIDE RANGE OF OPTIONS FOR UNIVERSITIES  
14 AND FOR PROFESSORS TO DRAW ON IN TERMS OF THEIR WILLINGNESS AND  
15 DESIRE TO USE OUR MATERIALS IN FULL BOOK FORM OR IN SMALLER  
16 CHUNKS.

17 Q. WE'LL COME BACK AND TALK ABOUT THAT. LET'S TALK A LITTLE  
18 MORE ABOUT THE NATURE OF OXFORD'S BUSINESS. HOW IS OXFORD  
19 UNIVERSITY PRESS, INC. LEGALLY ORGANIZED?

20 A. WE'RE A 501(C)(3).

21 THE COURT: LET ME GO BACK FOR JUST A MINUTE. YOU  
22 SAID YOU WORK FOR OXFORD UNIVERSITY PRESS. IS THAT A UNITED  
23 KINGDOM OUTFIT OR AN AMERICAN OUTFIT OR WHAT?

24 THE WITNESS: WE'RE AN AFFILIATE OF THE UNIVERSITY.  
25 WE'RE NOT DIRECTLY MANAGED BY THE U.K.

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1 THE COURT: SO OXFORD UNIVERSITY PRESS IS A U.S.  
2 COMPANY?

3 THE WITNESS: IT'S AN U.S. 501(C)(3). RIGHT,  
4 EXACTLY.

5 THE COURT: IS THERE A SEPARATE ENTITY IN THE UNITED  
6 KINGDOM?

7 THE WITNESS: THERE IS ESSENTIALLY A -- IT IS NOT A  
8 SEPARATE ENTITY, NO. IT'S A -- THE PRESS IN THE U.K. IS A  
9 DEPARTMENT OF THE UNIVERSITY, AND WE ARE AFFILIATED WITH THE  
10 UNIVERSITY.

11 THE COURT: AND YOU'RE A SEPARATE COMPANY ESTABLISHED  
12 IN THE UNITED STATES WITH AN AFFILIATION?

13 THE WITNESS: CORRECT.

14 THE COURT: THANK YOU.

15 BY MR. RICH:

16 Q. AND WHEN YOU SAY 501(C)(3) THAT'S FOR TAX PURPOSES. I  
17 TAKE IT, THOUGH, THAT YOU AS WELL AS OXFORD U.K. OPERATE ON A  
18 NOT-FOR-PROFIT BASIS?

19 A. WE DO.

20 Q. AND WHAT'S THE -- HOW LONG HAS THE U.S. OXFORD OPERATION  
21 BEEN IN BUSINESS?

22 A. WE HAVE BEEN IN BUSINESS SINCE 1896.

23 Q. AND FLESHING OUT PERHAPS A LITTLE BIT OF WHAT HER HONOR  
24 WAS GETTING TO ABOUT THE NATURE OF THE ORGANIC RELATIONSHIP  
25 WITH OXFORD U.K., IS OXFORD U.S. AS I UNDERSTAND IT THE

1 EXCLUSIVE U.S. DISTRIBUTOR OF ALL PRODUCTS THAT ARE LICENSED BY  
2 OXFORD U.K.

3 A. YES, WE HAVE A RECIPROCALLY EXCLUSIVE DISTRIBUTION  
4 ARRANGEMENT WHEREBY WE DISTRIBUTE U.K.'S BOOKS AND THEY  
5 DISTRIBUTE OURS.

6 Q. DOES OXFORD U.S. HAVE A MISSION STATEMENT?

7 A. IT DOES.

8 Q. WHAT DOES IT PROVIDE?

9 A. IT INDICATES THAT WE EXIST TO FURTHER THE UNIVERSITY'S  
10 OBJECTIVES IN RESEARCH, SCHOLARSHIP AND EDUCATION.

11 Q. AND COMING BACK TO YOUR NOT-FOR-PROFIT STATUS, HOW DOES IT  
12 AFFECT OXFORD'S APPROACH TO PUBLISHING PROJECTS?

13 A. ACTUALLY HAVING BEEN IN THE COURTROOM WHEN MY COLLEAGUE  
14 FOR CAMBRIDGE TESTIFIED, IT'S NOT DISSIMILAR. WE CERTAINLY  
15 LOOK FIRST AND FOREMOST FOR QUALITY. WE LOOK FOR ORIGINALITY  
16 OF RESEARCH. WE LOOK FOR BOOKS THAT WILL ADD TO THE DISCIPLINE  
17 IN WHICH THEY APPEAR, AND WE SECONDARILY LOOK AT THE FINANCIAL  
18 VIABILITY.

19 WE AS IS THE CASE WITH CAMBRIDGE AND THE MAJORITY OF  
20 THE 120 OR SO UNIVERSITY PRESSES IN THE COUNTRY, WE OFTENTIMES  
21 PASS ON BOOKS THAT ARE COMMERCIALY QUITE ATTRACTIVE BUT DO NOT  
22 FIT WITHIN THE PARAMETERS OF OUR MISSION.

23 Q. WHERE DO THE COMBINED OXFORD PRESS PUBLISHING ACTIVITIES  
24 MEANING U.K. AND U.S. COMBINED PLACE OXFORD AMONG UNIVERSITY  
25 PRESSES IN SIZE?



1 A. WE ARE THE LARGEST UNIVERSITY PRESS IN THE WORLD.

2 Q. WHAT IS OXFORD'S PRIMARY MARKET FOR SALES AND PERMISSIONS?

3 A. THE ACADEMIC MARKET.

4 Q. DO YOU HAVE A SENSE OF THE -- ROUND NUMBERS, NUMBERS OF

5 COLLEGES AND UNIVERSITIES THAT COMPRISE THIS POTENTIAL ACADEMIC

6 MARKET?

7 A. THERE ARE I BELIEVE A LITTLE BIT OVER 4,300 TWO AND FOUR

8 YEAR COLLEGES IN THE U.S. AT PRESENT.

9 Q. AND DO YOU KNOW HOW MANY STUDENTS POPULATE THOSE SCHOOLS

10 APPROXIMATELY?

11 A. IT'S A LITTLE OVER 19 MILLION.

12 Q. HOW ABOUT THE SCALE FOR THE SIZE OF THE ACADEMIC

13 PUBLISHING MARKET BASED ON ANY DATA WITH WHICH YOU MAY BE

14 FAMILIAR?

15 A. I BELIEVE IT'S A LITTLE OVER TWO AND A HALF BILLION

16 DOLLARS.

17 Q. AND DO YOU HAVE ANY SENSE OR ESTIMATE OF OXFORD'S SHARE OF

18 THAT MARKET?

19 A. WELL ACADEMIC PUBLISHING IS DIVIDED BETWEEN IN A SENSE

20 BOOKS PUBLISHING AND JOURNALS PUBLISHING. JOURNALS PUBLISHING

21 TENDS TO BE BASED ON THE SCIENCES AND MEDICINE AND TENDS TO BE

22 MUCH LARGER. I THINK IT CONSTITUTES ABOUT A BILLION AND A HALF

23 OF THAT TWO AND A HALF BILLION.

24 OXFORD IS PRIMARILY A BOOKS PUBLISHER, AND OUR SHARE

25 OF THE BOOKS MARKET IS ABOUT TWO AND A HALF PERCENT. OUR SHARE

1 OF THE JOURNALS MARKET IS A LITTLE UNDER 4 PERCENT.

2 Q. NOW, ARE YOU FAMILIAR WITH CONCEPTS USED BY PUBLISHERS OF  
3 FRONT LIST AND BACK LIST TITLES?

4 A. I AM.

5 Q. CAN YOU DESCRIBE FOR THE COURT THE MEANING OF THOSE TERMS?

6 A. FRONT LIST REFERS TO TITLES THAT ARE PUBLISHED WITHIN THE  
7 FISCAL YEAR OF A COMPANY. IT DOESN'T REFER TO A CALENDAR  
8 YEAR. IT'S JUST THE YEAR -- THE FIRST 12 MONTHS IN WHICH THE  
9 BOOK APPEARS -- I'M SORRY, NOT THE FIRST 12 MONTHS.

10 A BOOK CAN APPEAR IN THE 11 MONTH OF THE PUBLISHER'S  
11 FISCAL YEAR AND STILL BE A FRONT LIST BOOK, BUT CERTAINLY  
12 ANYTHING MORE THAN 12 MONTHS OLD IS CONSIDERED A BACK LIST  
13 BOOK.

14 Q. AND CAN YOU DESCRIBE A LITTLE BIT AT LEAST AS IT WORKS IN  
15 OXFORD'S BUSINESS THE RELATIVE IMPORTANCE FOR FRONT LIST AND  
16 BACK LIST TITLES?

17 A. WELL FRONT LIST IS A VERY SPECULATIVE BUSINESS. WE'RE  
18 ESSENTIALLY TAKING A CHANCE AND TRYING TO GUESS OFTENTIMES WHAT  
19 THE MARKET IS FOR A WORK. SO THAT IS FUNDAMENTALLY A MORE  
20 SPECULATIVE AND LESS PREDICTABLE WAY OF PUBLISHING.

21 THE BACK LIST IS MUCH MORE PROVEN WHICH IS WHY OXFORD  
22 IS VERY MUCH FOCUSED AS A PUBLISHER TOWARDS PUBLISHING TO THE  
23 BACK LIST. WE'RE CONSTANTLY THINKING NOT OF WHETHER THE BOOK  
24 IS GOING TO SELL IN THE FIRST YEAR, BUT WHETHER THE BOOK IS  
25 GOING SELL IN THE THIRD OR THE FOURTH OR THE FIFTH YEAR BECAUSE

1 THE BACK LIST IS REALLY THE SPINE OF THE PUBLISHING PROGRAM.

2 AND SO WE'RE VERY HEAVILY ORIENTED TOWARDS NURTURING  
3 OUR BACK LIST AND ACQUIRING BOOKS THAT WILL GO INTO THE BACK  
4 LIST.

5 Q. WHAT ARE THE CRITERIA OF A BOOK OR BOOKS THAT ARE LIKELY  
6 TO HAVE THAT LONG SELLING POWER INTO THE BACK LIST?

7 A. GENERALLY THE SALES FIGURES OF MOST BACK LISTED BOOKS ARE  
8 SHOCKINGLY LOW, AND THE ONES THAT TEND TO HAVE A LONG LIFE ARE  
9 THOSE THAT TEND TO GET ADOPTED INTO COURSES, THAT TEND TO BE  
10 USED IN A VARIETY OF COLLEGE COURSES.

11 Q. WHAT DO YOU MEAN WHEN YOU USE THE TERM ADOPTED INTO  
12 COURSES?

13 A. ADOPTED MEANS IF A PROFESSOR ASSIGNS THE BOOK TO THE  
14 COURSE AND THE STUDENTS PURCHASE THE BOOKS.

15 Q. CAN YOU GIVE THE COURT A SENSE OF HOW MANY BOOKS OXFORD  
16 HAS IN PRINT, AND I USE THAT ADVISEDLY BECAUSE WE CAN TALK A  
17 LITTLE MORE AS YOUR HONOR HAS ALREADY HEARD A LITTLE BIT ABOUT  
18 THE DATED NATURE OUT OF PRINT, BUT HOW MANY BOOKS DO YOU HAVE  
19 AVAILABLE FOR SALE OR LICENSING?

20 A. APPROXIMATELY 30,000 BOOKS ARE CURRENTLY IN PRINT. WE  
21 HAVE OVER A HUNDRED THOUSAND, 103,000 BOOKS THAT ARE AVAILABLE  
22 FOR LICENSING BECAUSE THOSE ARE BOOKS THAT GO BACK TO OUR  
23 PUBLISHING THROUGH THE DECADES AND THE CENTURIES.

24 Q. AND HOW MANY NEW TITLES A YEAR DOES OXFORD U.S. PUBLISH?

25 A. A LITTLE UNDER A THOUSAND NEW TITLES A YEAR.

1 Q. AND SINCE I BROACHED IT, IS THERE SUCH A THING AS BOOKS  
2 REALLY BEING OUT OF PRINT TODAY?

3 A. WELL, AS MR. SMITH FROM CAMBRIDGE SAID IN THE LAST TEN  
4 YEARS WE'VE GREATLY BENEFITED FROM PRINT ON DEMAND TECHNOLOGIES  
5 WHERE WE CAN PRINT BOOKS MUCH LIKE WHEN WE PRINT SOMETHING OFF  
6 OF A COMPUTER AND RESPOND TO DEMAND BY PRINTING AS FEW AS ONE  
7 COPY.

8 SO WHAT THAT HAS DONE RATHER WONDERFULLY IS ACTIVATE  
9 THE BACK LIST OF BOOKS. WE'VE PUT TENS OF THOUSANDS -- MAYBE  
10 NOT TENS, MAYBE 12,000 BOOKS IN THE LAST FEW YEARS WE HAVE PUT  
11 BACK INTO PRINT AS A RESULT OF PRINT ON DEMAND WHICH HAS BEEN A  
12 VERY HAPPY DEVELOPMENT FROM EVERY IMAGINABLE STANDPOINT.

13 Q. WHAT DOES PRINT ON DEMAND ACTUALLY ENTAIL?

14 A. IT INVOLVES CREATING A DIGITAL FILE AND THEN PRINTING A  
15 BOOK OUT WHETHER IT'S A SINGLE COPY OR 35 COPIES IN RESPONSE TO  
16 AN ADOPTION REQUEST.

17 OFTENTIMES BOOKS WILL SELL TO -- THE LONG LIFE OF A  
18 BOOK WILL BE THAT ONE OR TWO PROFESSORS FIND IT VERY USEFUL IN  
19 THE SEMINARS AND THEY'LL ADOPT TO THE TUNE OF 30 OR 40 COPIES A  
20 YEAR, AND THAT'S REALLY A CORE MARKET AS THE BOOK MARKET IS  
21 ESSENTIALLY A, QUOTE, WORK OR CONSTELLATION OF SMALLER MICRO  
22 MARKETS.

23 SO WE USED TO NOT BE ABLE TO ACTUALLY SATISFY THAT  
24 DEMAND, AND IT'S BEEN -- IT'S REDUCED A LOT OF FRICTION BETWEEN  
25 AUTHORS AND THE PRESS BECAUSE THEIR BOOKS HAVE BEEN GRANTED

1 ETERNAL LIFE THROUGH PRINT ON DEMAND.

2 Q. YOU MENTIONED BRIEFLY THE TYPES OF PUBLICATIONS CREATED BY  
3 THE ACADEMIC SIDE OF THE PUBLISHING OPERATION. DO YOU ALSO  
4 HAVE A HIGHER END DIVISION?

5 A. WE DO.

6 Q. AND WHAT IS ITS FOCUS?

7 A. IT'S FOCUS IS TO PUBLISH EXCLUSIVELY TO THE TEXTBOOK  
8 MARKET TO PUBLISH BOOKS THAT WILL BE ADOPTED INTO COLLEGE  
9 COURSES.

10 Q. IS THAT AN IMPORTANT ASPECT OF OXFORD'S OPERATIONS?

11 A. FROM THE STANDPOINT OF THE VIABILITY OF THE PRESS, IT IS  
12 THE MOST IMPORTANT DIVISION.

13 Q. THE MOST IMPORTANT?

14 A. IT'S THE MOST IMPORTANT DIVISION BECAUSE IT IS ONE WHERE  
15 IT GENERATES -- IT'S THE MOST MARKET DRIVEN.

16 Q. ARE THERE UNIQUE OR DIFFERENT ATTRIBUTES IN TERMS OF  
17 CREATING A TEXTBOOK FROM THE PROCESS AND COST ASSOCIATED WITH  
18 CREATING OTHER WORKS SAY SPAWN THROUGH THE ACADEMIC DIVISION?

19 A. YEAH, IT'S A VERY DIFFERENT APPROACH. THE MONOGRAPHS ARE  
20 REALLY CREATED -- THOSE PROGRAMS ARE DEVELOPED BY EDITORS WHO  
21 AS MR. SMITH WAS SAYING --

22 Q. CAN I ASK YOU TO SLOW DOWN PERHAPS A LITTLE BIT FOR THE  
23 BENEFIT OF ALL OF US AND THE REPORTER. THANK YOU.

24 A. SURE. THE MONOGRAPHS ARE GENERATED BY EDITORS WHO ARE  
25 SPECIALISTS IN A DISCIPLINE, AND THEY DEVISE THOSE PROGRAMS TO

1 HAVE AN INTELLECTUAL INTEGRITY, AND THE BOOKS OFTEN HAVE  
2 VERY SMALL PRINT RUNS, AND THE POINT IS THAT THERE IS  
3 INTELLECTUAL QUALITY AND AN INTELLECTUAL INTEGRITY TO THE  
4 PROGRAM.

5 THE HIGHER EDUCATION BOOKS RATHER THAN BEING DEMAND  
6 DRIVEN -- SORRY, RATHER THAN BEING SUPPLY DRIVEN BECAUSE THE  
7 MONOGRAPHS ARE OFTEN WRITTEN AND PROVIDED TO US, THE  
8 TEXTBOOKS ARE CREATED IN RESPONSE TO A PERCEIVED DEMAND IN  
9 COLLEGE COURSES.

10 ONE OF THE THINGS THAT OXFORD HAS TRIED TO  
11 DISTINGUISH ITSELF FOR AS TEXTBOOK PRICES HAVE RISEN IS OUR  
12 SLOGAN FOR THE HIGHER EDUCATION DIVISION IS ALL FOR EDUCATION,  
13 NOT FOR PROFIT, AND WE TRY TO CREATE OUR BOOKS IN A WAY THAT  
14 THEY ARE FINANCIALLY MORE ACCESSIBLE, I.E., LESS EXPENSIVE THAN  
15 SOME OF THE COMMERCIAL COUNTERPARTS.

16 BUT THE PROCESS THAT GOES INTO MAKING THESE BOOKS IS  
17 VERY MUCH THE SAME. WE WILL SOMETIMES SEND OUT MANUSCRIPTS TO  
18 A HUNDRED, 200 PEOPLE TO ESSENTIALLY FIELD TEST THEM AS A MEANS  
19 OF TRYING TO ASCERTAIN WHETHER THEY'RE GOOD, WHO WILL USE THEM,  
20 HOW THEY CAN BE IMPROVED. SO IT'S A MUCH MORE MARKET FACING  
21 APPROACH.

22 Q. WHEN YOU SAY A HUNDRED TO 200, IS THAT PER MANUSCRIPT  
23 SOMETIMES?

24 A. THAT IS PER BOOK, YES, AND THAT'S NOT TO SAY THAT EVERY  
25 SUCH BOOK RECEIVES THAT TREATMENT. WE HAVE CERTAIN TEXTBOOKS

1 WE CALL AAA, AND THOSE TEND TO BE BOOKS THAT ARE PROJECTED TO  
2 GENERATE OVER 300,000 DOLLARS A YEAR, AND THOSE REQUIRE AN  
3 ENORMOUS AMOUNT OF ENGINEERING AND INVESTMENT, NOT JUST IN THE  
4 CREATION OF THE TEXT BUT IN THE COMMISSIONING OF ART IN THE  
5 GENERATION OF WHAT WE CALL IN HIGHER EDUCATION ANCILLARIES  
6 WHICH ARE COMPANION WEBSITES, GUIDES FOR THE TEACHERS, PROBLEM  
7 SETS. IT'S A VERY DIFFERENT BEAST FROM SIMPLY PUBLISHING AN  
8 ACADEMIC BOOK.

9 Q. YOU SAID IT'S MORE A DEMAND DRIVEN SIDE OF YOUR BUSINESS.  
10 COULD YOU SAY A LITTLE MORE ABOUT HOW THAT DEMAND IS GENERATED  
11 AND WHAT THAT INTERFACE IS WITH THE ACADEME IN DEVELOPING SUCH  
12 PRODUCTS?

13 A. YEAH, THERE ARE CERTAIN DISCIPLINES THAT ARE EXTREMELY  
14 COMPETITIVE. PSYCHOLOGY AND HISTORY ARE TWO OF THE MOST  
15 COMPETITIVE DISCIPLINES AT THE ENTRY LEVEL, AND WE HAVE I THINK  
16 LESS THAN 1 PERCENT OF THE OVERALL COLLEGE TEXTBOOK MARKET, BUT  
17 THAT MARKET IS DOMINATED BY LARGE COMMERCIAL PUBLISHERS, AND SO  
18 WE ARE -- WE HAVE TO BE VERY, VERY CLEAR ABOUT WHERE WE SEE  
19 AREAS OF OPPORTUNITY AND WHERE WE THINK WE CAN GAINFULLY GO IN  
20 AND PROVIDE A TEXTBOOK THAT IS GOING TO BE OF USE TO STUDENTS.  
21 BECAUSE IF YOU SPEND ALL THE MONEY ON A TEXTBOOK AND IT DOESN'T  
22 WORK, IT REALLY, IT REALLY HITS YOU WHERE YOU LIVE.

23 Q. AND THEN AS PART OF MAKING THAT SET OF JUDGMENTS, HOW MUCH  
24 INTERACTION IS THERE WITH AND HOW MUCH INPUT IS THERE FROM  
25 ACADEMIC DEPARTMENTS, FACULTY MEMBERS, DEPARTMENT CHAIRS AND

1 THE LIKE?

2 A. IT'S EXTREMELY INTERACTIVE. WE OFTENTIMES EVEN FLY PEOPLE  
3 IN TO OUR NEW YORK CITY OFFICES IN ORDER TO ESSENTIALLY HAVE  
4 THEM IN THE ROOM FOR THE DAY AND ASK THEM QUESTIONS ABOUT HOW  
5 THEY'RE USING THEIR BOOKS, WHAT THEY WOULD LIKE TO SEE IN A  
6 DIFFERENT TEXTBOOK.

7 WE HAVE WHAT ARE KNOWN AS FIELD REPS WHO GO OUT AND  
8 ARE CONSTANTLY TRAVELING. THEY HAVE DIFFERENT TERRITORIES, AND  
9 THEY ARE TRYING TO JUST HAVE THEIR EARS TO THE GROUND, FIGURE  
10 OUT WHO IS USING WHAT BOOK AND TRY TO THEN INFORM HOW WE  
11 OURSELVES ARE PUBLISHING.

12 Q. SEVERAL OF THE PRIOR PLAINTIFF WITNESSES TESTIFIED AS PART  
13 OF THIS PROCESS OF PROVIDING EXAMINATION OR REVIEW OR I THINK I  
14 HEARD THE WORD DESK COPIES -- THOSE MIGHT OR MIGHT NOT BE  
15 INTERCHANGEABLE TERMS -- OF TEXTBOOKS TO FACULTY. DOES  
16 OXFORD HAVE A COMPARABLE PRACTICE, AND IF SO COULD YOU DESCRIBE  
17 IT?

18 A. YES, WE DO. WE HAVE JUST IN THE HIGHER EDUCATION REALM WE  
19 SEND OUT, I THINK, ABOUT A MILLION, 1.6 MILLION DOLLARS EVERY  
20 YEAR OF GRATIS COPIES WHICH ARE INTENDED TO STIMULATE INTEREST  
21 IN THE BOOK AND DRIVE DEMAND AND ENCOURAGE PEOPLE TO CONSIDER  
22 OUR BOOKS, AND THAT AGAIN IS JUST THE NUMBER FOR THE HIGHER  
23 EDUCATION DEPARTMENT WHICH IS ABOUT 33 MILLION DOLLARS OF OUR  
24 142 MILLION DOLLAR OPERATION.

25 Q. WHAT JUSTIFIES EXPENDING A SUM AS LARGE AS 1.6 MILLION



1 DOLLARS; WHAT'S THE ECONOMIC PROPOSITION THAT THAT'S TIED TO?

2 A. IT IS ACTUALLY VERY TIME-CONSUMING TO SWITCH TEXTBOOKS.

3 IF YOU'RE A PROFESSOR YOU'VE BUILT AN ENTIRE CURRICULUM AROUND

4 A TEXTBOOK, AND THERE IS A BUILT IN STASIS THAT YOU DON'T WANT

5 TO INCUR ALL THE WORK THAT'S INVOLVED IN TEACHING THE TEXT.

6 SO WE HAVE TO MAKE IT EASY FOR PEOPLE, AND WE HAVE TO

7 ACTUALLY TRY TO INTEREST THEM AND DISTINGUISH OUR WORK FROM ALL

8 THOSE OTHER TEXTBOOKS OUT THERE, AND YOU CAN'T ACTUALLY DO THAT

9 UNLESS YOU PUT THE TEXTBOOK IN FRONT OF THEM AND MAKE IT AS

10 EASY FOR THEM TO ENGAGE WITH IT AS POSSIBLE.

11 Q. WHAT IS YOUR HOPE AND EXPECTATION ONCE THE PROFESSOR

12 ENGAGES WITH AN EXAMINATION COPY; WHAT'S THE HOPED FOR END

13 RESULT?

14 A. THE HOPED FOR END RESULT IS THAT THEY WILL ADOPT THE

15 BOOK. OFTENTIMES WHAT THAT INVOLVES IS OUR MAKING A

16 PRESENTATION IN FRONT OF AN ENTIRE COMMITTEE WITH OTHER

17 PUBLISHERS WAITING IN THE WINGS TO TRY TO CONVINCING THE

18 COMMITTEE THAT ASSIGNING THE BOOK AT A GIVEN COMMUNITY COLLEGE,

19 WHY OURS IS A BETTER BOOK FOR THEIR STUDENTS.

20 Q. SO THIS MIGHT BE A COMMITTEE OF FACULTY MEMBERS IN A

21 PARTICULAR DISCIPLINE TEACHING IN A PARTICULAR SUBJECT AREA?

22 A. EXACTLY.

23 THE COURT: WHAT PERCENTAGE OF YOUR BUSINESS IS

24 TEXTBOOKS?

25 THE WITNESS: WELL, WE PUBLISH ABOUT -- THE HIGHER

1 EDUCATION DIVISION IS A LITTLE BIT OVER 30 MILLION. THE PRESS  
2 OVERALL IS ABOUT 142 MILLION, BUT THAT'S A LITTLE DECEPTIVE.  
3 BECAUSE IN THE ACADEMIC AREA THAT I'M ALSO RESPONSIBLE FOR, MY  
4 COLLEAGUE FROM CAMBRIDGE WAS REFERRING TO THE STRONG MONTHS IN  
5 AUGUST AND DECEMBER, WE SEE THAT SAME DOUBLE PEAK DIP AS WELL  
6 IN THE MONOGRAPH AREA BECAUSE SOME OF THOSE BOOKS ARE ADOPTED  
7 IN SEMINARS AND SMALLER COURSES, AND THOSE AREN'T THE BIG  
8 WEIGHTY TEXTBOOKS. THOSE ARE THE SMALLER ONES BASED ON  
9 ORIGINAL RESEARCH THAT HAVE SUCH AN IMPACT ON THE FIELD AND  
10 THAT ARE -- THEY HAVE SUCH A TRANSFORMATIVE EFFECT ON THE WAY  
11 PEOPLE THINK ABOUT A GIVEN TOPIC THAT PROFESSORS ARE GOING TO  
12 ADOPT THEM.

13 BY MR. RICH:

14 Q. WE'VE BEEN TALKING A LOT ABOUT TEXTBOOKS, AND I KNOW  
15 DATING MYSELF PERHAPS WHEN I THINK TEXTBOOK, I THINK ABOUT  
16 THESE ENORMOUS, HARD COVER, HEAVY TO CARRY MATERIALS.

17 IS THAT THE EXCLUSIVE OR EVEN DOMINANT SUBJECT MATTER  
18 OR FORMAT OF THE BOOKS PUBLISHED BY THE HIGHER END DIVISION, OR  
19 IS IT SOMETHING BROADER AND DIFFERENT?

20 A. NO, IT REMAINS -- HIGHER ED IS ONE OF THE FEW AREAS WHERE  
21 THE TEXTBOOK REMAINS A VERY DOMINANT FORMAT. IN A HOST OF  
22 OTHER AREAS WE'VE SEEN CERTAINLY IN REFERENCE CERTAINLY IN  
23 ACADEMIC, WE'VE SEEN THIS FRAGMENTING OF HOW WE ARE ABLE TO OR  
24 HOW WE CAN AND SHOULD DELIVER OUR CONTENT TO OUR READERS.

25 BUT IN HIGHER EDUCATION THERE HAS NOT YET SPRUNG UP

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1 AN ETABLET OR SOMETHING SIMILAR THAT IS BEING USED. IT WILL  
2 BUT IT HASN'T HAPPENED AS YET.

3 Q. IN FACT OF THE RANGE OF WORKS THAT OXFORD PROVIDES TO THE  
4 ACADEMIC COMMUNITY SPANS A NUMBER OF BOOK FORMATS WELL BEYOND  
5 TEXTBOOKS I UNDERSTAND YOU TO BE TESTIFYING; IS THAT TRUE?

6 A. YES. WHEN I REFER TO 142 MILLION AT OXFORD THAT INCLUDES  
7 A BIBLE'S DIVISION. IT INCLUDES A MEDICAL PUBLISHING  
8 DIVISION. IT INCLUDES A LEGAL DIVISION THAT PROVIDES PRIMARILY  
9 ONLINE PRODUCT. IT INCLUDES A REFERENCE DIVISION THAT USED TO  
10 BE A MULTI VOLUME PRINT BASED PUBLISHING ARM AND IS NOW ALMOST  
11 EXCLUSIVELY AN ONLINE SERVICES PROVIDER.

12 THE COURT: THE 30 MILLION YOU SAID IS TEXTBOOKS?

13 THE WITNESS: YEAH, THE 33 MILLION IS JUST FOR HIGHER  
14 EDUCATION.

15 BY MR. RICH:

16 Q. ACROSS ALL OF THESE DIVISIONS, MR. PFUND, WHAT IS OXFORD  
17 LOOKING FOR IN THE WORKS IT'S GOING TO INVEST AND PUBLISH?

18 A. WELL, WHAT WE'RE REALLY LOOKING FOR OVERALL ARE WORKS  
19 THAT -- IT SOUNDS A LITTLE BIT PRETENTIOUS BUT THAT ARE GOING  
20 TO INCREASE HUMAN UNDERSTANDING. THAT'S OUR MISSION, THE  
21 REASON WE EXIST. SO THAT REALLY DOES INFORM EVERY STEP OF OUR  
22 CONSIDERATION OF NEW BOOKS.

23 AND THE WAY THAT EXPRESSES ITSELF IS WHAT WE'RE  
24 REALLY LOOKING FOR ARE BOOKS THAT WILL IN SOME WAY SHED A  
25 DIFFERENT INTERPRETATIVE LIGHT ON HOW WE SEE THE WORLD, AND

1 THAT CAN TAKE THE FORM OF A BOOK ABOUT THE BIOLOGY OF SPIDERS,  
2 A BOOK ON THE HISTORY OF SOCIOLOGY. THE IDEA OF PUBLISHING  
3 WORKS THAT CHANGE THE WAY PEOPLE THINK ABOUT A TOPIC IS I THINK  
4 WHAT ANIMATES THE PRESS.

5 THE COURT: AND GOING BACK TO THE MATTER OF THE  
6 MONOGRAPHS, WHEN YOU SAY MONOGRAPHS YOU MEAN A RESEARCH BASED  
7 WORK ON A PARTICULAR TOPIC?

8 THE WITNESS: YES, YOUR HONOR.

9 THE COURT: AND WHAT PERCENTAGE OF YOUR PUBLICATIONS  
10 WOULD BE MONOGRAPHS, WHAT OUT OF THE 142 MILLION?

11 THE WITNESS: I WOULD SAY THAT'S PROBABLY ABOUT 30  
12 MILLION, 30, 35 MILLION, SOMEWHERE IN THERE. MONOGRAPH IS ONE  
13 OF THESE TERMS IF I CAN EXPLAIN FOR ONE SECOND? IT'S A TERM  
14 THAT IS USED -- IT'S A VERY CONFUSING TERM IN THE INDUSTRY THAT  
15 HAS A LOT OF CONFUSING TERMS.

16 WHEN A LIBRARIAN SAYS A MONOGRAPH, THEY MEAN  
17 OFTENTIMES A SINGLE AUTHORED RESEARCH WORK. PUBLISHERS WHEN WE  
18 SAY MONOGRAPH, WE TEND TO MEAN A SMALL BOOK THAT IS GOING TO  
19 HAVE A VERY LIMITED AUDIENCE, AND WE MAKE A DISTINCTION BETWEEN  
20 MONOGRAPHS AND TRADE BOOKS.

21 FOR INSTANCE, WE PUBLISH A BOOK CALLED FREEDOM RIDERS  
22 WHICH WAS JUST FEATURED ON A DOCUMENTARY ON PBS. IT WAS ON  
23 OPRAH. IT IS A MONOGRAPH IN THAT IT IS A RESEARCH BASED WORK  
24 ABOUT THE FREEDOM RIDES, BUT OUR HOPE IS ACTUALLY TO REACH A  
25 WIDER AUDIENCE WITH IT, AND SO WE REFER TO IT AS A TRADE OR

1 GENERAL INTEREST BOOK.

2 AND SO IT'S A DIFFERENCE BETWEEN THE TERM OF ART IN  
3 THE ACADEME AND A TERM OF ART IN THE PUBLISHING INDUSTRY, BUT  
4 IT IS -- A SINGLE AUTHORED RESEARCH WORK CAN BE A TRADE BOOK  
5 BUT CERTAINLY THAT IS WHAT IS MEANT BY MONOGRAPH.

6 BY MR. RICH:

7 Q. PICKING UP ON HER HONOR'S QUESTION ABOUT CREATIVITY AND  
8 WE'VE HAD SOME DISCUSSION WITH VARIOUS WITNESSES ABOUT THE  
9 CONCEPT OF ORIGINALITY, HOW CENTRAL ARE THOSE CONCEPTS TO THE  
10 WORKS THAT OXFORD PUBLISHES?

11 A. THEY ARE ABSOLUTELY KEY. I THINK, YOU KNOW, WHEN YOU SPAN  
12 THE LIST OF WAYS IN WHICH YOU CAN PUBLISH, THE NOTION OF FACT  
13 BASED AS MR. SMITH SAID WE DO HOPE THAT OUR WORK IS FACT BASED,  
14 BUT I THINK THAT'S SETTING THE BAR A LITTLE LOW.

15 MAJOR LEAGUE BOX SCORES ARE FACT BASED. WE ARE  
16 LOOKING FOR BOOKS THAT ARE MORE THAN FACT BASED THAT ARE TAKING  
17 THE FACTS AND ACTUALLY COMBINING THEM IN A WAY THAT ARE --  
18 AGAIN THAT SERVES TO ENLIGHTEN, AND SO THAT'S REALLY THE  
19 DOMINANT IMPERATIVE AS WE SEE IT.

20 Q. I'M GOING TO ASK YOU TO BRING SOME OF THESE CONCEPTS ALIVE  
21 BY REFERENCE TO TWO WORKS THAT ARE INVOLVED DIRECTLY IN THIS  
22 CASE.

23 WITH YOUR HONOR PERMISSION I'D LIKE TO PROVIDE  
24 COPIES?

25 THE COURT: YOU MAY.

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1 BY MR. RICH:

2 Q. ONE IS PX-460, JOHN BLASSINGAME'S THE SLAVE COMMUNITY.  
3 THE SECOND IS KENNETH T. JACKSON CRABGRASS FRONTIER WHICH IS  
4 PLAINTIFFS' TRIAL EXHIBIT 368.

5 SIR, ARE THESE TWO WORKS THAT ARE PUBLISHED BY  
6 OXFORD?

7 A. THEY ARE.

8 Q. ARE YOU FAMILIAR WITH THEM AND WITH THEIR OVERALL CONTENT?

9 A. I AM INDEED.

10 Q. LET'S START WITH THE SLAVE COMMUNITY. TO WHAT EXTENT DOES  
11 THAT WORK EXEMPLIFY THE PUBLISHING IDEALS AND OBJECTIVES OF  
12 OXFORD UNIVERSITY PRESS IN YOUR ESTIMATION?

13 A. I THINK IT'S A SHINING EXAMPLE OF EXACTLY THAT. THIS IS A  
14 BOOK THAT WAS PUBLISHED MANY, MANY YEARS AGO AT A TIME WHEN THE  
15 HISTORY HAD VERY MUCH BEEN DONE FROM THE TOP DOWN, AND THIS IS  
16 ONE OF THE FIRST BOOKS TO LOOK AT LIFE ON A PLANTATION FROM THE  
17 STANDPOINT OF SLAVES, AND IT WAS A VERY CONTROVERSIAL WORK.

18 IT ESSENTIALLY LAUNCHED A WHOLE NEW WAY OF THINKING  
19 ABOUT AMERICAN HISTORY FROM THE BOTTOM UP, AS THE SAYING GOES,  
20 AND, IN FACT, IT WAS SO CONTROVERSIAL THAT THERE WAS AN ENTIRE  
21 OTHER BOOK PUBLISHED JUST ABOUT IT SEVERAL YEARS AFTERWARDS.  
22 SO IT IS ONE OF THE GEMS OF OUR BACK LIST.

23 MR. RICH: YOUR HONOR, I'D LIKE TO OFFER PLAINTIFFS'  
24 EXHIBIT 460 IN EVIDENCE AT THIS TIME.

25 MR. HARBIN: NO OBJECTION, YOUR HONOR.

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1 THE COURT: IT'S ADMITTED. I'M JUST CURIOUS WHEN WAS  
2 IT PUBLISHED?

3 THE WITNESS: I THINK IT WAS PUBLISHED IN 1952 OR  
4 SOMETHING. IT WAS PUBLISHED IN 1972, AND IT'S THE 36TH  
5 PRINTING.

6 BY MR. RICH:

7 Q. WHAT DOES IT MEAN WHEN A WORK GOES THROUGH NUMEROUS  
8 PRINTINGS?

9 A. IT MEANS A VERY HAPPY PUBLISHER. IT ALSO MEANS THAT IT'S  
10 OBVIOUSLY FOUND AN AUDIENCE. I CAN SEE IT'S BEEN THROUGH 36  
11 PRINTINGS WHICH IS A RARITY FOR US, AND THAT IT MEANS IT'S A  
12 WORK THAT'S HAD AN IMPACT, AND THAT IT'S FINDING A CONTINUAL  
13 AUDIENCE AND READERSHIP.

14 Q. CAN YOU SAY A FEW WORDS ABOUT THE OTHER BOOK CRABGRASS  
15 FRONTIER?

16 A. YES, IT'S WRITTEN BY KEN JACKSON WHO IS STILL A PROFESSOR  
17 AT COLUMBIA UNIVERSITY. IT WAS ONE OF THE MOST IMPORTANT BOOKS  
18 IN LOOKING AT THE WAY IN WHICH THE U.S. WAS BECOMING A SUBURBAN  
19 CULTURE.

20 IT MAPS OUT WHAT JACKSON REFERS TO AS THE DEVELOPMENT  
21 OF A RUBBER TIRE CIVILIZATION, AND HOW THE SUBURBS WOULDN'T  
22 HAVE BEEN POSSIBLE WITHOUT CARS, AND HOW IT'S HAD A COMPLETELY  
23 TRANSFORMATIVE AFFECT ON THE AMERICAN LANDSCAPE AND ON CIVIC  
24 LIFE AND ESSENTIALLY ALL -- ON THE FAMILY ON A GREAT MANY  
25 ASPECTS OF AMERICAN LIFE.

1 MR. RICH: AT THIS THAT POINT I'D ALSO LIKE TO OFFER  
2 THAT BOOK WHICH IS PX-368 IN EVIDENCE.

3 MR. HARBIN: NO, YOUR HONOR.

4 THE COURT: IT'S ADMITTED.

5 BY MR. RICH:

6 Q. MR. SMITH FROM CAMBRIDGE WAS ASKED AND BRIEFLY ALLUDED TO  
7 SOME OF THE RECOGNITION GIVEN TO CERTAIN CAMBRIDGE AUTHORS AND  
8 WORKS, SO I FEEL I'M OBLIGED TO ASK YOU SIMILARLY HAS OXFORD  
9 BEEN BLESSED WITH AND ITS AUTHORS WITH A NUMBER OF PRIZES AND  
10 AWARDS?

11 A. WE HAVE. ACTUALLY KEN'S BOOK IS ONE THAT WON A BANCROFT  
12 PRIZE WITH IS GIVEN BY COLUMBIA UNIVERSITY TO ACKNOWLEDGE  
13 OUTSTANDING WORKS IN HISTORY.

14 WE HAVE ALSO WON A NUMBER OF PULITZER PRIZES IN  
15 RECENT YEARS MOSTLY IN THE FIELD OF HISTORY. WE WERE FINALISTS  
16 LAST YEAR FOR A BOOK THAT WE SIGNED UP IN 1976 AND WAS  
17 PUBLISHED 35 YEARS LATER, AND SO, YEAH, WE HAVE A VERY STRONG  
18 HISTORY LIST. SO WE TEND TO BE HOPEFUL WHEN PULITZER TIME  
19 COMES AROUND.

20 Q. YOU ALLUDED TO SOME ONLINE PUBLICATIONS. LET ME ASK THE  
21 QUESTION BROADLY AS TO FRAME THIS. DOES OXFORD IN FACT OFFER  
22 PUBLICATIONS IN BOTH PRINT AND DIGITAL FORMATS?

23 A. YES.

24 Q. WHAT IS OXFORD'S PHILOSOPHY IN RESPECT TO DEVELOPING  
25 PRODUCTS IN NONPRINT FORMATS?



1 A. WELL, OUR PHILOSOPHY IN THAT REGARD IS GUIDED BY OUR  
2 OVERALL PHILOSOPHY WHICH IS THAT WE WANT TO TRY TO PROVIDE OUR  
3 WORKS TO AS MANY READERS AS WE POSSIBLY CAN WITHIN VIABLE  
4 MEANS.

5 I THINK ONE OF THE CHALLENGES FOR ALL MEDIA COMPANIES  
6 HAS BEEN WE'VE BEEN BESIEGED BY ALL THESE NEW BUSINESS MODELS,  
7 AND MANY OF THEM ARE FLY BY NIGHT. THEY'RE DOT COM COMPANIES  
8 WHO KNOW NOTHING ABOUT PUBLISHING WHO HAVE A GREAT POWERPOINT,  
9 AND WE HAVE TO DISTINGUISH BETWEEN WHAT WE THINK IS GOING TO  
10 WORK ESPECIALLY FOR A COMPANY LIKE OUP AND NOT GO DOWN THE  
11 WRONG PATH.

12 SO WHAT WE HAVE DONE IS WE HAVE -- OUR APPROACH IS  
13 ESSENTIALLY THERE'S A FORK IN THE ROAD TO ANSWER YOUR  
14 QUESTION. WE CREATE OUR OWN ONLINE PRODUCTS, AND WE ALSO  
15 ENGAGE IN A NUMBER OF LICENSING PARTNERSHIPS WITH OTHER  
16 COMPANIES THAT WE THINK ARE STABLE, SENSIBLE AND REFLECT THE  
17 KIND OF APPROACH THAT WE THINK IS RIGHT FOR US.

18 Q. CAN YOU IDENTIFY SOME EXAMPLES OF OXFORD'S DIGITAL AND  
19 ONLINE PRODUCTS?

20 A. WELL, WE PUBLISH OXFORD SCHOLARSHIP ONLINE WHICH WAS  
21 LAUNCHED IN THE FALL IN OCTOBER OF 2003. IT WAS THE FIRST  
22 SINGLE PUBLISHER ONLINE BOOK PLATFORM.

23 Q. WHAT IS OXFORD'S SCHOLARSHIP ONLINE?

24 A. OXFORD'S SCHOLARSHIP ONLINE IS ESSENTIALLY AN ONLINE  
25 ARCHIVE OF ALL OF OUR MONOGRAPHS. IT INCLUDES AS MUCH -- AS

1 MANY OF OUR MONOGRAPHS AS WE THE RIGHT TO PUT IN AN ONLINE  
2 ENVIRONMENT. IT IS ORGANIZED BY DIFFERENT DISCIPLINES AGAIN  
3 REFLECTING THE DISCIPLINES THAT WE PUBLISH IN AND SOLD TO WHAT  
4 WE CALL THE INSTITUTIONAL MARKET TO LIBRARIES.

5 Q. DO THOSE INCLUDE ACADEMIC INSTITUTION?

6 A. THOSE ARE PRIMARY ACADEMIC INSTITUTIONS.

7 Q. SO HOW DOES THAT WORK IF UNIVERSITY X WERE TO SAY I WANT  
8 THE MONOGRAPHS IN THE FIELD OF PHILOSOPHY OR MATH, IS THERE A  
9 MENU OF OPTIONS THAT THEY CAN CHOOSE OR DO THEY HAVE TO TAKE  
10 THE WHOLE THING?

11 A. NO, NO, THEY CAN ORDER BY MODULE AS WE REFER TO IT OR BY  
12 DISCIPLINE. WE PROVIDE BETTER DEALS FOR THE MORE DISCIPLINES  
13 THAT ARE TAKEN, A CLASSIC SALES APPROACH, BUT THERE IS A GREAT  
14 VARIETY OF THE WAY IN WHICH PEOPLE CAN PURCHASE THIS CONTENT.

15 WHAT'S BEEN AN INTERESTING EDUCATION FOR ME IS THAT  
16 DIFFERENT UNIVERSITIES IN DIFFERENT PARTS OF THE WORLD WANT  
17 THAT CONTENT IN DIFFERENT WAYS. SOME OF THEM WANT TO OWN IT.  
18 THEY WANT TO PURCHASE IT AND HAVE IT, KEEP IT ON THEIR SERVER  
19 AND STORE IT AND OTHERS WANT TO SUBSCRIBE TO IT.

20 SO FOR INSTANCE IN THE U.S. LIBRARIES DON'T LIKE  
21 SUBSCRIBING BECAUSE THEY FEEL LIKE THEY PAY FOR THE SAME  
22 CONTENT YEAR IN AND YEAR OUT. IN AUSTRALIA SUBSCRIPTION IS THE  
23 PRIMARY MODE. SO THERE ARE A GREAT MANY WAYS IN WHICH PEOPLE  
24 CAN INTEGRATE THAT CONTENT ONTO THEIR LIBRARY PLATFORM.

25 Q. I ASSUME OXFORD IS SENSITIVE TO SOME DEGREE TO THE

1 POTENTIAL FOR WHAT'S CALLED VIRAL DISTRIBUTION OF PRODUCTS IN  
2 ELECTRONIC FORMS?

3 A. SURE.

4 Q. HOW'S DOES YOUR PRICING ACCOUNT FOR THE POTENTIAL AUDIENCE  
5 REACH OF THESE ONLINE PRODUCTS?

6 A. WE HAVE WHAT'S KNOWN AS A CONCURRENT USER MODEL WHERE IF  
7 YOU WANT TO SUBSCRIBE AND YOU ONLY WANT TO SUBSCRIBE ONE TO  
8 FIVE CONCURRENT USERS THAT COSTS ONE THING. IF YOU WANT TO  
9 HAVE FIVE TO TWENTY, AND IT GOES UP FROM THERE ALL THE WAY TO  
10 UNLIMITED ACCESS.

11 Q. WHAT DOES A CONCURRENT USER MEAN?

12 A. A CONCURRENT USER IS WHEN -- IF YOU HAVE TWO CONCURRENT  
13 USERS IT MEANS THAT THERE IS TWO PEOPLE ON THE SITE AT THE SAME  
14 TIME USING THE SITE, AND WHAT'S BEEN HUGE EDUCATIONAL FOR ME  
15 IN THE LAST FEW YEARS IS THAT RATHER THAN BEING FOCUSED ON BOOK  
16 SALES, WE ARE REORIENTING OURSELF AS AN INDUSTRY TOWARD USAGE.  
17 USAGE IS BECOMING THE NEW SALE.

18 AND OUR SALESPEOPLE WILL ALSO GO BACK TO A UNIVERSITY  
19 AND SAY, YOU KNOW, YOU HAD 357 TURNAWAYS MEANING STUDENTS WHO  
20 COULDN'T GET ON BECAUSE THERE WERE ALREADY THE MAXIMUM NUMBER  
21 OF USERS ON THE SITE, SO YOU REALLY SHOULD THINK ABOUT GOING TO  
22 THE NEXT LEVEL.

23 Q. THIS IS DATA WHICH IS TRACKED?

24 A. YES, ABSOLUTELY.

25 Q. JUST SO I UNDERSTAND THIS, I THINK YOU SAID U.S. LIBRARIES

1 HAVE AN AVERSION TO SUBSCRIPTIONS?

2 A. YES.

3 Q. SO IF I'M LIBRARIAN AND I WANT TO ACQUIRE ONE OF MORE  
4 MODULES UNDER THIS ONLINE PRODUCT YOU HAVE BEEN DISCUSSING THE  
5 OSO, AND I SAY I WANT TEN USERS AT ANY ONE TIME TO USE IT,  
6 THERE WOULD BE A PRICE QUOTE OF X FOR THAT?

7 A. YES.

8 Q. AND IF ON THE OTHER HAND I SAID I'D LIKE 15 OR 20 PEOPLE,  
9 I TAKE IT THERE WOULD BE A DIFFERENT AND HIGHER PRICE?

10 A. CORRECT, I THINK THERE ARE FIVE DIFFERENT LEVELS.

11 Q. AND THEN ON A SUBSCRIPTION MODEL IS THE PRINCIPLE THE  
12 SAME, THAT IS, THE PRICE GRADUATES DEPENDING ON THE NUMBER OF  
13 PERMITTED CONCURRENT USERS?

14 A. YES. IT ALSO GRADUATES DEPENDING UPON THE NUMBER OF WHAT  
15 ARE CALLED FTE'S OR FULL-TIME EMPLOYEES. IT'S VERY -- IT'S AN  
16 ENVIRONMENT WHERE THERE ARE A GREAT MANY DIFFERENT WISHES FOR  
17 DIFFERENT KINDS OF ACCESS, AND WE'RE TRYING TO MEET THOSE.

18 ONE OF THE MOST RECENT IS A DEVELOPMENT SOMETHING  
19 CALLED PAY PER VIEW WHERE PEOPLE WANT TO ACTUALLY DEPENDING ON  
20 THE NUMBER OF HITS PAY, AND THAT TENDS TO BE VERY FAVORED AMONG  
21 THE SMALL LIBERAL ARTS SCHOOLS AND TENDS TO BE REGARDED WITH  
22 GREAT ANXIETY AMONG THE LARGER SCHOOLS BECAUSE THEY WOULD SEE  
23 THAT AS LIKELY TO BE VERY EXPENSIVE.

24 Q. AND DOES THIS OXFORD SCHOLARSHIP ONLINE PRODUCT HAVE ANY  
25 APPLICATION TO A SETTING SUCH AS THE ERESERVE SYSTEM AT AN

1 INSTITUTION LIKE GEORGIA STATE UNIVERSITY?

2 A. YES, IT DOES.

3 Q. HOW SO?

4 A. WELL, IT CAN BE ESSENTIALLY LINKED TO AN ERESERVE. SO IF  
5 YOU WERE A SUBSCRIBER TO OXFORD SCHOLARSHIP ONLINE YOU COULD  
6 QUITE EASILY GIVEN THE FACT THAT YOU'RE WITHIN THE UNIVERSITY  
7 DOMAIN YOU COULD ACCESS THAT CONTENT.

8 Q. I HAD BEGUN BY ASKING YOU TO ENUMERATE SEVERAL EXAMPLES OF  
9 ONLINE PRODUCTS, AND I THEN INTERRUPTED AS WE TALKED ABOUT  
10 OSO. ARE THERE OTHERS THAT ARE WORTH MENTIONING?

11 A. WELL, WE HAVE SEVERAL DOZEN, BUT WE HAVE AN ENTIRE  
12 REFERENCE ARM GIVEN THE FACT THAT VERY FEW PEOPLE OR FEWER  
13 PEOPLE, I SHOULD SAY, ALL THE TIME ARE USING PRINT  
14 DICTIONARIES.

15 WE HAVE CONVERTED MUCH OF OUR LEXICAL DICTIONARY  
16 PROGRAM AS WELL AS OUR NONLEXICAL DICTIONARY PROGRAMS TO  
17 VARIOUS FORMS OF ONLINE PRODUCTS. SO THERE'S OXFORD LANGUAGE  
18 DICTIONARIES ONLINE. THERE IS OXFORD DICTIONARIES ONLINE.  
19 THERE'S THE OXFORD ENGLISH DICTIONARY ONLINE WHICH IS ONE OF  
20 THE FIRST DICTIONARIES TO GO FULLY ONLINE.

21 THEN WE ALSO HAVE DEVELOPED A NUMBER OF ACADEMIC  
22 RESEARCH PRODUCTS SUCH AS BIBLICAL STUDIES ONLINE,  
23 AFRICAN-AMERICAN STUDIES ONLINE, THE ISLAMIC STUDY CENTER.

24 SO THIS IS AN AREA THAT WE'RE REALLY DEVELOPING, AND  
25 THE ONE THAT IS PROBABLY AT LEAST FOR ME THE MOST EXCITING

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1 WHICH HAS A SLIGHTLY DRY NAME BUT IT'S OXFORD BIBLIOGRAPHIES  
2 ONLINE, AND WHAT OXFORD BIBLIOGRAPHIES ONLINE IS TRYING TO DO  
3 IS TO SOMEHOW HARNESS THIS ENORMOUS AMOUNT OF INFORMATION THAT  
4 WE'RE HEARING FROM ACADEMICS.

5           THEY'RE JUST OVERWHELMED BY IT. THEY'RE PINNED  
6 AGAINST THE WALL BY THIS FIRE HOSE OF INFORMATION THAT'S COMING  
7 TO THEM ALL THE TIME, AND WHEN WE WENT OUT WITH OUR MARKET  
8 RESEARCH AND ASKED THEM WHAT THEY WERE LOOKING FOR, THEY  
9 BASICALLY SAID WE WANT IT FILTERED, WE DON'T NEED MORE STUFF,  
10 WE WANT SOME WAY IN WHICH TO ASSESS WHAT'S GOOD AND NOT GOOD.

11           AND THE IDEA OF THIS IS TO BASICALLY PROVIDE A  
12 RESOURCE SO THAT BOTH ACADEMICS AND STUDENTS IF THEY ARE  
13 LOOKING FOR, YOU KNOW, A BOOK ON A GIVEN TOPIC OR A DOCUMENTARY  
14 OR THE BEST BLOG OR THE MOST USEFUL JOURNAL ARTICLE ON ANY  
15 NUMBER OF SUBJECTS AGAIN ORGANIZED BY DISCIPLINE THAT THEY  
16 COULD JUST GO THERE AND THEN WITH A ONE CLICK LINK CLICK OVER  
17 TO THESE PRODUCTS IN DIFFERENT ONLINE ENVIRONMENTS. IT'S VERY  
18 AMBITIOUS.

19 Q. DOES OXFORD PUBLISH E-BOOKS?

20 A. WE DO.

21 Q. AND FOR THE RECORD DEFINE WHAT AN E-BOOK IS?

22 A. AN E-BOOK IS AN ONLINE DIGITAL FORM OF A BOOK. IT CAN BE  
23 DELIVERED TO A DESKTOP. IT'S DELIVERED MOST COMMONLY TO A  
24 HANDHELD READING DEVICE.

25 Q. HOW DOES OXFORD PERCEIVE THIS SUITE OF ELECTRONIC AND

1 ONLINE DIGITAL OFFERINGS AS A COMPONENT OF YOUR OVERALL  
2 BUSINESS; DO YOU SEE THIS AS A GROWING SEGMENT OF YOUR BUSINESS  
3 OVER TIME?

4 A. ABSOLUTELY. IT'S THE SINGLE MOST IMPORTANT PART OF OUR  
5 BUSINESS OVER TIME. WE TALK ALL THE TIME ABOUT HOW WE'VE MOVED  
6 FROM BEING A PRINT PUBLISHER TO BEING A MIXED MEDIA PRINTING  
7 ONLINE PUBLISHER.

8 Q. I'D LIKE YOU TO DISCUSS IN LITTLE MORE DETAIL THE NATURE  
9 OF OXFORD'S INTERACTION WITH THE ACADEMIC COMMUNITY IN  
10 PRODUCING ITS PUBLICATIONS. YOU TOUCHED ON IT IN THE HIGHER ED  
11 SETTING, BUT MORE BROADLY COULD YOU TELL THE COURT PLEASE ABOUT  
12 THE DEGREE OF INTERACTION AND RECIPROCAL RELATIONSHIP THAT GOES  
13 ON THERE.

14 A. WELL, WHAT MR. SMITH FROM CAMBRIDGE DESCRIBED I THINK ALSO  
15 HOLDS TRUE FOR US, AND THERE'S NO REASON TO GO INTO THAT IN ANY  
16 GREAT DETAIL. WE HAVE MANY OF THE SOME RELATIONSHIPS WITH OUR  
17 AUTHORS. THE EDITORS DEVELOP RELATIONSHIPS OVER TIME. THERE  
18 ARE SOCIAL RELATIONSHIPS. THEY KNOW PEOPLE OVER THE COURSE OF  
19 SEVERAL BOOKS.

20 WE TRY AS A MATTER OF COURSE NOT TO PUBLISH JUST  
21 BOOKS BUT ACTUALLY TO PUBLISH AND DEVELOP AUTHORS AND THAT IT  
22 IS ONE OF THE MORE REWARDING ASPECTS OF OUR WORK.

23 IN RECENT YEARS GIVEN ALL THE CHANGES THAT HAVE SWEEPED  
24 OVER PUBLISHING, SWEEPED OVER THE WAY IN WHICH PEOPLE TEACH AND  
25 THE WAY IN WHICH EDUCATION HAPPENS, WE HAVE TAKEN A MUCH MORE

1 INTERACTIVE APPROACH WITH OUR AUDIENCE.

2 SO WE WILL ON A REGULAR BASIS INVITE PEOPLE INTO THE  
3 OFFICE OR RENT A CONFERENCE ROOM IN A HOTEL AND ASK PEOPLE TO  
4 COME IN AND TALK TO US ABOUT WHAT'S HAPPENING IN THEIR WORLD.

5 WE HAVE A LIBRARY ADVISORY GROUP THAT CONSISTS OF  
6 ABOUT 10 OR 12 PEOPLE FROM ALL KINDS OF DIFFERENT LIBRARIES AND  
7 WE GET IN A ROOM FOR A DAY AND JUST TALK ABOUT THINGS SUCH AS  
8 PRINT ON DEMAND OR WHAT'S NOW CALLED PATRON DRIVEN ACQUISITION  
9 WHEREBY LIBRARIANS AREN'T ORDERING SPECULATIVELY BUT THEY'RE  
10 JUST WAITING FOR THEIR PATRONS TO IDENTIFY WORKS THEY WANT AND  
11 THEN ORDERING THOSE IN RESPONSE TO EVIDENT INTEREST.

12 WE ALSO HAVE A JOURNALS PUBLISHING GROUP. WE HAVE  
13 THINGS CALLED OXFORD JOURNALS DAY WHERE WE BRING IN THE HEADS  
14 OF LEARNING SOCIETIES, THE EDITORS WHO ARE INVOLVED IN  
15 PUBLISHING THOSE JOURNALS, TALK ABOUT HOW WE CAN DEVELOP THE  
16 JOURNAL, TALK ABOUT HOW WE CAN DRIVE INTEREST IN THAT JOURNAL,  
17 TALK ABOUT THINGS LIKE OPEN ACCESS WHICH IS A MOVEMENT THAT HAS  
18 SWEEPED OVER SCIENCE AND MEDICAL PUBLISHING, AND HOW WE CAN BE  
19 ESSENTIALLY EMBRACING SOME OF THESE TRENDS IN A WAY THAT'S GOOD  
20 FOR THE SCHOLARS, THE PRESS AND THE LEARNED SOCIETY.

21 Q. IN A DECLARATION YOU SUBMITTED EARLIER IN THIS CASE, YOU  
22 REFERRED TO AN ECO SYSTEM AS YOU PUT IT THAT EXISTED BETWEEN  
23 THE ACADEMIC COMMUNITY AND PUBLISHERS LIKE OXFORD; DO YOU  
24 RECALL USING THAT PHRASEOLOGY?

25 A. I DO.

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1 Q. WHAT DID YOU HAVE IN MIND BY THAT?

2 A. BY THAT I MEAN SIMPLY THAT THERE IS ESSENTIALLY A SYSTEM  
3 WHEREBY SCHOLARS GENERATE WORK, AND IF YOU LOOK AT IT FROM AN  
4 ECONOMIC STANDPOINT, THEY ARE GENERATING WORK WHILE ON SALARY  
5 AT A UNIVERSITY.

6 THEY SEND THAT WORK TO US AS PUBLISHERS. WE THEN  
7 INVEST IN IT BY REVIEWING IT, BY DOING ALL THE THINGS TO IT  
8 THAT PUBLISHERS DO, AND THEN IT IS THEN PURCHASED BY  
9 LIBRARIANS.

10 SO IT'S ESSENTIALLY A CLOSED ECONOMIC SYSTEM IN MANY  
11 WAYS BECAUSE WE'RE ALL WORKING FOR -- ON THE PART OF EDUCATION,  
12 AND WE'RE ALL ESSENTIALLY PAID MORE OR LESS BY THE SAME PEOPLE,  
13 AND THE PEOPLE WHO ARE -- THIS IS ACTUALLY A KEY PART IS  
14 THAT -- WHICH IS WHY IT'S SO IMPORTANT FOR US TO MAKE SURE THAT  
15 OUR AUTHORS ARE HAPPY IS THAT OUR AUTHORS ARE ALSO OUR  
16 CUSTOMERS.

17 SO THE PEOPLE WHO ARE GENERATING THE WORK THAT WE  
18 RELY ON IN ORDER TO PUBLISH ARE THE SAME PEOPLE WHO AT THE  
19 OTHER END ARE ACTUALLY PURCHASING THAT CONTENT AND ARE MAKING  
20 USE OF IT IN THEIR COURSES AND IT THEN PERPETUATES ITSELF.

21 THE COURT: WHEN YOU ARE AT A GOOD BREAKING POINT --

22 MR. RICH: THIS IS GOOD.

23 THE COURT: LET'S TAKE A 20 MINUTE BREAK.

24 (RECESS)

25 THE COURT: YOU MAY PROCEED.

1 BY MR. RICH:

2 Q. MR. PFUND, YOU TALKED ABOUT ALL THIS INTELLECTUAL RAW  
3 TALENT IN THE ACADEME WITH WHICH OXFORD INTERACTS. WHY DO THEY  
4 NEED OXFORD; WHY DON'T THESE FOLKS JUST GO OFF AND SELF  
5 PUBLISH?

6 A. ONE OF THE THINGS THAT ACADEMIC TRAINING I THINK  
7 UNAVOIDABLY DOES IS IT NARROWS YOUR FIELD OF VISION. YOU END  
8 UP SPENDING SAY IF YOU'RE A SOCIOLOGIST FIVE, SIX, SEVEN YEARS  
9 IN A PH.D. PROGRAM TALKING TO PEOPLE WHO ARE SIMILARLY TRAINED  
10 AND I THINK YOU DEVELOP -- YOU DEVELOP A NARROW FIELD OF  
11 VISION, AND THEREFORE YOU DON'T QUITE HAVE A SENSE OF WHAT THE  
12 GENUINE SIZE OF AN AUDIENCE FOR A CERTAIN WORK IS.

13 AND YOU ALSO DEVELOP A LANGUAGE ALMOST KIND OF LIKE A  
14 TRIBAL LANGUAGE WHERE YOU SPEAK WITH YOUR FELLOW ACADEMICS IN A  
15 CERTAIN WAY, AND OUR JOB IS TO TRY TO HAVE ALMOST A  
16 TRANSLATIONAL ROLE WHERE WE'RE TRYING TO PRESERVE THE QUALITY  
17 OF THE ACADEMIC IDEAS BUT MAKE THEM OFTENTIMES A LITTLE BIT  
18 MORE PALATABLE, A LITTLE BIT MORE BROADLY UNDERSTANDABLE TO  
19 PEOPLE WHO DON'T HAVE PH.D.'S IN SOCIOLOGY, AND ALSO JUST TO  
20 TRY TO STRUCTURE THE MANUSCRIPT IN A PERSUASIVE WAY TO IMPROVE  
21 THE WRITING AND TO DO A GREAT MANY OF THE POST PUBLICATION  
22 THINGS THAT PUBLICATION INVOLVES WHICH ARE ALL THE USUAL THINGS  
23 LIKE MARKETING, SALES AND PUBLICITY.

24 BUT AS MR. SMITH AGAIN WAS SAYING ALAS DATA FEEDS  
25 HAVE BECOME AN INCREASINGLY PART OF OUR LIVES WHEREBY WE'RE

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1 SENDING ALL THE INFORMATION ABOUT THE BOOKS OUT TO ALL THE  
2 ONLINE BOOK SELLERS AND WHOLESALERS. SO IT'S BECOME A LOT  
3 ABOUT SYSTEMS BY WHICH BOOKS ARE MADE AVAILABLE TO THE WORLD.

4 Q. LET'S TAKE THE SITUATION OF A YOUNG EMERGING SUPERSTAR IN  
5 A PARTICULAR ACADEMIC FIELD. WHAT VALUE ADDED DOES OXFORD  
6 BRING IN WORKING WITH THAT INDIVIDUAL IN DEVELOPING A  
7 MANUSCRIPT THROUGH THE PUBLICATION BEYOND WHAT YOU'VE TESTIFIED  
8 TO?

9 A. WELL PROBABLY THE MOST SIGNIFICANT THING WE DO IS THE  
10 REVIEW PROCESS WHERE WE SEND OUT THE MANUSCRIPT TO A RANGE OF  
11 SCHOLARS, AND IT'S ALWAYS PLEASANTLY SURPRISING TO ME THE DEPTH  
12 OF ENGAGEMENT THAT RESULTS FROM THOSE REVIEWS, AND I THINK  
13 SCHOLARS OFTENTIMES HAVE THIS IMPRESSION THAT THEIR COMMUNITY  
14 IS AVERSE TO TAKING CRITICISM.

15 IN MY EXPERIENCE WHEN YOU SEND AT TWO READERS REPORTS  
16 THAT ARE 12 SINGLE SPACED PAGES TO AN AUTHOR, THEY TEND TO BE  
17 THRILLED, AND EVEN IF THE CRITICISM OF THE WORK IS MUSCULAR BY  
18 NATURE, THEY ARE HAPPY THAT IT'S IMPROVING THEIR WORK, AND THAT  
19 REALLY IS TO PROVIDE AN OBJECTIVE BUT KNOWLEDGEABLE AND HIGHLY  
20 EXPERT OPINION IS ONE OF THE KEY THINGS THAT WE DO, AND THEN,  
21 OF COURSE, THE EDITOR IS ALSO AN EXPERT IN THE FIELD ALTHOUGH  
22 NOT AN EXPERT IN THE SENSE OF HAVING FORMAL TRAINING, BUT IT'S  
23 JUST MORE OF AN EXPERIENTIAL EXPERTISE.

24 Q. IS THERE ANYTHING IN THE NATURE OF THE PEER REVIEW PROCESS  
25 WHICH IS WHAT I THINK YOU WERE GENERALLY REFERRING TO THAT

1 DIFFERS AT OXFORD SO WE DON'T OVER GO THE SAME GROUND FROM WHAT  
2 MR. SMITH TESTIFIED THE PROCESS WAS AT CAMBRIDGE?

3 A. NOT THE PEER REVIEW PROCESS AT THAT LEVEL. WE DO HAVE A  
4 SLIGHTLY DIFFERENT STRUCTURE FROM CAMBRIDGE IN THAT WE HAVE A  
5 SYNDICATE. WE HAVE DELEGATES IN THE U.K. IT'S THE SAME THING  
6 JUST A DIFFERENT WORD, BUT WE HAVE ALSO IN THE U.S. WE HAVE  
7 DELEGATES.

8 THESE ARE SCHOLARS AT AMERICAN UNIVERSITIES WHO SERVE  
9 THAT ROLE AS ESSENTIALLY -- THEY'RE ALMOST PROXIES IN SOME WAYS  
10 FOR THE U.K. DELEGATES. THEY ARE OFTENTIMES KNOW THE U.K.  
11 DELEGATES JUST FROM BEING COLLEAGUES AND --

12 Q. WHAT IS THEIR ROLE?

13 A. THEIR ROLE IS ACTUALLY TO PROVIDE AN ADDITIONAL LAYER OF  
14 APPROVAL OF THE BOOK. THEY ARE THE PEOPLE TO WHOM WE SEND THE  
15 PACKET OF MATERIALS AND SAY DO YOU THINK THIS IS READY TO GO,  
16 DO YOU THINK WE SHOULD PUBLISH THIS.

17 THE COURT: EXCUSE ME, DO YOU ALL DO WORKS FOR HIRE?

18 THE WITNESS: WE DO.

19 THE COURT: HOW MUCH OF THE TIME WITH RESPECT TO  
20 MONOGRAPHS?

21 THE WITNESS: WITH RESPECT TO MONOGRAPHS, MOST OF THE  
22 MONOGRAPHS DON'T TAKE THE FORM OF WORKS FOR HIRE. THE WORKS  
23 FOR HIRE TEND -- SAGE, FOR INSTANCE, IS A SOCIAL SCIENCE  
24 PUBLISHER, AND THEY DO A LOT OF BOOKS THAT ARE METHODOLOGICAL  
25 THAT ARE TRAINING BOOKS FOR ACADEMICS, AND THOSE ARE NOT

1 NECESSARILY THE KIND OF BOOKS THAT ACADEMICS WANT TO WRITE  
2 BECAUSE THEY CAN BE TECHNICAL, AND SO THOSE BOOKS TEND TO BE  
3 WORKS FOR HIRE. OUR REFERENCE PUBLISHING TENDS TO BE THE SAME  
4 WAY. WHEN I WAS MENTIONING OXFORD --

5 THE COURT: WHAT DO YOU MEAN BY THE SAME WAY?

6 THE WITNESS: THEY TEND TO BE WORK FOR HIRE. MOST  
7 ACADEMIC MONOGRAPHS ARE NOT WORK FOR HIRE IN THAT SENSE. WORKS  
8 FOR HIRE TEND TO BE WHEN A PRESS OR AN EDITOR OF -- AN EXTERNAL  
9 EDITOR TO USE THE EARLIER LANGUAGE SAYS I WANT TO ASSEMBLE A  
10 CAST OF REALLY SMART PEOPLE TO WRITE ABOUT THIS BOOK, AND THEN  
11 WE SEND THAT WORK FOR HIRE AGREEMENT AND THEY AGREE TO  
12 CONTRIBUTE A CHAPTER FOR THAT BOOK.

13 THE COURT: SO A WORK FOR HIRE SITUATION WOULD BE  
14 MORE WHERE YOU KNOW WHAT YOU WANT AND YOU COMMISSION PEOPLE TO  
15 DO IT AS OPPOSED TO GETTING IN WORKS THAT, YOU KNOW, YOU MAY  
16 NOT HAVE BEEN EXPECTING?

17 THE WITNESS: CORRECT, YES.

18 BY MR. RICH:

19 Q. JUST COMING BACK TO THE DELEGATES, WHAT ARE THEIR  
20 OBJECTIVES FOR REVIEWING WHAT'S ALREADY BEEN REVIEWED BY THE  
21 PEER REVIEWERS?

22 A. THEY'RE ESSENTIALLY MAKING SURE THAT WE ARE NOT IN ANY WAY  
23 GAINING THE SYSTEM. THE REVIEWERS ARE PEOPLE IN GOOD  
24 STANDING. THAT THE REVIEWS ARE SENSIBLE. OFTENTIMES THESE  
25 FIELDS ARE NOT HUGE FIELDS, SO PEOPLE WILL KNOW DIFFERENT

1 SCHOLARS BY NAME OR BY REPUTATION.

2 SO THEIR OVERALL RESPONSIBILITY IS TO INSURE THAT  
3 WE'RE DOING A GOOD JOB OF STEWARDING THIS PROGRAM IN A GIVEN  
4 DISCIPLINE, AND IT SOMETIMES DOES GET CONTENTIOUS IF A DELEGATE  
5 DOESN'T THINK A BOOK SHOULD GET APPROVED.

6 THERE ARE ANY NUMBER OF CASES WHERE WE DELIBERATE FOR  
7 MANY DAYS AND WEEKS ABOUT A GIVEN PROJECT THAT MAY SELL 600  
8 COPIES, BUT BECAUSE THERE IS A REAL DISAGREEMENT ABOUT THE  
9 INTELLECTUAL MERIT OF A GIVEN WORK.

10 Q. I TAKE IT IT'S NOT JUST A FORMALITY THAT WORKS GO THROUGH  
11 THESE PROCESSES. I TAKE IT SOME NUMBER OF WORKS EVENTUALLY  
12 DON'T MAKE IT THROUGH ONE OR BOTH LEVELS OF REVIEW; IS THAT  
13 ACCURATE?

14 A. YES, THAT'S ACCURATE. I WOULD BE DISMAYED IF THERE WERE  
15 AN EDITOR WHOSE WORKS WERE BEING REGULARLY TURNED BACK BY A  
16 DELEGATE. THAT WOULD MEAN TO ME THAT THE EDITOR IS NOT DOING A  
17 GOOD JOB OF SELECTING HIS OR HER PROGRAM, BUT THERE ARE TIMES  
18 WHERE THE BOOKS ARE NOT APPROVED.

19 Q. HOW LONG DOES IT TAKE FROM INCEPTION OF A PROJECT OR  
20 SOMEBODY COMING TO YOU WITH AN IDEA FOR A PUBLISHING PROJECT  
21 FOR THAT TO ACTUALLY BE PRODUCED AND FINALIZED AND MARKETED AND  
22 SOLD; WHAT PERIOD OF TIME ARE WE SPEAKING ABOUT?

23 A. OUR INTERNAL DECISION ABOUT WHETHER OR NOT TO PUBLISH  
24 SHOULD BE PRETTY SHORTLIVED. IT SHOULD BE A MATTER OF MONTHS,  
25 BUT THE PROCESS FROM THE TIME THAT THE BOOK IS PUT UNDER

1 CONTRACT UNTIL THE TIME IT'S PUBLISHED, I THINK WE ACTUALLY AT  
2 ONE POINT HELD THE GUINNESS BOOK OF WORLD RECORDS FOR THE  
3 LONGEST PERIOD OF TIME BETWEEN THE TIME THE CONTRACT WAS SIGNED  
4 AND THE TIME THE MANUSCRIPT WAS DELIVERED.

5 Q. HOW LONG WAS THAT?

6 A. IT WAS 70 YEARS.

7 Q. HOPEFULLY THAT'S NOT NORMAL?

8 A. NO, THAT IS NOT NORMAL, BUT THAT BOOK THAT I REFERENCED  
9 EARLIER THAT WAS A PULITZER PRIZE FINALIST THAT WAS 36 YEARS IN  
10 THE MAKING. SO --

11 Q. WHAT'S A MORE TYPICAL PERIOD?

12 A. A MORE TYPICAL PERIOD IS THREE TO FIVE YEARS.

13 Q. WHAT KIND OF COSTS ARE WE TALKING ABOUT ASSOCIATED WITH  
14 GETTING A WORK OF SCHOLARSHIP PRODUCED AND PUBLISHED?

15 A. THE COST CAN REALLY VARY. THERE ARE BOOKS WHERE WE OFFER  
16 MODEST ADVANCES, AND THE PRODUCTION VALUES ARE COMMENSURATE  
17 WITH THE SIZE OF THE MARKET.

18 THERE ARE BOOKS WHERE WE OFFER SIX FIGURE ADVANCES,  
19 AND WE SPEND AN ENORMOUS AMOUNT OF TIME ON THE LOOK OF THE  
20 JACKET, THE END PAPERS, THE INTERIOR TEXT, THE DESIGN. SO WE  
21 TRY TO CALIBRATE IT TO THE NATURE OF THE AUDIENCE.

22 IF IT'S A MONOGRAPH IN THE FIELD OF LINGUISTICS, WE  
23 TEND TO -- THAT AUDIENCE IS NOT LOOKING FOR US TO MAKE THE  
24 PROSE THE SAME OR TO MAKE IT A BEAUTIFUL ARTIFACT.

25 IF IT'S A BOOK THAT WE'RE HOPING TO REACH A LARGER

1 AUDIENCE WITH ESPECIALLY IF WE HAVE COMMITTED TO A SIGNIFICANT  
2 ADVANCE, WE'LL FEATHER THE NEST AS A MEANS TO ENSURE THAT THE  
3 BOOK IS SUCCESSFUL.

4 Q. DID I UNDERSTAND ONE OF YOUR EARLIER ANSWERS DEALING WITH  
5 THE TRADE SIDE OF YOUR PUBLISHING TO IN ESSENCE BE A WAY TO  
6 LEVERAGE THE SCHOLARSHIP AND THE INTENSITY OF WORK PRODUCT  
7 THAT'S DEVELOPED AND REACH A BROADER AUDIENCE WITH IT; IS THAT  
8 ESSENTIALLY WHAT I HEARD YOU SAY?

9 A. YES, IT A RISKIER FORM OF PUBLISHING BECAUSE IT COSTS MORE  
10 TO DO BECAUSE YOU HAVE TO GET THE BOOKS IN STORES. YOU HAVE TO  
11 DO -- IT IS FUNDAMENTALLY MORE SPECULATIVE THEN THE ACADEMIC  
12 PUBLISHING, BUT IT'S ACTUALLY A VERY IMPORTANT PART OF WHAT WE  
13 DO.

14 Q. DOES OXFORD VIEW ITS AUTHOR RELATIONSHIPS AS ONE TIME OR  
15 AS CONTINUING?

16 A. HOPEFULLY CONTINUING.

17 Q. AND WHY IS THAT OF ANY IMPORTANCE TO YOU?

18 A. WELL BECAUSE ONE OF THE MOST UNSATISFYING ASPECTS OF BEING  
19 AN ACADEMIC PUBLISHER WHICH HAS A GENERAL INTEREST PUBLISHING  
20 ARM IS THAT OFTENTIMES YOU WILL DEVELOP AN AUTHOR OVER THE  
21 COURSE OF TWO OR THREE OR FOUR BOOKS, AND THEN A LARGE  
22 COMMERCIAL HOUSE WILL SWOOP IN AND PAY AN ADVANCE THAT IS  
23 BEYOND WHAT WE CAN PAY, AND THEN WE LOSE THAT AUTHOR WHICH IS  
24 FROM THE AUTHOR'S STANDPOINT ENTIRELY DESIRABLE AND MAKES GOOD  
25 SENSE BUT CAN BE A LITTLE FRUSTRATING.



1 Q. HAVE YOU HAD SOME SUCCESS IN RETAINING PERENNIAL AUTHORS?

2 A. WE HAVE.

3 Q. CAN YOU IDENTIFY ONE OR TWO?

4 A. CERTAINLY JAMES MCPHERSON WOULD BE ONE. HE'S AN HISTORIAN  
5 ON THE CIVIL WAR. HE WROTE A BOOK CALLED BATTLE CRY OF FREEDOM  
6 WHICH WON THE PULITZER. I THINK HE'S PUBLISHED SEVEN OR EIGHT  
7 BOOKS WITH US. CHRISTIAN SMITH WHO IS A SOCIOLOGIST OF  
8 RELIGION HAS PUBLISHED A NUMBER OF BOOKS WITH US.

9 IN EVERY DISCIPLINE THERE ARE PEOPLE WHO VIEW OUP AS  
10 BEING THEIR HOME PUBLISHER, THEIR HOUSE.

11 Q. IS A COMPONENT OF THE COSTS THAT GO INTO PUBLISHING A  
12 MANUSCRIPT SECURING ANY NECESSARY THIRD PARTY PERMISSIONS FEES?

13 A. YES.

14 Q. CAN YOU GIVE THE COURT SOME SENSE OF THE MAGNITUDE OF THAT  
15 EXPENDITURE BY OXFORD IN ANY GIVEN YEAR?

16 A. IT VARIES GREATLY FROM YEAR TO YEAR, BUT I KNOW THAT IN AN  
17 AVERAGE YEAR JUST IN THE HIGHER EDUCATION DEPARTMENT WE ARE  
18 SPENDING WELL OVER HALF A MILLION DOLLARS IN PERMISSIONS. WE  
19 WILL OFTENTIMES WHEN WE SIGN UP A BOOK THIS WILL BE A POINT OF  
20 NEGOTIATION BETWEEN THE AUTHOR AND THE PRESS WHAT THE  
21 PERMISSIONS BUDGET IS, WHETHER WE PAY FOR ALL OF IT, WHETHER WE  
22 PAY FOR SOME OF IT, WHETHER SOME OF THE COSTS OF THE  
23 PERMISSIONS IS PUT AGAINST THE ROYALTY ACCOUNT AS ESSENTIALLY  
24 AN ADVANCE AGAINST FUTURE ROYALTIES.

25 THOSE PERMISSIONS TEND TO REVOLVE AROUND EVERYTHING

1 FROM TEXTURAL EXCERPTS TO GRAPHS AND CHARTS, THINGS SUCH AS  
2 THAT.

3 Q. ARE YOU FAMILIAR WITH THE CONCEPT OF A COURSEPACK?

4 A. I AM.

5 Q. WHAT DO YOU UNDERSTAND THAT TO BE?

6 A. A COURSEPACK IS A COLLECTION OF MATERIALS THAT HAS BEEN  
7 DEvised BY A PROFESSOR OFTENTIMES FROM OTHER SOURCES WHETHER  
8 IT'S BOOKS OR JOURNALS INTO ESSENTIALLY A COMPILATION INTENDED  
9 FOR CLASSROOM USE.

10 Q. ARE YOU AWARE WHETHER UNIVERSITY FACULTY AROUND THE  
11 COUNTRY HAVE USED EXCERPTS FROM OXFORD BOOKS IN CREATING SUCH  
12 COURSEPACKS?

13 A. I AM.

14 Q. AND WHAT IS OXFORD'S POLICY WITH RESPECT TO LICENSING SUCH  
15 USES?

16 A. WE ARE ENTHUSIASTICALLY IN FAVOR.

17 Q. LET ME ASK YOU THIS. DOES OXFORD IN ADDITION TO LICENSING  
18 THE KINDS OF COMPILATIONS YOU JUST DESCRIBED, DOES IT ALSO  
19 OFFER ITS CONTENT FOR LICENSE TO THIRD PARTY CONTENT  
20 AGGREGATORS WHO WILL FOR CUSTOMERS AS IT WERE CREATE CUSTOM  
21 PUBLISHING COMPENDIA?

22 A. YES.

23 Q. COULD YOU TALK ABOUT THAT A LITTLE BIT?

24 A. YES, THIS IS SOMETHING THAT'S KNOWN AS CUSTOM PUBLISHING.  
25 IT'S SPRUNG UP PROBABLY IN THE LAST TEN YEARS. IT IS A KISSING

1 COUSIN TO PRINT ON DEMAND IN A SENSE THAT WHEN PROFESSORS ARE  
2 TRYING TO DEVISE THEIR COURSES THEY OFTENTIMES WILL LIKE THIS  
3 ASPECT OF ONE TEXTBOOK AND THAT ASPECT OF ANOTHER, AND SO THEY  
4 WILL PICK AND CHOOSE AND ESSENTIALLY COMBINE THEM.

5 IT'S A WAY IN WHICH WE AT OXFORD ARE QUITE  
6 DISADVANTAGED RELATIVE TO OUR COMMERCIAL COUNTERPARTS BECAUSE  
7 WE ARE NOT AT LIBERTY TO DO THAT IN THE SAME WAY BECAUSE WE  
8 HAVE TO GET DELEGATE APPROVAL. SO WE CAN'T DO THAT ON THE FLY  
9 IN THE WAY THAT SOME OF THE COMMERCIAL HOUSES CAN.

10 BUT OFTENTIMES WHAT PRESSES WILL DO IS SIMPLY GO TO A  
11 PROFESSOR -- THESE FIELD REPS AS I MENTIONED EARLIER WILL GO TO  
12 A PROFESSOR AND SAY GIVE US YOUR SYLLABUS, AND THEN THEY WILL  
13 ESSENTIALLY GET THE PERMISSIONS BASED ON THE SYLLABUS. THE  
14 PROFESSOR WILL PUT THE SYLLABUS IN FRONT OF THE BOOK, WRITE A  
15 BRIEF INTRODUCTION AND THEY WILL BIND IT INTO WHAT'S KNOWN AS A  
16 CUSTOM TEXTBOOK. THAT IS ONE OF THE FASTEST GROWING ASPECTS OF  
17 COLLEGE PUBLISHING.

18 Q. WHAT IS THE ECONOMIC ARRANGEMENT BY WHICH OXFORD WOULD  
19 ALLOW ITS OWN CONTENT TO BE USED AS PART OF THOSE CUSTOMIZED  
20 PRODUCTS?

21 A. IT'S A STRAIGHTFORWARD LICENSING ARRANGEMENT.

22 Q. WHO ARE SOME OF THE LARGER -- YOU MENTIONED YOU ARE  
23 HARDPRESSED TO COMPETE WITH SOME OF THE LARGER COMMERCIAL  
24 CUSTOM PUBLISHERS. CAN YOU IDENTIFY ONE OR TWO OF THEM?

25 A. I WOULDN'T SAY WE'RE HARDPRESSED TO COMPETE. WE CAN'T ON

1 THE CUSTOM PUBLISHING SIDE DO IT BY CHARTER AS QUICKLY AS THEY  
2 DO IT. WE DO SOMETIMES IF A PROFESSOR HAS A SYLLABUS AND WE  
3 THINK THAT IT ACTUALLY MIGHT BE APPLICABLE TO A RANGE OF  
4 COURSES, WE WILL OURSELVES CREATE A TEXTBOOK OUT OF THAT.

5 BUT WE DON'T DO IT ON A MICRO LEVEL QUITE THAT WAY  
6 SIMPLY BECAUSE WE CAN'T DO THAT AS QUICKLY AS SOME OF THE  
7 COMMERCIALS, BUT THOSE HOUSES WOULD BE PRESSES LIKE MCGRAW-  
8 HILL, PEARSON, ALL THE LARGE COMMERCIAL HIGHER EDUCATION  
9 PUBLISHERS.

10 Q. THANK YOU. SO AS A GENERAL MATTER IF A CONSUMER DOESN'T  
11 WANT TO PURCHASE A FULL VOLUME, A FULL OXFORD WORK IS OXFORD  
12 OPPOSED IN PRINCIPLE TO THE LICENSED USE OF EXCERPTS FROM THOSE  
13 WORKS?

14 A. NO.

15 Q. AND DOES THAT WILLINGNESS PERTAIN EQUALLY TO PROPOSED  
16 DIGITIZED USES OF THOSE EXCERPTS AS WELL AS PHYSICALLY  
17 REPRODUCING PHOTOCOPIED EXCERPTS?

18 A. WELL, WE TAKE -- IN TERMS OF OUR MISSION WE TRY  
19 INCREASINGLY TO TAKE A FORMAT NEUTRAL POSITION WHERE IF PEOPLE  
20 WANT OUR CONTENT WE TRY TO FIGURE OUT A WAY TO GET IT TO THEM  
21 IN A WAY THAT WORKS FOR EVERYONE.

22 SO WE DO MAKE CERTAIN DISTINCTIONS AS I MENTIONED,  
23 FOR INSTANCE, WITH THE CONCURRENT USERS, BUT, NO, WE DON'T --  
24 WE'RE FAR FROM BEING AVERSE. WE ACTUALLY WANT TO EXPLORE THESE  
25 DIFFERENT KINDS OF DELIVERY.

ANDRE G. ASHLEY, O.C.R.

1 Q. AND HOW DOES A USER WISHING TO SECURE PERMISSION TO USE AN  
2 EXCERPT OF OXFORD WORK, HOW DOES IT GO ABOUT DOING THAT?

3 A. THEY COULD EITHER COME DIRECTLY TO THE PRESS, OR MOST  
4 COMMONLY THEY GO TO THE COPYRIGHT CLEARANCE CENTER.

5 Q. AND DOES OXFORD MAINTAIN ONE OR MORE LICENSED  
6 RELATIONSHIPS WITH THE COPYRIGHT CLEARANCE CENTER THROUGH WHICH  
7 THAT ORGANIZATION ACTS AS A LICENSING AGENT ON OXFORD'S BEHALF?

8 A. YES, WE DO.

9 Q. DO YOU KNOW APPROXIMATELY HOW MANY OXFORD TITLES ARE  
10 AVAILABLE FOR LICENSING THROUGH THE COPYRIGHT CLEARANCE CENTER?

11 A. A LITTLE BIT OVER A HUNDRED THOUSAND.

12 THE COURT: WHAT TYPES OF WORKS WOULD THESE TITLES  
13 BE?

14 THE WITNESS: THEY WOULD ENCOMPASS THE VAST MAJORITY  
15 OF OUR PUBLISHING. THERE ARE CERTAIN TITLES THAT WE MIGHT KEEP  
16 OUT FOR REASONS OF IF THEY'RE -- IF THE AGENT OR AUTHOR DOESN'T  
17 WANT IT IN THERE AND IT'S STIPULATED THAT THEY DON'T WANT THEM  
18 TO BE INCLUDED IN THERE, BUT MOST OF OUR TITLES ARE AVAILABLE  
19 IN THAT WAY.

20 THE COURT: WELL, I MEAN, FOR EXAMPLE, WOULD THESE  
21 HUNDRED THOUSAND INCLUDE HARDBACKS?

22 THE WITNESS: YES.

23 THE COURT: SOFT BACKS?

24 THE WITNESS: YES, ABSOLUTELY.

25 THE COURT: WOULD IT INCLUDE MONOGRAPHS?

1 THE WITNESS: YES.

2 THE COURT: WHAT PART OF IT WOULD BE MONOGRAPHS?

3 THE WITNESS: I WOULD SAY THE VAST MAJORITY BECAUSE  
4 WE'RE A VERY MONOGRAPH HEAVY PUBLISHER ESPECIALLY OVER TIME  
5 OVER THE CENTURY OR SO THAT THOSE BOOKS WERE PUBLISHED. IT  
6 WOULD BE A REAL STAB IN THE DARK, BUT I'D PROBABLY SAY 65, 70  
7 PERCENT, SOMETHING LIKE THAT.

8 THE COURT: SO WITHOUT FLIPPING BACK IN MY NOTES AND  
9 DOING SOME MATH, WHAT PERCENTAGE OF YOUR TITLES WOULD BE  
10 AVAILABLE THROUGH CCC?

11 THE WITNESS: I WOULD IMAGINE IT WOULD BE IN THE MID  
12 90'S PERCENTAGE WISE.

13 THE COURT: THANK YOU.

14 BY MR. RICH:

15 Q. CAN ANYBODY GO TO CCC WITH RESPECT TO THESE HUNDRED  
16 THOUSAND TITLES AND COPY AS MUCH OF THOSE TITLES AS THEY WISH,  
17 OR ARE THERE ANY RESTRICTIONS WHICH YOU OR TO YOUR KNOWLEDGE  
18 CCC MAY PLACE ON THOSE COPYING PRIVILEGES?

19 A. THE WAY IT WORKS IS ANY PUBLISHER IS RELUCTANT OR SHOULD  
20 BE RELUCTANT IF THEY'RE NOT TO HAVE A THIRD PARTY BETWEEN THEM  
21 AND THEIR CUSTOMER BECAUSE YOU WANT TO KNOW HOW THE CUSTOMER IS  
22 BEHAVING, WHAT READERS WANT, WHAT PROFESSORS WANT, AND ONE OF  
23 THE THINGS THAT WE'RE VERY KEEN ON IS GETTING FEEDBACK FROM CCC  
24 IN THAT RESPECT.

25 ONE OF THE WAYS WE'VE APPROACHED THIS IS TO SAY FOR

1 PRINT IF THERE IS A REQUEST OF MORE THAN 15 PERCENT OF THE  
2 WORK --

3 Q. ONE FIVE?

4 A. YES, 15 PERCENT OR 150 COPIES, THAT REQUEST GETS PUSHED UP  
5 TO ONE OF OUR PERMISSIONS PEOPLE. IF IT'S A MATTER OF ONLINE,  
6 IF IT'S A DIGITAL REQUEST, THOSE PERCENTAGES ARE SLIGHTLY  
7 DIFFERENT. IT'S 20 PERCENT AND IT'S TWO CHAPTERS.

8 VERY FEW OF THOSE REQUESTS ACTUALLY DO GET BUMPED UP  
9 TO THOSE PERMISSIONS PEOPLE. I THINK IT'S IN THE NEIGHBORHOOD  
10 PROBABLY OF ONE OR TWO OR THREE PERCENT AT THE MOST A YEAR, AND  
11 THOSE REQUESTS TO THE PERMISSIONS PEOPLE IF IT'S 80 PERCENT OF  
12 A BOOK OR IF IT'S A BOOK WHERE THEY KNOW THAT THE AUTHOR HAS  
13 EXPRESSED RESERVATIONS OR IF THERE IS SOME COMPLICATION, THEY  
14 WILL GO EITHER TO THE EDITORIAL DIRECTOR OR THE PUBLISHER OF  
15 THE AREA IN WHICH THE BOOK IS PUBLISHED AND INQUIRE, BUT THAT  
16 PROCESS NORMALLY TAKES 72 HOURS, 96 HOURS AT THE MOST.

17 IT USED TO BE A NIGHTMARISHLY COMPLICATED PROCESS  
18 BECAUSE IT WAS MANUAL. IT'S AN AREA WHERE WE'VE MADE ENORMOUS  
19 STRIDES IN TERMS OF RESPONSE TIME BECAUSE IT WAS CREATING A LOT  
20 OF TENSION.

21 Q. I SHOULD HAVE ESTABLISHED THAT WHEN OXFORD AUTHORIZES  
22 THE COPYRIGHT CLEARANCE CENTER TO ISSUE LICENSES FOR THE  
23 TITLES YOU'VE AUTHORIZED, THAT'S A NONEXCLUSIVE ARRANGEMENT,  
24 CORRECT?

25 A. YES.

ANDRE G. ASHLEY, O.C.R.

1 Q. IN OTHER WORDS, A USER AT ITS ELECTION COULD COME EITHER  
2 TO THE COPYRIGHT CLEARANCE CENTER OR IN THEORY COME DIRECTLY TO  
3 OXFORD TO MAKE THAT REQUEST, CORRECT?

4 A. YES.

5 Q. AND DO I UNDERSTAND YOUR ANSWERS JUST NOW TO SAY THAT IF  
6 TO HER HONOR'S QUESTION LET'S TAKE THE -- LET'S DO THIS IN  
7 PIECES. LET'S ASSUME THAT A USER WERE TO GO TO CCC AND ASK FOR  
8 16 PERCENT OR 30 PERCENT OF A WORK WHICH WOULD TRIGGER A BOUNCE  
9 BACK SAYING WAIT A MINUTE, WE'RE NOT AUTHORIZED?

10 A. RIGHT.

11 Q. DO I UNDERSTAND YOUR ANSWER TO BE THAT THAT IS NOT THE END  
12 OF THE PROCESS OR NEED NOT BE FOR THAT USER'S REQUEST?

13 A. NO, CERTAINLY NOT.

14 Q. THEY CAN STILL COME TO YOU FOR -- TO OXFORD DIRECTLY TO  
15 ASK FOR PERMISSION AS TO THAT USE?

16 A. YEAH, AND THAT PROCESS ISN'T AUTOMATED IN THE SAME WAY  
17 THAT THE LEVEL BELOW IS, BUT IT IS A VERY CLEAN AND EFFICIENT  
18 PROCESS. IT TAKES A MATTER OF A COUPLE OF DAYS. IF PEOPLE ARE  
19 OUT OF TOWN, THESE ARE PEOPLE IN THE U.K., IF THERE'S A ROYAL  
20 WEDDING IT MAY TAKE A LITTLE LONGER, BUT IT TENDS NOT TO BE AN  
21 ISSUE.

22 Q. AND WITH RESPECT TO WHATEVER PERCENTAGE, SMALL PERCENTAGE  
23 APPARENTLY OF WORKS ARE NOT LICENSED THROUGH THE CCC, IS IT  
24 ACCURATE AS WELL THAT A USER COULD STILL SEEK A LICENSE FOR AN  
25 EXCERPT DIRECTLY FROM OXFORD?



1 A. SURE, YES.

2 Q. NOW DOES THE AUTHORIZATION TO CCC INCLUDE OUT OF PRINT  
3 TITLES?

4 A. IT DOES, YES.

5 THE COURT: LET ME GO BACK JUST A MINUTE. YOU SAID  
6 OVER 90 PERCENT, BUT I DID FLIP BACK IN MY NOTES, AND YOU SAID  
7 EARLIER YOU ALL HAD 142 MILLION TEXTBOOKS.

8 THE WITNESS: SORRY, THAT WAS 142 MILLION DOLLARS IN  
9 ANNUAL SALES.

10 THE COURT: ALL RIGHT. THAT'S DOLLARS. EXCUSE ME.

11 MR. RICH: WE'LL GET INTO WITH MS. ARMSTRONG, YOUR  
12 HONOR, SOME OF THE DETAILS OF THE -- WE CALL IT CCC FOR  
13 SHORT -- LICENSING PROGRAMS, AND I'M NOT GOING TO ATTEMPT TO DO  
14 THAT THROUGH THIS WITNESS.

15 BY MR. RICH:

16 Q. BUT ARE YOU AWARE THAT CCC OFFERS AMONG ITS LICENSING  
17 PROGRAM IN WHICH OXFORD PARTICIPATES PROGRAMS WHICH OPERATE ON  
18 A TRANSACTION BY TRANSACTION LICENSING BASIS?

19 A. YES.

20 Q. AND IN THOSE PROGRAMS DO YOU KNOW WHETHER IT'S OXFORD  
21 UNIVERSITY PRESS OR CCC WHICH ESTABLISHES THE PER TRANSACTION  
22 PRICING TO THE USER?

23 A. IT'S OXFORD UNIVERSITY PRESS.

24 Q. AND WHAT IS THE PER TRANSACTION FEE THAT OXFORD HAS  
25 AUTHORIZED CCC TO CHARGE FOR AN ACADEMIC USE OF WORKS WITHIN

1 CCC'S LICENSING REPERTORY?

2 A. IT'S 12 CENTS A PAGE.

3 Q. AND SO THAT IF A PROFESSOR WANTED TO MAKE AN ERES TYPE USE  
4 FOR A COURSE OF 30 STUDENTS, WOULD THAT 12 CENTS A PAGE BE  
5 TIMES THE NUMBER OF PAGES OF THE EXCERPT TIMES THE NUMBER OF  
6 STUDENTS?

7 A. CORRECT, YEAH.

8 MR. RICH: AND, YOUR HONOR, WE'LL HEAR TOMORROW ABOUT  
9 A SERVICE CHARGE THAT CCC LEVIES TO THAT TRANSACTION.

10 BY MR. RICH:

11 Q. DOES OXFORD TO YOUR KNOWLEDGE PARTICIPATE IN ANOTHER  
12 ACADEMIC FACING LICENSE PROGRAM OFFERED BY THE COPYRIGHT  
13 CLEARANCE CENTER WHICH OFFERS LICENSES ON A REPERTORY OR  
14 SO-CALLED BLANKET WIDE BASIS?

15 A. YES.

16 Q. AND I TAKE IT IN THAT PROGRAM DO YOU HAVE AN UNDERSTANDING  
17 AS TO HOW THE PRICING IS SET FOR THAT OFFERING TO THE ACADEMIC  
18 COMMUNITY?

19 A. MY UNDERSTANDING IS THAT IT IS AS THE TERM BLANKET LICENSE  
20 SUGGESTS, IT'S PRIMARILY ATTRACTIVE TO SCHOOLS THAT USE A  
21 CONSIDERABLE AMOUNT OF OXFORD CONTENT AND WANT TO REDUCE THE  
22 TRANSACTIONAL FRICTION OR COST OF THAT AND SIMPLY AGREE TO AN  
23 ANNUAL FEE WHICH IS FOR THE USAGE OF ALL OF IT BASICALLY. ALL  
24 OF IT IS A LITTLE BIT OF A BLUNT TERM, BUT IT'S I THINK A  
25 BLANKET USAGE.

ANDRE G. ASHLEY, O.C.R.

1 Q. SIR, HOW DO THE ACTIVITIES AT GSU THAT OXFORD IS HERE  
2 COMPLAINING ABOUT HARM OXFORD IN ITS BUSINESS?

3 MR. HARBIN: OBJECT, YOUR HONOR, FOR THE RECORD.  
4 IT'S OUTSIDE THE SCOPE OR BEYOND THE ISSUE OF DIRECT  
5 PERMISSIONS CALCULATION FOR THE WORKS USED AND NOT DISCLOSED IN  
6 DISCOVERY.

7 THE COURT: OVERRULED.

8 THE WITNESS: WELL, WE'RE AT A TIME WHERE AS I SAID  
9 EARLIER PEOPLE ARE USING SMALLER CHUNKS OF INFORMATION TO TEACH  
10 ALL THE TIME, AND THEY'RE ABLE TO TAILOR OR CUSTOM THEIR  
11 PEDAGOGY MORE AND MORE. THEY'RE NOT HELD CAPTIVE BY A GIVEN  
12 BOOK, AND THAT'S CHANGED RADICALLY IN THE LAST TEN YEARS, AND  
13 WHAT WE'RE TRYING TO DO AT OXFORD IS TO PROVIDE PEOPLE WITH A  
14 GREAT MANY OPTIONS TO FACILITATE EXACTLY THAT.

15 HOWEVER, IF THAT PROCESS TAKES PLACE AND THERE IS NO  
16 MEANS OF OUR RECOVERING THE REVENUE THAT WE'VE TRADITIONALLY  
17 RECOVERED IN DIFFERENT FORMS, THEN IT WILL ACTUALLY HAVE A  
18 REALLY DAMAGING AFFECT ON OUR ABILITY TO CONTINUE TO OPERATE.

19 Q. HAVE YOU GIVEN CONSIDERATION TO THE CONSEQUENCES FOR THE  
20 VITALITY OF OXFORD'S BUSINESS OR THE PRACTICES WHICH YOU HAVE  
21 OBSERVED TAKING PLACE AT GSU TO MULTIPLY AND BECOME PREVALENT  
22 ACROSS THE 4,000 OR SO COLLEGES OR UNIVERSITIES OR SOME LARGE  
23 SUBSET THEREOF NATIONALLY?

24 MR. HARBIN: SAME OBJECTIONS, YOUR HONOR.

25 THE COURT: I'LL ALLOW IT.

1           THE WITNESS:  YEAH, I THINK THAT THAT'S AN ANXIETY  
2 THAT MANY PUBLISHERS HAVE, CERTAINLY PUBLISHERS CATERING TO AN  
3 INSTITUTIONAL AND ACADEMIC MARKET.  I THINK IF THAT WERE TO  
4 HAPPEN WE WOULD HAVE TO CURTAIL OUR OPERATIONS IN SOME WAY, AND  
5 I TEND NOT TO THINK TOO HARD ABOUT THIS BECAUSE IT'S PRETTY  
6 DISMAL TO CONTEMPLATE, BUT I SUSPECT WHAT WOULD HAPPEN IS WE  
7 WOULD PROBABLY HAVE TO CUT BACK IN SOME OF OUR PUBLISHING AND  
8 THAT WOULD BY NATURE BE IN THE LEAST REVENUE GENERATING AREA.

9           SO WHEN I MENTIONED THOSE 17 DISCIPLINES THAT WE  
10 PUBLISH IN, THERE ARE SOME DISCIPLINES THAT ARE QUITE LUCRATIVE  
11 MIGHT BE TOO STRONG BUT THAT GENERATE MORE REVENUE THAN OTHERS,  
12 ECONOMICS, FINANCE, CHEMISTRY.  THE SCIENCES TEND TO DO WELL.

13           WHAT TENDS TO DO LESS WELL ARE THE HUMANITIES,  
14 LITERARY STUDIES, CLASSICS.  THEY TEND TO HAVE SMALLER AREAS.  
15 SMALLER READERSHIPS, AND THEY ARE NOT FINANCED IN THE  
16 UNIVERSITY IN THE SAME WAY.  SO I SUSPECT WHAT WE WOULD LIKELY  
17 DO IS CUT BACK IN SOME OF THOSE AREAS AS A MEANS OF DEALING  
18 WITH A REVENUE SHORTFALL.

19           THE COURT:  DO YOU HAVE KNOWLEDGE OF HOW PREVALENT  
20 GEORGIA STATE'S PRACTICE IS IN OTHER SCHOOLS?

21           THE WITNESS:  WELL, THERE HAVE BEEN OTHER SCHOOLS WHO  
22 WE HAVE APPROACHED, SYRACUSE, HOFSTRA AND MARQUETTE AND HAVE IN  
23 CONJUNCTION WITH THEM WORKED OUT --

24           THE COURT:  THAT'S NOT THE QUESTION I'M ASKING YOU.  
25 YOU MADE A STATEMENT ABOUT, YOU KNOW, IF THIS BECOMES PREVALENT

1 AT A LOT OF SCHOOLS, AND I'M ASKING YOU DO YOU KNOW HOW  
2 PREVALENT A PRACTICE LIKE GEORGIA STATE'S IS AT OTHER SCHOOLS  
3 ACROSS THE COUNTRY?

4 THE WITNESS: I DON'T KNOW THAT FIRSTHAND, NO, YOUR  
5 HONOR.

6 BY MR. RICH:

7 Q. I'M GOING TO SHOW YOU ANOTHER WORK INVOLVED IN THIS CASE.  
8 THIS ONE IS ENTITLED THE POWER ELITE BY AN AUTHOR C. WRIGHT  
9 MILLS, AND IF I MAY APPROACH, YOUR HONOR?

10 THE COURT: YOU MAY.

11 BY MR. RICH:

12 Q. THIS IS PLAINTIFFS' EXHIBIT 448. IS THIS A WORK YOU'RE  
13 FAMILIAR WITH?

14 A. YES, IT IS.

15 Q. CAN YOU DESCRIBE THE NATURE OF THIS WORK AND WHAT SPECIAL  
16 CONTRIBUTION TO SCHOLARSHIP IT HAS MADE?

17 A. THIS WAS A BOOK THAT WAS PUBLISHED IN THE MID 50'S BY C.  
18 WRIGHT MILLS WHO IS ONE OF THE MOST INFLUENTIAL SOCIOLOGISTS OF  
19 THE 20TH CENTURY.

20 IT IDENTIFIED THE DEVELOPMENT OF A CLASS, A MIDDLE  
21 CLASS, THE POWER ELITE AS HE CALLS IT, THAT WAS CHANGING  
22 SOCIETY, AND THIS WAS RELATIVE TO THE HISTORICAL POWER  
23 STRUCTURES IN THE U.S.

24 THIS WAS A DEVELOPMENTALLY DIFFERENT STAGE IN THAT  
25 THIS WAS ACTUALLY A GROUP OF PEOPLE IN TERMS OF WHERE THEY WERE

1 GROWING UP, WHERE THEY WERE GOING TO COLLEGE, THAT THEY ALL  
2 ESSENTIALLY WERE OF ONE GROUP AND THAT THIS HAD A PROFOUND  
3 IMPACT ON THE WAY IN WHICH SOCIETY WAS EVOLVING.

4 MR. RICH: YOUR HONOR, AT THIS POINT I'D LIKE TO  
5 OFFER PX-448 IN EVIDENCE?

6 MR. HARBIN: NO OBJECTION, YOUR HONOR.

7 THE COURT: IT'S ADMITTED.

8 BY MR. RICH:

9 Q. IF WE COULD CALL UP ON THE SCREEN FROM THE JOINT FILING  
10 WHICH I BELIEVE IS JX-5 A REFERENCE TO THIS WHICH I BELIEVE IS  
11 AT C-19 OF THAT DOCUMENT INVOLVING A FALL 2009 USAGE.

12 CAN YOU SEE IT FROM WHERE YOU'RE SITTING, SIR?

13 A. I CAN.

14 Q. IF WE CAN SCROLL TO THE RIGHT AS TO THE SUGGESTED RETAIL  
15 PRICE OF THIS WORK, IT'S LISTED AS \$19.95; IS THAT CORRECT?

16 A. YES.

17 Q. AND ASSUMING THAT AS REPORTED ON THIS EXHIBIT PROFESSOR  
18 HARVEY IN THE COURSE INVOLVED HAD 16 STUDENTS IN THE CLASS; DO  
19 YOU SEE THAT REPORTED THERE?

20 A. YES.

21 Q. SO AM I CORRECT THAT THE POTENTIAL LOST SALES TO OXFORD  
22 WERE THIS WORK PURCHASED BY STUDENTS INSTEAD OF ITS TWO  
23 CHAPTERS BEING USED WITHOUT PERMISSION WOULD HAVE GENERATED 16  
24 SALES AT OR PERHAPS SOMEWHAT BELOW THE SUGGESTED RETAIL PRICE;  
25 IS THAT CORRECT?

1 MR. HARBIN: I WOULD JUST OBJECT THAT IT'S IN THE  
2 NATURE OF ARGUMENT, YOUR HONOR. I MEAN THE WITNESS IS JUST  
3 DOING A MATHEMATICAL CALCULATION.

4 THE COURT: OVERRULED.

5 THE WITNESS: YES.

6 BY MR. RICH:

7 Q. AND ARE YOU AWARE, SIR, WHETHER THIS SAME WORK HAS BEEN  
8 PLACED ON GEORGIA STATE'S ERESERVE SYSTEM IN PRIOR ACADEMIC  
9 TERMS?

10 A. I AM.

11 Q. DO YOU KNOW HOW MANY PRIOR TERMS SINCE 2005 THIS WORK HAS  
12 APPEARED?

13 A. I BELIEVE IT'S FIVE SEMESTERS.

14 MR. HARBIN: I OBJECT, YOUR HONOR. IT'S IRRELEVANT  
15 AND IT'S OUTSIDE THE COURT'S ORDER. IT'S IRRELEVANT TO WHAT  
16 HAS HAPPENED AS A RESULT OF THE POLICY THAT WAS ADOPTED AT  
17 GEORGIA STATE IN 2009.

18 THE COURT: DO YOU WISH TO RESPOND?

19 MR. RICH: YES, YOUR HONOR, I DO. I THINK IT'S  
20 CRITICAL TO SHOW THAT AS PART OF THE EFFORTS THAT WE'RE HEARING  
21 ABOUT ALL OF THE REMEDIAL WORK BEING DONE UNDER THE NEW POLICY  
22 AND GIVING IT TIME PER MR. SCHAEZEL'S OPENING, WHAT WE'RE  
23 SEEING IN MANY CASES IS A PERSISTENCE IN USE, NO CHANGE IN  
24 PRACTICE NOTWITHSTANDING THE NEW POLICY, AND I AM ELICITING TWO  
25 EXAMPLES OR I'M SEEKING TO BY THIS LINE OF EXAMINATION THAT

1 IT'S BUSINESS AS USUAL AS TO IMPORTANT WORKS.

2 THE COURT: OBJECTION SUSTAINED.

3 BY MR. RICH:

4 Q. NOW, YOU ALSO -- WELL, LET ME ASK YOU THIS IN QUESTION  
5 FORM. THE HARM ABOUT WHICH YOU ARE CONCERNED TO OXFORD'S  
6 BUSINESS IS THAT STRICTLY WITH RESPECT TO LOST SALES, OR DOES  
7 IT ALSO ENTAIL OTHER POTENTIAL LOST INCOME SOURCES?

8 MR. HARBIN: JUST FOR THE RECORD AGAIN, YOUR HONOR, I  
9 OBJECT. I THINK YOU ADDRESSED IT.

10 THE COURT: OVERRULED.

11 THE WITNESS: IT WOULD PERTAIN ALSO TO SOMETHING WE  
12 REFER TO AS OTHER PUBLISHING INCOME ON OUR PROFIT AND LOSS  
13 STATEMENT WHICH INCLUDES PERMISSIONS REVENUE.

14 BY MR. RICH:

15 Q. AND CAN YOU TELL THE COURT IN YOUR FISCAL YEAR 2009  
16 APPROXIMATELY WHAT WERE THE OVERALL PERMISSION INCOME EARNED BY  
17 OXFORD?

18 A. IT WAS I BELIEVE A LITTLE OVER A MILLION DOLLARS, ABOUT A  
19 MILLION FIFTY THOUSAND THEREABOUTS.

20 Q. AND IN FISCAL 2010 DO YOU KNOW WHAT THAT NUMBER WAS  
21 APPROXIMATELY?

22 A. IT WAS A LITTLE BIT UNDER 840,000 DOLLARS.

23 MR. HARBIN: YOUR HONOR, I OBJECT IN THE SENSE THAT  
24 THIS INFORMATION HAS NOT BEEN PROVIDED BY THE PLAINTIFFS SO WE  
25 HAVE NOTHING TO BASE IT ON.



1 THE COURT: THE QUESTION WOULD BE DID YOU ASK FOR  
2 IT?

3 MR. HARBIN: I THINK WE DID, AND I THINK IT WAS  
4 PROVIDED UP TO 2009 WHICH IS WHAT WE HAVE.

5 THE COURT: SO THE OBJECTION IS YOU ASKED FOR IT IN  
6 DISCOVERY AND YOU DIDN'T GET THE INFORMATION?

7 MR. HARBIN: THE MORE RECENT INFORMATION. WE GOT UP  
8 TO I THINK FISCAL YEAR 2009.

9 MR. RICH: I BELIEVE WE HAVE PRODUCED IN DISCOVERY FY  
10 2010 INFORMATION, YOUR HONOR, AND THIS WITNESS IN ADDITION I  
11 THOUGHT IT WOULD BE ENTIRELY APPROPRIATE TO PROVIDE A SUBSET OF  
12 THAT INFORMATION WHICH IS WHAT PERMISSION INCOME THEY ACHIEVED  
13 IN FY 2010.

14 MR. HARBIN: YOUR HONOR, I BELIEVE IT'S BEEN  
15 PRODUCED -- GLOBAL NUMBERS HAVE BEEN PRODUCED AS TO WHAT THEIR  
16 WORLD REVENUE HAS BEEN. REVENUE FOR WORKS AT ISSUE ON THE  
17 ORIGINAL LIST BUT NOT THEIR OVERALL PERMISSIONS INCOME IS MY  
18 UNDERSTANDING.

19 MR. RICH: WE PRODUCED THE DOCUMENTS REQUESTED FOR  
20 THAT WERE MAINTAINED IN TERMS OF FINANCIAL RECORDS. I'M NOT  
21 AWARE OF A SPECIFIC REQUEST FOR A BREAKOUT OF PERMISSIONS  
22 INCOME. HAD IT BEEN REQUESTED, WE WOULD HAVE PROVIDED IT.

23 THE COURT: SO YOU'RE SAYING THERE WAS NO REQUEST IN  
24 DISCOVERY CONCERNING GIVE ME THE AGGREGATE AMOUNT OF YOUR  
25 PERMISSIONS INCOME LET'S SAY FOR 2010?

1           MR. RICH: YOUR HONOR, I WILL CERTAINLY WANT TO CHECK  
2 WITH MY TEAM BECAUSE MY MEMORY IS NOT COMPREHENSIVE, BUT I  
3 DON'T BELIEVE IT WAS FORMULATED IN THAT FASHION, BUT MY  
4 UNDERSTANDING IS WE PRODUCED THE FINANCIAL DATA THAT WERE  
5 REQUESTED AS THEY WERE MAINTAINED BY THE COMPANY.

6           MR. HARBIN: IF I MAY MAKE ANOTHER BRIEF POINT, YOUR  
7 HONOR, AGAIN THIS IS IN THE NATURE OF AN ECONOMIC ANALYSIS. WE  
8 HAVE PERMISSION INCOME THAT HAS FALLEN FROM 2009. HE HAS NOT  
9 BEEN DESIGNATED AS AN EXPERT. THEY DID HAVE AN EXPERT WHO  
10 OPINED ABOUT PERMISSION INCOME, BUT HER TESTIMONY WAS THAT IT  
11 HASN'T GROWN AS QUICKLY AS OTHER REVENUE.

12           NOW THEY'RE OFFERING A COMPLETELY DIFFERENT ANALYSIS  
13 NOT SUPPORTED BY DOCUMENTS, NOT SUPPORTED BY EXPERT TESTIMONY  
14 AND I THINK IT'S --

15           THE COURT: WELL OBVIOUSLY I DON'T KNOW WHAT WAS  
16 REQUESTED IN DISCOVERY. YOU ALL KNOW. I DON'T KNOW. HERE'S  
17 WHAT I'M GOING TO DO. I'M GOING TO GO AHEAD AND OVERRULE THE  
18 OBJECTION, BUT IF YOU CAN GO BACK AND LOOK AND PROVE THAT  
19 YOU'RE RIGHT, I'LL STRIKE IT. SO AT THIS TIME I'M GOING TO  
20 OVERRULE THE OBJECTION AND YOU MAY PROCEED.

21           MR. RICH: THANK YOU, YOUR HONOR.

22 BY MR. RICH:

23 Q. YOU MENTIONED TO HER HONOR EARLIER ON YOUR TESTIMONY THAT  
24 OXFORD'S FY 2010 REVENUES WERE ABOUT 142 MILLION DOLLARS; IS  
25 THAT CORRECT?

1 A. YES.

2 Q. WHAT WAS ITS NET OPERATING INCOME IN FY 2010, AND I KNOW  
3 THAT NUMBER WAS PRODUCED TO THE OTHER SIDE?

4 A. I BELIEVE IT WAS A LITTLE BELOW FIVE AND A HALF MILLION.

5 Q. NOW IS A DOLLAR OF PERMISSIONS REVENUE EQUIVALENT FROM  
6 OXFORD'S FINANCIAL PERSPECTIVE TO A DOLLAR OF SALES REVENUE?

7 A. NO.

8 Q. CAN YOU EXPLAIN WHY?

9 A. WELL, A DOLLAR OF BOOK REVENUE, IF YOU'RE LOOKING AT THAT  
10 DOLLAR AS COMING IN AT THE TOP OF THE PROFIT AND LOSS  
11 STATEMENT, THERE ARE VARIOUS THINGS THAT CLAW AWAY AT THAT  
12 DOLLAR AS IT SIFTS DOWN THROUGH THE P&L.

13 THERE ARE WHAT WE CALL COST OF GOODS. THERE IS  
14 ROYALTIES. THERE'S OPERATING EXPENSES, INDIRECT OVERHEAD LIKE  
15 THE WAREHOUSE. SO BY THE END WHAT'S LEFT AT THE BOTTOM TENDS  
16 TO BE FIVE, SIX CENTS, SOMETHING TO THAT EFFECT.

17 THE WAY IN WHICH PERMISSIONS INCOME HITS THE P&L,  
18 THERE IS NONE OF THAT STUFF DETRACTING FROM IT. IT'S SIMPLY WE  
19 SPLIT IT WITH THE AUTHOR AND THERE IS NO OTHER ASSOCIATED COSTS  
20 TO IT. SO IT'S ACTUALLY WHAT IN THE PARLANCANCE OF MY ACCOUNTING  
21 AND FINANCE COLLEAGUES, IT'S HEAVY MONEY BECAUSE IT DROPS DOWN  
22 TO THE BOTTOM LINE.

23 Q. DO YOU KNOW, SIR, WHETHER ANY PERMISSIONS FEES WERE PAID  
24 TO OXFORD EITHER DIRECTLY OR THROUGH THE COPYRIGHT CLEARANCE  
25 CENTER IN CONNECTION WITH ANY OF THE USES OF THE OXFORD

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1 MATERIALS APPEARING IN THE JOINT FILING WHICH IS IN EVIDENCE AS  
2 JOINT EXHIBIT 5?

3 A. I DO.

4 Q. WHAT'S THE ANSWER?

5 A. THERE WERE NO SUCH FEES PAID.

6 Q. I'D LIKE TO CALL UP THAT JOINT FILING ONE MORE TIME  
7 LOOKING AT PAGE C-1, FALL 2009 TERM, THIS TIME INVOLVING THE  
8 BOOK THE SLAVE COMMUNITY WHICH IS ALREADY IN EVIDENCE AS  
9 PX-460, AND IF WE MOVE ACROSS THIS LINE, AND THIS IS A COURSE  
10 INVOLVING A PROFESSOR DIXON CLASS OF REPORTEDLY 59 STUDENTS, AM  
11 I CORRECT THAT HAD PROFESSOR DIXON SOUGHT A PERMISSION FROM OUP  
12 OR FROM THE COPYRIGHT CLEARANCE CENTER TO USE THE REPORTED 35  
13 PAGES USED I BELIEVE YOU TESTIFIED EARLIER THAT THE FEE WOULD  
14 BE 12 CENTS PER PAGE PER STUDENT; IS THAT CORRECT?

15 A. YES.

16 Q. AND DO YOU SEE THE ENTRY UNDER COST PER STUDENT OF \$4.20?

17 A. I DO.

18 Q. DO YOU UNDERSTAND THAT WOULD BE THE FEE THAT WOULD BE  
19 CHARGED DIRECTLY OR INDIRECTLY BY OXFORD HAD PROFESSOR DIXON  
20 SOUGHT TO PERMISSION THAT USE?

21 A. THAT'S CORRECT, YES.

22 Q. NOW, DURING THIS LITIGATION, SIR, IT'S BEEN SUGGESTED THAT  
23 ERES USES ACTUALLY STIMULATE PURCHASES OF BOOKS BY STUDENTS.  
24 ARE YOU FAMILIAR WITH THAT ASSERTION WHICH HAS BEEN MADE?

25 A. YES, I HAVE.

1 Q. IN YOUR EXPERIENCE AND KNOWLEDGE OF THE ACADEMIC MARKET,  
2 DO YOU HAVE A REACTION TO THAT?

3 A. I'M SKEPTICAL.

4 Q. WHY?

5 A. BECAUSE MY EXPERIENCE AS AN EDITOR, AS A PUBLISHER, IT IS  
6 THE RARE STUDENT WHO TAKES THE INITIATIVE TO READ MORE THAN IS  
7 ASSIGNED TO THEM.

8 Q. ARE YOU FAMILIAR WITH THE FURTHER CONTENTION WHICH HAS  
9 BEEN MADE BY SEVERAL PROFESSORS IN THIS LAWSUIT IN THEIR  
10 DEPOSITIONS THAT IF THESE WORKS WERE NOT AVAILABLE TO THEM AND  
11 THEIR STUDENTS FOR FREE THEY WOULDN'T HAVE ASSIGNED THEM; ARE  
12 YOU FAMILIAR WITH THAT ARGUMENT?

13 A. I AM, YES.

14 Q. DO YOU HAVE A REACTION TO THAT?

15 A. WELL, I THINK IT'S A DIFFICULT ARGUMENT TO MAKE WITH SOME  
16 OF THE WORKS THAT WE HAVE TALKED ABOUT THIS MORNING BECAUSE  
17 THESE WORKS REALLY WERE DEEPLY INFLUENTIAL AS EVIDENCED BY  
18 THEIR PRINT RUNS, BY THE WAY IN WHICH THE SCHOLARLY COMMUNITY  
19 HAS ENGAGED WITH THEM BY THEIR LONGEVITY, BY THEIR CONTINUED  
20 RELEVANCE. SO I THINK IT WOULD VERY DIFFICULT TO FIND A LIKE  
21 ON LIKE SUBSTITUTE FOR THESE BOOKS.

22 MR. RICH: THANK YOU. YOUR HONOR, WE'RE GOING TO  
23 TURN NOW TO THE SECOND PORTION OF THE EXAMINATION WHICH IS THE  
24 WORK-BY-WORK ASPECT OF THIS AND WITH ADVANCE APOLOGIES FOR THE  
25 TEDIUM OF SOME OF IT.

1 TO TRY TO EXPEDITE IT AS MS. SINGER DID, I HAVE A  
2 LIST OF EXHIBITS I'D LIKE TO OFFER IN EVIDENCE PRELIMINARILY.  
3 OUR BELIEF AND UNDERSTANDING IS THERE ARE NO OBJECTIONS TO ANY  
4 OF THESE. IF WE'RE WRONG, I'M SURE MY COLLEAGUES TO MY LEFT  
5 WILL SO ADVISE YOUR HONOR.

6 THESE ARE ALL PLAINTIFF'S EXHIBITS 344, 345, 349,  
7 351 --

8 THE COURT: COULD I ASK YOU TO SLOW DOWN.

9 MR. RICH: 353. IF THERE'S A SERIES TOGETHER CAN I  
10 SAY INCLUSIVE, WOULD THAT WORK?

11 THE COURT: CERTAINLY.

12 MR. RICH: SO 353 THROUGH 362, 366, 367, 369 THROUGH  
13 374, 388 THROUGH 391, 393, 394, 406 THROUGH 409, 418 THROUGH  
14 426, 432, 437, 438, 441 THROUGH 450, 455. I SEE 451 OUT OF  
15 SEQUENCE HERE. 456 -- I BEG YOUR PARDON, SORRY, 451, 456 --

16 THE COURT: NOT 455?

17 MR. RICH: YES, 455, PARDON ME, 455 AND THEN 451 OUT  
18 OF ORDER, 456, 457, 461 THROUGH 463, AND 467 THROUGH 480, AND  
19 THEN AGAIN APOLOGIES WE HAD SOME LAST MINUTE STITCHING  
20 TOGETHER. IN ADDITION 452, 453, 427, 428, 433, 434, 435, 458  
21 AND 459.

22 MR. HARBIN: YOUR HONOR, I CAN'T RESPOND TO ALL  
23 THOSE. THIS IS THE FIRST WE'VE HEARD THE LISTING, BUT, NUMBER  
24 1, IF WE DIDN'T OBJECT IN THE PRETRIAL ORDER, WE ARE NOT  
25 OBJECTING NOW. WE'LL CONFIRM THAT PERHAPS AFTER LUNCH.

1 I DO KNOW THAT SOME OF THEM ARE THE FINANCIAL RECORDS  
2 ABOUT THE SALES OF THE BOOKS AT ISSUE AND THE PERMISSION FEES  
3 AT ISSUE THAT ARE RECORDS OF OXFORD AND WE DO NOT OBJECT TO ANY  
4 OF THOSE.

5 THE COURT: I'M GOING TO GO AHEAD AND ADMIT THEM  
6 UNDERSTANDING THAT THEY ARE NOT OBJECTED TO, AND IF YOU ALL  
7 CHECK OVER YOUR LIST AND COME TO SOME DIFFERENT DECISION, LET  
8 ME KNOW. SO THEY ARE ADMITTED.

9 MR. RICH: THANK YOU, YOUR HONOR. LET ME JUST IF I  
10 MAY ADVISE YOUR HONOR OF SOME ONGOING CONVERSATIONS WITH OUR  
11 OPPOSING COUNSEL. I THINK WHAT'S GOING TO HAPPEN --

12 MR. HARBIN: I'M SORRY, I'VE BEEN HANDED THIS ABOUT  
13 THE OBJECTIONS. THERE ARE SOME I BELIEVE WE DO OBJECT TO WHICH  
14 IS --

15 THE COURT: YOU DON'T HAVE TO TELL ME RIGHT NOW.  
16 JUST CHECK THE PRETRIAL ORDER.

17 MR. HARBIN: ALL RIGHT.

18 MR. RICH: WE'VE HAD SOME CONVERSATION ABOUT  
19 UNDERSTANDING OBJECTIONS AND ALSO BEING RESPONSIVE TO YOUR IN  
20 LIMINE RULINGS SO AS NOT TO PROLONG THE AGONY OVER CERTAIN  
21 WORKS, AND WE HAVE NOT REACHED THE END ZONE BUT WE'VE MOVED THE  
22 BALL ALONG SOME, AND WHAT RESPECTIVE COUNSEL HOPE TO DO WILL BE  
23 TO PRESENT A REVISED JOINT FILING WITH EXACTLY THOSE WORKS THAT  
24 ARE LEFT BOTTOM LINE. THERE WILL BE SOME WORKS THAT WILL DROP  
25 BY THE WAY SIDE FOR A VARIETY OF REASONS, AND I DON'T THINK

1 EITHER SIDE WOULD SUGGEST THAT THEY REFLECT, QUOTE, ADMISSIONS  
2 OF ANY KIND EXCEPT THIS IS TO MOVE THE PROCESS.

3 THE COURT: THAT WOULD BE TERRIFIC.

4 BY MR. RICH:

5 Q. WITH THAT IN MIND, MR. PFUND, I'D LIKE TO TALK BRIEFLY NOW  
6 ABOUT THE REPRESENTATIVE OXFORD WORKS WHICH ARE AT ISSUE IN  
7 THIS LITIGATION --

8 THE COURT: LET ME INTERRUPT YOU. WHAT DOES THAT  
9 CLOCK SAY?

10 MR. RICH: 12:10. WHEN DO YOU CARE TO BREAK FOR  
11 LUNCH?

12 THE COURT: MAYBE A QUARTER TILL ONE.

13 BY MR. RICH:

14 Q. MR. PFUND, LET'S START WITH AWAKENING CHILDREN'S MINDS BY  
15 LAURA BERK YOU SHOULD HOPEFULLY HAVE A COPY OF THAT BUT WE'LL  
16 MAKE IT AVAILABLE. IT'S PX-354 NOW IN EVIDENCE, AND THAT  
17 APPEARS IN THE JOINT FILING AT PAGE B-2, AND THAT INDICATES  
18 THAT PROFESSOR KRUGER USED 19 PAGES FROM THIS WORK DURING HER  
19 COURSE LEARNING AND THE LEARNER EPY 7090 DURING THE SUMMER OF  
20 2009 TERM; IS THAT CONSISTENT WITH YOUR UNDERSTANDING?

21 A. YES.

22 Q. AND CAN YOU TELL THE COURT WHEN THIS BOOK WAS PUBLISHED  
23 PLEASE?

24 A. THIS BOOK WAS PUBLISHED IN 2001.

25 Q. HOW MANY PRINTINGS HAS IT BEEN THROUGH?



1 A. THIS BOOK HAS BEEN THROUGH FIVE PRINTINGS.

2 Q. WHAT DOES THAT TELL US ABOUT THE ACCEPTANCE OF THIS WORK?

3 A. IT SUGGESTS THAT IN A VERY COMPETITIVE FIELD THAT IT'S  
4 FOUND AN AUDIENCE.

5 Q. AND IF YOU WOULD LOOK IN YOUR BINDER PLEASE AT PX-355 AND  
6 356, EACH OF WHICH IS NOW IN EVIDENCE, I'LL JUST ADVISE THE  
7 COURT REALLY TO MOVE THIS THAT THOSE ARE THE AUTHOR AGREEMENTS  
8 AND COPYRIGHT REGISTRATION CERTIFICATES FOR THE WORK; IS THAT  
9 CONSISTENT WITH YOUR UNDERSTANDING?

10 A. YES, IT IS.

11 Q. LOOKING AT THIS ENTRY PLEASE, CAN WE SCROLL OVER AND CAN  
12 YOU TELL THE COURT OR CONFIRM THAT THE SUGGESTED RETAIL PRICE  
13 FOR THIS WORK WAS 28 DOLLARS?

14 A. YES.

15 Q. AND OVER IN THE NEXT COLUMN WHICH IS COST PER STUDENT, AM  
16 I CORRECT THAT -- DOES IT CORRECTLY REPORT THAT HAD THIS  
17 PROFESSOR INSTEAD OF UTILIZING THE WORK FOR FREE SOUGHT  
18 LICENSES THAT ON A PER STUDENT BASIS THAT EXCERPT WOULD HAVE  
19 COST \$2.28?

20 A. YES.

21 Q. NOW, THAT SAME WORK, IF WE TURN THE TO C-10, WAS ALSO USED  
22 BY PROFESSOR KRUGER IN THE FALL OF 2009, AND IT THERE REPORTS  
23 THAT VERSUS THE 19 PAGES UTILIZED IN THE SUMMER, IF WE COULD  
24 SCROLL RIGHT PLEASE, 39 PAGES OF THIS WORK WERE USED. IF YOU  
25 CAN KEEP SCROLLING, THANK YOU. 39 PAGES WERE USED IN THE FALL;

1 DO YOU SEE THAT?

2 A. YES.

3 Q. AND I TAKE IT THE RETAIL COST IS THE SAME 28 DOLLARS, AND  
4 IN THIS CASE THE LICENSE COST TIMES THE LARGER NUMBER OF  
5 PAGES -- THAT IS MISREPORTED, YOUR HONOR, I DID THE MATH THIS  
6 MORNING AND I SAID OOPS.

7 THE \$2.48 IS JUST WRONG. I WANT TO AMEND IT IF I  
8 MAY, AND BY MY MATH 12 CENTS TIMES 39 COPIES SHOULD HAVE BEEN  
9 NOT 2.40 AS REPORTED BUT \$4.68.

10 THE COURT: ALL RIGHT.

11 MR. RICH: AND THEN, YOUR HONOR, TIMES THE 19  
12 STUDENTS, THAT ERROR CARRIED OVER, INSTEAD OF \$48.60 BY MY MATH  
13 INCLUDING A 3 DOLLAR SERVICE FEE TO THE COPYRIGHT CLEARANCE  
14 CENTER, THE CORRECT NUMBER SHOULD HAVE BEEN \$91.92 FOR THE  
15 ENTIRE CLASS. I APOLOGIZE FOR THE ERROR. I DON'T THINK WE  
16 HAVE ANY OTHERS.

17 BY MR. RICH:

18 Q. IF WE COULD TURN IN YOUR BINDER TO TAB B AND THAT DEALS  
19 WITH THE SLAVE COMMUNITY, AND IF WE COULD LOOK AT C-1 OF THE  
20 JOINT FILING PLEASE, HERE IT INDICATES THAT PROFESSOR DIXON  
21 USED PAGES 249 THROUGH 283 OF THIS WORK DURING HER FALL 2009  
22 COURSE AFRICAN-AMERICAN FAMILIES AAS 3000; IS THAT CONSISTENT  
23 WITH YOUR UNDERSTANDING?

24 A. YES, IT IS.

25 Q. IF YOU WOULD NOW PLEASE TURN IN YOUR BINDER TO PX-357, CAN

1 YOU IDENTIFY THE DOCUMENT WE'RE LOOKING AT 357?

2 A. YES, I CAN. IT IS A LISTING OF THE LIFE SALES AND  
3 PERMISSIONS REVENUE AND VARIOUS OTHER ASPECTS OF SEVERAL BOOKS  
4 PROFILED.

5 Q. AND DO YOU KNOW THE SOURCE OF THE DATA ON PX-357?

6 A. YES, IT WAS GENERATED BY COLLEAGUES OF MINE IN OUR FINANCE  
7 AND ACCOUNTING DEPARTMENT.

8 Q. DO YOU KNOW IF THE DATA WERE DERIVED FROM DATA MAINTAINED  
9 IN THE ORDINARY COURSE OF OXFORD'S BUSINESS?

10 A. YES.

11 Q. ARE YOU ABLE TO IDENTIFY -- I SEE, I THINK, TWO REPORTING  
12 LINES RELATING TO SLAVE COMMUNITY. I KNOW THIS IS HARD TO  
13 READ.

14 A. RIGHT, ONE SAYS CL WHICH MEANS CLOTH WHICH IS A PUBLISHING  
15 TERM FOR HARDBACK, AND THEN THE OTHER HAS P BEHIND THE TITLE  
16 WHICH IS FOR PAPERBACK. SO THAT WOULD BE THE RELEVANT --

17 Q. AND WHAT DO THESE DATA REVEAL AS TO THE NUMBERS OF UNIT  
18 SALES OF THIS WORK AND THIS -- PARDON ME, THIS IS, IF WE SCROLL  
19 TO THE TOP LEFT PLEASE, THIS A LIFE-TO-DATE ANALYSIS OF THOSE  
20 BOOKS; IS THAT CORRECT?

21 A. RIGHT. SO THE SALES QUANTITY SUGGESTS WE SOLD 204,757  
22 COPIES GROSS, THEN WE RECEIVED 55,286 RETURNS, AND THAT WE HAVE  
23 SOLD THROUGH AS WE SAY 149,471 BOOKS.

24 MR. RICH: AND IS YOUR HONOR FAMILIAR WITH THE  
25 CONCEPT OF RETURNS; IS THAT A CONCEPT THAT YOU'RE FAMILIAR

1 WITH?

2 THE COURT: WELL, I HEARD SOME TESTIMONY ABOUT IT  
3 YESTERDAY. IT SEEMS SELF-EXPLANATORY.

4 MR. RICH: YES, IT IS. THANK YOU.

5 BY MR. RICH:

6 Q. AND IN TERMS OF -- IF YOU LOOK AT THE THIRD COLUMN FROM  
7 THE LEFT OF THIS DOCUMENT, IT NET SALES VALUE; WHAT DOES THAT  
8 REPRESENT?

9 A. THAT REPRESENTS THE TOTAL REVENUE GENERATED AFTER RETURNS  
10 FROM THE SALES OF THOSE UNITS.

11 Q. OKAY. AND IF YOU MOVE THREE COLUMNS TO THE RIGHT, THERE  
12 IS SOMETHING LABELED TOTAL OPI; DO YOU SEE THAT?

13 A. RIGHT, THAT'S A TERM WE USE AT OXFORD FOR OTHER PUBLISHING  
14 INCOME, AND THAT REFERS TO PERMISSIONS AND THE LIKE.

15 Q. YOU SAID OTHER PERMISSIONS?

16 A. YES, THE PERMISSIONS INCOME.

17 Q. BUT MORE THAN SIMPLY PERMISSIONS?

18 A. THAT'S RIGHT, IT CAN INCLUDE TRANSLATIONS. IT CAN -- IT'S  
19 MOSTLY PERMISSIONS AND TRANSLATIONS. THERE ARE OCCASIONAL  
20 OTHER THINGS, BUT THOSE ARE VERY RARE.

21 Q. IF YOU COULD LOOK AT EXHIBIT PX-344 IN YOUR BINDER. IT'S  
22 MULTIPAGE DOCUMENT; DO YOU HAVE THAT?

23 A. YES, I DO.

24 Q. IS THIS A DOCUMENT YOU ARE FAMILIAR WITH?

25 A. IT IS.

1 Q. WHAT IS IT?

2 A. IT IS A REPORT THAT WE GENERATE USING OUR SAP SYSTEM OF

3 REVENUE OF OPI ESSENTIALLY OF OTHER PUBLISHING INCOME.

4 Q. IS THIS A BREAKDOWN OF WHAT THAT OPI CONSISTS OF BY TITLE?

5 A. CORRECT.

6 Q. IF YOU WOULD LOOK OVER TO THE NEXT TO THE LAST PAGE OF

7 THIS EXHIBIT, I THINK YOU'LL FIND A ENTRY FOR THE SLAVE

8 COMMUNITY; DO YOU SEE THAT?

9 A. I DO.

10 Q. COULD YOU INDICATE -- THERE IS A LINE FOR PERMISSIONS; DO

11 YOU SEE THAT?

12 A. YES.

13 Q. AND IT'S REPORTED AS \$3,758.05; IS THAT CORRECT?

14 A. THAT'S CORRECT.

15 Q. IS THAT A PURE PERMISSIONS INCOME --

16 A. YES.

17 Q. -- READING ON THAT; IN OTHER WORDS, THAT'S THE PORTION OF

18 THE OPI RELATING TO PERMISSIONS INCOME FOR THIS WORK?

19 A. YES, THAT'S RIGHT.

20 MR. RICH: OKAY. AT THIS POINT, YOUR HONOR, I WOULD

21 OFFER BOTH PLAINTIFFS' EXHIBIT 357 AND PLAINTIFFS' EXHIBIT 344

22 INTO EVIDENCE.

23 MR. HARBIN: NO OBJECTION, YOUR HONOR.

24 THE COURT: THEY ARE ADMITTED.

25 BY MR. RICH:

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1 Q. AND IN YOUR BINDER, SIR, IF YOU CONTINUE, AND, AGAIN, THIS  
2 IS JUST FOR INFORMATION PURPOSES I THINK SINCE THESE ARE IN  
3 EVIDENCE, PX-461 BEING THE AUTHOR AGREEMENT FOR THIS WORK AND  
4 PX-462 THE REGISTRATION CERTIFICATE; IS THAT CORRECT?

5 A. YES, THAT'S CORRECT.

6 Q. LET'S TURN TO TAB C PLEASE, MOVING ALONG. THIS IS NEXT  
7 WORK EVOLUTION OF INFECTIOUS DISEASE BY PAUL EWALD?

8 A. YES.

9 Q. AND THAT'S PX-388 IS THE BOOK ITSELF?

10 A. YES.

11 Q. AND THE JOINT FILING AT C-7 INDICATES THAT PROFESSOR  
12 MCCOMBIE USED PAGES 15 TO 34 OF THIS WORK IN THE FALL 2009 TERM  
13 FOR HER COURSE EPIDEMIOLOGY AND ANTHROPOLOGY 4440; IS THAT  
14 CORRECT?

15 A. YES.

16 Q. AND IF YOU WOULD LOOK IN YOUR BINDER PX-389 AND 390 WHICH  
17 ARE IN EVIDENCE, I UNDERSTAND THOSE TO BE RESPECTIVELY THE  
18 AUTHOR AGREEMENT AND A COPYRIGHT REGISTRATION CERTIFICATE FOR  
19 THE WORK, CORRECT?

20 A. CORRECT.

21 Q. OKAY. AND COULD YOU TELL US HOW MANY PAGES OF TEXTURAL  
22 MATTER ARE IN THIS BOOK PLEASE?

23 A. IT LOOKS TO BE 215.

24 Q. OKAY. AND STAYING WITH THE EXCERPT FROM THE JOINT EXHIBIT  
25 UP ON THE SCREEN, IS IT ACCURATE AS REPORTED THAT THE SUGGESTED

1 RETAIL PRICE OF THE HARD BOUND EDITION OF THIS WORK IS 170  
2 DOLLARS AND THE PAPER EDITION 60 DOLLARS?

3 A. YES.

4 Q. AND TO THE RIGHT THAT HAD THIS EXCERPT BEEN PERMISSIONED  
5 INSTEAD OF USED FOR FREE, EACH STUDENT WOULD HAVE BEEN CHARGED  
6 BY THE COPYRIGHT CLEARANCE CENTER -- PARDON ME, THE PER WORK  
7 CHARGE WOULD HAVE BEEN \$2.40?

8 A. YES.

9 Q. LET'S TURN TO TAB D PLEASE. THE NEXT WORK IS APPROACHES  
10 TO QUALITATIVE RESEARCH BY SHARLENE HESSE-BIBER, AND IF WE LOOK  
11 AT THE JOINT FILING AT PAGE C-8 PLEASE, HERE WE INDICATE THAT  
12 PROFESSOR KAUFMANN USED PAGES 447 THROUGH 472, THAT'S 26 PAGES  
13 OF THIS WORK, DURING HER COURSE EPRS 8500 IN THE FALL 2009  
14 TERM, CORRECT?

15 A. CORRECT.

16 Q. ALL RIGHT. AND IF YOU LOOK AT THE BOOK ITSELF PLEASE,  
17 COULD YOU CONFIRM THAT THE CHAPTER APPEARING AT PAGES 447 TO  
18 472 CORRESPONDS TO THE ESSAY TITLED THE ART AND POLITICS OF  
19 INTERPRETATION BY NORMAN DENZIN?

20 A. YES, CONFIRMED.

21 Q. AND IF YOU COULD TURN TO PAGE ROMANETTE 14 PLEASE, AM I  
22 CORRECT THAT THIS INDICATES THAT THE CHAPTER TAKEN WAS  
23 PUBLISHED WITH THE PERMISSION OF SAGE PUBLICATIONS?

24 A. YES, THAT'S RIGHT.

25 Q. AND SORRY TO HAVE YOU MOVING AROUND, BUT NOW IF YOU WOULD

1 RETURN TO THE BINDER PLEASE, DO YOU RECOGNIZE PLAINTIFFS'

2 EXHIBIT 351 NOW IN EVIDENCE AS THE AUTHOR AGREEMENT?

3 A. YES, I DO.

4 Q. AND THEN BACK UP TO THE CHART HERE, AM I CORRECT THAT AS

5 TO THIS WORK, IF WE COULD SCROLL RIGHT, THE SUGGESTED RETAIL

6 PRICE AS SHOWN HERE IS 92 DOLLARS HARD BOUND AND 49.95 IN PAPER

7 EDITION?

8 A. YES.

9 Q. AND TO THE RIGHT THAT THE PER STUDENT LICENSE COST HAD

10 THIS WORK BEEN PERMISSIONED WAS \$3.12?

11 A. THAT'S RIGHT.

12 Q. LET'S GO TO TAB E PLEASE WHICH IS A BOOK ENTITLED FILM

13 LANGUAGE, A SEMIOTICS OF THE CINEMA BY CHRISTIAN METZ; AM I

14 CORRECT THAT THIS BOOK IS NO LONGER IN PRINT?

15 A. YES.

16 Q. BUT NONETHELESS AVAILABLE FOR LICENSING?

17 A. CORRECT.

18 Q. OKAY. NOW, THE JOINT FILING AT C-11 INDICATES THAT

19 PROFESSOR BARKER USED PAGES 108 TO 148 OF THIS BOOK IN HER

20 COURSE CALLED FILM THEORY AND CRITICISM, THAT'S FILM 4750,

21 DURING THE FALL 2009 TERM; IS THAT CONSISTENT WITH YOUR

22 UNDERSTANDING?

23 A. IT IS.

24 Q. AND IF YOU WOULD TAKE A LOOK PLEASE IN YOUR BINDER AT

25 PLAINTIFFS' EXHIBIT 393?



1 A. YES.

2 Q. CAN YOU DESCRIBE WHAT THIS DOCUMENT IS PLEASE?

3 A. THIS A TRANSLATION AGREEMENT BETWEEN KLINCKSIECK  
4 PUBLICATIONS WHICH IS GRANTING TO OXFORD THE RIGHT --

5 MR. HARBIN: EXCUSE ME, SIR, MY COPY OF THE BOOK  
6 DOESN'T HAVE 393 IN IT. DO YOU ALL HAVE A COPY?

7 MR. RICH: APOLOGIES. IF WE MAY HAVE A MOMENT, YOUR  
8 HONOR?

9 (PAUSE IN THE PROCEEDINGS.)

10 MR. HARBIN: THANK YOU.

11 MR. RICH: THANK YOU. YOU CAN ANSWER.

12 THE WITNESS: IT IS A TRANSLATION AGREEMENT BETWEEN  
13 KLINCKSIECK AND OXFORD UNIVERSITY PRESS WHEREBY KLINCKSIECK IS  
14 GRANTING TO OXFORD THE RIGHT TO PUBLISH AN ENGLISH LANGUAGE  
15 TRANSLATION OF THIS BOOK.

16 BY MR. RICH:

17 Q. AND ACCORDING TO ARTICLE 1 OF THIS DOCUMENT, IF WE COULD  
18 HIGHLIGHT THAT PLEASE --

19 A. IT OUTLINES THAT THIS DOCUMENT IS GRANTING TO OUP THE  
20 EXCLUSIVE RIGHT TO PRINT, PUBLISH AND SELL IN VOLUME THE  
21 ENGLISH TRANSLATION OF THIS WORK.

22 Q. RIGHT. AND IF WE COULD LOOK AT ARTICLE 8 OF THIS  
23 DOCUMENT, DOES THE TRANSLATION AGREEMENT GRANT OXFORD THE RIGHT  
24 THE LICENSE EXCERPTS OF IT?

25 A. IT DOES ASSUMING WE RECEIVE CONSENT FROM KLINCKSIECK.

1 Q. IF YOU WOULD TAKE A LOOK PLEASE AT IN YOUR BINDER -- I'M  
2 SORRY, AT THE LAST PAGE OF PLAINTIFFS' EXHIBIT 393?

3 A. YES.

4 Q. CAN YOU IDENTIFY WHAT WE'RE LOOKING AT THERE?

5 A. THIS WOULD BE A LETTER FROM SOMEONE AT KLINCKSIECK TO AN  
6 OXFORD UNIVERSITY PRESS EMPLOYEE INDICATING THAT WE -- THAT  
7 THEY ARE HEREBY GRANTING US THE RIGHT TO LICENSE IN FUTURE  
8 WITHOUT SEEKING THEIR CONSENT FIRST OUT OF CONCERN THAT A DELAY  
9 MIGHT RESULT IN THE LOSS OF LICENSING OPPORTUNITY BUT ASKING  
10 THAT WE INFORM THEM OF ANY ARRANGEMENTS AFTER THE FACT, AND, OF  
11 COURSE, PAY THEM THEIR PORTION OF THE LICENSING AGREE.

12 Q. AND HAS OXFORD SO COMPORTED ITSELF WITH RESPECT TO ANY  
13 SUCH FUTURE LICENSES?

14 A. WE HAVE INDEED.

15 Q. IF YOU TURN TO PX-391 IN YOUR BINDER, I'LL ASK YOU IF YOU  
16 RECOGNIZE THIS AS THE COPYRIGHT REGISTRATION CERTIFICATE FOR  
17 THE OXFORD TRANSLATION OF THIS WORK?

18 A. YES.

19 MR. RICH: AT THIS POINT, YOUR HONOR, WE WOULD MOVE  
20 THE ADMISSION OF PX-391.

21 MR. HARBIN: NO OBJECTION, YOUR HONOR.

22 THE COURT: IT'S ADMITTED.

23 BY MR. RICH:

24 Q. IF YOU COULD TURN TO TAB F IN YOUR BINDER PLEASE?

25 A. YES.

1 Q. THE UNPREDICTABLE PAST EXPLORATIONS IN AMERICAN CULTURAL  
2 HISTORY BY LAWRENCE LEVINE, AND THE USE OF THIS WORK APPEARS AT  
3 PAGE C-13 OF THE JOINT FILING.

4 NOW THAT JOINT FILING INDICATES THAT PROFESSOR DAVIS  
5 USED PAGES 35 TO 58 OF THIS WORK DURING HER COURSE ISSUES AND  
6 INTERPRETATIONS IN AMERICAN HISTORY, THAT'S HISTORY 7010,  
7 DURING THE FALL OF 2009 TERM, CORRECT?

8 A. YES.

9 Q. AND YOU HAVE THAT BOOK I BELIEVE ALSO IN FRONT OF YOU?

10 A. I DO.

11 Q. AND I'M GOING TO ASK YOU IN YOUR BINDER IF YOU COULD ALSO  
12 CONFIRM THAT YOU RECOGNIZE PX-478 AND PX-479, BOTH IN EVIDENCE,  
13 RESPECTIVELY AS THE AUTHOR AGREEMENT AND COPYRIGHT REGISTRATION  
14 CERTIFICATE?

15 A. YES, I DO.

16 Q. BACK UP TO THIS EXHIBIT, IF WE COULD SCROLL RIGHT, I'D ASK  
17 YOU IF YOU COULD CONFIRM THAT THE SUGGESTED RETAIL WORK OF THIS  
18 WORK WAS AT THE TIME \$34.99?

19 A. YES.

20 Q. AND THAT THE PERMISSION FEE HAD PERMISSION BEEN SOUGHT PER  
21 STUDENT HERE WOULD HAVE BEEN \$2.88 FOR USE OF THIS EXCERPT?

22 A. YES, CORRECT.

23 Q. LET'S GO TO TAB G, LIVING ETHICS ACROSS MEDIA PLATFORMS BY  
24 MICHAEL BUGEJA. THAT APPEARS IN JOINT FILING C-14, AND THE  
25 JOINT FILING INDICATES THAT PROFESSOR FREEMAN USED PAGES 116 TO

1 121 AND 299 TO 305 OF THIS WORK DURING HER COURSE MEDIA ETHICS  
2 AND SOCIETY, THAT'S JOURNALISM 4800, DURING THE FALL OF 2009  
3 TERM, CORRECT?

4 A. YES.

5 Q. AND LOOKING IN YOUR BINDER AGAIN AT PX-424 AND 425, EACH  
6 OF WHICH ARE NOW IN EVIDENCE, DO YOU RECOGNIZE THESE AS THE  
7 AUTHOR AGREEMENT AND COPYRIGHT REGISTRATION CERTIFICATE  
8 RESPECTIVELY FOR THIS WORK?

9 A. YES, I DO.

10 Q. AND UP TO THE CHART, IF WE COULD SCROLL RIGHT, WILL YOU  
11 CONFIRM THAT THE SUGGESTED RETAIL PRICE AS OF THE FALL 2009 FOR  
12 THIS WORK WAS \$69.95?

13 A. YES.

14 Q. AND THAT THIS EXCERPT WAS AVAILABLE AND WOULD HAVE BEEN  
15 AVAILABLE FOR LICENSING HAD IT BEEN SOUGHT AT THE COST OF \$1.56  
16 PER STUDENT?

17 A. CORRECT.

18 Q. TAB H, THE ORGAN AS A MIRROR OF ITS TIME, NORTH EUROPEAN  
19 REFLECTION, 1610 TO 2000 BY CERALA SNYDER. THE JOINT FILING  
20 INDICATES AT C-14 THAT PROFESSOR ORR USED PAGES 78 TO 91 OF  
21 THIS WORK DURING HIS COURSE CALLED BAROQUE MUSIC, MUSIC 8840 IN  
22 THE FALL OF 2009, CORRECT?

23 A. CORRECT.

24 Q. AND IF YOU WOULD TURN TO THE TABLE OF CONTENTS OF PX-441  
25 WHICH IS THE WORK ITSELF. IF I'M GOING TOO FAST, LET ME KNOW?

1 A. I'M ALL SET.

2 Q. COULD YOU CONFIRM THAT PAGES 78 THROUGH 91 CORRESPOND TO A  
3 CHAPTER BY HANS DAVIDSSON CALLED THE ORGAN AS 17TH CENTURY  
4 COSMOLOGY?

5 A. YES, CONFIRMED.

6 Q. AND IF YOU WOULD NOW LOOK AT YOUR BINDER AT PX-442, PX-443  
7 AND PX-444, EACH OF WHICH IS IN EVIDENCE, CAN YOU CONFIRM THOSE  
8 TO BE THE AUTHOR AGREEMENT, CONTRIBUTOR AGREEMENT AND THE  
9 COPYRIGHT REGISTRATION FOR THIS WORK?

10 A. YES.

11 Q. AND BACK UP TO THE SCREEN, I WOULD ASK YOU AGAIN TO  
12 CONFIRM PLEASE THAT AS OF THE DATE OF THIS USE THE SUGGESTED  
13 RETAIL PRICE, LIST PRICE FOR THIS WORK WAS 65 DOLLARS?

14 A. YES.

15 Q. AND THIS IT WAS AVAILABLE OR WOULD HAVE BEEN AVAILABLE FOR  
16 PERMISSIONING PER STUDENT FOR THIS LENGTH OF EXCERPT AT A COST  
17 OF \$1.68?

18 A. YES.

19 Q. TAB I, THE CRABGRASS FRONTIER WHICH WE DISCUSSED EARLIER,  
20 IF WE LOOK AT THE JOINT FILING HERE AT C-16, IT INDICATES THAT  
21 PROFESSOR LASNER USED PAGES 246 TO 271 IN HIS COMPARATIVE  
22 CULTURE CLASS, PERS 2001, DURING THE FALL 2009 TERM, CORRECT?

23 A. CORRECT.

24 Q. AND IF YOU WOULD AGAIN PULL OUT PX-357, THIS IS EYE TEST  
25 UNFORTUNATELY HERE AND WE'LL PUT IT ON THE SCREEN AGAIN, COULD

1 YOU TELL US WHAT THE LIFETIME SALES FOR THIS WORK HAVE BEEN,  
2 AND PERHAPS YOU COULD IDENTIFY -- ON THIS ONE I ACTUALLY SEE  
3 THREE DIFFERENT REPORTING LINES, TWO TOGETHER AND ONE SEPARATE?  
4 A. RIGHT, THE FIRST ONE WHICH IS ABOUT A QUARTER OF THE WAY  
5 DOWN THE PAGE SAYS UPDF AFTER IT, THAT'S STANDS FOR UNIVERSAL  
6 PDF AND THAT'S SIMPLY THE E-BOOK. THEN IF YOU GO FURTHER  
7 DOWN --  
8 Q. IT'S ON THE SCREEN IF THAT HELPS YOU?  
9 A. GREAT. THEN THAT IS --  
10 Q. IS THAT HARD BOUND AND PAPER AGAIN?  
11 A. YEAH, IT'S CLOTH AND PAPERBACK, AND IT SHOWS A NET SALES  
12 OF 103,000 DOLLARS IN HARD COVER AND 636,000 DOLLARS IN  
13 PAPERBACK, AND IT ALSO SHOWS OPI OR OTHER PUBLISHING INCOME  
14 TOTALING BETWEEN THE TWO A LITTLE BIT UNDER 12,000 DOLLARS, SO  
15 11,055 FOR THE HARD COVER AND 917 FOR THE PAPERBACK.  
16 Q. AND THE SALES QUANTITY UNIT SALES IS OVER ABOUT FIVE  
17 COLUMNS?  
18 A. THE HARD COVER IS 9,997 AND THE PAPERBACK IS 110,430.  
19 Q. AND IF YOU WOULD PULL OUT THIS OTHER COMPENDIUM OF DATA  
20 PX-344, ARE YOU ABLE TO LOCATE THE ENTRIES FOR CRABGRASS  
21 FRONTIER THERE?  
22 A. WHAT PAGE IS IT ON?  
23 Q. I WAS AFRAID YOU WERE GOING TO ASK. IT'S UP ON THE SCREEN  
24 HERE.  
25 A. GREAT. SO WHAT THIS SHOWS IS PERMISSIONS REVENUE OF

1 \$7,677.86. IT ALSO SHOWS PHOTOCOPY REVENUE OF \$151.78.

2 Q. DO YOU KNOW WHAT THE DIFFERENCES ARE, OR WHAT THEY  
3 SEPARATELY ACCOUNT FOR; I DO NOT?

4 A. I DON'T EITHER.

5 Q. I TAKE IT THERE HAVE BEEN SOME E-BOOK SALES FOR THIS WORK;  
6 IS THAT CORRECT?

7 A. YES, QUESTIA AND AMAZON DIGITAL SERVICES ABOVE THOSE  
8 LINES. AMAZON DIGITAL SERVICES IS KINDLE SALES WHICH IS A  
9 HANDHELD READER AND QUESTIA IS AN E-BOOK AGGREGATOR WHICH  
10 CATERS PRIMARILY TO HIGH SCHOOLS.

11 Q. THANK YOU. BACK TO YOUR BINDER PLEASE AND IF YOU'D LOOK  
12 AT PX-369 AND PX-370, EACH IN EVIDENCE, I WILL REPRESENT TO YOU  
13 BUT I'D APPRECIATE YOU CONFIRMING IT, THOSE ARE THE AUTHOR  
14 AGREEMENT AND COPYRIGHT REGISTRATION CERTIFICATE FOR THIS WORK?

15 A. YES.

16 Q. AND BACK UP TO THE JOINT EXHIBIT PLEASE AT C-16, ASK YOU  
17 TO CONFIRM THAT THE SUGGESTED RETAIL LIST PRICE FOR THAT WORK  
18 AS OF THE FALL OF 2009 WAS \$19.59?

19 A. CORRECT.

20 Q. AND THAT THE EXCERPT USED WAS AVAILABLE PER STUDENT FOR  
21 LICENSING AT A COST OF \$3.12?

22 A. YES.

23 Q. TAB J, POLITICS OF PUBLIC HOUSING, BLACK WOMEN'S STRUGGLES  
24 AGAINST URBAN INEQUALITY BY RHONDA WILLIAMS, THAT APPEARS IN  
25 JOINT FILING AT C-16. IT INDICATES THAT PROFESSOR LASNER ALSO

1 USED PAGES 21 TO 53 OF THIS WORK IN COMPARATIVE CULTURE CLASS  
2 DURING THE FALL OF 2009; DO YOU SEE THAT?  
3 A. YES.  
4 Q. AND IF YOU WOULD TURN IN YOUR BOOK TO PX-446 AND 447, THIS  
5 IS UNDER TAB J, DO YOU RECOGNIZE THOSE TO BE THE AUTHOR  
6 AGREEMENT AND COPYRIGHT REGISTRATION CERTIFICATES FOR THIS  
7 WORK?  
8 A. I DO.  
9 Q. AND BACK UP TO THE SCREEN, LET'S CONFIRM THE SUGGESTED  
10 RETAIL PRICE FOR THAT WORK OF 25 DOLLARS; IS THAT CORRECT?  
11 A. YES.  
12 Q. AND THE PER STUDENT PERMISSION FEE AVAILABLE HAD BEEN IT  
13 SOUGHT OF \$3.96?  
14 A. YES.  
15 Q. AND TURNING TO TAB K IN YOUR BINDER PLEASE, THE NEXT WORK  
16 THE CRAFT OF INQUIRY BY ROBERT ALFORD. THE JOINT FILING AT C-8  
17 INDICATES THAT PROFESSOR KAUFMANN USED PAGES 21 TO 31 OF THIS  
18 WORK IN HER COURSE QUALITATIVE INTERPRETATIVE RESEARCH IN  
19 EDUCATION, THAT'S EPRS 8500, DURING THE FALL OF 2009, CORRECT?  
20 A. YES.  
21 Q. IF WE COULD TURN TO A-3 OF THE JOINT EXHIBIT, IT REPORTS  
22 THAT PROFESSOR KAUFMANN USED THIS WORK FOR THE SAME COURSE  
23 DURING THE MAY 2009 MAYMESTER, CORRECT?  
24 A. CORRECT.  
25 Q. ALL RIGHT. AND IN YOUR BINDER AT PX-373 AND 374 IN



1 EVIDENCE, AM I CORRECT THAT THOSE ARE THE AUTHOR AGREEMENT AND  
2 THE COPYRIGHT REGISTRATION CERTIFICATE PERTAINING TO THIS WORK?

3 A. YOU ARE CORRECT.

4 Q. IF WE WOULD STAY WITH THIS EXAMPLE AND GO OVER, WOULD YOU  
5 CONFIRM PLEASE THAT THE SUGGESTED RETAIL PRICE FOR THIS WORK AS  
6 OF MAY AND FALL 2009 WAS \$32.95?

7 A. CORRECT.

8 Q. AND THAT THE LICENSE FEE FOR THE EXCERPT USED WOULD HAVE  
9 COST \$1.32?

10 A. YES.

11 Q. TAB L, BEHAVIOR, SOCIETY AND NUCLEAR WAR, VOLUME 1 BY A  
12 SERIES OF COAUTHORS; IS THAT CORRECT?

13 A. YES.

14 Q. AND AT C-17 OF THE JOINT FILING WE LEARN THAT PROFESSOR  
15 DUFFIELD USED PAGES 8 TO 15 AND 19 TO 48 OF THIS WORK IN HIS  
16 COURSE MILITARY CONFLICT AND INTERNATIONAL SECURITY, THAT'S  
17 LABELED POLS 8470 DURING THE FALL OF 2009, CORRECT?

18 A. CORRECT.

19 Q. AND IF YOU LOOK IN YOUR BINDER AT PX-360 AND 361, ALSO IN  
20 EVIDENCE, ASK YOU TO CONFIRM THAT THOSE ARE THE AUTHOR  
21 AGREEMENT AND COPYRIGHT CERTIFICATE FOR THIS WORK?

22 A. INDEED, THEY ARE.

23 Q. AND IF WE SCROLL OVER I'D ASK YOU TO CONFIRM THE SUGGESTED  
24 RETAIL PRICE OF THE WORK AT \$42.95, AND THE AVAILABILITY OF  
25 TAKING OF ABOUT 38 PAGES AND MORE THAN 10 PERCENT OF THE WORK

- 1 AT \$4.56 PER STUDENT?
- 2 A. YES.
- 3 Q. TAB M, POWER ELITE WHICH WE'VE DISCUSSED APPEARS AT THE  
4 JOINT FILING AT C-19. I WOULD ASK YOU TO LOOK AT PX-449 AND  
5 450 IN YOUR BINDER AND CONFIRM THAT THOSE REFLECT THE AUTHOR  
6 AGREEMENT AND COPYRIGHT REGISTRATION CERTIFICATE FOR THIS WORK?
- 7 A. YES.
- 8 Q. AND THEN WE TALKED ABOUT THE RETAIL PRICE OF THIS WORK  
9 BEFORE AS BEING 19.95, CORRECT?
- 10 A. CORRECT.
- 11 Q. I'LL ASK YOU TO CONFIRM THAT THE EXCERPT USED WAS  
12 AVAILABLE PER STUDENT FOR PERMISSION LICENSING FOR THE REPORTED  
13 15 AND A HALF PERCENT OF THE WORK OF 56 PAGES TAKEN FOR \$6.72?
- 14 A. YES.
- 15 Q. TAB N, REGION, RACE AND RECONSTRUCTION, THAT'S AT C-13 OF  
16 THE JOINT FILING, THAT INDICATES THAT PROFESSOR DAVIS USED  
17 PAGES 143 THROUGH 177 OF THIS WORK FOR ALMOST 8 PERCENT OF IT  
18 FOR HER HISTORY 7010 COURSE DURING THE FALL OF 2009, CORRECT?
- 19 A. YES.
- 20 Q. IN YOUR BINDER IS PX-455 AND 456 IN EVIDENCE REFLECTING  
21 THE AUTHOR AGREEMENT AND COPYRIGHT REGISTRATION CERTIFICATE,  
22 CORRECT?
- 23 A. YES.
- 24 Q. AND LOOKING AT THE EXHIBIT, CAN YOU CONFIRM PLEASE THAT  
25 THE SUGGESTED RETAIL PRICE WAS \$29.95?

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1 A. YES.

2 Q. AND THAT EACH STUDENT WISHING A PERMISSION USE OF THIS  
3 EXCERPT COULD HAVE HAD IT FOR \$4.20?

4 A. CORRECT.

5 Q. TAB O, FUNDAMENTAL CONSIDERATIONS IN LANGUAGE TESTING BY  
6 LYLE BACHMAN, THAT APPEARS AT C-3 OF THE JOINT FILING WHICH  
7 INDICATES THAT PROFESSOR KIM USED PAGES 81 TO 110 OF  
8 FUNDAMENTAL CONSIDERATIONS IN LANGUAGE TESTING FOR HER COURSE  
9 SECOND LANGUAGE EVALUATION AND ASSESSMENT, THAT'S AL 8550,  
10 DURING THE FALL OF 2009 TERM, CORRECT?

11 A. YES.

12 Q. AND IF YOU WILL LOOK IN YOUR BINDER AT PX-407 AND 408  
13 PLEASE, EACH OF WHICH IS IN EVIDENCE, AM I CORRECT THAT THOSE  
14 ARE THE AUTHOR AGREEMENT AND THE REGISTRATION CERTIFICATE FOR  
15 THIS WORK?

16 A. YES.

17 Q. AND WE WOULD SCROLL ACROSS PLEASE, CAN YOU CONFIRM AGAIN  
18 THAT THE PAPERBACK VERSION OF THIS WORK WAS AVAILABLE FOR  
19 PURCHASE AT A RETAIL LIST PRICE OF \$33.95?

20 A. YES.

21 Q. AND THAT THE EXCERPT WAS AVAILABLE FOR LICENSING PER  
22 STUDENT AT A COST OF \$3.60?

23 A. YEP.

24 Q. TAB P PLEASE, LANGUAGE TESTING IN PRACTICE BY LYLE BACHMAN  
25 AND ADRIAN PALMER APPEARING IN THE JOINT FILING AT C-4 WHICH

1 INDICATES THAT PROFESSOR KIM USED PAGES 17 TO 42, 43 TO 60 AND  
2 85 TO 94 FOR HER COURSE SECOND LANGUAGE EVALUATION AND  
3 ASSESSMENT, AL 8550, DURING THE FALL OF 2009?

4 A. YES, CORRECT.

5 Q. AND IF YOU LOOK IN YOUR BINDER AT PX-419 AND 420 IN  
6 EVIDENCE AND CONFIRM THAT THOSE ARE RESPECTIVELY THE AUTHOR  
7 AGREEMENT AND REGISTRATION CERTIFICATE FOR THIS WORK?

8 A. YES, THEY ARE.

9 Q. AND UP TO THE EXHIBIT ITSELF, CAN YOU CONFIRM THAT THE  
10 LIST RETAIL PRICE OF THE PAPER BOUND VERSION OF THIS BOOK WAS  
11 \$33.95?

12 A. YEP.

13 Q. AND THEREFORE THE 54 PAGE EXCERPT ALMOST 15 PERCENT OF THE  
14 WORK USED FOR FREE THAT COULD HAVE BEEN PERMISSIONED AND PAID  
15 FOR PER STUDENT AT THE COST OF \$6.48?

16 A. THAT'S RIGHT.

17 Q. TAB Q PLEASE, NORTH GERMAN CHURCH MUSIC IN THE AGE OF -- I  
18 CAN'T PRONOUNCE THAT -- BUXTEHUDE BY GEOFFREY WEBBER, THE JOINT  
19 FILING WHICH IS AT C-15 INDICATES THAT PROFESSOR ORR USED PAGES  
20 9 TO 26 OF THIS WORK DURING HIS COURSE BAROQUE MUSIC, THAT'S  
21 MUS 8840, DURING THE FALL OF 2009, CORRECT?

22 A. CORRECT.

23 Q. IF YOU WOULD LOOK AT PX-438 IN YOUR BINDER, DO YOU  
24 RECOGNIZE THIS AS THE AUTHOR AGREEMENT FOR THIS WORK?

25 A. I DO.

1 Q. AND IF YOU WOULD SCROLL ACROSS PLEASE, THE SUGGESTED  
2 RETAIL OR LIST RETAIL PRICE FOR THIS WORK WAS 115 DOLLARS?  
3 A. YES.  
4 Q. AND LICENSE OF THE EXCERPT WAS AVAILABLE PER STUDENT AT  
5 \$2.16, CORRECT?  
6 A. THAT'S RIGHT.  
7 Q. TAB R, REGIMES AND DEMOCRACY IN LATIN AMERICA BY GERARDO  
8 MUNCK, THAT APPEARS AT THE JOINT FILING AT C-17 WHICH INDICATES  
9 THAT PROFESSOR MCCOY USED PAGES 1 TO 24, 25 TO 38 AND 39 TO 50  
10 OF THIS WORK FOR HER COURSE LATIN AMERICAN POLITICS, THAT'S  
11 POLS 8250, DURING THE FALL TERM 2009, CORRECT?  
12 A. CORRECT.  
13 Q. ALL RIGHT. IF YOU CAN TURN TO THE TABLE OF THE CONTENTS  
14 OF THIS WORK PLEASE?  
15 A. YES.  
16 Q. CAN YOU TELL ME WHO WROTE PAGES 1 TO 38?  
17 A. THE EDITOR OF THE VOLUME GERARDO L. MUNCH.  
18 Q. AND IF YOU WOULD TURN TO PLAINTIFFS' EXHIBIT 453, COULD  
19 YOU TELL THE COURT WHAT PLAINTIFFS' EXHIBIT 453 IS PLEASE?  
20 A. THIS IS THE AGREEMENT FOR THE PUBLICATION OF THE BOOK,  
21 PUBLISHING AGREEMENT.  
22 Q. AND IF YOU'D FOCUS ON SCHEDULE 3, PARAGRAPH 5.1 OF THAT  
23 DOCUMENT, CAN YOU ADVISE WHAT RIGHTS WERE GRANTED BY THIS WORK?  
24 A. THE RIGHTS THAT WERE GRANTED WERE THE FULL TITLE GUARANTEE  
25 FOR THE LEGAL TERM OF COPYRIGHT, THE COPYRIGHT AND EDITORS

1 CONTRIBUTIONS TO THE WORK PRESENT AND FUTURE.

2 Q. THANK YOU.

3 THE COURT: WOULD THIS BE A GOOD BREAKING POINT?

4 MR. RICH: IT CERTAINLY WOULD. I'VE PROBABLY GOT  
5 LESS THAN TEN MINUTES.

6 THE COURT: LET'S TAKE A SHORT LUNCH BREAK TODAY.  
7 LET'S TAKE A LUNCH BREAK UNTIL 1:20.

8 (NOON RECESS)

9 THE COURT: YOU MAY PROCEED.

10 MR. RICH: A TINY BIT OF HOUSEKEEPING IF I MAY. MR.  
11 HARBIN WAS KIND ENOUGH TO ADVISE US THAT WE MISTAKENLY MOVED  
12 INTO EVIDENCE A SMALL NUMBER OF EXHIBITS FROM A WORK OF PERHAPS  
13 ONE OF MORE WORKS THAT WE'RE NOT GOING TO BE PURSUING AND  
14 THEREFORE I'D LIKE TO INDICATE TO YOUR HONOR THAT WE DID NOT  
15 INTEND TO AND ARE NOT ASKING TO HAVE IN EVIDENCE PLAINTIFF'S  
16 EXHIBITS 468 THROUGH 472 OR PLAINTIFF'S EXHIBITS 474 THROUGH  
17 476.

18 WE HAVE SEVERAL SUPPLEMENTAL PLAINTIFFS' EXHIBITS  
19 THAT WE WOULD ASK BE -- WE'D LIKE TO OFFER INTO EVIDENCE. THEY  
20 ARE 350, 352, 375, 454, 486 AND 487.

21 MR. HARBIN: NO OBJECTION, YOUR HONOR.

22 THE COURT: ALL RIGHT. SO THE DOCUMENTS YOU  
23 INDICATED YOU WANTED TO WITHDRAW ARE WITHDRAWN, AND THE OTHERS  
24 ARE ADMITTED.

25 MR. RICH: THANK YOU SO MUCH.

1 BY MR. RICH:

2 Q. MR. PFUND, YOU HAVE A GROWING STACK OF OXFORD WORKS IN  
3 FRONT OF YOU WHICH ARE REPRESENTATIVE OF WORKS ON THE JOINT  
4 FILING. CAN I JUST ASK YOU A QUICK QUESTION OF THOSE ARE ANY  
5 OF THEM FALL WITHIN THE CATEGORY OF MONOGRAPHS?

6 A. YES, THIS ONE RIGHT HERE WOULD BE THE MUSIC OF BERLIOZ,  
7 AND THIS ONE ACTUALLY THE POLITICS OF PUBLIC HOUSING BY RODNEY  
8 WILLIAMS. IT'S FOCUSED ON BALTIMORE. THIS CERTAINLY WOULD  
9 QUALIFY. THIS IS NORTH GERMAN CHURCH MUSIC IN THE AGE OF  
10 BUXTEHUDE, AND THEN ALSO THE MUSIC BOOK ORGAN AS A MIRROR OF  
11 ITS TIME, THAT WOULD BE MONOGRAPHIC.

12 Q. THANK YOU. IF WE COULD TURN BACK TO THE BINDER AND THE  
13 PROCESS WE WERE GOING THROUGH BEFORE THE LUNCH BREAK, WE WERE  
14 IN THE MIDDLE OF DISCUSSING ASPECTS OF REGIMES AND DEMOCRACY IN  
15 LATIN AMERICA EDITED BY MR. MUNCK APPEARING IN TAB R OF YOUR  
16 BINDER, AND IF I COULD ASK YOU TO TURN TO PX-378 PLEASE?

17 A. YES.

18 Q. AND ASK IF YOU CAN IDENTIFY WHAT PX-378 REPRESENTS?

19 A. THIS IS A LIST OF OXFORD TITLES WITH THE AUTHOR, TITLE AND  
20 THEN THE PUBLICATION DATES OF THE BOOKS BOTH IN THE UNITED  
21 KINGDOM AND THEN AS WELL IN THE U.S.

22 Q. DO YOU KNOW HOW THAT DATA WAS ASSEMBLED?

23 A. IT WAS ASSEMBLED FROM COLLEAGUES OF MINE IN OUR DATA  
24 OFFICE.

25 Q. AND WOULD THEY HAVE RELIED ON BUSINESS RECORDS MAINTAINED

1 BY OXFORD U.S. OR THE U.K. IN THE ORDINARY COURSE?

2 A. YES.

3 MR. RICH: WE WOULD OFFER PLAINTIFFS' EXHIBIT 378.

4 MR. HARBIN: YOUR HONOR, WE WOULD OBJECT BOTH ON  
5 HEARSAY AND FOUNDATION IN THAT IT DOES NOT ITSELF CONSTITUTE A  
6 BUSINESS RECORD, AND THEY HAVEN'T BEEN PRODUCED THE UNDERLYING  
7 APPARENT BUSINESS RECORDS THAT APPARENTLY OTHER EMPLOYEES OF  
8 THE U.K. GROUP RELIED ON. SO WE WOULD OBJECT ON THAT BASIS.

9 THE COURT: IS THAT OBJECTION ON THE PRETRIAL ORDER?

10 MR. HARBIN: YES, WE DID OBJECT TO THAT.

11 THE COURT: THE OBJECTION YOU JUST STATED?

12 MR. HARBIN: I THINK WE OBJECTED TO BOTH HEARSAY AND  
13 FOUNDATION. IT WASN'T QUITE THAT VERBOSE BUT --

14 THE COURT: CAN I SEE THE EXHIBIT?

15 MR. RICH: THAT'S A PICTURE OF IT UP ON THE SCREEN,  
16 YOUR HONOR.

17 MR. HARBIN: IT LOOKS LIKE JUST A LIST SOMEBODY  
18 PREPARED. WE OBJECT ON HEARSAY AND FOUNDATION GROUNDS.

19 THE COURT: LAY THE BEST FOUNDATION YOU CAN AND THEN  
20 WE'LL COME BACK TO IT.

21 MR. RICH: THANK YOU.

22 BY MR. RICH:

23 Q. MR. PFUND, IS IT PART OF OXFORD'S ORDINARILY CONDUCTED  
24 BUSINESS PRACTICES TO COMPLY WITH FORMALITIES OF BOTH U.K. AND  
25 U.S. COPYRIGHT LAW?



1 A. YES.

2 Q. AND DO YOU HAVE STAFF -- DOES OXFORD MAINTAIN A STAFF OF  
3 PEOPLE WHOSE RESPONSIBILITY AT LEAST IN PART CONSTITUTE THAT  
4 ACTIVITY?

5 A. YES.

6 Q. AND IS IT ALSO IMPORTANT TO OXFORD THAT IT KEEP TRACK OF  
7 IN SOME FASHION THE FIRST PUBLICATION DATES OF THE WORKS WHICH  
8 IT PUBLISHES?

9 A. YES, ABSOLUTELY.

10 Q. AND TO YOUR KNOWLEDGE IS THAT DONE BOTH IN THE UNITED  
11 KINGDOM AND IN THE UNITED STATES?

12 A. YES, ALL BOOKS WE PUBLISH HAVE A FORMAL PUBLICATION DATE.

13 Q. AND IS IT YOUR UNDERSTANDING THAT INFORMATION OF THIS TYPE  
14 IS TYPICALLY MAINTAINED AT LEAST CURRENTLY IN THE FORM OF  
15 ELECTRONIC DATABASE KIND OF ENTRIES?

16 A. YES, ITS MAINTAINED, YES.

17 Q. IS IT YOUR UNDERSTANDING THAT AT THE REQUEST OF COUNSEL --  
18 OR DO YOU HAVE AN UNDERSTANDING THIS INFORMATION WAS EXTRACTED  
19 FROM ONE OR MORE OF THOSE DATABASES IN ORDER TO CREATE  
20 PLAINTIFFS' EXHIBIT 378?

21 A. YES, I DO.

22 MR. RICH: YOUR HONOR, THAT'S THE BASIS ON WHICH WE  
23 PRODUCED IT. THERE ISN'T ANY EXISTING BUSINESS RECORD OF THIS  
24 TYPE INSIDE THE COMPANY. THIS LITERALLY HAD TO BE EXTRACTED  
25 FROM DISCRETE DATA FILES AND COMPILED IN THIS FASHION, AND

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1 THERE IS NO BASIS FOR UNDERMINING ITS CREDIBILITY OR ACCURACY.

2 MR. HARBIN: MAY I RESPOND BRIEFLY, YOUR HONOR?

3 THE COURT: YES.

4 MR. HARBIN: WE DON'T CONTEST THEY ARE NORMAL  
5 PRACTICES, BUT I THINK THE TESTIMONY IS CLEAR THIS WITNESS DOES  
6 NOT HAVE PERSONAL KNOWLEDGE OF THE CREATION THIS, AND THESE ARE  
7 NOT THE BUSINESS RECORDS.

8 IT SOUNDS LIKE THERE ARE BUSINESS RECORDS THAT  
9 UNDERLIE THE DATABASES WHICH WE HAVE CONSISTENTLY NOT OBJECTED  
10 TO WHAT IS A REAL BUSINESS RECORD, AND THE PRACTICAL CONCERN IS  
11 IF SOMEONE -- I'M NOT TALKING ABOUT INTENTIONALLY BUT SOMEBODY  
12 JUST PUT DOWN THE WRONG DATES IN CREATING FROM WHAT WAS A  
13 BUSINESS RECORD A DOCUMENT THAT'S NOT, AND THAT'S IMPORTANT  
14 AND, YOU KNOW, WE'VE MADE NO SECRET THAT WE THINK THE  
15 REGISTRATION ISSUE IS IMPORTANT, AND YOUR HONOR EXCLUDED  
16 EVIDENCE WHERE THEY CAN'T PRODUCE ADMISSIBLE OF REGISTRATION,  
17 AND THIS DIRECTLY RELATES TO THAT. SO WE WOULD MAINTAIN OUR  
18 OBJECTION.

19 THE COURT: I SUSPECT THAT THE INFORMATION ON  
20 PLAINTIFFS' TRIAL EXHIBIT 378 IS ACCURATE JUST BECAUSE -- WELL,  
21 I JUST SUSPECT IT, BUT THE WITNESS HAS SAID IT'S HIS  
22 UNDERSTANDING THAT THESE ENTRIES REFLECT INFORMATION THAT'S  
23 OTHERWISE IN THE COMPUTER SYSTEM I GUESS AT OXFORD UNIVERSITY  
24 PRESS. HE DIDN'T CREATE THE DOCUMENT?

25 MR. RICH: NO, HE DID NOT.

1 THE COURT: AND I HAVE NOT HEARD HIM SAY THAT HE CAN  
2 VERIFY THE INFORMATION ON IT WHICH IS THE PART OF THE  
3 INFORMATION THAT IS IMPORTANT TO YOU, SO I DON'T THINK THIS  
4 EXHIBIT CAN COME IN THROUGH THIS WITNESS; THEREFORE, I WILL  
5 SUSTAIN THE OBJECTION AT THIS TIME.

6 MR. RICH: WOULD YOUR HONOR ENTERTAIN AND PERMIT US  
7 TO ATTEMPT THROUGH OTHER MEANS TO GET THIS INFORMATION INTO THE  
8 RECORD?

9 THE COURT: YES.

10 MR. RICH: THANK YOU VERY MUCH.

11 BY MR. RICH:

12 Q. IF YOU WOULD TURN TO TAB S PLEASE IN YOUR BINDER?

13 A. YES.

14 Q. THAT IS THE MUSIC OF BERLIOZ BY JULIAN RUSHTON?

15 A. YES.

16 Q. AND IF WE TURN TO THE JOINT FILING AT B-4, IT INDICATES  
17 THAT PROFESSOR ORR USED PAGES 250 TO 267 OF THE MUSIC OF  
18 BERLIOZ FOR HIS COURSE ROMANTIC PERIOD 1800 TO 1900, THAT'S  
19 MUSIC 8860, DURING THE 2009 SUMMER TERM; IS THAT YOUR  
20 UNDERSTANDING?

21 A. CORRECT.

22 Q. I BELIEVE YOU HAVE A COPY OF THE BOOK IN FRONT OF YOU IN  
23 EVIDENCE AS PX-427?

24 A. YES.

25 Q. AND THEN IF YOU WOULD LOOK IN YOUR BINDER PLEASE AT PX-428

1 ALSO IN EVIDENCE, CAN YOU IDENTIFY THAT DOCUMENT PLEASE?

2 A. THAT IS THE PUBLISHING AGREEMENT BETWEEN OXFORD AND THE  
3 AUTHOR FOR THIS BOOK.

4 Q. MR. RUSHTON; IS THAT CORRECT?

5 A. YES.

6 Q. AND IF YOU LOOK AT PARAGRAPH 5 OF THAT DOCUMENT PLEASE --

7 A. YES.

8 Q. -- WHAT RIGHTS DOES OXFORD ACQUIRE -- DID OXFORD ACQUIRE  
9 IN THAT WORK?

10 A. THE LEGAL TERM OF COPYRIGHT INCLUDING ANY RENEWALS AND  
11 EXTENSIONS, THE SOLE EXCLUSIVE AND SUBJECT AS HEREINAFTER  
12 PROVIDED, IRREVOCABLE RIGHT AND LICENSE TO PRODUCE AND PUBLISH  
13 THE WORK OR TO LICENSE THE PRODUCTION AND PUBLICATION OF THE  
14 WORK OR ANY ADAPTATION OR ANY ABRIDGEMENT OF THE WORK OR ANY  
15 SUBSTANTIAL PARTS OF THE WORK IN BOOK FORM, ET CETERA.

16 Q. THANK YOU. IF YOU WOULD TURN TO TAB T, THE NEXT WORK IS  
17 NEWSPAPERS BY PETER GRUNDY, THAT'S JOINT FILING A-2 WHICH  
18 INDICATES THAT PROFESSOR MURPHY USED PAGES 30 TO 58 OF  
19 NEWSPAPERS DURING HIS COURSE CLASSROOM PRACTICES, THE COURSE IS  
20 AL 8480, THAT'S DURING THE 2009 MAYMESTER; DO YOU SEE THAT?

21 A. YES.

22 Q. AND THE BOOK IS IN EVIDENCE OF PX-433. IF YOU WOULD TURN  
23 TO PAGE 58 OF THE BOOK PLEASE?

24 A. YES.

25 Q. DO YOU SEE A REFERENCE TO PHOTOCOPIABLE?

- 1 A. UH-HUH (AFFIRMATIVE).
- 2 Q. DO YOU KNOW WHAT THAT IS A REFERENCE TO?
- 3 A. I DON'T ACTUALLY, NO.
- 4 Q. OKAY. DO YOU HAVE ANY UNDERSTANDING AS TO WHAT MATERIAL
- 5 IT PURPORTS TO INDICATE IT IS PHOTOCOPIABLE?
- 6 A. I WOULD PRESUME IT'S THE SQUARED BOX ABOVE THAT LINE AND
- 7 THAT'S IN CONVENTION WITH -- THAT'S THE CONVENTION WITH THE
- 8 CREDIT LINE BELOW THE OBJECT TO WHICH IT REFERS.
- 9 Q. DO YOU HAVE ANY IDEA WHY IT WOULD INDICATE OR SINGLE OUT
- 10 THAT MATERIAL AS BEING PHOTOCOPIABLE?
- 11 A. I DON'T.
- 12 Q. IF YOU'D LOOK AT PX-434 PLEASE, IDENTIFY WHAT THAT IS?
- 13 A. THE PUBLISHING AGREEMENT BETWEEN OXFORD UNIVERSITY PRESS
- 14 AND PETER GRUNDY FOR THE WORK NEWSPAPERS.
- 15 Q. AND LOOK AT PARAGRAPH 5.1, WHAT RIGHTS DID THE AUTHOR
- 16 ASSIGN TO OXFORD?
- 17 A. THE COPYRIGHT IN THE WORK INCLUDING ANY RENEWAL TOGETHER
- 18 WITH ANY FUTURE COPYRIGHT ARISING IN CONNECTION WITH THE WORK.
- 19 Q. ALL RIGHT. FINALLY TAB U, IT'S A-2 OF THE JOINT FILING,
- 20 INDICATES THAT PROFESSOR MURPHY USED PAGES 24 TO 62 OF ROLE
- 21 PLAY RESOURCE BOOKS FOR TEACHERS DURING HIS COURSE CLASSROOM
- 22 PRACTICES AND TEACHING, ESL SLASH EFL AL 8480 DURING THE 2009
- 23 MAYMESTER, CORRECT?
- 24 A. CORRECT.
- 25 Q. THE BOOK IS IN EVIDENCE AT PX-458. IF YOU WOULD TAKE A

1 LOOK IN YOUR BINDER AT PX-459 PLEASE?

2 A. YES.

3 Q. WHAT IS THAT?

4 A. THAT IS THE PUBLISHING AGREEMENT BETWEEN OXFORD UNIVERSITY  
5 PRESS AND GILLIAN PORTER LADOUSSE FOR THE PUBLICATION OF HIS  
6 WORK OF ROLE PLAY.

7 Q. IF YOU'D LOOK AT PARAGRAPH 5.1, WHAT RIGHTS DOES OXFORD  
8 ACQUIRE BY THAT PARAGRAPH IN THE WORKS?

9 A. THE LEGAL TERM OF COPYRIGHT INCLUDING ANY RENEWAL THEREOF,  
10 THE COPYRIGHT INCLUDING ANY FUTURE COPYRIGHT IN THE WORK.

11 MR. RICH: ONE MOMENT PLEASE, YOUR HONOR.

12 (PAUSE IN THE PROCEEDINGS.)

13 MR. RICH: YOUR HONOR, THAT CONCLUDES MY  
14 EXAMINATION. THANK YOU.

15 CROSS-EXAMINATION

16 BY MR. HARBIN:

17 Q. MR. PFUND, MY NAME IS JOHN HARBIN. WE MET FORMERLY. I'LL  
18 BE ASKING YOU SOME QUESTIONS. I'VE NOW MET SOMEBODY WHO  
19 ACTUALLY SPEAKS FASTER THAN I DO I BELIEVE. SO IT'S GOOD TO  
20 MEET YOU, AND THE COURT REPORTER IS GOING TO HAVE A PAINFUL  
21 TIME IN THE NEXT HOUR OR SO.

22 I WANT TO ASK YOU A QUESTION YOU WERE JUST TESTIFYING  
23 ABOUT THIS WORK NEWSPAPERS --

24 THE COURT: WHAT WAS THE EXHIBIT NUMBER?

25 MR. HARBIN: IT'S DEFENDANTS' EXHIBIT 789, BUT I

1 THINK WE'VE ALREADY INTRODUCED IT AS PLAINTIFF'S EXHIBIT 433.

2 BY MR. HARBIN:

3 Q. AND I THINK YOU WERE TALKING ABOUT THE PHOTOCOPIABLE  
4 LANGUAGE IN CERTAIN PAGES WHERE YOU SAID YOU WEREN'T FAMILIAR  
5 WITH IT AND YOU WERE PRESUMING WHAT IT MEANT; IS THAT RIGHT?

6 A. I THINK I SAID I PRESUMED THAT IT WAS A CREDIT LINE.

7 Q. IF YOU LOOK AT THE SECOND PAGE OF THE INSIDE COVER, WHAT  
8 OXFORD AS PUBLISHER TOLD THE WORLD IS THAT OXFORD GRANTS  
9 PERMISSION FOR THE PHOTOCOPYING OF THOSE PAGES MARKED  
10 PHOTOCOPIABLE ACCORDING TO THE FOLLOWING CONDITIONS; DO YOU SEE  
11 THAT?

12 A. I DO.

13 Q. INCLUDING IN THAT IS INDIVIDUAL PURCHASERS MAY MAKE COPIES  
14 THEIR OWN USE OR FOR CLASSES OR FOR USE BY CLASSES THAT THEY  
15 TEACH?

16 A. RIGHT.

17 Q. NOW OXFORD DID NOT SAY ONLY PORTIONS OF THE PAGES MARKED  
18 PHOTOCOPIABLE ARE COPIABLE, DID IT, IT SAID THE PAGES ARE  
19 COPIABLE?

20 A. CORRECT.

21 Q. NOW, YOU REFERRED TO THE CONTRACT FOR THAT WORK WHICH IS  
22 IN TAB T, PLAINTIFFS' EXHIBIT 434, THAT CONTRACT IS ACTUALLY  
23 WITH THE OXFORD UNIVERSITY PRESS IN THE U.K., CORRECT?

24 A. YES, THAT'S CORRECT.

25 Q. OKAY. AND I THINK YOU SAID THAT WHILE YOU ARE AFFILIATED

1 YOU'RE NOT UNDER THEIR -- THE MANAGEMENT OF THE UNIVERSITY?

2 A. THAT'S CORRECT, THAT'S WHAT I SAID, YES.

3 Q. BUT THAT THE OXFORD UNIVERSITY PRESS OF THE U.K. IS  
4 ACTUALLY A DEPARTMENT OF THE UNIVERSITY?

5 A. THAT'S CORRECT.

6 Q. AND THE CONTRACT TO YOUR UNDERSTANDING, I BELIEVE YOU  
7 ALREADY TESTIFIED TO THIS, WHICH WE CAN INTRODUCE BETWEEN  
8 OXFORD UNIVERSITY U.K. -- OXFORD UNIVERSITY PRESS U.K. AND  
9 OXFORD UNIVERSITY PRESS IN THE U.S. ONLY GIVES OXFORD  
10 UNIVERSITY PRESS IN THE U.S. EXCLUSIVE DISTRIBUTION RIGHTS,  
11 CORRECT?

12 A. I'M SORRY, COULD YOU REPEAT THAT? I MISSED THE FIRST PART  
13 OF THAT QUESTION.

14 Q. THE CONTRACT BETWEEN OXFORD UNIVERSITY PRESS U.K. AND  
15 OXFORD UNIVERSITY PRESS IN THE U.S. GIVES YOUR COMPANY YOUR  
16 NONPROFIT EXCLUSIVE RIGHTS TO DISTRIBUTE?

17 A. I'M NOT AWARE OF A CONTRACT PER SE. I THINK THERE WAS A  
18 FORMALIZATION OF THE RELATIONSHIP BETWEEN OXFORD U.S. AND U.K.  
19 IN I THINK THE MID 2000'S.

20 I'VE NOT SEEN A COPY OF THAT CONTRACT. THE  
21 RELATIONSHIP HAS ALWAYS BEEN PRESUMED TO BE ALMOST  
22 EXISTENTIALLY RELATED. SO I DON'T KNOW OF SUCH A CONTRACT.  
23 WHICH IS NOT TO SAY IT DOESN'T EXIST, I HAVE JUST NOT SEEN IT.

24 MR. HARBIN: IF I MAY APPROACH THE WITNESS, YOUR  
25 HONOR?

ANDRE G. ASHLEY, O.C.R.



1 THE COURT: YES.

2 BY MR. HARBIN:

3 Q. LET ME HAND YOU A NOTEBOOK. BEFORE I GET TO THAT, BY THE  
4 WAY, THE CONTRACT REGARDING THE LAST WORK YOU TALKED ABOUT ROLE  
5 PLAY, UNDER TAB U OF THE PLAINTIFFS' WITNESS BOOK, THE CONTRACT  
6 BEING PLAINTIFFS' EXHIBIT 459 IS ALSO A CONTRACT BETWEEN THE  
7 AUTHOR LADOUSSE AND THE OXFORD UNIVERSITY PRESS IN THE U.K.?

8 A. THAT'S CORRECT.

9 Q. AND IT'S DATED 1985; IS THAT RIGHT?

10 A. THAT'S RIGHT.

11 Q. IF YOU LOOK AT THE BOOK I JUST GAVE YOU AT PLAINTIFFS'  
12 EXHIBIT 509, IT APPEARS TO BE A CONTRACT BETWEEN OXFORD  
13 UNIVERSITY PRESS AND OXFORD UNIVERSITY PRESS, INC. WHICH I  
14 THINK IS THE U.S. GROUP; IS THAT RIGHT?

15 A. CORRECT.

16 Q. DATED NOVEMBER 11, 2010?

17 A. YES.

18 Q. AND HAVE YOU EVER SEEN THIS CONTRACT BEFORE?

19 A. I HAVE NOT SEEN THIS CONTRACT BEFORE, AT LEAST NOT TO MY  
20 RECOLLECTION.

21 MR. HARBIN: MY UNDERSTANDING, YOUR HONOR, IS THAT IS  
22 THE ONLY WRITTEN CONTRACT BETWEEN THE TWO ENTITIES THAT HAS  
23 BEEN PRODUCED IN THE LITIGATION.

24 BY MR. HARBIN:

25 Q. NOW IN REGARD TO THE MUSIC OF BERLIOZ WORK THAT YOU

1 DISCUSSED, TO YOUR KNOWLEDGE THERE IS NO CERTIFICATE OF  
2 COPYRIGHT REGISTRATION, CORRECT; YOU'RE RELYING ON ITS STATUS  
3 AS A FOREIGN WORK TO YOUR KNOWLEDGE?

4 A. TO MY KNOWLEDGE, YES, CORRECT.

5 Q. THE ONLY RECORD YOU DO HAVE OF PUBLICATION IS THE -- AT  
6 THIS TIME IS THE SPREADSHEET THAT YOU WENT OVER, CORRECT, THAT  
7 YOU DIDN'T PERSONALLY PREPARE?

8 A. THE ONLY RECORD I HAVE OF THE PUBLICATION DATE OR THE  
9 PUBLICATION?

10 Q. PUBLICATION DATE, I'M SORRY. THANK YOU.

11 A. YES, THAT'S CORRECT.

12 Q. THANK YOU.

13 THE COURT: NOW WHICH WORK ARE WE TALKING ABOUT  
14 HERE?

15 MR. HARBIN: THAT'S MUSIC OF BERLIOZ WHICH IS  
16 PLAINTIFFS' EXHIBIT 427.

17 BY MR. HARBIN:

18 Q. NOW, JUST TO BE CLEAR WHEN YOU SAID YOU WERE ACTING  
19 PRESIDENT, THAT'S OF THE U.S. COMPANY?

20 A. CORRECT.

21 Q. OKAY. THANK YOU. AND YOUR EXPERIENCE AT NYU WAS IN  
22 EDITORIAL WORK FIRST AS EDITOR, THEN EDITOR IN CHIEF AND THEN  
23 YOU WENT TO DIRECTOR?

24 A. THAT'S RIGHT, YES.

25 Q. OKAY. AND THEN YOU WORKED AT VARIOUS EDITORIAL CAPACITIES

1 LEADING UP TO YOUR PROMOTION NOW AT OXFORD?

2 A. CORRECT. ALTHOUGH THE PUBLISHER CAPACITY EXTENDED WELL  
3 BEYOND EDITORIAL. THAT INCLUDED ALL THE PUBLICATION FUNCTIONS  
4 INVOLVED IN THE ACADEMIC TRADE DIVISION. SO THAT WAS  
5 ESSENTIALLY JUST RUNNING A SMALL PUBLISHING HOUSE WITHIN A  
6 LARGER ONE.

7 Q. AND YOU HAVE NO LEGAL TRAINING YOURSELF?

8 A. I HAVE NO LEGAL TRAINING.

9 Q. AND YOU HAVE NO FINANCE OR ACCOUNTING TRAINING?

10 A. I DO HAVE FINANCE AND ACCOUNTING TRAINING. I TOOK A  
11 COURSE SHORTLY BEFORE BECOMING THE DIRECTOR OF THE NEW YORK  
12 UNIVERSITY PRESS ON ACCOUNTING -- I FORGOT THE EXACT NAME OF  
13 IT, BUT IT WAS ACCOUNTING FINANCE FOR PUBLISHING. IT WAS A  
14 NIGHT COURSE AT NYU.

15 Q. THAT WAS ONE COURSE?

16 A. IT WAS ONE COURSE.

17 Q. ONE SEMESTER OR QUARTER?

18 A. YEAH, I PRESUME A SEMESTER. I DON'T RECOLLECT EXACTLY BUT  
19 IT WAS ONE COURSE.

20 Q. AND THAT'S THE EXTENT OF YOUR FINANCE AND ACCOUNTING  
21 TRAINING, AND YOU HAVEN'T WORKED IN THE FINANCE OR ACCOUNTING  
22 DEPARTMENTS OF THE PUBLISHERS YOU'VE HAVE WORKED WITH?

23 A. NO, I HAVE NOT.

24 Q. AND WHEN YOU TALKED ABOUT PERMISSIONS REVENUE BEING HEAVY  
25 MONEY, THAT WORDS YOU'RE RELYING ON WHAT; I THINK YOU SAID

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1 ACCOUNTING AND FINANCE PEOPLE TOLD YOU ABOUT THAT?

2 A. YES, THAT IS WHAT I SAID.

3 Q. BUT THERE ARE COSTS ASSOCIATED WITH EVEN PERMISSIONS  
4 REVENUE, CORRECT, FOR EXAMPLE, AS I BELIEVE YOU TESTIFIED,  
5 OXFORD HAS PERMISSIONS PERSONNEL WHOSE JOB IT IS TO RESPOND TO  
6 AND DEAL WITH THE PERMISSIONS SIDE OF THE BUSINESS?

7 A. YES.

8 MR. RICH: OBJECTION, COMPOUND QUESTION.

9 THE COURT: OVERRULED.

10 BY MR. HARBIN:

11 Q. AND YOU HAVE TO MONITOR, FOR EXAMPLE, CCC'S PERFORMANCE?

12 A. I DON'T THINK MONITOR IS NECESSARILY THE RIGHT WORD, BUT I  
13 BELIEVE WE CERTAINLY IN TERMS OF OUR RELATIONSHIP WITH THEM WE  
14 HAVE REGULAR CONVERSATIONS AND MEETINGS, YES.

15 Q. OKAY. NOW YOU TALKED A LITTLE BIT ABOUT THE LARGE  
16 COMMERCIAL PUBLISHERS. YOU MENTIONED MCGRAW-HILL, PEARSON.  
17 ARE THEY THE LARGEST TWO?

18 A. PEARSON IS PROBABLY CONSIDERED THE LARGEST. MY KNOWLEDGE  
19 OF -- THERE ARE SO MANY MERGERS THAT ALWAYS TAKE PLACE IN THE  
20 COLLEGE PUBLISHING WORLD, BUT PEARSON IS CERTAINLY AMONG THE  
21 LARGEST IF NOT THE LARGEST.

22 Q. AND HOW MANY OTHER LARGE COMMERCIAL PUBLISHERS ARE THERE  
23 JUST BALLPARK?

24 A. I WOULD SAY THERE ARE FIVE TO SIX.

25 Q. WHAT SHARE OF THE ACADEMIC PUBLISHING MARKET DO THEY HAVE;

1 CAN YOU APPROXIMATE THAT?  
2 A. OF THE HIGHER EDUCATION MARKET?  
3 Q. RIGHT.  
4 A. THAT'S GOING TO BE A TOUGH ONE --  
5 THE COURT: ARE YOU TALKING ABOUT MCGRAW-HILL AND  
6 PEARSON?  
7 BY MR. HARBIN:  
8 Q. CAN YOU ESTIMATE FOR MCGRAW-HILL AND PEARSON WHAT SHARE  
9 ROUGHLY THEY WOULD HAVE?  
10 A. NO, I'M AFRAID I DON'T KNOW THAT BY A COMPETITOR. I WOULD  
11 IMAGINE THAT THE TOP FOUR TO FIVE PRESSES CONTROL -- AGAIN THIS  
12 IS A BIT OF A GUESS, BUT I WOULD SAY 70 TO 80 PERCENT OF THE  
13 HIGHER EDUCATION MARKET.  
14 Q. OKAY. AND SO TO YOUR KNOWLEDGE -- ARE YOU ACTIVE IN THE  
15 AAP?  
16 A. WE ARE, WE ARE MEMBERS.  
17 Q. AMERICAN ASSOCIATION OF PUBLISHERS?  
18 A. CORRECT, WE'RE MEMBERS.  
19 Q. TO YOUR KNOWLEDGE ARE THE LARGE COMMERCIAL PUBLISHERS  
20 MEMBERS?  
21 A. YES, THEY ARE.  
22 Q. AND IS AAP HELPING FUND THE COSTS, THE FEES FOR  
23 OXFORD'S -- THE ATTORNEYS' FEES FOR YOUR PARTICIPATION IN THIS  
24 LITIGATION?  
25 A. I BELIEVE SO, YES.

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1 Q. AND CCC IS PAYING THE REST OF THE FEES?

2 A. I DON'T KNOW WHAT THE EXACT ARRANGEMENT IS IN THAT REGARD.

3 Q. BUT OXFORD IS NOT PAYING THE FEES?

4 A. I'M NOT AWARE THAT OXFORD IS PAYING THE FEES AS A SEPARATE  
5 ENTITY. WE PAY FEES CERTAINLY TO THE AAP AS A FUNCTION OF OUR  
6 MEMBERSHIP EVERY YEAR.

7 THEY'RE A TRADE ASSOCIATION MEANING AN ASSOCIATION  
8 THAT REPRESENTS PUBLISHER INTERESTS, AND WE ARE A MEMBER OF  
9 THEM AS WE ARE OF THE AMERICAN ASSOCIATION OF UNIVERSITY  
10 PRESSES.

11 Q. DID I UNDERSTAND YOU TO SAY -- OBVIOUSLY THIS IS AN  
12 ESTIMATION -- THAT OXFORD HAS FIRST APPROXIMATELY 2.5 PERCENT  
13 OF THE ACADEMIC BOOKS MARKET?

14 A. YES.

15 Q. AND DID YOU SAY 4.5 PERCENT OF THE JOURNAL MARKET?

16 A. I THINK I SAID SOMEWHERE UNDER 4 PERCENT. I THINK I SAID  
17 3.7 PERCENT.

18 Q. 3.7 PERCENT. AND IN REGARD TO OXFORD UNIVERSITY PRESS  
19 U.S. COMPANIES BUSINESS IN THE UNITED STATES, HOW DOES THE  
20 BUSINESS BREAKDOWN DOLLAR WISE BETWEEN THE JOURNAL MARKET AND  
21 THE ACADEMIC BOOKS MARKET?

22 A. THE ACADEMIC DIVISION AS WE CALL IT IS ABOUT A 50 MILLION  
23 DOLLAR DIVISION, AND THAT INCLUDES SALES OF BOTH U.S. AND U.K.  
24 ORIGINATED BOOKS.

25 THE JOURNALS DIVISION IS APPROXIMATELY 60 MILLION

1 POUNDS. I'M NOT ENTIRELY SURE OF THAT NUMBER, BUT I THINK  
2 THAT'S ABOUT RIGHT.

3 Q. THE 50 MILLION IS THAT IN -- I THOUGHT YOU SAID THE  
4 ACADEMIC DIVISION IN THE U.S. WAS ABOUT 33 MILLION DOLLARS.  
5 ARE YOU NOW TALKING ABOUT THE OVERALL OXFORD PUBLISHING?

6 A. I WAS MAKING A DISTINCTION BETWEEN THE ACADEMIC DIVISION  
7 IN THE U.S. -- SORRY, IT GETS CONFUSING WITH THE TERMINOLOGY.  
8 WE MAKE A DISTINCTION BETWEEN WHAT WE CALL TRADE AND ACADEMIC.

9 THE ACADEMIC WHICH IS ALMOST EXCLUSIVELY GEARED  
10 TOWARDS THE ACADEMY IS ABOUT 32 MILLION DOLLARS. WHEN YOU  
11 INCLUDE THE TRADE BOOKS, WHICH WE ALSO REFER TO AS BEING PART  
12 OF THE ACADEMIC DIVISION BECAUSE IT'S REALLY A DISTINCTION  
13 THAT'S PRIMARILY ABOUT SALES CHANNEL, THAT THEN REACHES 50  
14 MILLION.

15 Q. OKAY. BUT THE JOURNALS DIVISION IS A SEPARATE DIVISION?

16 A. IT IS, ALTHOUGH WE RECENTLY COMBINED OUR PUBLISHING INTO  
17 SOMETHING CALLED THE GLOBAL ACADEMIC BUSINESS, BUT IT IS  
18 SEPARATE.

19 JOURNALS PUBLISHING AND BOOKS PUBLISHING IN TERMS OF  
20 HOW IT WORKS AND THE WAY IT'S DONE IS ACTUALLY MATERIALLY  
21 DIFFERENT AND AS A RESULT THEY ARE SEPARATE FUNCTIONS.

22 Q. AND YOU SAID THAT THE JOURNALS DIVISION PUBLISHES  
23 PRIMARILY IN THE SCIENCE AND TECHNICAL FIELD?

24 A. NO, WE HAVE A GOOD MANY HUMANITIES AND SOCIAL SCIENCES  
25 JOURNALS, AND WE HAVE A SMALLER BUT CONSIDERABLE NUMBER OF

1 SCIENCE AND MEDICAL JOURNALS.

2 Q. AND DO YOU HAVE JOURNALS -- AND WE'RE TALKING ABOUT  
3 UNIVERSITIES OF EDUCATION HERE, BUT DOES OXFORD UNIVERSITY  
4 PRESS ALSO HAVE CORPORATE CUSTOMERS WHO EITHER SUBSCRIBE TO  
5 JOURNALS OR BUY PERMISSIONS?

6 A. YES, I THINK THAT LIKELY WOULD BE SIGNIFICANTLY SMALLER.  
7 I THINK THAT CORPORATE CUSTOMERS WOULD PROBABLY BE LIMITED  
8 LARGELY TO THE OCCASIONAL MEDICAL JOURNAL. I THINK THE  
9 MAJORITY OF JOURNAL CUSTOMERS TEND TO BE ACADEMIC.

10 Q. AND DOES YOUR REVENUE IN THE U.S. WHEN WE LOOK AT YOUR  
11 U.S. FINANCIAL INFORMATION, DOES THAT INCLUDE REVENUE RECEIVED  
12 FROM INSTITUTIONS OR COMPANIES OVERSEAS OUTSIDE THE U.S.?

13 A. IT INCLUDES -- I'D HAVE TO THINK ABOUT THIS FOR A  
14 SECOND. IT INCLUDES SALES OF OUR BOOKS TO OUR HOME OFFICE WHO  
15 THEN SELL THEM ON.

16 SO, YES, IT DOES IS THE SHORT ANSWER. WE HAVE LOCAL  
17 OFFICES TO WHOM WE TEND TO PROVIDE THE BOOKS, AND THEY THEN  
18 SELL THEM OUT INTO THE MARKETPLACE.

19 Q. REGARDING CCC, I THINK YOU SAID THEY ARE THE PRIMARY  
20 SOURCE, MOST OF THE REQUESTS FOR PERMISSIONS FOR PORTIONS OF  
21 WORKS COME THROUGH CCC?

22 A. I THINK THAT'S RIGHT, YES, I THINK THAT'S RIGHT.

23 Q. AND CAN YOU ESTIMATE WHAT PERCENTAGE COMES THROUGH CCC  
24 VERSUS DIRECTLY TO OXFORD?

25 A. I REALLY CAN'T. I DON'T KNOW THAT. I JUST DON'T KNOW

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1 WHAT THAT PERCENTAGE IS. I KNOW THAT IT USED TO BE A VERY  
2 SMALL NUMBER, AND IT HAS GROWN SIGNIFICANTLY WITH EVERY PASSING  
3 YEAR SIMPLY BECAUSE CCC IS SUCH A CLEAN AND EFFICIENT WAY OF  
4 SOLICITING AND RECEIVING PERMISSIONS.

5 Q. DO YOU REMEMBER TESTIFYING IN 2009 THAT CCC WAS THE  
6 PRIMARY SOURCE OF THE PERMISSIONS?

7 A. I DON'T BUT IF I SAID IT THEN, I IMAGINE IT WAS TRUE.

8 Q. AS FAR AS IN TERMS OF DOLLAR REVENUE, IS IT CORRECT THAT  
9 THE REVENUE RECEIVED FROM PERMISSIONS DIRECTED THROUGH CCC  
10 WOULD BE THE MAJORITY OF YOUR PERMISSIONS REVENUE FOR ACADEMIC  
11 BOOKS?

12 A. LIKELY, YES.

13 Q. WOULD YOU SAY THE VAST MAJORITY OVER 70, 80 PERCENT?

14 A. I REALLY WOULDN'T WANT TO ATTACH A NUMBER TO IT BECAUSE  
15 I'M JUST NOT CERTAIN WHAT THOSE NUMBERS ARE. I WOULD THINK IT  
16 WOULD BE A LARGE'ISH MAJORITY, YES.

17 Q. I BELIEVE YOU TESTIFIED THE WORKS WE'RE TALKING ABOUT HERE  
18 GENERALLY YOUR ACADEMIC WORKS ARE NONFICTION FACTUAL WORKS,  
19 CORRECT?

20 A. YES, NONFICTION.

21 Q. AND AT OXFORD IT IS THE AUTHOR'S RESPONSIBILITY FOR  
22 DETERMINING IF THE USE OF ANOTHER'S MATERIAL IS FAIR USE  
23 CONSULTING WITH THE EDITOR, CORRECT?

24 A. CORRECT.

25 Q. AND SOMETIMES THE AUTHOR WORKING IN -- OF AN OXFORD

1 PUBLICATION MAKES THAT DETERMINATION AS TO WHETHER USE IS FAIR  
2 WITHOUT CONSULTING THE EDITOR?  
3 A. YES.  
4 Q. AND I BELIEVE YOU TESTIFIED EARLIER YOUR AUTHORS ARE ALSO  
5 YOUR CUSTOMERS?  
6 A. CORRECT.  
7 Q. MEANING THEY'RE TYPICALLY PROFESSORS?  
8 A. YES.  
9 Q. IN THAT BOOK IF YOU'D LOOK AT PLAINTIFFS' EXHIBIT 496?  
10 A. YES, SIR.  
11 Q. IS IT CORRECT THIS IS PERMISSIONS GUIDELINES AND TIPS THAT  
12 YOU GIVE TO YOUR AUTHORS?  
13 A. YES, INDEED.  
14 Q. OKAY. AND YOU INFORM YOUR AUTHORS THAT COPYRIGHT LAW IS  
15 COMPLEX AND EVER CHANGING AND FAIR USE QUESTIONS IN PARTICULAR  
16 INVOLVE A SIGNIFICANT AMOUNT OF SUBJECTIVITY AND ARE VERY FACT  
17 SPECIFIC?  
18 A. YES, THAT'S WHAT IT SAID.  
19 Q. AND THAT OUP CANNOT PROVIDE ANY HARD AND FAST RULES ABOUT  
20 WHEN PERMISSION IS REQUIRED?  
21 A. CORRECT.  
22 Q. NOW, IF YOU LOOK AT THE SECOND PAGE OF PLAINTIFFS' EXHIBIT  
23 496, YOU HAVE A DISCUSSION THAT YOU GIVE YOUR AUTHORS ABOUT  
24 FAIR USE?  
25 A. YEP.

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1 Q. AND YOU STATE A PERCENTAGE OF ORIGINAL -- FIRST YOU HAVE  
2 AT THE TOP PARAGRAPH, YOU DESCRIBE -- YOU LIST THREE FACTORS TO  
3 APPLY?  
4 A. YEP, CORRECT.  
5 Q. INCLUDING AMONG OTHERS THE PERCENTAGE OF THE ORIGINAL WORK  
6 THAT YOU'RE USING?  
7 A. YES.  
8 Q. BUT THEN YOU SAY THERE ARE HARD AND FAST RULES TO APPLY IN  
9 WEIGHING THESE FACTORS?  
10 A. YES.  
11 Q. THAT'S YOUR UNDERSTANDING OF THE FAIR USE LAW?  
12 A. WELL, I THINK THAT'S A SLIGHT OVERSIMPLIFICATION. IF YOU  
13 CONTINUE ON DOWN, IT SAYS WITH THIS CAVEAT THERE ARE A FEW  
14 GUIDELINES. SO I THERE IS A LITTLE BIT MORE --  
15 Q. YEAH, WE'RE GOING TO GET TO THAT. PERCENTAGE OF THE  
16 ORIGINAL, YOU SAID -- OXFORD STATES IT IS USUALLY ACCEPTABLE TO  
17 QUOTE 1 TO 3 PERCENT OF AN ORIGINAL UNIT IF THE USE IS  
18 TRANSFORMATIVE; DO YOU SEE THAT?  
19 A. I DO.  
20 Q. NOW, YOU WOULD AGREE WITH ME THAT IS A MORE RESTRICTIVE  
21 STANDARD THAN FAIR USE AS IT'S TRADITIONALLY UNDERSTOOD IN YOUR  
22 EXPERIENCE?  
23 A. I'M NOT SURE WHY I WOULD AGREE WITH YOU ON THAT. I DON'T  
24 THINK I HAVE MADE THAT STATEMENT.  
25 Q. SO DO YOU AGREE OR DISAGREE OR YOU DON'T KNOW?

1 A. I HAVEN'T LOOKED AT THE FAIR USE POLICIES OF OTHER  
2 PUBLISHING HOUSES. I TEND TO FOCUS ON OUR OWN. SO I DON'T  
3 ACTUALLY KNOW WHETHER THAT IS MORE RESTRICTIVE OR NOT.

4 Q. YOU AGREE THERE'S NO MAXIMUM TO THE PERCENTAGE OF A WORK  
5 THAT CAN BE USED AND STILL QUALIFY AS FAIR USE?

6 MR. RICH: OBJECTION.

7 MR. HARBIN: I'M NOT TALKING ABOUT UNDER OXFORD'S  
8 POLICIES. I'M TALKING ABOUT GENERALLY.

9 THE COURT: STATE YOUR OBJECTION?

10 MR. RICH: IT CALLS FOR A LEGAL CONCLUSION.

11 THE COURT: WELL, I THINK IT IS A LEGAL CONCLUSION.  
12 I'LL ALLOW IT THOUGH.

13 THE WITNESS: COULD YOU REPEAT THE QUESTION?

14 BY MR. HARBIN:

15 Q. YOU AGREE THERE IS NO MAXIMUM TO THE PERCENTAGE OF A WORK  
16 THAT CAN BE USED AND STILL QUALIFY AS FAIR USE?

17 A. I'M HAVING A HARD TIME COGNITIVELY ACTUALLY FIGURING OUT  
18 WHAT THAT SENTENCE MEANS THAT THERE'S NO MAXIMUM -- COULD YOU  
19 REPHRASE IT IN A DIFFERENT WAY?

20 Q. YOU AGREE THERE IS NO MAXIMUM TO THE PERCENTAGE OF A WORK  
21 THAT CAN BE USED AND STILL QUALIFY AS FAIR USE?

22 A. YES, I WOULD SAY UNILATERALLY THAT IS NOT A STATEMENT I  
23 WOULD -- I DON'T THINK YOU CAN PUT A HARD AND FAST PERCENTAGE  
24 AND CLAIM THAT UP TO THAT POINT IT IS FAIR USE WITHOUT CONTEXT,  
25 BECAUSE I THINK THERE ARE POEMS AND LYRICS AND A GREAT MANY

1 OTHER FACTORS THAT ONE TENDS TO CONSIDER.

2 Q. AND IF YOU LOOK AT PAGE 5 OF OXFORD'S GUIDELINES,  
3 OXFORD -- IF YOU LOOK AT THE CONCLUSION ON THE THIRD LINE TO  
4 QUOTE THIS, OXFORD INTENTIONALLY STATED SOME OF THE FAIR USE  
5 RULES-OF-THUMB CONSERVATIVELY, CORRECT?

6 A. YES.

7 Q. AND IN YOUR EXPERIENCE IF YOU ASK TEN DIFFERENT PEOPLE IN  
8 PUBLISHING THEY WOULD GIVE YOU TEN DIFFERENT ANSWERS ABOUT WHAT  
9 PERCENTAGE IS APPROPRIATE?

10 A. YES, I THINK I DID SAY THAT IN MY DEPOSITION, YES.

11 Q. AND YOU AGREE IF THE USE IS FAIR THAT NO PERMISSION FEE IS  
12 OWED TO OXFORD OR ANY OTHER PUBLISHER?

13 A. YES.

14 Q. AND IS IT CORRECT THAT YOUR AUTHORS SOMETIMES USE WORKS  
15 EVEN IF THEY DECIDE THEY NEED TO GET A PERMISSION WITHOUT  
16 ACTUALLY HAVING THAT PERMISSION WHEN THEY CAN'T LOCATE THE  
17 COPYRIGHT OWNER?

18 A. THAT WOULD BE A CASE WHERE WE WOULD ACTUALLY LOOK AT THAT  
19 VERY MUCH ON AN AD HOC BASIS AND TAKE IT UP WHAT WE THINK OF AS  
20 A LADDER OF ESCALATION WITHIN THE PRESS.

21 THERE ARE VARIOUS DEGREES AT WHICH -- VARIOUS WAYS IN  
22 WHICH WE WOULD ENGAGE A SITUATION LIKE THAT, AND THAT WOULD --  
23 IN THE FIRST INSTANCE, THE AUTHOR WOULD COME TO THE EDITOR.  
24 THE EDITOR WOULD SAY YOU NEED TO GET PERMISSION. THE AUTHOR  
25 WOULD THEN SEEK PERMISSION.

ANDRE G. ASHLEY, O.C.R.

1           IF THE AUTHOR WERE UNABLE TO FIND A COPYRIGHT OWNER,  
2 HAD DONE A COPYRIGHT SEARCH WITH THE LIBRARY OF CONGRESS, HAD  
3 WRITTEN TO THE LAST KNOWN COPYRIGHT HOLDER, AND ALL THOSE  
4 AVENUES HAD BEEN EXHAUSTED, LIKELY WHAT WOULD HAPPEN THEN IS A  
5 DETERMINATION WOULD BE MADE BY THE EDITOR IN CONJUNCTION WITH  
6 THE AUTHOR AS TO WHETHER OR NOT THAT WAS A -- IT WOULD MAKE  
7 SENSE TO PROCEED WHETHER THE MATERIAL WAS OF SUCH CRUCIAL  
8 IMPORT TO THE WORK OF SCHOLARSHIP THAT IT NEEDED TO BE INCLUDED  
9 IN THERE.

10           AND THIS IS WHEN -- I FORGET WHO TESTIFIED TO THIS  
11 EARLIER, BUT THE IDEA THAT UNIVERSITY PRESSES ARE USERS OF FAIR  
12 USE OR CONSUMERS OF FAIR USE, I BELIEVE THAT VERY STRONGLY.  
13 BECAUSE I THINK IT'S VERY DIFFICULT TO DO SCHOLARSHIPS IN SOME  
14 AREAS IF YOU'RE NOT RELYING ON FAIR USE.

15           IF THE EDITOR WERE NERVOUS ABOUT PROCEEDING THAT  
16 WOULD THEN BE DISCUSSED WITH THE EDITORIAL DIRECTOR AND THE  
17 PUBLISHER, AND IF THEN THERE WASN'T AN AGREEMENT AS TO WHAT  
18 CONSTITUTED A SENSIBLE WAY TO PROCEED, WE WOULD DRAW ON OUR  
19 LEGAL COUNSEL IN-HOUSE, AND IF THEN THERE WAS STILL SOME DOUBT,  
20 WE WOULD GO TO OUR EXTERNAL LEGAL COUNSEL FOR ADVICE.

21 Q.    SO IS THE SHORT ANSWER THAT YES, SOMETIMES YOUR AUTHORS DO  
22 USE MATERIAL FROM ANOTHER EVEN WHEN THEY THOUGHT THEY SHOULD  
23 GET PERMISSION AND THEY COULDN'T OBTAIN THE PERMISSION, AND YOU  
24 HAVE PUBLISHED BOOKS WHERE THAT IS STATED IN THE BOOK, CORRECT?

25 A.    YES, IF WE THINK IT IS CRITICAL TO THE SCHOLARSHIP AND

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1 WE'VE EXHAUSTED ALL THE AVENUES, WE WILL PROCEED, YES.

2 MR. HARBIN: YOUR HONOR, WITH THESE AGREEMENTS I  
3 BELIEVE WE'VE WORKED OUT, I'M X'ING THROUGH PAGES.

4 BY MR. HARBIN:

5 Q. I BELIEVE YOU SAID THAT OXFORD'S CUSTOM PUBLISHING AT  
6 PRESENT IS SOMEWHAT LIMITED BECAUSE YOU HAVE DO HAVE THE  
7 REQUIREMENT OF USING ONLY OXFORD APPROVED MATERIAL?

8 A. THAT'S RIGHT.

9 Q. AND IN REGARD TO GIVING AWAY BOOKS, YOU GIVE AWAY SOME  
10 200,000 COPIES OF TEXTBOOKS EACH YEAR FREE TO PROFESSORS?

11 A. I DON'T KNOW IF IT'S 200,000. I KNOW IT'S 1.5, 1.6  
12 MILLION, AND, AGAIN, THAT'S JUST OUR HIGHER EDUCATION  
13 DIVISION. IF IT WERE PRESS WIDE IT WOULD BE A SIGNIFICANTLY  
14 LARGER NUMBER.

15 Q. I WILL REPRESENT TO YOU -- DO YOU RECALL FILING A  
16 DECLARATION IN CONJUNCTION WITH RESPONDING TO SUMMARY JUDGMENT  
17 OR BRIEFING ON SUMMARY JUDGMENT IN THIS CASE?

18 A. YES.

19 Q. AND I REPRESENT YOU PUT THAT FIGURE IN THERE OF 200,000 --

20 A. IN THAT CASE, YEAH, ABSOLUTELY I WOULDN'T REFUTE THOSE.

21 Q. NOW IN REGARD TO CERTAIN BOOKS HAVING ETERNAL LIFE, OXFORD  
22 AND ALL ACADEMIC PUBLISHERS IN YOUR EXPERIENCE DO COME OUT WITH  
23 NEW EDITIONS TO WORKS, CORRECT?

24 A. YES.

25 Q. AND SOMETIMES MULTIPLE EDITIONS?

1 A. YES, CONSECUTIVE EDITIONS, SO FOR FOUR, FIVE, SIX  
2 EDITIONS, YES.

3 Q. AND YOU BELIEVE THAT THE NEW EDITION CONTAINS NEW MORE  
4 CURRENT INFORMATION THAN THE PRIOR EDITION?

5 A. YES, THAT'S THE IDEA OF A REVISED EDITION, CORRECT.

6 Q. AND OXFORD PROMOTES IT THAT WAY TO THE PROFESSORS THAT  
7 THEY SHOULD BUY THE CURRENT EDITION?

8 A. YES, WE DO.

9 Q. BY THE WAY IN REGARD TO YOUR BOOKS, DOES OXFORD TRACK THE  
10 AVAILABILITY OF YOUR BOOKS NOT ON THE AMAZON SERVICE WHERE  
11 SOMEONE IS LOOKING AT A PORTION BUT JUST ANYBODY IN THE PUBLIC  
12 GOING TO AMAZON AND LOOKING UP ONE OF YOUR BOOKS, A USED BOOK;  
13 DO YOU TRACK THAT AT ALL?

14 A. DO YOU WE TRACK THE SEARCHES, IS THAT YOUR QUESTION? DO  
15 WE TRACK HOW PEOPLE SEARCH OUR BOOKS ON AMAZON?

16 Q. NOT SEARCHING BOOKS --

17 A. SEARCH FOR A BOOK?

18 Q. JUST BUYING A BOOK, DO YOU TRACK THE PRICES, FOR EXAMPLE,  
19 OF USED BOOKS THAT OXFORD HAS PUBLISHED, SPECIFICALLY USED  
20 ACADEMIC BOOKS THAT OXFORD HAS PUBLISHED?

21 A. WE'RE CERTAINLY AWARE OF THEM. I DON'T KNOW THAT I'D SAY  
22 WE TRACK THEM. IT'S A VERY COMMON PHENOMENON THAT WITHIN  
23 MINUTES OF A PUBLICATION THERE IS A USED BOOK AVAILABLE ONLINE  
24 ON AMAZON.

25 Q. WOULD YOU AGREE THAT THE CRABGRASS BOOK YOU TESTIFIED



1 ABOUT COULD BE PURCHASED AS A USED BOOK ON AMAZON FOR AS LITTLE  
2 AS \$3.50 NOW?

3 A. I WOULD IMAGINE THAT'S ABSOLUTELY THE CASE.

4 Q. AND THAT THE SLAVE COMMUNITY BOOK YOU TALKED ABOUT COULD  
5 BE PURCHASED FOR AS LITTLE AS FOUR DOLLARS OR SO?

6 A. YEP. AGAIN, I DON'T KNOW THAT FOR A FACT, BUT  
7 EXTRAPOLATING FROM MY EXPERIENCE, I WOULD SAY THAT'S LIKELY.

8 Q. NOW, I WANT TO TALK ABOUT FINANCIAL ISSUES AND THE  
9 QUESTION OF HARM OR POTENTIAL HARM BY THE ACTIONS THAT  
10 PROFESSORS AT GSU HAVE UNDERTAKEN.

11 DO YOU RECALL THAT YOU WERE PRODUCED AS A WITNESS BY  
12 THE PLAINTIFFS ON BEHALF OF OXFORD UNIVERSITY PRESS?

13 A. DO I RECALL THAT? I'M NOT SURE I UNDERSTAND THE QUESTION.

14 Q. DO YOU RECALL GIVING A DEPOSITION IN THE CASE?

15 A. YES, I'VE GIVEN A DEPOSITION, CORRECT.

16 Q. DO YOU RECALL THAT YOU WEREN'T JUST TESTIFYING  
17 INDIVIDUALLY, YOU WERE DESIGNATED AS A REPRESENTATIVE OF  
18 OXFORD?

19 A. YES, THAT'S CORRECT.

20 Q. AND DO YOU RECALL THAT YOU WERE DESIGNATED TO TESTIFY --  
21 AND BY THE WAY IF YOU NEED TO LOOK AT IT IT'S IN THE NOTEBOOK I  
22 JUST GAVE YOU AS DEFENDANT'S EXHIBIT 1.

23 YOU WERE DESIGNATED, AMONG OTHER THINGS, TO TESTIFY  
24 ON THE ISSUE OF WHETHER PLAINTIFF CONTENDS THE MARKETS OR  
25 POTENTIAL MARKETS FOR PLAINTIFFS' COPYRIGHTS HAVE SUFFERED OR

1 ARE SUFFERING FROM THE POSTINGS OF EXCERPTS OF WORKS COVERED BY  
2 SUCH COPYRIGHTS ON ERES, ULEARN AND/OR COURSE AND FACULTY  
3 WEBSITES AT GSU; DO YOU RECALL THAT?

4 A. YES.

5 Q. AND THAT IT INCLUDED BUT WAS NOT LIMITED TO, QUOTE, THE  
6 AMOUNT OF HARM IN U.S. DOLLARS AND HOW SUCH AMOUNT WAS  
7 CALCULATED, CLOSED QUOTE; DO YOU RECALL THAT?

8 A. YES.

9 Q. NOW, YOU'RE NOT AWARE OF ANY ANALYSIS ON MARKET HARM THAT  
10 HAS BEEN CONDUCTED OTHER THAN APPLYING PERMISSION FEES TO THE  
11 LEVEL OF USAGE AT GSU, CORRECT?

12 A. CORRECT.

13 Q. AND THAT MEANS SIMPLY TAKING THE NUMBER OF PAGES THAT WERE  
14 USED AND MULTIPLYING IT BY THE PER PAGE PRICE THAT YOU WOULD  
15 LIKE TO CHARGE AND THE NUMBER OF STUDENTS THAT ACTUALLY WERE IN  
16 THE CLASS, CORRECT?

17 A. CORRECT.

18 Q. BY THE WAY, YOU WERE QUESTIONED ABOUT IF EACH STUDENT  
19 WANTED TO BUY THIS EXCERPT THAT WOULD COST THAT STUDENT X OR  
20 WORDS TO THAT EFFECT; DO YOU RECALL THAT?

21 A. YES.

22 Q. BUT IS IT YOUR UNDERSTANDING THAT THE WAY THE PERMISSIONS  
23 IS IS YOU LOOK AT THE CLASS IF A PROFESSOR CONTACTS YOU AND THE  
24 CHARGES ARE FOR ANTICIPATED NUMBER OF STUDENTS IN THE CLASS?

25 A. THAT'S RIGHT.

1 Q. YOU GENERALLY DON'T GET PERMISSIONS REQUESTS FROM  
2 INDIVIDUAL STUDENTS?

3 A. NO, YOU DON'T.

4 Q. NOW, YOU MADE NO MENTION IN YOUR DEPOSITION AS THE  
5 DESIGNATED REPRESENTATIVE OF OXFORD WHEN YOUR DEPOSITION WAS  
6 TAKEN ABOUT ANY ISSUE OR CONCERN ABOUT LOST SALE OF BOOKS, DID  
7 YOU, SIR?

8 A. IT WAS LONG DAY. I DON'T RECOLLECT EVERYTHING I SAID, BUT  
9 IF THE RECORD SHOWS THAT I DID NOT, I DID NOT.

10 Q. AND YOU DON'T RECALL GIVING ANY SUCH TESTIMONY, DO YOU,  
11 SIR, IN YOUR DEPOSITION?

12 A. I DO NOT.

13 Q. AND YOU TESTIFIED -- AS YOU TESTIFIED YOU'RE NOT AWARE OF  
14 ANY ANALYSIS OXFORD HAS PERFORMED TO DETERMINE WHETHER GSU'S  
15 USE OF OXFORD'S WORKS HAS CONTRIBUTED TO A BROADER MARKET  
16 IMPACT AFFECTING YOUR COPYRIGHT GENERALLY?

17 A. THAT'S CORRECT.

18 Q. OXFORD HAS CONDUCTED NO FORMAL SURVEYS OR STUDIES,  
19 CORRECT?

20 A. CORRECT.

21 Q. AND YOU'RE NOT QUALIFIED TO GIVE SUCH AN OPINION ABOUT ANY  
22 DEGREE OF MARKET HARM YOURSELF, ARE YOU, SIR?

23 A. AS PHRASED, NO.

24 Q. AND YOU HAVE NO EVIDENCE OF YOUR PERSONAL KNOWLEDGE THAT  
25 ANY CONDUCT BY GSU OR ITS PROFESSORS HAS CAUSED OXFORD TO LOSE

1 THE SALE OF A SINGLE BOOK, DO YOU?

2 A. I THINK THAT'S A DIFFICULT ONE TO ANSWER. I THINK IF THE  
3 PERCENTAGE OF USE OF THE BOOK, THE MORE OF THE BOOK THAT IS  
4 USED THE MORE LIKELY IT WOULD BE THAT WERE IT NOT USED IN THIS  
5 WAY THAT A STUDENT WOULD PURCHASE IT.

6 IF ONE IS USING 12 CHAPTERS OF A BOOK SAY  
7 HYPOTHETICALLY OF A 14 CHAPTER BOOK, IT SEEMS TO ME THAT THAT'S  
8 A LIKELY PRESUMPTION THAT BARRING AN ALTERNATIVE THE BOOK WOULD  
9 BE PURCHASED.

10 I THINK THAT'S ONE OF THE REASONS WHY WE HAVE THE  
11 POLICY OF WHEN PEOPLE ARE USING MORE AND MORE OF A BOOK WE WANT  
12 TO ENCOURAGE PEOPLE TO BUY THE BOOK AS MUCH SO THAT THE BOOK IS  
13 ACTUALLY IS THEIRS AND IS PART OF THEIR LIBRARY AND PRESUMABLY  
14 PART OF THEIR INTELLECTUAL LANDSCAPE.

15 IN MANY WAYS ONE COULD MAKE THE ARGUMENT THAT TRYING  
16 TO ENCOURAGE THE PURCHASE OF THE BOOK JUST ADDS TO THE USED  
17 BOOK MARKET, BUT I THINK WE HAVE AT LEAST UNTIL VERY RECENTLY  
18 BEEN IN THE BUSINESS OF PRIMARILY SELLING BOOKS. SO I THINK  
19 THAT BE -- I WOULDN'T WANT TO MAKE THAT KIND OF UNEQUIVOCAL  
20 STATEMENT.

21 Q. FOLLOWING UP ON YOUR HYPOTHETICAL, AND I DON'T WANT TO  
22 BELABOR THIS BECAUSE THE STIPULATION IS IN THE RECORD, YOU'RE  
23 NOT AWARE OF ANY INSTANCE IN THIS CASE WHERE ANY GSU PROFESSOR  
24 COPIED AND USED IN A CLASS 12 OR 14 CHAPTERS OF AN OXFORD, ARE  
25 YOU?

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1 A. CORRECT, THAT WAS A HYPOTHETICAL.

2 Q. RIGHT. AND TO GO BACK TO MY QUESTION, YOU DON'T HAVE ANY  
3 PERSONAL KNOWLEDGE YOURSELF THAT ANY CONDUCT BY GSU OR ANY OF  
4 ITS PROFESSORS HAS CAUSED OXFORD TO LOSE THE ACTUAL SALE OF ANY  
5 BOOK, DO YOU?

6 A. AS PHRASED NO.

7 Q. AND OXFORD HAS NOT SEEN A DECLINE IN ITS REVENUE, ITS  
8 PERMISSIONS REVENUE SINCE THE INCEPTION OF ELECTRONIC RESERVES,  
9 HAS IT?

10 A. I THINK THAT'S ACTUALLY FALSE.

11 Q. IT WAS TRUE AS OF 2009, WASN'T IT?

12 A. I DON'T ACTUALLY KNOW THE TRAJECTORY OF THOSE PERMISSIONS  
13 REVENUES. IT'S DIFFICULT-- IT'S NOT A LIKE-ON-LIKE MEASURE.  
14 BECAUSE THE FACT IS WHEN A PRESS IS GROWING, WE SOMETIMES MAKE  
15 ACQUISITIONS. WE CERTAINLY ARE BUILDING UP OUR PUBLISHING  
16 PROGRAM.

17 IT'S POSSIBLE THAT THE PERMISSIONS REVENUE WOULD GROW  
18 AS A RESULT OF NATURAL GROWTH BUT STILL BE DECLINING BUT -- I  
19 DON'T ACTUALLY KNOW THE TRAJECTORY FROM MEMORY, THE TRAJECTORY  
20 OF THE PERMISSIONS REVENUE OF 2009.

21 Q. BUT YOU AGREE AS PART OF YOUR REVENUE OVERALL AS OF 2009  
22 OXFORD HAD NOT SEEN A DECLINE IN ITS REVENUE SINCE THE  
23 INCEPTION OF ELECTRONIC RESERVES?

24 A. WHEN YOU SAY REVENUE, YOU MEAN PERMISSIONS REVENUE?

25 Q. REVENUE OVERALL?

1 A. REVENUE OVERALL? YOU MEAN TOP LINE REVENUE?  
2 Q. YES.  
3 A. YES, THAT IS ABSOLUTELY TRUE.  
4 Q. IN FACT OXFORD HAS GROWN ENORMOUSLY IN THE PAST 15 YEARS  
5 AT LEAST UP TO 2009, CORRECT?  
6 A. THAT IS TRUE.  
7 Q. YOU SAID ROUGHLY DOUBLE IN SIZE?  
8 A. SINCE 2009?  
9 Q. UP TO 2009?  
10 A. FROM WHEN?  
11 Q. IN THE LAST 15 YEARS I BELIEVE BY YOUR TESTIMONY; IS THAT  
12 RIGHT?  
13 A. YEAH, AND TO BE CLEAR A SIGNIFICANT AMOUNT OF THAT GROWTH  
14 IS ACTUALLY THROUGH ACQUISITIONS. IT'S NOT -- THE ACQUISITIONS  
15 SIDE MEANS WHEN YOU PURCHASE TEXTBOOKS OR OTHER PUBLISHER'S  
16 WORKS OR AN OCCASIONAL CASE OF SMALL COMPANIES, SMALL  
17 PUBLISHING COMPANIES.  
18 OUR BIGGEST ACQUISITION, FOR INSTANCE, WAS GROVE  
19 MUSIC WHICH WAS AN ONLINE REFERENCE PRODUCT AND THAT  
20 CONTRIBUTED -- HAS CONTRIBUTED CONSIDERABLY TO OUR GROWTH.  
21 Q. NOW, YOU MENTIONED IN YOUR DIRECT SOME BOOKS THAT HAVE  
22 HAD -- I THINK YOU MENTIONED WENT THROUGH THE PERMISSIONS  
23 REVENUE FROM SLAVE COMMUNITY AND THE CRABGRASS BOOK AND OTHERS?  
24 A. YES.  
25 Q. SOME OF THE BOOKS THAT OXFORD HAS COMPLAINED ABOUT IN THIS

1 CASE HAVE VERY SMALL PERMISSION FEES REVENUE OVER THEIR LIFE,  
2 CORRECT?  
3 A. I THINK THAT'S RIGHT LOOKING AT THAT SPREADSHEET, YES.  
4 Q. DO YOU RECALL, AS I BELIEVE WAS STATED IN YOUR DECLARATION  
5 FOR THE SUMMARY JUDGMENT, THE AWAKENING CHILDREN'S MIND BOOK  
6 HAS GENERATED A TOTAL OF 75 DOLLARS IN PERMISSIONS REVENUE?  
7 A. I DON'T RECALL THAT, BUT I COULD LOOK IT UP QUICKLY  
8 ENOUGH. I IMAGINE IT'S ON THE SPREADSHEET.  
9 Q. AND THAT SPREADSHEET WAS PLAINTIFFS' EXHIBIT 344. IT'S  
10 ALSO IN THE NOTEBOOK I JUST GAVE YOU.  
11 A. I'M SORRY, WAS IT 344? I DON'T REMEMBER.  
12 Q. DO YOU SEE PLAINTIFFS' EXHIBIT 344 IN THE BOOK I GAVE YOU?  
13 A. YEP, I'M LOOKING UP THE PERMISSIONS REVENUE FOR AWAKENING  
14 CHILDREN'S MIND. I WOULD SAY -- YEAH, UNDER A HUNDRED DOLLARS.  
15 Q. AND IF YOU LOOK AT THE FIRST PAGE OF PLAINTIFFS' EXHIBIT  
16 344, THE FIRST BOOK IS ROLE PLAY, AND IT DOESN'T SHOW  
17 ANYTHING. IT HAS DIFFERENT CATEGORIES PHOTOCOPY INCOME, ET  
18 CETERA, BUT IT DOESN'T HAVE PERMISSIONS BROKEN OUT?  
19 A. RIGHT.  
20 Q. DOES THAT MEAN IT HASN'T GENERATED ANY PERMISSIONS  
21 REVENUE?  
22 A. IT IS -- IT SAYS EXTRACTS; IS THAT RIGHT? THAT'S LIKE A  
23 CUSTOM. YES, THAT LOOKS TO BE THE CASE.  
24 Q. BECAUSE THERE'S A SEPARATE CATEGORY IN THIS BUSINESS  
25 RECORD FOR PERMISSIONS REVENUE, RIGHT?

1 A. THAT'S RIGHT.

2 Q. IF YOU LOOK AT THE BOOK DEMOCRACY ACCOUNTABILITY IN LATIN  
3 AMERICA AT THE BOTTOM OF THAT PAGE; DO YOU SEE THAT?

4 A. YEP.

5 Q. IF YOU GO ONTO THE NEXT PAGE, THAT BOOK GENERATED OVER ITS  
6 LIFE 30 DOLLARS IN PERMISSIONS REVENUE?

7 A. YEP, \$30.29, YES.

8 Q. I WON'T BELABOR THIS BECAUSE IT'S IN THE RECORD, BUT I  
9 BELIEVE YOU HAVE INTRODUCED -- OXFORD THROUGH ITS COUNSEL HAS  
10 INTRODUCED SOME DETAIL RECORDS, AND I JUST WANT TO LOOK AT ONE  
11 OF THEM.

12 THIS IS PLAINTIFFS' EXHIBIT 362. THIS IS IF I  
13 UNDERSTAND IT, TELL ME IF I'M WRONG, IF YOU LOOK AT THE TOP  
14 LEFT IT'S NOT NECESSARILY THE LIFE OF THE BOOK, IT'S A REPORT  
15 OF PERMISSIONS FEE REVENUE OF AT LEAST CERTAIN KINDS.

16 MY FIRST QUESTION IS FROM JULY 1, 2004 THROUGH  
17 DECEMBER 1, 2010 --

18 A. DO I HAVE A COPY OF THAT?

19 Q. IT'S PLAINTIFFS' EXHIBIT 362.

20 A. YEP, I'VE GOT IT.

21 Q. THIS IS A REPORT OF CERTAIN PERMISSIONS INCOME, FEE INCOME  
22 TO OXFORD FROM THE WORK BEHAVIOR, SOCIETY AND NUCLEAR WAR?

23 A. RIGHT.

24 Q. AND IT'S A REPORT FROM JULY 1, 2004 THROUGH DECEMBER 1,  
25 2010?



- 1 A. CORRECT.
- 2 Q. IS THIS A REPORT FROM CCC?
- 3 A. IT SAYS IN THE UPPER RIGHT-HAND CORNER ORDER INFORMATION  
4 FROM COPYRIGHT CLEARANCE CENTER, SO I PRESUME THAT WOULD BE THE  
5 CASE, YES.
- 6 Q. SO THIS INDICATES THAT IN THOSE FIVE AND A HALF YEARS THAT  
7 BOOK BEHAVIOR, SOCIETY IN NUCLEAR GENERATED \$193.80 IN -- LET  
8 ME REPHRASE THAT. THE FIRST GROUP IS APS REVENUE?
- 9 A. RIGHT.
- 10 Q. AND BRIEFLY STATE WHAT APS IS?
- 11 A. THAT IS ONE OF THE LICENSING FORMATS OR LICENSES THAT WE  
12 GRANT CCC.
- 13 Q. AND THEN ECC IS ANOTHER FORM THAT THEY GRANT TO THEIR  
14 CUSTOMERS?
- 15 A. CORRECT.
- 16 Q. AND SO FROM JULY 2004 THROUGH DECEMBER 2010 THIS WORK  
17 BEHAVIOR, SOCIETY AND NUCLEAR WAR GENERATED \$231 IN APS INCOME?
- 18 A. YEP.
- 19 Q. AND \$193.80 IF YOU LOOK AT THE BOTTOM OF THE PAGE IN ECC  
20 INCOME?
- 21 A. THAT'S RIGHT.
- 22 Q. AND THIS WOULD BE THE TOTAL PERMISSIONS FEE INCOME CCC  
23 GENERATED FROM THIS BOOK FOR THAT PERIOD OF TIME?
- 24 A. YES, THAT WOULD BE MY PRESUMPTION.
- 25 Q. NOW, THE PLAINTIFFS EXHIBIT -- AND AGAIN THAT'S

1 PLAINTIFFS' EXHIBIT 362. THE PLAINTIFFS' EXHIBIT 344 WE WERE  
2 LOOKING AT WHERE IT BREAKS OUT PERMISSIONS INCOME, DOES THAT  
3 INCLUDE INCOME FROM CCC?

4 A. THAT WOULD INCLUDE INCOME FROM CCC. IT SHOULD INCLUDE  
5 INCOME FROM CCC, YES.

6 Q. AND GO BACK TO PLAINTIFF'S EXHIBIT 362 BRIEFLY. CCC  
7 ACTUALLY REPORTS TO OXFORD THE DATE OF THE REQUEST, THE  
8 INSTITUTION, THE CUSTOMER, THE PROFESSOR, THE COURSE NAME, IT  
9 PROVIDED ALL THAT INFORMATION, CORRECT?

10 A. YES.

11 Q. NOW, I BELIEVE YOU SAID YOUR OVERALL PERMISSIONS INCOME  
12 WAS ABOUT ONE MILLION, \$1,050,000 IN 2009?

13 A. CORRECT.

14 Q. THAT'S NOT JUST FROM PERMISSIONS FOR PORTIONS OF ACADEMIC  
15 BOOKS, THAT INCLUDES JOURNALS, CORRECT?

16 A. THAT'S A GOOD QUESTION. THAT WOULD NOT INCLUDE JOURNALS.

17 Q. IT INCLUDES PERMISSIONS INCOME OTHER THAN FROM REQUESTS  
18 FOR PORTIONS OF ACADEMIC BOOKS EITHER THROUGH CCC OR DIRECTLY  
19 TO OXFORD?

20 A. CORRECT, IT WOULD INCLUDE ALL PERMISSIONS REQUESTS AS SUCH  
21 PERMISSIONS TO REPRINT WORK, TO REUSE, REPRINT, COPY, ET  
22 CETERA.

23 Q. OKAY. AND DO YOU RECALL -- WE CAN PULL OUT YOUR  
24 DECLARATION IF WE NEED TO, BUT DO YOU RECALL THAT YOUR  
25 PERMISSION FEE INCOME FROM CCC FOR THE THREE YEARS 2007, 2008

1 2009 WAS AS FOLLOWS A LITTLE OVER 358,000 DOLLARS IN PERMISSION  
2 INCOME FROM CCC IN 2007?

3 A. THAT SOUNDS RIGHT.

4 Q. A LITTLE OVER 380,000 DOLLARS IN 2008?

5 A. CORRECT.

6 Q. AND 367 ALMOST 368,000 IN 2009?

7 A. YEAH, THAT SOUNDS RIGHT, YES.

8 Q. AND THAT AS YOU'VE TESTIFIED WOULD BE THE VAST MAJORITY OF  
9 THE PERMISSIONS INCOME FROM EACH OF THOSE YEARS THAT OXFORD  
10 RECEIVED FROM ACADEMIC BOOKS?

11 A. YES. THE VAST MAJORITY MAYBE NOT, BUT, YES, THE MAJORITY.

12 Q. WELL, WE'LL LOOK AT THE RECORD TO WHAT YOU TESTIFIED TO  
13 PREVIOUSLY, BUT THE FACT IS YOUR PERMISSION FEES FOR ACADEMIC  
14 BOOKS FOR EACH OF THOSE YEARS HAS BEEN WELL LESS THAN 1 PERCENT  
15 OF YOUR OVERALL INCOME?

16 A. YES.

17 MR. HARBIN: THAT'S ALL I HAVE, YOUR HONOR. THANK  
18 YOU.

19 THE COURT: WILL THAT DO IT FOR THIS WITNESS?

20 MR. RICH: IT WILL, YOUR HONOR.

21 THE COURT: YOU CAN STEP DOWN, SIR. THANK YOU.

22 ALL RIGHT. WE'LL GO AHEAD AND STOP FOR THIS  
23 AFTERNOON. WE'LL START AT 9:30 IN THE MORNING, AND WE'LL RUN  
24 UNTIL 2:30 TOMORROW AFTERNOON. YOU ALL HAVE A NICE EVENING.

25 (PROCEEDINGS ADJOURNED)

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REPORTER'S CERTIFICATION

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18

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE  
 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

19

20

21

22

ANDRE G. ASHLEY  
 OFFICIAL COURT REPORTER  
 UNITED DISTRICT COURT  
 NORTHERN DISTRICT OF GEORGIA

DATE:

23

24

25

ANDRE G. ASHLEY, O.C.R.