

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

CAMBRIDGE UNIVERSITY PRESS;
OXFORD UNIVERSITY PRESS, INC.;
SAGE PUBLICATIONS, INC.,

Plaintiffs

v.

CIVIL ACTION NO.
1:08-CV-1425-ODE

MARK P. BECKER, in his official capacity as President of Georgia State University; RISA PALM, in her official capacity as Senior Vice President for Academic Affairs and Provost of Georgia State University; J.L. ALBERT, in his official capacity as Georgia State University Associate Provost for Information Systems and Technology; NANCY SEAMANS, in her official capacity as Dean of Libraries at Georgia State University; ROBERT F. HATCHER, in his official capacity as Vice Chair of the Board of Regents of the University System of Georgia; KENNETH R. BERNARD, JR., JAMES A BISHOP, FREDERICK E. COOPER, LARRY R. ELLIS, FELTON JENKINS, W. MANSFIELD JENNINGS, JR., JAMES R. JOLLY, DONALD M. LEEBERN, JR., WILLIAM NESMITH, JR., DOREEN STILES POITEVINT, WILLIS J. POTTS, JR., WANDA YANCEY RODWELL, KESSEL STELLING, JR., BENJAMIN J. TARBUTTON, III, RICHARD L. TUCKER, ALLAN VIGIL, and LARRY

WALKER, in their official capacities as
members of the Board of Regents of the
University System of Georgia,

Defendants

**DEFENDANTS'
PROPOSED FINDINGS OF FACT**

TABLE OF CONTENTS

FINDINGS OF FACT.....	8
I. INTRODUCTION	8
II. PARTIES	12
A. Plaintiffs	12
B. Defendants.....	12
III. DEVELOPMENT AND ADOPTION OF 2009 COPYRIGHT POLICY....	15
IV. GEORGIA STATE UNIVERSITY COMMUNITY	23
V. COURSE PACKS.....	23
VI. GEORGIA STATE UNIVERSITY’S LIBRARY BUDGET	24
VII. GEORGIA STATE UNIVERSITY’S E-RESERVE SYSTEM.....	25
VIII. THE COPYRIGHT CLEARANCE CENTER.....	33
IX. GSU POLICY IS MORE CONSERVATIVE.....	42
X. FACTOR 4–EFFECT ON THE MARKET	45
XI. PLAINTIFFS’ FAILURES ON PROOFS OF OWNERSHIP	45
A. Licenses To Copied Materials.....	46
B. Copied Pages Not Protectable (Originality & Copyrightability).....	46

C.	Registrations Outside Of 5 Yrs	48
D.	Foreign Works.....	49
E.	No Valid Author Or Editor Agreement (And Requested)	49
F.	No Valid Author Or Editor Agreement.....	50
XII.	ALLEGED COPYRIGHT INFRINGEMENTS	53
A.	Professor John Duffield.....	54
B.	Professor Jodi Kaufmann	59
C.	Professor Jennifer Esposito	68
1.	EPSF8280 – Anthropology of Education – Summer Semester 2009	69
a.	Handbook of Ethnography.....	69
b.	Handbook of Feminist Research: Theory and Praxis	71
c.	The SAGE Handbook of Qualitative Research (2nd edition).....	72
d.	The SAGE Handbook of Qualitative Research (1st edition).....	73
2.	EPRS8520 – Qualitative Research in Education III – Fall Semester 2009	74
a.	Theoretical Frameworks in Qualitative Research	75
D.	Professor Patricia Dixon.....	76
E.	Professor Daphne Greenberg	81
F.	Professor Melinda Hartwig	83
1.	AH 4900 – Materiality of Egyptian Paintings	84

a.	Ancient Egyptian Materials and Technology	84
G.	Professor Hankla	86
H.	Professor Florencia Anggoro	92
1.	EPY8960 – Seminar in Educational Psychology – Fall Semester 2009	93
a.	Language Acquisition and Conceptual Development.....	93
I.	Professor Jennifer Barker	94
1.	FILM4750 – Film Theory and Criticism – Fall Semester 2009	94
a.	Film Language: A Semiotics of the Cinema	94
J.	Professor Gabler-Hover.....	95
K.	Professor Nathaniel Leon Orr	98
1.	MUS 8860 – Romantic Period 1800 to 1900 – Summer Semester 2009	99
a.	Liszt: Sonata in B Minor	99
b.	Cambridge Companion to Mendelssohn	101
c.	Cambridge Companion to Schumann.....	103
d.	Cambridge Companion to Beethoven	104
e.	The Music of Berlioz.....	106
2.	MUS 8840 – Baroque Music– Fall Semester 2009	107
a.	The Organ As a Mirror of Its Time: North European Reflections 1610-2000	107
b.	North German Church Music in the Age of Buxtehude	109

L.	Professor Marni Davis.....	110
1.	HIST7010 – Issues and Interpretations in American History (Fall 2009).....	111
a.	Region, Race and Reconstruction.....	112
b.	The Unpredictable Past.....	113
M.	Professor Carrie Freeman.....	114
1.	JOUR4800 – Media Ethics & Society – Fall Semester 2009.....	114
a.	Living Ethics: Across Media Platforms	114
N.	Professor Denis Gainty.....	115
1.	HIST 4820 – Cross-Cultural Encounters in World History.....	115
a.	The Cambridge History of China, Vol. VIII, Part 2....	116
O.	Professor Harvey	118
1.	SOCI8030 – Social Theory I- Fall 2009.....	118
a.	The Power Elite	118
P.	Professor Youjin Kim.....	119
1.	AL8500 – Second Language Evaluation and Assessment – Fall 2009	119
a.	Language Testing in Practice	121
b.	Assessing Language for Specific Purposes	122
c.	Fundamental Considerations in Language Testing	124
d.	Assessing Grammar.....	125
e.	Assessing Vocabulary.....	127

f.	Learning Vocabulary in Another Language	128
g.	Assessing Reading	130
h.	Assessing Listening	131
i.	Assessing Speaking	133
j.	Assessing Writing	134
k.	Criterion-Referenced Language Testing	136
Q.	Professor Matthew Lasner	137
1.	PERS2001 – Comparative Culture – Fall Semester 2009	138
a.	Crabgrass Frontier: The Surbanization of the United States	138
b.	The Politics of Public Housing: Black Women’s Struggles Against Urban Inequality	139
R.	Professor Jennifer Mccoy	139
1.	POLS8250 – Latin American Politics– Fall Semester 2009	140
a.	Regimes and Democracy in Latin America: Theories and Methods	141
S.	Professor Susan McCombie	142
1.	ANTH4440 – Epidemiology and Anthropology – Fall Semester 2009	143
a.	International Health Organisations and Movements, 1918-1939	143
b.	Evolution of Infectious Disease	144
T.	Professor Margaret Moloney	145

1.	NURS 8035 – Theoretical and Philosophical Foundations of Nursing – Fall Semester 2009	145
a.	Handbook of Mixed Methods in Social & Behavioral Research	146
U.	Professor John Murphy	147
1.	AL 8480 – Classroom Practices in Second/Foreign Language Teaching - Maymester 2009	148
a.	Pronunciation Games.....	148
b.	Keep Talking	150
c.	More Grammar Games	152
d.	Grammar Practice Activities (1st Edition)	154
e.	Five Minute Activities: A Resource Book of Short Activities.....	155
f.	Newspapers.....	157
g.	Role Play: Resource Books for Teachers	158
V.	Professor Mary Ohmer	160
1.	SW8200 – Evaluation and Technology – Fall Semester 2009.....	160
a.	The SAGE Handbook of Qualitative Research (2nd Edition).....	161
b.	Utilization-Focused Evaluation: The New Century Text (3rd Edition)	162
W.	Professor Kathleen Whitten	162
1.	PSYC 4030 Cross-Cultural Psychology Fall Semester 2009.....	163
a.	A World of Babies	163

VI. PLAINTIFFS' PROPOSED INJUNCTION 164

Defendants Mark P. Becker, in his official capacity as President of Georgia State University, et al., respectfully submit the following Proposed Findings of Fact and Conclusions of Law.

PROPOSED FINDINGS OF FACT¹

I. INTRODUCTION

1. The 2009 Copyright Policy adopted by the University System of Georgia and implemented at Georgia State University (“GSU”) is appropriate and effective to address the wide range of copyright issues that arise in an educational context at GSU and throughout the University System of Georgia, including the GSU electronic reserve system (“e-Reserve”). The 2009 Copyright Policy includes a seasoned, competent and balanced Fair Use Checklist to assist professors and others in addressing fair use issues. Together with educational programs and explanatory materials, implementation of the Policy has resulted in considered and legally correct fair use determinations.

2. The evidence at trial demonstrated that this is not a case of “ongoing and continuous infringement”—as the Eleventh Amendment requires—but instead

¹ Defendants hereby designate any Proposed Findings of Fact properly characterized as Conclusions of Law to be such conclusions. Defendants likewise hereby designate any Proposed Conclusions of Law properly designated as Findings of Fact to be such findings.

one of affirmative and effective actions to assist professors in making the difficult decisions surrounding fair use determinations in the educational environment. Rather than facilitate a misuse of the fair use defense, adoption and implementation of the 2009 Copyright Policy at GSU has yielded an average amount of usage, for all of the accused infringing excerpts, of no more than approximately 10% of the subject works. The evidence at trial confirmed that the 2009 Copyright Policy is thus in keeping with, and in fact more conservative than, copyright policies that have been adopted by other universities across the United States, many of which permit uses as high as 20% to 25%.

3. The effectiveness of the 2009 Copyright Policy is reflected in the diminishing number of alleged infringements. Plaintiffs' initial claims alleged "widespread and systematic" infringement of "a vast amount of copyrighted works." When focused on three academic terms in 2009, Plaintiffs' claims were reduced to 126 alleged infringements involving 48 professors. By the beginning of trial, Plaintiffs claims were further reduced to 99 alleged infringements involving 33 professors. During trial, Plaintiffs claims were finally reduced to 75 alleged infringements involving 23 professors. Given that GSU has over 1000 full time professors and hundreds of adjunct professors teaching thousands of courses in a

given academic term, Plaintiffs' diminished infringement allegations do not support "widespread" or "systematic" infringement on an ongoing, continuous basis.

4. Importantly, these alleged infringements in fact constitute instances of fair use under 17 U.S.C. § 107 and are not, therefore, infringements at all. Even a generalized four factor analysis under Section 107 demonstrates the fair use. As to factor one, the purpose and character of the use is for nonprofit, educational purposes, which heavily weighs in favor of fair use. As to factor two, the works at issue are fact-based as they should be when used for educational purposes, which also weighs in favor of fair use. As to factor three, the average amount used by all professors for all of the alleged infringements is approximately 10%. When only two professors are removed from the analysis so that the evaluation concerns 21 professors rather than 23, the average amount used drops to 7.5% and the median amount used drops to 6.8%. In keeping with recent Supreme Court precedent, the amount used is appropriate for the favored purpose of teaching -- clearly an educational use. The third factor weighs in favor of fair use. As to factor four, the evidence at trial showed that there was no harm to the market for the original works—the books from which excerpts were used. Plaintiffs argue that there is harm to the "permissions" market for use of the excerpts. Even assuming that such a market exists, the evidence showed that the use of excerpts in an educational context

can and does stimulate the market for the original work (purchase of the book). Moreover, if professors were forced to pay or charge students for access to such excerpts, it is undisputed that the professors would use other sources for the factual information provided by the excerpts and therefore would not use those excerpts. The GSU e-Reserve system therefore has, at most, a limited (and only potentially negative) effect on the market and that such effect may actually stimulate the market. The fourth factor also weighs in favor of fair use.

5. The 2009 Copyright Policy, including the Fair Use Checklist, changed behavior at GSU, causing professors to think more carefully about fair use issues. Implementation of the Policy, even though not yet complete, affirmatively educated professors and reduced the average amount used. Rather than having encouraged misuse of the fair use defense, the evidence showed that 2009 Copyright Policy enhanced proper fair use determinations and contributed to the educational experience. Plaintiffs have failed to prove both their claims of widespread, systematic, ongoing and continuous acts of copyright infringement and a misuse of the fair use defense by the Defendants. In contrast, the Defendants have demonstrated that they have not misused the fair use defense and have proven that their uses are fair use and those uses are entitled to a judgment of non-infringement.

II. PARTIES

A. Plaintiffs

6. Plaintiff Cambridge University Press (“Cambridge”) is a corporation with an office in New York, New York that publishes various academic works.

7. Plaintiff Oxford University Press, Inc. (“Oxford”) is a corporation with an office in New York, New York that publishes various academic works.

8. Plaintiff SAGE Publications (“SAGE”) is a corporation with an office in Thousand Oaks, California that publishes various academic works.

B. Defendants

9. Georgia State University (“GSU”) is a public university in Atlanta, Georgia and an institution unit of the University System of Georgia.

10. Defendant Mark P. Becker is the President of GSU, and has been sued in his official capacity.

11. Defendant Donald M. Leebern, Jr. is a member of the Board of Regents of the University System of Georgia (“Board of Regents”), and has been sued in his individual capacity.

12. Defendant Larry Walker is a member of the Board of Regents, and has been sued in his individual capacity.

13. Defendant Robert F. Hatcher is a member of the Board of Regents, and has been sued in his individual capacity.

14. Defendant W. Mansfield Jennings, Jr. is a member of the Board of Regents, and has been sued in his individual capacity.

15. Defendant James R. Jolly is a member of the Board of Regents, and has been sued in his individual capacity.

16. Defendant Doreen Stiles Poitevint is a member of the Board of Regents, and has been sued in her individual capacity.

17. Defendant Wanda Yancey Rodwell is a member of the Board of Regents, and has been sued in her individual capacity.

18. Defendant Richard L. Tucker is a member of the Board of Regents, and has been sued in his individual capacity.

19. Defendant Kenneth R. Bernard, Jr. is a member of the Board of Regents, and has been sued in his individual capacity.

20. Defendant William Nesmith, Jr. is a member of the Board of Regents, and has been sued in his individual capacity.

21. Defendant Willis J. Potts, Jr. is a member of the Board of Regents, and has been sued in his individual capacity.

22. Defendant Kessel Stelling, Jr. is a member of the Board of Regents, and has been sued in his individual capacity.

23. Defendant Benjamin J. Tarbutton, III is a member of the Board of Regents, and has been sued in his individual capacity.

24. Defendant Larry R. Ellis is a member of the Board of Regents, and has been sued in his individual capacity.

25. Defendant Rutledge A. Griffin, Jr. is a member of the Board of Regents, and has been sued in his individual capacity.

26. Defendant Thomas Hopkins is a member of the Board of Regents, and has been sued in his individual capacity.

27. Defendant Neal L. Pruitt, Jr. is a member of the Board of Regents, and has been sued in his individual capacity.

28. Defendant Phillip A. Wilheit, Sr. is a member of the Board of Regents, and has been sued in his individual capacity.

29. Defendant Nancy Seamans is the Dean of Libraries at GSU, and has been sued in her official capacity.

30. Ms. Seamans started working for GSU after the commencement of this action in April 2008. (Trial Transcript, June 2, 2011, Vol. 12, Trial Testimony of Nancy H. Seamans (herein "Seamans Tr.") at 47:6-8.)

31. Ms. Seamans is responsible for all functioning of GSU's University Library. (Seamans Tr., Vol. 12 at 45:6-16.)

32. Defendant J.L. Albert is the Associate Provost for Information Systems and Technology at GSU, and has been sued in his official capacity.

33. Defendant Risa Palm is the Senior Vice President for Academic Affairs and Provost of GSU, and has been sued in her official capacity.

III. DEVELOPMENT AND ADOPTION OF 2009 COPYRIGHT POLICY

34. In the Fall of 2008, Erroll Davis, the Chancellor of the University System of Georgia, appointed various members of University System Institutions to form the University System of Georgia Select Committee on Copyright ("Copyright Committee"). The Committee was charged with the responsibility of recommending changes to the Regent's Guide to Copyright. (PX 683, DX 145; Seamans Tr., Vol. 12 at 49:21-50:12; Trial Transcript, June 6, 2011 (Vol. 14), Testimony of William G. Potter (herein "Potter Tr.") at 92:6-13, 93:25-94:8; DX 130.)

35. It was determined that the Regents Guide needed to be addressed and updated given that it was over eleven years old, it did not contemplate many of the digital technologies available to research libraries today, and it did not provide the kind of support needed for all faculty members of the University System of Georgia. (DX 145; DX 130; Seamans Tr. at 66:13-67:5.)

36. Nine members of University System of Georgia institutions were selected to be members of the Copyright Committee: Dr. Sally Atherton, Cellular Biology and Anatomy Department Chair at the Medical College of Georgia; Ms. Beth P. Bridgon, Vice President and Associate Provost of Information Technology Support & Services at the Medical College of Georgia; Ms. Cynthia V. Hall, Assistant Legal Advisor of the Office of Legal Affairs at GSU; Dr. TyAnna K. Herrington, Associate Professor from the School of Literature, Communication, and Culture at the Georgia Institute of Technology; Dr. Teresa Joyce, Associate Provost of Office of Academic Affairs at Kennesaw State University; Dr. Marie Lasseter, Office of Instructional and Information Technology for the University System of Georgia; Mr. Terence McElwee, General Counsel for the University of Georgia Research Foundation and for the Office of the Vice President for Research at the University of Georgia; Dr. William G. Potter (the committee chair) Dean of Libraries for the University of Georgia; and Dr. Nancy H. Seamans, Dean of Libraries at GSU. (DX 528, tab 15; Seamans Tr., Vol. 12 at 52:22-54:3; Potter Tr., Vol. 14 at 94:15-95:10.)

37. Messrs. Anthony Askew and Stephen Schaezel were retained as counsel to advise the Copyright Committee in their charge to modify the Regent's Guide. (PX 683, Seamans Tr., Vol. 12 at 52:17-23; Potter Tr., Vol. 14 at 96:6-10.)

38. Mr. Burns Newsome, Vice-Chancellor for Legal Affairs of the University System of Georgia, was also an advisor for the Copyright Committee. (Potter Tr., Vol. 14 at 96:6-10; Seamans Tr., Vol. 12 at 52:17-23.)

39. As a result, library, faculty, administration, research, IT, and legal interests were represented by members of the Copyright Committee. (DX 528, tab 15; Seamans Tr., Vol. 12 at 54:17-55:32; Potter Tr., Vol. 14 at 95:11-19, 96:3-5.)

40. Formation of the committee was, in part, spurred by this litigation but decisions by the Committee were made independent of the lawsuit. (DX 145; Seamans Tr., Vol. 12 at 64-65.)

41. The Copyright Committee met via conference call or in person five times from late Fall of 2008 to January of 2009, on the following approximate dates: Dec. 3, 2008 in person; January 8, 2009 in person; January 13, 2009 via conference call; January 22, 2009 in person; and February 1, 2011 via conference call. (Seamans Tr., Vol. 12 at 54:4-10, 65:5-6; Potter Tr., Vol. 14 at 96:20-25; 97:4-9, 103:25-104:5, 108:14-17, 111:14-19.)

42. Early on, the Copyright Committee members were given tasks to review and report back on copyright policies and procedures that other institutions had adopted and implemented. Those institutions whose policies were reviewed included Duke University, Indiana University, Indiana University-Purdue University

at Indianapolis (IUPUI), University of Minnesota, Emory University, Columbia University, Cornell University, University of Texas, and Brigham Young University, as well as the Copyright Clearance Center and the Association of Research Laboratories. (Seamans Tr., Vol. 12 at 56:5-57:22; Potter Tr., Vol. 14 at 97:23-99:13, 99:14-24, 103:20-24.)

43. The review of these policies led to the determination that a four-factor fair use checklist, implemented by many of the institutions listed above, should be adopted. (Potter Tr., Vol. 14 at 97:23-99:13, 99:14-24, 103:20-24.)

44. While not given any time constraints from the Chancellor, the Copyright Committee set a goal to complete its work by the end of January of 2009 since the Copyright Committee's work would be based upon the work of other institutions. (Potter Tr., Vol. 14 at 126:6-17, 126:21-25, 127:20-25.)

45. While the original plan was to modify the Regent's Guide, the Copyright Committee determined that to do so would be too cumbersome, and decided to develop a new policy that would be based on the copyright policy of Columbia University, a policy which included a four-factor fair use checklist. (Seamans Tr. 12-57:7-14; Potter Tr., Vol. 14 at 98:9-20, 104:11-105:14, 106:3-6, 108:16-109:14, 110:6-111:9.)

46. During the January 15 and 22 meetings, the Copyright Committee decided to not include the Regent's Guide in the new policy and modified the Columbia University copyright policy to fit the needs of the University System of Georgia. (Seamans Tr., Vol. 12 at 57:7-14; Potter Tr. Vol. 14 at 98:9-20, 104:11-105:14, 106:3-6, 108:16-109:14, 110:6-111:9.)

47. The Copyright Committee focused on creating a fair use checklist as a part of its new Copyright Policy and decided to use Columbia University's fair use checklist as a starting point and then added beneficial components to the checklist as determined in the Committee's review of other institutions' fair use checklists, relying on legal counsel to provide the proper language. (Seamans Tr., Vol. 12 at 63:8-64:7; Potter Tr., Vol. 14 at 98:9-20, 104:11-105:14, 106:3-6, 108:16-109:14, 110:6-111:9.)

48. The Copyright Committee completed the 2009 Copyright Policy in early February and provided it to the Chancellor for his approval. (Potter Tr., Vol. 14 at 111:10-13, 111:24-113:2, 121:22-25, 134:15-17, 113:20-114:12; DX 528.)

49. No member of the Board of Regents was a member of the Copyright Committee, or had any role in the formation of the Copyright Committee, or the formation or implementation of the 2009 Copyright Policy. (Potter Tr., Vol. 14 at 115:8-20.)

50. The Copyright Committee did not base any of its decisions regarding the 2009 Copyright Policy on the effect such decisions might have on the current litigation. The litigation was not discussed during any of the Copyright Committee meetings. (Potter Tr., Vol. 14 at 115:22-116:13, 126:21-25, 129:4-9.)

51. The goal was for a new copyright policy to be used by and reflect the needs of all institutions that are a part of the University System of Georgia. (Seamans Tr., Vol. 12 at 58:2-16.)

52. The Copyright Committee determined that faculty members, being both the creators of copyrighted materials as authors and users of copyrighted material as teachers, would be the individuals in the best position to perform a fair use analysis with respect to materials to be used in their teaching. (Seamans Tr., Vol. 12 at 58:17-59:4, 59:17-24; Potter Tr., Vol. 14 at 114:13-115:5.)

53. The Copyright Committee determined that the library's role in assessing fair use would be to provide tools for evaluating the fair use of materials used by the Faculty, such as use in electronic reserve systems. (Seamans Tr., Vol. 12 at 62:9-21.)

54. The intent of the Copyright Committee was that the 2009 Copyright Policy would apply to all types of copyrighted material regardless of the mechanism used to deliver that material to the students. (Seamans Tr., Vol. 12 at 101:4-8.)

55. The Copyright Committee discussed incorporating objective numerical limitations, such as percentages or numbers of chapters, but concluded that the analysis should focus on an evaluation of all four of the fair use factors, and not just an objective numerical limitation. (Seamans Tr., Vol. 12 at 62:19-21, 63:2-6.)

56. The Copyright Committee created a fair use checklist to be used as a tool by faculty members to work through an evaluation of fair use questions. (Seamans Tr., Vol. 12 at 63:8-13, 20-23; Becker Deposition Testimony, April 22, 2011 Played at trial on May 26, 2011 (Vol. 8 at 9:1) (herein “Becker Tr.”) 85:10-21; Potter Tr., Vol. 14 at 129:20-22.)

57. The 2009 Copyright Policy includes hyperlinks to other websites that are intended to be (a) part of the 2009 Copyright Policy and (b) used to assist faculty members’ understanding of copyright. (Seamans Tr., Vol. 12 at 71:3-72:15, 137:17-138:23, 140:19-24; Potter Tr., Vol. 14 at 114:6-12, 114:21-115:5.)

58. Given the different needs of different institutions of the University System of Georgia, the Copyright Committee was not charged with developing a uniform plan for implementation for the 2009 Copyright Policy. (Seamans Tr., Vol. 12 at 135:11-22.)

59. The 2009 Copyright Policy superseded all other university policies or guides regarding copyright issues, including prior references to Guidelines for

Classroom Copying that appear in the GSU faculty handbook. (Becker Tr. 96:18-97:12, 103:15-106:5, 106:19-107:5.)

60. In February 2009, after the adoption of the 2009 Copyright Policy, the GSU library staff attended a training session covering the Policy and its implementation. (Seamans Tr., Vol. 12 at 91:19-94:16.)

61. The 2009 Copyright Policy has been placed on a publicly available website, accessible by all employees of the University System of Georgia. (Seamans Tr., Vol. 12 at 152:9-17.)

62. The 2009 Copyright Policy provides information and materials to assist a faculty member in obtaining permission to use copyrighted materials. (Seamans Tr., Vol. 12 at 77:9-81:22.)

63. After the adoption of the 2009 Copyright Policy, the GSU library developed new processes associated with its e-Res System to comply with the 2009 Copyright Policy. (Burtle Tr., Vol. 11 at 135:5-136:18; Seamans Tr., Vol. 12 at 65:15-66.)

64. After the adoption of the 2009 Copyright Policy, the GSU library staff, in charge of the e-Res system were given permission to question faculty decisions regarding faculty requests for posting of material on the e-Res System. (Seamans Tr., Vol. 12 at 73:21-75:25.)

65. In assisting faculty members, GSU library staff members looked to see if a work that a professor wished to post was already licensed by GSU. (Seamans Tr., Vol. 12 at 76:1-76:20.)

IV. GEORGIA STATE UNIVERSITY COMMUNITY

66. Currently, GSU has approximately 31,000 enrolled students, with 22,500 undergraduate students and 8,500 professional/graduate students. In 2009, GSU enrolled approximately 29,000 students. (Becker Tr., 8:25-9:9, 12:8-11.)

67. GSU currently has 3,000 students living in university housing, with the remaining 28,000 students commuting from off-campus. (Becker Tr. 12:17-13:13.)

68. GSU employs approximately 1,000 tenure-track faculty, in addition to hundreds of other part-time teaching or full-time instructors. (Becker Tr. 9:10-19.)

69. GSU teaches hundreds of thousands of credit hours each semester in (Becker Tr. 9:22-10:9.)

70. In 2009, each GSU student spent on average \$500 a semester on the purchase of books for use in class. (Becker Tr. 11:9-21.)

V. COURSE PACKS

71. A course pack is a collection of book chapters or journal articles or instructor's notes or class materials combined together, printed together, and sold as

a unit. (Trial Transcript, May 23, 2011, Deposition Testimony of James D. Palmour (herein “Palmour Tr.”), 25:1-5).

72. Course packs have been used by faculty at GSU, and permission fees have been paid. (Becker, 18:23-19:17; Palmour Tr. 30:17-31:14).

73. When assisting in assembling course packs for professors, GSU did not perform a fair use analysis and requested permission for use of all copyrighted materials. (Palmour Tr., 34:6-35:21).

74. The determination as to whether to use the GSU e-Res system or course packs for a given class rests with the faculty member responsible for the course. (Becker, 18:23-19:17, 21:8-19).

VI. GEORGIA STATE UNIVERSITY’S LIBRARY BUDGET

75. The GSU Library’s budget for 2009 was approximately \$11 million, with more than half of that amount covering personnel and operating costs, and the remainder going to acquisition of works, including licensed content, such as electronic materials, and print materials such as books or monographs. (Seamans Tr., Vol. 12 at 85:3-24.)

76. GSU spent close to \$4 million on electronic materials in 2009, which included journal packages, databases, and e-book packages. (Seamans Tr., Vol. 12 at 88:12-89:9.)

77. The GSU library made payments in 2009 to the Copyright Clearance Center as a result of interlibrary loans of books and similar works. (Seamans Tr., Vol. 12 at 90:9-91:18.)

78. GSU students pay GSU each semester a \$35 library fee that is used to pay off debt incurred for renovations already made to the GSU library; that fee does not go to supplement the library's operating budget. (Seamans Tr., Vol. 12 at 117:17-118:16, 149:15-150:2.)

79. Before an additional student fee can be charged to GSU students, the fee must go through an evaluation process and must be approved by both students and faculty through a vote. (Seamans Tr., Vol. 12 at 149:15-150:16.)

80. Within the last four years GSU students and faculty voted not to add a \$3 sustainability fee. (Seamans Tr., Vol. 12 at 150:6-8.)

VII. GEORGIA STATE UNIVERSITY'S E-RESERVE SYSTEM

81. Georgia State University's e-Res system permits professors at GSU to electronically provide course reading material to students enrolled in each professor's respective class. ("Stipulations of Fact Regarding e-Res and uLearn Usage at Georgia State University", Dkt. No. 118-2, ¶¶ 1-2; Burtle Tr., Vol. 11 at 119:21-120:4.)

82. The e-Res system also permits professors to inform students as to the availability of physical course materials, such as hardcopy books and audio files. (DX 160 at 4-6; Burtle Tr., Vol. 11 at 140:12-141:7; Trial Testimony of Marjorie Denise Dimsdale May 20, 2011 T. Vol. 4 at 129:20-130:1)

83. Course materials that may be posted on the e-Res system include excerpts from books, notes, video, audio, exam questions, homework assignments, handouts, syllabi, and other reading materials. (Dkt. No. 118-2, Definitions Sec.; Burtle Tr., Vol. 11 at 114:3-12, 116:24-117:8; DX 160 at 4-11.)

84. To place course materials on the e-Res system, a GSU professor must complete an Electronic Reserves Request Form. (DX 160; Dimsdale Tr., Vol. 4 at 96:6-97:4; Seamans Tr., Vol. 12 at 75:21-25; Burtle Tr., Vol. 11 at 117:22-118:18.)

85. Before submitting any request to place an item on the e-Res system, a professor must identify one of the following reasons why the professor is authorized to place the item on e-Res: the library has a license for the electronic version of the course material (either a journal article or a book); the course material is in the public domain; the use would qualify as fair use utilizing the Board of Regents Fair Use Checklist; the professor is the copyright holder; or the professor has obtained permission from the copyright holder. (DX 160 at 1, Dimsdale Tr. 4-97:5-19.)

86. Before a professor may submit any course material to be posted on the e-Res system, the professor must agree to follow the University System of Georgia's Copyright Policy. (DX 160 at 1, Dimsdale Tr., Vol. 4 at 97:5-19, 99:1-5.)

87. When making a request for electronic course material to be posted on the e-Res System, the professor must select one of the following choices: (1) the library already has a license to use the item; (2) it falls under fair use according to the fair use checklist the professor completed; (3) it is public domain or allowed under a Creative Commons license; or (4) the professor obtained permission from the copyright holder. (DX 160 at 9.)

88. If the reading material falls under fair use according to the fair use checklist as completed, the professor is required to print and retain a copy of the completed fair use checklist. (DX 160; Dimsdale Tr., Vol. 4 at 97:20-24.)

89. Failure to fill out and complete the fair use checklist is a failure to comply with one of the requirements of the 2009 Copyright Policy. (Becker Tr. at 75:15-76:25.)

90. Failure to retain a completed fair use checklist is a failure to comply with one of the requirements of the 2009 Copyright Policy. (Becker Tr. at 77:1-7.)

91. A good faith fair use analysis may still have occurred without the retention or physical completion of a fair use checklist even though such failures do

not comply with two of the requirements of the 2009 Copyright Policy. (Becker Tr. at 77:8-78:22.)

92. The Fair Use Checklist hyperlink, provided on the e-Res request form page will deliver the professor to the University System of Georgia's Copyright Policy, including discussions of fair use, and the Fair Use Checklist. (DX 160 at 1, 8-11; Burtle Tr., Vol. 11 at 139:10-25; Seamans Tr., Vol. 12 at 67:13-68:9, 69:4-22.)

93. If a professor states that the material is in the public domain, the e-Res library staff will review the requested material to be posted to make sure there is no copyrighted material included. (T. Vol. 4 at 129:1-9.)

94. If a professor states that he or she obtained permission from the copyright holder, the professor must provide evidence of that permission to the library staff. (T. Vol. 4 at 97:25-98:4.)

95. An e-Res Request Form must be completed and submitted each semester for each item of electronic course material that a professor wishes to place on the e-Res System, regardless of whether or not the professor has submitted a request for placement of the same electronic course material in previous semesters. (T. Vol. 4 at 126:22-127:15; T. Vol. 10 at 40:15-22; DX 514.)

96. If requesting that an excerpt from a copyrighted work be placed on the e-Res system, the professor must provide the bibliographical information for the

work, including the, author, title, place and year of publication, publisher, and edition, and the chapters or page numbers of the excerpt to be used. (DX 160 at 9; T. Vol. 4 at 101:1-102:8.)

97. Each professor at GSU is responsible for determining whether or not a use of an excerpt from a copyrighted work for his or her class is a fair use. (T. Vol. 4 at 97:5-24, 103:13-24, 123:18-124:4; Burtle Tr., Vol. 11 at 121:18-122:16, 142:2-142:13.)

98. While the GSU library staff does not make an independent fair use determination, the GSU library staff does have the authority to question a professor's determination if a "red flag" is raised by the professor's submission. The staff may direct the professor to GSU's legal department to resolve a "red flag" issue. (T. Vol. 4 at 127:16-128:3; Burtle Tr., Vol. 11 at 122:7-123:13, 124:3-11.)

99. Examples of "red flags" include: (i) requesting a whole book or a large portion of a book be placed on the e-Res system (Dimsdale Tr., Vol. 4 123:18-124:14, 129:13-15; Burtle Tr., Vol. 11 at 124:12-24); (ii) requesting that a fictional work such as a novel be placed on the e-Res system; (iii) a perceived lack of knowledge of the e-Res system and its requirements (Dimsdale Tr., Vol. 4 at 128:23-25); (iv) claiming, as public domain, a work that includes copyrighted material

(Dimsdale Tr., Vol. 4 at 129:1-9); and (v) insufficient proof of permission when permission is alleged (Dimsdale Tr., Vol. 4 at 129:10-13.)

100. For example, when Professor Nathaniel Orr incorrectly marked his excerpt from Mendelssohn and Schumann for use in his MUS8860 Summer Semester 2009 class as work in the public domain, the e-Res System recognized that the work was not in the public domain, flagged the mistake and notified Professor Orr. (Orr Tr. (Vol. 7) at 64:12-65:7; DX 521 at 3.)

101. When posting excerpts of copyrighted works on the e-Res system, the e-Res system staffers include the requested excerpts as well as the title page and the copyright page for the work. (Burtle Tr., Vol. 11 at 125:7-12.)

102. A webpage specifically devoted to a particular course for a specific semester, called a Course Reserve page, is created to make the course materials placed on the e-Res system available to students enrolled in that particular course that semester. (Dkt. No. 118-2 ¶ 3; Dimsdale Tr., Vol. 4 at 106:10-17; Burtle Tr., Vol. 11 at 125:13-24.)

103. Up to fifty items can be posted to a given Course Reserve page. (Burtle Tr., Vol. 11 at 145:4-145:6.)

104. Professors do not have the ability to add, remove, or change course material posted on their respective Course Reserve pages. (Burtle Tr., Vol. 11 at 145:7-9.)

105. The Course Reserve pages are protected by a password generated by the e-Res System. (Burtle Tr., Vol. 11 at 120:10-20 and 125:13-126:1; T. Vol. 4 at 112:21-113:1; Seamans Tr., Vol. 12 at 93:1-94:4; see also, e.g., T. Vol. 10 at 27:5-12.)

106. The e-Res staff sends the password to the professor teaching the course who then distributes it to only those students enrolled in course for which the Course Reserve page is made, and the students must provide the password before they are granted access to the copyrighted course material on the course reserve page. (DX 520, Burtle Tr., Vol. 11 at 120:10-20 and 125:13-126:1; T. Vol. 4 at 112:21-113:1; Seamans Tr., Vol. 12 at 82:10-82:19, 93:17-94:4; see also, e.g., T. Vol. 10 at 27:5-12.)

107. When accessing material found on a Course Reserve page, a student is presented with a copyright notice and must agree to follow the copyright law. (T. Vol. 4 at 114:7-20; DX 610.)

108. A Course Reserve page has a visibility period which coincides with the term of a semester; at the end of the semester, the course reserve page is no longer

available to the students and professor. (Burtle Tr., Vol. 11 at 120:10-12, 120:21-121:3; T. Vol. 4 at 110:5-14.)

109. While the University System of Georgia's Copyright Policy requires that all course materials be deleted from the e-Res System at the end of a semester, GSU has not been able to fulfill this requirement at this time due to the current litigation and a requirement that all relevant material be retained for the litigation. (Burtle Tr., Vol. 11 at 121:4-11; T. Vol. 4 at 125:14-126:12; Seamans Tr., Vol. 12 at 76:21-24.)

110. The e-Res system tracks the number of times each individual item of course material on the system is accessed by an e-Res User during a specific time period. That number is represented in a "Hit Count" column for each item of course material found in e-Res Report. (Dkt. No. 118-2 ¶¶ 12 and 18; Burtle Tr., Vol. 11 at 126:2-7, 127:18-128:13.)

111. The Hit Count total also includes each instance that course material was accessed by library staff for confirmation of correct uploading, by professors verifying the postings, and by counsel for either plaintiffs or defendants during discovery. (Dkt. No. 118-2 ¶ 19; Burtle Tr., Vol. 11 at 130:24-131:13.)

VIII. THE COPYRIGHT CLEARANCE CENTER

112. The Copyright Clearance Center (“CCC”) is a licensing agency that licenses the use of copyrighted material. (T. Vol. 11 at 162:24-163:5).

113. The CCC is the world’s largest reproduction rights organization whose sole purpose is to manage reuse rights, create licensing services, and distribute royalty payments to right holders. (T. Vol. 11 at 163:15-25).

114. While there are organizations that manage reuse rights as a portion of their business, the CCC is the only reproduction rights organization in the United States. (T. Vol. 11 at 163:15-25).

115. The CCC distributes the largest amount of royalty payments for written works. (T. Vol. 11 at 164:3-10).

116. The CCC actively pursues obtaining rights to license content that end users would use, and secures the right to offer reuse rights to the end user. (Trial Transcript, June 1, 2011, Designated Deposition Transcript of Debra Marinello, CCC’s 30(b)(6), 11-158:20-159:8, 11-159:16-20).

117. The CCC has helped coordinate more than a dozen cases of copyright infringement over the past five to six years. (DX 66, p. 4).

118. The Association of American Publishers (herein the “APP”) instructed the President and CEO of the CCC to search for patterns of reuse of unlicensed

content. The search results identified unlicensed works being used on the GSU e-Reserve system. (T. Vol. 11 at 167:5-168:5).

119. The CCC did not attempt to determine whether or not the identified unlicensed uses found on the GSU e-Reserve System would be covered under fair use since it is not the CCC's policy or practice to do so. (T. Vol. 11 at 172:12-25, 11-212:16-20).

120. The CCC does not conduct a fair use analysis since fair use is particular to the circumstances in which the content is being used, and the CCC is not a part of those circumstances. (T. Vol. 11 at 172:21-173:4).

121. The CCC frequently investigates uses of unlicensed works identified by publishers or other organizations. (T. Vol. 11 at 173:15-174:17).

122. Although the CCC is not a law firm and cannot represent individuals or groups of rights holders in infringement matters, they are in a position to coordinate and streamline the administrative process relating to these matters as appropriate. ((T. Vol. 11 at 175:14-176:25; DX 68 at 4).

123. The AAP and the CCC are jointly paying for the Plaintiff's legal fees in this litigation. (T. Vol. 11 at 169:23-170:16).

124. Only 17% of the titles covered by the CCC's Annual Copyright License include digital rights. The remaining 83% of the titles are available for print rights to the end user. (T. Vol. 11 at 181:14-25).

125. The CCC's Annual Copyright License does not allow a subscriber to select the content that will be the subject of the license; the content delivered is from a limited number of titles that the CCC offers to subscribers to the Annual Copyright License. (T. Vol. 11 at 182:3-24).

126. In addition to paying an initial fee and an annual fee, in order to obtain the CCC's Annual Copyright License, a subscriber must own a hard copy of each of the original works. (T. Vol. 4 at 4-70.)

127. If a subscriber to the Annual Copyright License wants permission to use content that is outside of the Annual Copyright License, the subscriber must use the CCC's pay per use services, such as the Academic Permission Service or the Electronic Course Content Service, without any type of discount being applied. (T. Vol. 11 at 189:1-8, 11-190:6-13).

128. The CCC charges a \$3 service charge for each granted order under Academic Permission Service (herein the "APS") in addition to the royalties it collects with such service for the publishers. (T. Vol. 11 at 199:1-18).

129. While the average royalty fee per page of use under the APS ranges between 12 and 18 cents a page, there are publishers under the APS that do not include royalty fees for use of their content because such publishers want their content available for reuse. (T. Vol. 11 at 200:16-201:6).

130. Cambridge does not make works available for the Annual Copyright License. (T. Vol. 11 at 183:25-184:8)

131. 10 to 15% of permission requests through the APS are rejected. (T. Vol. 11 at 209:14-19).

132. The Electronic Course Content Service (herein the “ECCS”) is directed at electronic reserve systems and the works posted on those systems. (T. Vol. 11 at 204:8-14).

133. The CCC charges a \$3 service charge for each granted order under the ECCS in addition to the royalties it collects with such service for the publishers. (T. Vol. 11 at 214:20-25).

134. There are works on the APS and ECCS that are considered special orders that require the CCC to approach a publisher to receive permission to license such works before it can allow the works to be used. (T. Vol. 11 at 193:11-194:1, 11-206:6-21).

135. 30% of permission requests through the ECCS are rejected. (T. Vol. 11 at 209:8-13).

136. The CCC receives 15% of all royalty fees collected under the APS and the ECCS, and 30% of royalty fees for special orders that require the CCC to request permission from publishers to grant a request. (T. Vol. 11 at 215:14-21).

137. The CCC often has to reject requests for permissions because the publishers themselves do not have the rights for the works that they publish. (Marinello Tr., 12-8:3-18).

138. Some publishers have restrictions on the amount of a work that can be licensed. The amount differs amongst publishers and ranges between 20 to 30% of a work. (Marinello Tr., 12-8:19-9:19).

139. Publishers instruct the CCC to include the total number of pages in the content when determining the percentage of work used for permission purposes. (Marinello Tr., 12-9:22-10:1).

140. In or around 2000, the CCC assembled and modified a number of resources to form The Campus Guide to Copyright Compliance (herein the “Campus Guide”) with the intention of it being a resource tool for academic institutions to ensure copyright compliance. (Marinello Tr., 12-12:22-13:18, 12-14:8-10).

141. The CCC consulted with several outside sources, including the AAP, the American Library Association, the Association of American Research Libraries, and Dr. Ken Crews, in creating the content of The Campus Guide. (Marinello Tr., 12-14:11-18, 12-15:13-19).

142. The CCC included a Fair Use Checklist that was originally created by Dr. Crews in the Campus Guide because of its usefulness. (Marinello Tr., 12-15:20-16:7; DX 14).

143. The CCC modified their Fair Use Checklist to create more of a balanced approach for assessing fair use. (Marinello Tr., 12-18:21-19:4).

144. The CCC's Fair Use Checklist includes the four factors of fair use, and labels them as the following: Purpose, Nature, Amount, and Effect. (DX 14, pp. 1-2).

145. Under each factor, the CCC's Fair Use Checklist includes a column with subfactors listed under "Favoring Fair Use" and subfactors listed under "Opposing Fair Use." (DX 14).

146. Under the Purpose Factor, the Favoring Fair Use column includes the following ten subfactors: Directly related to classroom use; Research; Scholarship; Nonprofit Educational Institution; Criticism; Comment; News reporting;

Transformative or Productive use (changes the work for new utility); and Parody. (DX 14).

147. Under the Purpose Factor, the Opposing Fair Use column includes the following five subfactors: Commercial activity; Profiting from the use; Entertainment; Bad-faith behavior; and Denying credit to original author. (DX 14).

148. Under the Nature Factor, the Favoring Fair Use column includes the following three subfactors: Published work; factual or nonfiction based; and important to favored educational objectives. (DX 14).

149. Under the Nature Factor, the Opposing Fair Use column includes the following three subfactors: Unpublished work; Highly creative work (art, music, novels, films, plays); and Fiction. (DX 14).

150. Under the Amount Factor, the Favoring Fair Use column includes the following three subfactors: Small quantity; Portion used is not central or significant to entire work; and Amount is appropriate for favored educational purpose. (DX 14).

151. Under the Amount Factor, the Opposing Fair Use column includes the following two subfactors: Large portion or whole work used; and Portion used is central to work or “heart of the work.” (DX 14).

152. Under the Effect Factor, the Favoring Fair Use column includes the following four subfactors: User owns lawfully acquired or purchased copy of original work; One or few copies made; No significant effect on the market or potential market for copyrighted work; and No similar product marketed by the copyright holder. (DX 14).

153. Under the Effect Factor, the Opposing Fair Use column includes the following seven subfactors: Could replace sale of copyrighted work; Impairs market or potential market for copyrighted work or derivative; Available licensing mechanism for use of the copyrighted work; Permission available for using work; Numerous copies made; You made it accessible on Web or in other public forum; and Repeated or long term use. (DX 14).

154. When customers contact the CCC requesting assistance in determining whether or not their desired use of a work would be determined a fair use, the CCC refrains from giving them advice and directs the customer to consult their copyright compliance policy or in-house counsel. (Marinello Tr., 12-19:7-20; 12-20:21-24).

155. The CCC's Campus Guide, which includes a Fair Use Checklist, was intended to be provided to academic institutions as a tool from which they could pick and choose components to develop their own policy. (Marinello Tr., 12-20:24-21:24).

156. The Campus Guide is available on the CCC's website, www.copyright.com. However, while it may be still found on the CCC's server, all links to the CCC's Fair Use Checklist were removed from the CCC's website in early 2008 because it was no longer "legally appropriate." (Marinello Tr., 12-23:6-24:14, 12-24:15-25:16).

157. The CCC has no plans for modifying their Fair Use Checklist to make it legally appropriate or to make it a part of the Campus Guide. (Marinello Tr., 12-26:8-15).

158. The CCC has never received a request from a student to use a work under the ECCS. (T. Vol. 11 at 207:22-25).

159. The CCC charges a licensing fee to institutions that subscribe to the Annual Copyright License. (T. Vol. 11 at 186:12-15).

160. The CCC retains 25% of the license fees it collects from subscribers of the Annual Copyright License, and charges the subscribers an administrative fee of 10% of the Annual Copyright License fees. (T. Vol. 11 at 188:3-23).

161. The highest fee that the CCC has charged for an annual copyright license is for the laureate education level, which is \$85,000. (T. Vol. 11 at 187:20-25).

162. The CCC created the market for licensing copyrighted material. (Marinello Tr., Vol. 12 at 27:9-22).

163. The CCC does not know as to whether or not GSU's alleged infringement has caused any impact in the license market. (Marinello Tr., Vol. 12 at 28:3-29:17).

164. The CCC has noticed that the revenue from electronic licensing is not increasing in direct correlation to the decrease in print licensing as more institutions are moving to electronic reserve systems. (Marinello Tr., Vol. 12 at 29:18-30:8).

165. A factor that can contribute to not seeing a direct correlation in revenue between electronic licensing and print licensing is that subscription services are not considered a licensable event. (Marinello Tr., Vol. 12 at 31:9-22).

166. The CCC has not seen a decrease in service fees from GSU since GSU began posting items on its electronic reserves because GSU never used services from the CCC. (Marinello Tr., Vol. 12 at 33:9-21).

IX. GSU POLICY IS MORE CONSERVATIVE

167. The USG Copyright Policy is a cautious policy. (T. Vol. 13 at 20:11-14.)

168. The USG Copyright Policy is particularly cautious in some of its elements and perhaps more cautious than it needs to be. (T. Vol. 13 at 20:11-13.)

169. The USG Copyright Policy is different from most other copyright policies because it includes the commitment of an oversight check of many fair use decisions by the library, and because it includes a commitment that University counsel will be available to answer questions. (T. Vol. 13 at 20:15-21.)

170. GSU is one of very few universities that have taken the extraordinary step of providing individual faculty with access to counsel to address questions about fair use. (T. Vol. 14 at 77:9-14.) Only two of the thirty-seven schools' policies or guidelines reviewed by Dr. Kenneth Crews—Emory University and Cornell University—refer instructors to legal counsel for questions regarding fair use. (See DX 325 at 72-77, 93-101.)

171. The GSU fair use checklist includes items that are more cautious than necessary about the exercise of fair use. (T. Vol. 13 at 61:8–62:5.)

172. The GSU fair use checklist includes a sub-factor that supplemental classroom reading favors fair use, while required classroom reading militates against fair use. The law does not require such a balancing with respect to whether the reading is supplemental or required, and consequently the inclusion of this sub-factor demonstrates that GSU has erred on the side of caution. (T. Vol. 13 at 61:17–62:23.)

173. The GSU fair use checklist combines research and scholarship into a single sub-factor favoring fair use, whereas the Columbia University checklist breaks them into two sub-factors. As a practical matter, this reduces the number of checks in favor of fair use on the GSU checklist, and thus the GSU checklist takes a more cautious approach to fair use than the Columbia University checklist. (T. Vol. 14 at 70:14–71:19.)

174. The GSU fair use checklist combines criticism, comment, news reporting, and parody into a single sub-factor favoring fair use, whereas the Columbia University checklist breaks them into four sub-factors. As a practical matter, this reduces the number of checks in favor of fair use on the GSU checklist, and thus the GSU checklist takes a more cautious approach to fair use than the Columbia University checklist. (T. Vol. 14 at 70:14–71:19.)

175. The USG Copyright Policy requires the deletion of materials on e-Res at the end of each semester. This is a stronger policy than most universities, which just prevent access to materials after the semester ends. (T. Vol. 14 at 73:17–74:17.)

176. The USG Copyright Policy calls for library staff to determine whether materials submitted for posting are available through an electronic database or otherwise legally available, and to provide a link to those materials rather than scanning and posting them whenever possible. This is consistent with good

electronic reserves policy and benefits copyright owners because it allows rights holders to assess the relative value of the work and reduces the risk that additional copies will be made. (T. Vol. 14 at 74:18–76:18.)

X. FACTOR 4 – EFFECT ON THE MARKET

177. The fact that there is a price tag on reproduction of pieces of a work does not necessarily take away the right of fair use. (T. Vol. 13 at 71:4-6.)

178. If a work is available for instant licensing on the CCC website, one would be able to specify the range of pages to reproduce and receive a price quote for the use. A request for one page would result in a quote for the use of that page. Just because it is possible to pay a fee to reproduce a single page does not mean that reproduction of that page cannot be fair use. (T. Vol. 13 at 71:15–72:9.)

179. Just because a fee can be set for the use of a portion of a work does not mean that the reproduction of that item cannot be fair use. (T. Vol. 13 at 72:8-9.)

180. Whether something is available for licensing is a variable that one may include in the overall fair use equation. (T. Vol. 13 at 120:12–121:16.)

XI. PLAINTIFFS’ FAILURES ON PROOFS OF OWNERSHIP

181. Aside from copyright registrations, Plaintiffs did not present any proof of originality of the contents of any work at issue.

A. Licenses To Copied Materials

182. Defendants had express permission to copy eleven of the twenty pages from Pronunciation Games alleged to have been placed on e-Reserves by Dr. Murphy for AL 8480 in Maymester 2009. (PX 138 at 9, 11, 13-14, 17-18, 20-21, 23, 25-26 (indicating these pages are photocopyable).) Plaintiffs' claim of infringement for use of Pronunciation Games in Dr. Murphy's AL 8480 course in Maymester 2009 therefore is understood to encompass only the following nine pages: 8, 10, 12, 15-16, 19, 22, 24, and 27.

B. Copied Pages Not Protectable (Originality & Copyrightability)

183. The following pages included in Plaintiffs' allegations of infringing use contain primarily factual information and information from others' works: Pages 63, 67-68, 74, 77, 80-82, and 87-88 of More Grammar Games: Cognitive, Affective and Drama Activities for EFL Students; pages 5-46, 49-51, 56-61, 65-67, 69-71, 73-74, 76-77, 81, 83-88, 91-93, 95-97 and 100-102 of Grammar Practice Activities (1st edition); pages 457-458 of Newspapers; pages 40, 42-44, 46-47, 53-54, and 62 of Role Play: Resource Books for Teachers; pages 129-135, 137-138, 141-144 of Assessing Grammar; pages 204-207, 211-218, 220-221, 223-232, 234-247, 250-254, 257-258, 260-264, and 266-270 of Assessing Reading; pages 81-93, 95-105 and 107 of Fundamental Considerations in Language Testing; pages 123-126, 129-130, 133-

139, 142-145, 147, 149, and 151 of *Assessing Listening*; pages 24-28 and 30-34 of *Assessing Language for Specific Purposes*; pages 59-77, 80, 82-94, 140-143, 145-155, and 157-162 of *Assessing Speaking*; pages 344-346, 348-351, 353, 356-359, 361-365, 367-371, and 373-375 of *Learning Vocabulary in Another Language*; pages 152-155, 157-160, 163, 165-166, 168-169, 175, 180-181 of *Assessing Vocabulary*; pages 77-91, 93, 95-106, 108-120, 122-126, and 129 of *Assessing Writing*; pages 214-215 and 217-218 of *Awakening Children's Minds* (PX 354 at 214-15, 217-18, 289 n.90, 290 n.96); page 234 of *Understanding Trauma: Integrating Biological, Clinical, and Cultural Perspectives* (PX 142 at 234); and 116-121 of *Living Ethics: Across Media Platforms*.

184. The following pages included in Plaintiffs' allegations of infringing use present public domain material: pages 31, 35, 37, 41, 43 and 45 of *Liszt: Sonata in B Minor*; pages 96, 97, and 99 of *The Cambridge Companion to Mendelssohn*; pages 114, 116 and 118 of *The Cambridge Companion to Schumann*; pages 174-175 and 178-180 of *The Cambridge Companion to Beethoven*; pages 260 and 262 of *The Music of Berlioz*; pages 80-83 and 89 of *The Organ As a Mirror of Its Time: North European Reflections 1610-2000*; and page 24 of *North German Church Music in the Age of Buxtehude*.

C. Registrations Outside Of 5 Yrs

185. Plaintiffs have introduced certificates of registration for the following works, but these registrations were not made before or within five years after first publication of the associated works: More Grammar Games: Cognitive, Affective and Drama Activities for EFL Students (PX 134; PX 136); Five-Minute Activities: A Resource Book of Short Activities (PX 92; PX 90); Liszt: Sonata in B Minor (PX 132; PX 130); The Cambridge Companion to Beethoven (PX 56; PX 53); Ancient Egyptian Materials and Technology (PX 12; PX 6); Criterion-Referenced Language Testing (PX 87; PX 85); Assessing Grammar (PX 17; PX 15); Fundamental Considerations in Language Testing (PX 408; PX 406); Language Testing in Practice (PX 420; PX 418); Assessing Listening (PX 26; PX 24); Assessing Speaking (PX 36; PX 34); Learning Vocabulary in Another Language (PX 127; PX 125); Assessing Vocabulary (PX 46; PX 44); Assessing Writing (PX 41; PX 39); International Health Organisations and Movements, 1918-1939 (PX 111; PX 108); Language Acquisition and Conceptual Development (PX 122; PX 119); The Cambridge History of China, Volume 8, Part 2 (PX 82; PX 79); A World of Babies: Imagined Childcare Guides for Seven Societies (PX 151; PX 147); and The Power Elite (PX 450; PX 448).

D. Foreign Works

186. The following works at issue were first published in the United Kingdom and were not published in the United States within 30 days after publication in the United Kingdom: Pronunciation Games (PX 138; PX 140); Keep Talking: Communicative Fluency Activities for Language Teaching (PX 114; PX 116); Grammar Practice Activities (1st edition)(DE 788; PX 101); Newspapers (PX 433; PX 378); Role Play: Resource Books for Teachers (PX 458; PX 378); Handbook of Social Theory (PX 288); Qualitative Research Practice (PX 298); Handbook of Ethnography (PX 239); The Cambridge Companion to Mendelssohn (PX 65; PX 68); The Cambridge Companion to Schumann (PX 75; PX 77); The Music of Berlioz (PX 427; PX 378); Assessing Reading (PX 29; PX 31); Assessing Language for Specific Purposes (PX 20; PX 22); A History of Feminist Literary Criticism (PX 103; PX 104); North German Church Music in the Age of Buxtehude (PX 437; PX 378); and Regimes and Democracy in Latin America: Theories and Methods (PX 452; PX 378).

E. No Valid Author Or Editor Agreement (And Requested)

187. Defendants' document requests and interrogatories included requests related to Plaintiffs' ownership and/or licensing of the subject works. On November

5, 2010, this Court ordered Plaintiffs to supplement their responses to Defendants' requests and interrogatories for the subject works. (Dkt. 240 at 2.)

F. No Valid Author Or Editor Agreement

188. Plaintiffs have alleged infringement of pages 217-228 of Handbook of Social Theory, edited by George Ritzer and Barry Smart. (Dkt. 361-1 at 3; PX 288.) Pages 217-228 make up a portion of chapter 17 of the work, entitled "Symbolic Interactionism at the End of the Century," and authored by Kent L. Sandstrom, Daniel D. Martin, and Gary Alan Fine. (PX 288 at 217-228.) Plaintiffs failed to introduce at trial or produce in discovery evidence of contributing author agreements with authors Sandstrom or Martin. (But see PX 290 (agreement with Fine).)

189. Plaintiffs have alleged infringement of pages 455-486, 717-768, 803-820, 923-948 of The Sage Handbook of Qualitative Research (2nd edition), a collective work. (Dkt. 361; PX 265.) Plaintiffs failed to introduce at trial or produce in discovery evidence of contributing author agreements for pages 733-768.

190. Plaintiffs have alleged infringement of pages 415-428 of Inside Interviewing: New Lenses, New Concerns. (Dkt. 361-2 at 2.) Plaintiffs failed to introduce at trial or produce in discovery evidence of contributing author agreements for either of the two authors of pages 415-428.

191. Plaintiffs have alleged infringement of pages 188-203 of Handbook of Ethnography. (Dkt. 361-2 at 2.) Plaintiffs failed to introduce at trial or produce in discovery evidence of contributing author agreements for any of the three authors of pages 188-203.

192. Plaintiffs have alleged infringement of pages 71-106, 155-172, and 515-534 of Handbook of Feminist Research: Theory and Praxis. (Dkt. 361-3 at 5.) Plaintiffs failed to introduce at trial or produce in discovery evidence of a contributing author agreement for pages 71-106.

193. Plaintiffs have alleged infringement of pages 35-75 of Handbook of Narrative Inquiry. (Dkt. 361-3 at 5.) Plaintiffs failed to introduce at trial or produce in discovery evidence of a contributing author agreement for one of the two authors of the excerpt at pages 35-75.

194. Plaintiffs have alleged infringement of pages 108-148 of Film Language: A Semiotics of the Cinema. (Dkt. 361-3 at 6.) Plaintiffs failed to introduce at trial or produce in discovery evidence of a an assignment by the author to either Oxford or a foreign publisher of the excerpt at pages 108-148. (But see PX 393 (a translation agreement).)

195. Plaintiffs have alleged infringement of pages 1-50 of Regimes and Democracy in Latin America: Theories and Methods. (Dkt. 361-3 at 8.) Plaintiffs

failed to introduce at trial or produce in discovery evidence of a contributing author agreement for pages 39-50, authored by Mazzuca. (But see PX 453 (agreement with Gerado Munck).)

196. Plaintiffs have alleged infringement of pages 8-15 and 19-48 of Behavior, Society, and Nuclear War, Vol. 1. (Dkt. 361-3 at 9.) Plaintiffs failed to introduce at trial or produce in discovery evidence of a contributing author agreement for pages 8-15 and 19-48 or an editor agreement.

197. Plaintiffs have alleged infringement of pages 27 and 91-112 of A World of Babies: Imagined Childcare Guides for Seven Societies. (Dkt. 361-3 at 9.) Plaintiffs failed to introduce at trial or produce in discovery evidence of one of two contributing author agreements for page 27. Plaintiffs provided a contributing author agreement for one of the authors, but not both. (See PX 147; PX 149; PX 150.)

198. Plaintiffs have alleged infringement of pages 322-335 of A History of Feminist Literary Criticism (Dkt. 361-3), an excerpt of the collective work, which was authored by Stacy Gillis (PX 103). Plaintiffs failed to introduce at trial or produce in discovery evidence of a contributing author agreement from Gillis. (But see PX 105 (an editors' assignment for the book).)

XII. ALLEGED COPYRIGHT INFRINGEMENTS

199. All relevant course materials posted on GSU's e-Res and uLearn systems were placed there for a nonprofit educational use.

200. In response to an Order from the Court on August 12, 2010, Plaintiffs identified 126 alleged infringements of its Copyrights by 48 Professors during the Maymester, Summer and Fall Semesters of 2009.

201. In response to Orders from the Court on November 5, 2010 and March 4, 2011, Plaintiffs identified a reduced list of 99 alleged infringements of its Copyrights by 33 Professors during the Maymester, Summer and Fall Semesters of 2009.

202. During the course of the Trial in this matter, Plaintiff identified its final and further reduced list of 75 alleged infringements by 23 Professors during the Maymester, Summer and Fall Semesters of 2009.

203. For the 75 allegations of infringement that remained at issue at the conclusion of the trial, the average or mean percentage usage for all of those 75 allegations was 10.1% and the median percentage usage was 8.0%.

204. When just two professors (Professor Kim and Professor Murphy) are eliminated from consideration, so that the evaluation is for 21 professors rather than the 23 professors that remained at issue at the conclusion of the trial, the mean or

average percentage usage for the 75 allegations of infringement drops to 7.5% and the median percentage usage drops to 6.8%.

205. For the 23 professors that remained at issue at the conclusion of the trial, 16 of those professors are accused of infringement based on the use of no more than 2 excerpts from works for which plaintiffs claim to own or license the copyright.

206. It is, therefore, apparent that a significant portion of the alleged infringements of which the plaintiffs complain is the result of two professors in terms of mean and median percentage usage and seven professors in terms of the number of excerpts used.

207. Such limited usage of plaintiffs works by professors at Georgia State University fails to prove an ongoing and continuous misuse of the fair use defense by Georgia State or the Board of Regents for the University System of Georgia and does not prove that the new University System of Georgia Copyright Policy was devised and implemented by Georgia State and the Board of Regents to cause ongoing and continual misuse of the fair use defense.

A. Professor John Duffield

208. John Duffield is a Professor in the Department of Political Science at Georgia State University. T. Vol. 11 at 65. Professor Duffield taught a graduate-

level course entitled Military Conflict and International Security, POLS 8470, in the Fall of 2009. T. Vol. 11 at 67. The purpose of the course was to introduce graduate students to the scholarly literature on (a) the causes of war and international conflict and (b) efforts states and others have undertaken to address the problem of international militarized conflict. T. Vol. 11 at 68. Less than fifteen (15) students were enrolled in the POLS 8470 course in the Fall of 2009. T. Vol. 11 at 67.

209. Professor Duffield assigned both required readings and supplemental readings to his students in the POLS 8470 course. T. Vol. 11 at 70. The bulk of the readings Professor Duffield assigned were journal articles. T. Vol. 11 at 71. A small number were book excerpts. T. Vol. 11 at 71.

210. Professor Duffield's purpose in providing a list of supplemental readings was to provide additional readings to which the students could refer either in preparation for the class or afterwards to deepen their understanding of a subject. T. Vol. 11 at 70. These supplemental readings were not required readings for the POLS 8470 course. T. Vol. 11 at 70.

211. One of the required readings Professor Duffield assigned was an excerpt by Ole Holsti entitled "Crisis Decision Making" from the book Behavior, Society, and Nuclear War. T. Vol. 11 at 71-72; PTX-528. Behavior, Society, and Nuclear War is a 401-page edited volume containing chapters written by different

authors that address different aspects of the overall topic of the book. T. Vol. 11 at 72-73; PTX-359. The “Crisis Decision Making” chapter appears on pages 8 through 84 of the Behavior, Society, and Nuclear War book. T. Vol. 11 at 73. Professor Duffield assigned only pages 8 through 14 and 19 through 48 of that chapter, and therefore assigned less than 10% of the book. T. Vol. 11 at 73-74. Professor Duffield excluded from the assigned reading those pages he did not feel were necessary, allowing him to keep the total reading assignment to under 10% of the book. T. Vol. 11 at 74. Professor Duffield assigned the “Crisis Decision Making” excerpt as a reading during the fourth week of class because his class was reviewing explanations of the causes of conflict and war that are rooted in human nature. T. Vol. 11 at 74. The excerpt provided a useful discussion of an important approach to thinking about the contribution of human nature to the causes of war, and in particular the effect of crisis situations, stress, and short time periods on decision-making. T. Vol. 11 at 75.

212. Professor Duffield made the “Crisis Decision Making” excerpt available on GSU’s e-Reserve system. T. Vol. 11 at 76. To request that the excerpt be made available on GSU’s e-Reserve system, Professor Duffield filled out a fair use checklist on August 23, 2009 in accordance with GSU’s Copyright Policy. T. Vol. 11 at 76-77; PTX-563; see also DX-503; T. Vol. 11 at 90.

213. Professor Duffield analyzed each of the four factors identified in the checklist (including all of the subfactors) and concluded that the four factors weighed in favor of fair use. T. Vol. 11 at 79-80, 81-82, 83, 85, 87-88; PTX-563. With respect to Factor 1 (Purpose and Character of the Use), Professor Duffield concluded that this factor weighed in favor of fair use because the purpose of his use of the excerpt was for nonprofit educational use, it was for teaching, and the use was necessary to achieve his intended educational purpose. T. Vol. 11 at 80; PTX-563. With respect to Factor 2 (Nature of Copyrighted Work), Professor Duffield concluded that this factor weighed in favor of fair use because the excerpt was published, the excerpt was factual and nonfiction, and his use of the “Crisis Decision Making” excerpt was important to his educational objectives because it offered an important perspective on the causes of war to which he wanted to introduce his students. T. Vol. 11 at 82-83; PTX-563. With respect to Factor 3 (Amount and Substantiality of Portion Used), Professor Duffield concluded that this factor weighed in favor of fair use because he used a small portion of the book (less than 10%), and the amount taken was narrowly tailored to his educational purpose. T. Vol. 11 at 83-84; PTX-563. Professor Duffield only used those select portions of the “Crisis Decision Making” excerpt that he thought were the most useful and important components of the chapter. T. Vol. 11 at 84. The portion Professor

Duffield used of the “Crisis Decision Making” excerpt did not go to the heart of the book, and was not central to the book. T. Vol. 11 at 84; PTX-563. With respect to Factor 4 (Effect on Market of the Original), Professor Duffield concluded that this factor weighed in favor of fair use for several reasons. T. Vol. 11 at 85-87; PTX-563. First, Professor Duffield concluded that his assignment of the “Crisis Decision Making” excerpt to his students would not have a significant effect on the market or potential market for the book, since it would not make them any less likely to purchase a copy of the entire book. T. Vol. 11 at 85; PTX-563. His students likely would not have been exposed to the book without having been required to read the “Crisis Decision Making” excerpt. T. Vol. 11 at 85. Second, Professor Duffield was not aware of any other similar product marketed by the copyright holder. T. Vol. 11 at 85-86; PTX-563. Third, Professor Duffield owned a purchased copy of the book. T. Vol. 11 at 86; PTX-563. Fourth, only students in his class would have restricted, password-protected access to the “Crisis Decision Making” excerpt that Professor Duffield posted on e-Reserves. T. Vol. 11 at 86-87; PTX-563. While Professor Duffield believed a few factors may weigh against fair use, including that licensing or permission was reasonably available (which he did not know, but assumed could be true), that numerous copies of the excerpt were made or distributed (Professor Duffield believed that at least 10 students in the class were likely to access the

“Crisis Decision Making” excerpt), and that the excerpt was required classroom reading, Professor Duffield concluded, after considering all of the subfactors, that Factor 4 weighed in favor of fair use. T. Vol. 11 at 85, 87; PTX-563.

214. If it were determined that Professor Duffield’s use of the “Crisis Decision Making” excerpt was not a fair use, Professor Duffield would consider numerous other options to assigning the “Crisis Decision Making” excerpt, including making the book or the excerpt available on hard copy reserve in the library, or finding another reading or licensed journal article that would make a similar contribution to his students. T. Vol. 11 at 90-91.

B. Professor Jodi Kaufmann

215. Professor Jodi Kaufmann has been teaching at GSU since 2006; before that she was at the University of Georgia. T. Vol. 5 at 35. She teaches graduate students in the College of Education, including the courses ERPS 8500 & 8510, which are primarily for Ph.D. students. T. Vol. 5 at 36 & 37. Qualitative 1 (ERPS 8500) looks at what theories underlay the field, and Qualitative 2 (ERPS 8510) looks at how to collect data. T. Vol. 5 at 37, 38. Professor Kaufmann has published articles in a variety of journals. T. Vol. 5 at 40.

216. Professor Kaufmann learned about the new copyright policy in approximately February of 2009. T. Vol. 5 at 42. She is aware the policy is on-line

and has read it. T. Vol. 5 at 44, 45. Kaufman attended an educational session on the new policy, given by Cynthia Hall. Other professors attended. T. Vol. 5 at 45. The training lasted about an hour and included a Power Point presentation and a discussion about the new fair use checklist. T. Vol. 5 at 46, 47. Professor Kaufmann always filled out a fair use checklist for each of the excerpts she used in a course in 2009. T 5-177.

217. The new copyright policy changed Kaufmann's views and practices. Before the new policy she thought that anything under 20% was acceptable. T. Vol. 5 at 88. After the adoption of the new policy, it has been her practice to not use more than 10% of a particular work. T. Vol. 5 at 90. Also, since the training she makes sure she or the library owns the work and that it meets the fair use test. T. Vol. 5 at 176. Using the fair use checklist helped her focus on the relevant questions, such as whether an excerpt was as narrow as it could be. T. Vol. 5 at 177. Kaufmann has never posted reading excerpts on U-Learn. T. Vol. 5 at 173. Prof. Kaufmann owned all but one of the books from which she assigned excerpts and the library owned that one (so when Professor Kaufmann did not check the box for "owns a copy" on a checklist, that was a mistake). (T. Vol. 5 at 178.)

218. Professor Kaufmann has not completed a checklist that failed the fair use test, but that is because she only completes it after she has run through the

factors in her mind. (Id. at 96-97.) She has considered and rejected excerpts because the use did not appear to be fair use or it was close enough she was not going to use it. (T. Vol. 6 at 37.) In those situations, she did not complete the checklist. (Id. at 38.)

219. Professor Kaufmann does not believe the use of excerpts negatively affects the market for the book from which on excerpt is taken. If anything, it helps, because it introduces the students to the book and makes it more likely they will buy it. (T. Vol. 5 at 99-100.) That is how she came to buy the SAGE Handbook as a graduate student. (Id. at 99,181-82.)

220. PX 516 is the syllabus for the Qualitative Interpretative Research in Education 1 Course that Professor Kaufmann taught during the Maymester in 2009. T. Vol. 5 at 68, 69. There were approximately 13 students in the class. T. Vol. 5 at 69.

221. Professor Kaufmann required the students to buy three books for the Class for the 2009 Maymester course and recommended a fourth. T. Vol. 5 at 69, 70, 172; PX 516. One of the two texts all students were required to buy was a SAGE publication, Foundations of Social Research. T. Vol. 5 at 172. Each book cost around \$50 to \$60. Id.

222. Professor Kaufmann assigned as an e-Res excerpt one chapter at 733-768, of the SAGE Handbook of Qualitative Research, 2d ed., for the 2009 Maymester class. Professor Kaufmann did not assign chapter 27, beginning at page 717, or chapter 36, beginning at page 923, of the SAGE Handbook of Qualitative Research, 2d edition, in the 2009 Maymester, as Plaintiffs alleged, and those excerpts do not appear on the syllabus for Maymester, 2009, or the E Res submission to the library. T. Vol. 6 at 4, 5; PX 516; & DX 512. (As a result, Kaufmann used approximately 3% of the work, not the 7.3% Plaintiffs calculated based on the belief she used three chapters.)

223. Professor Kaufmann assigned as e-Res excerpts four chapters of the SAGE Handbook of Qualitative Research, 3rd Edition, PX 267. She assigned: Chapter 1, pages 1-32 (T. Vol. 5 at 80) and also pages 357-375, 443-465, and 651-679. Thus, per Plaintiffs' calculation she used 9.1% of the work. JX 5; PX 516.

224. Professor Kaufmann also assigned the following excerpts of other works for the 2009 Maymester: (i) pages 21-31 of *The Craft of Inquiry*, or 8.2% of the work; (ii) pages 515-534 of the *Handbook of Feminist Research*, or 2.8% of the work; (iii) pages 217-228 of the *Handbook of Social Theory*, or 2.2% of the work; (iv) pages 85-99 and 135-156 of the *Handbook of Critical and Indigenous Methodologies*, or 6.5% of the work; and (v) pages 3-34 of the *Handbook of*

Narrative Inquiry, or 4.5% of the work. JX 5 Contrary to Plaintiffs' contentions, Kaufmann did not assign any portion of the work Qualitative Research Practice in the Maymester 2009 class. T. Vol. 5 at 179, 180; DX 512.

225. Professor Kaufmann filled out a fair use checklist. T. Vol. 5 at 81. PX 576. The checklist for the Denzin & Lincoln chapter, Chapter 1 of the SAGE Handbook of Qualitative Research, 3d ed. PX 576, T. Vol. 5 at 81, 82. PX 571 is the checklist she completed for the Plummer chapter of the SAGE Handbook at 357-375. T. Vol. 5 at 111. PX 579 is the checklist she completed for Stake's "Qualitative Case Studies" chapter at 443-465, of the Handbook, 3d ed. T. Vol. 5 at 106. PX 580 is the checklist she completed for pages 651-679 of the SAGE Handbook, 3d ed., T. Vol. 5 at 109, 110. PX 572 is her checklist for Ch. 28 at 733-768, of the SAGE Handbook, 2d ed., T. Vol. 5 at 118, 119.

226. PX 573 is the checklist for the Preissle chapter, Chapter 26, pages 515-534, of the SAGE Handbook of Feminist Research. T. Vol. 5 at 112. PX 578 is the checklist for Chapter 17, pp 217-228, of the SAGE Handbook of Social Theory. T. Vol. 5 at 113, 114. PX 575 is checklist she created for Chapter 7 at 135-156, of the Handbook of Critical and Indigenous Methodologies. T. Vol. 5 at 116, 117. PX 574 is the checklist she created for Chapter 1 at 3-34, of the Handbook of Narrative

Inquiry. T. Vol. 5 at 117, 118. PX 577 is the checklist for the proposed use of Ch. 2 at 21-31 of *The Craft of Inquiry*. T. Vol. 5 at 120.

227. Regarding each of the excerpts Professor Kaufmann used in the 2009 *Maymester*, she concluded, utilizing the checklist provided as part of the new policy, that each use constituted a fair use. T. Vol. 5 at 184-189; T. Vol. 6 at 6 through 10.

228. Plaintiffs have also raised an issue concerning Kaufmann's use of excerpts in a course in Summer of 2009. Kaufmann required students to purchase three textbooks for the Summer 2009 course, and two of the three (*Documents in Qualitative Research and Qualitative Interviewing*) are SAGE publications. T. Vol. 6 at 11. The books cost between \$70 & \$100. T. Vol. 6 at 11.

229. Professor Kaufmann assigned two chapters from the *SAGE Handbook of Qualitative Research*, 2d ed., pages 717-732 and 923-943, or 3.5% of the work. JX 5. She also used one chapter, pages 415-428, or 2.8%, of the work *Inside Interviewing*. JX 5.

230. Professor Kaufmann completed checklists for all the works for the summer class before the summer semester. (T. Vol. 5 at 139.) Those checklists she could not locate, she re-created. (*Id.*) PX 628 is checklist she recreated for the chapter by Harper at 717-752, of the *Handbook*, PX 265. T. Vol. 5 at 138. PX 625 is her recreated checklist for pages 923-94 of the *SAGE Handbook*. (T. Vol. 5 at

141.) PX 629 is her recreated checklist for Chapter 15 of Inside Interviewing, pages 311-330, by Charmaz on “Qualitative Interviewing.” (T. Vol. 5 at 142.)

231. Regarding each of the excerpts Professor Kaufmann used in the Summer 2009 course, she concluded, utilizing the checklist provided as part of the new policy, that each use constituted a fair use. (T. Vol. 6 at 12-15, 19.) Professor Kaufmann’s conclusions about fair use were reasonable and correct.

232. Plaintiffs also have challenged Professor Kaufmann’s use of excerpts in the course she taught in the Fall 2009 semester, EPRS E500, Qualitative Interpretive Research in Education 1. Professor Kaufmann required students to purchase three textbooks for the this course, T. Vol. 5 at 144, two of which were SAGE publications. (T. Vol. 6 at 20-21.) The cost for the books was approximately \$80-\$100. (T. Vol. 6 at 21.)

233. Professor Kaufmann assigned the following excerpt from the SAGE Handbook of Qualitative Research, 2d ed. (PX 265): pages 733-768, 36 pages or 3.4% of the work; and the following excerpts from the Third Edition of that Handbook, PX 267: pages 1-32, 109-138, 357-373, 443-465, 547-557, 915-932, and 959-978, 153 pages or 13.4% of the work. (JX 5; T. Vol. 5 at 152.) (Prof. Kaufmann testified she erred in missing her goal of not using more than 10% of a work. (T. Vol. 5 at 152.)

234. Professor Kaufmann also assigned the following excerpts in the Fall 2009 course: pages 21-31 or 6% of *The Craft of Inquiry*; pages 447-472 or 4.6% of *Approaches to Qualitative Research*; pages 71-106, 155-172, and 515-534, or 10.4%, of the *Handbook of Feminist Research*; pages 35-75 or 6.3% of the *Handbook of Narrative Inquiry*; and pages 217-228, or 2.2% of the *Handbook of Social Theory*.

235. PX 572 is the checklist Kaufmann created for the use of Chapter 28, pp. 733-768, of the *SAGE Handbook of Qualitative Research*, 2d ed. (T. Vol. 5 at 166-67.) PX 581 is the checklist Kaufmann completed on July 17, 2009, for the Denzin & Lincoln chapter of the *SAGE Handbook of Qualitative Research*, 3rd ed. (T. Vol. 5 at 145.) PX 582 is the checklist she completed for the Bishop chapter of the *SAGE Handbook*, 3d ed., beginning at page 109. (T. Vol. 5 at 146-147.) PX 583 is the checklist she created for the Plummer chapter of the *SAGE Handbook*, 3d ed., pp. 357-373. (T. Vol. 5 at 147.) PX 584 is the checklist for the Stake chapter, chapter 17, of the *SAGE Handbook*, 3d ed. T. Vol. 5 at 148. PX 585 is the checklist for chapter 22, by Beverly, of the *SAGE Handbook*, 3d ed. T. Vol. 5 at 149. PX 587 is the checklist for Chapter 38, *Writing as a Method of Inquiry*, of the *SAGE Handbook*, 3rd Ed. T. Vol. 5 at 151, 152.

236. PX 588 is her checklist for chapter 4 at 71-106, from the *SAGE Handbook of Feminist Research*. T. Vol. 5 at 165, 166. PX 589 is her checklist for

Chapter 8 of the Handbook of Feminist Research at 155-172. T. Vol. 5 at 155, 156. PX 590 is the checklist she filled out for the Preissle chapter of the SAGE Handbook of Feminist Research, pp 515-534. T. Vol. 5 at 154. PX 594 is the checklist for chapter 17 of the SAGE Handbook of Social Theory, PX 288, pages 217-228. T. Vol. 5 at 157, 158.

237. PX 593 is the checklist for the use of Chapter 2 of The Craft of Inquiry at 21-21. T. Vol. 5 at 168. PX 591 is checklist completed on July 17, 2009, for use of Chapter 21 at 447-472, of Approaches to Qualitative Research, PX 349. T. Vol. 5 at 169, 170.

238. Regarding each of the excerpts Professor Kaufmann used in the Fall 2009 course, she concluded, utilizing the checklist provided as part of the new policy, that each use constituted a fair use. T. 24, 26, 28 - 30, 33-37.

239. Professor Kaufmann's conclusions about the uses of the excerpts she incorporated in the Maymester, Summer, and Fall 2009 classes being fair uses are reasonable and correct. Prof. Kaufmann had thoughtful reasons for using each of the excerpts. See, e.g., T. Vol. 5 at 175, 183-189, T. Vol. 6 at 6, 8, 12, 14, 23, 25, 27, 30 - 32. All of the uses were for non-profit, educational purposes. Professor Kaufmann accurately described several of the works as being in significant part overviews of the relevant field and summaries of the works of others. See, e.g., T. Vol. 5 at 175,

185, 186, 188; T. Vol. 6 at 8, 30. (See also Kaufmann's testimony about the difference between summarizing and transforming. T. Vol. 6 at 39, 40.) For example, she stated that Chapter 1 of the 3rd edition of the SAGE Handbook of Qualitative Analysis, does not provide an overview of the entire book. It predominantly gives one an overview of the history of the field and the stages through which the field has gone. T. Vol. 5 at 81. In addition, Professor Kaufmann's conclusions that the excerpts were not the heart of the respective works appear accurate. See, e.g., T. Vol. 5 at 180-182, T. Vol. 6 at 39, T. Vol. 6 at 47.

240. Also Professor Kaufmann indicated the excerpts were not critical to her teaching. She testified that it would not be problematic or difficult to find substitutes for the works that she has assigned from the SAGE Handbook of Qualitative Research. T. Vol. 5 at 80; T. Vol. 6 at 42 to 44. If Professor Kaufmann was advised she had to obtain permission to use the works and it would cost each student \$28, she would think twice about using them and would look for other resources such as e-journals. T. Vol. 6 at 45.

C. Professor Jennifer Esposito

241. Professor Jennifer Esposito is currently employed as a professor in the Educational Policy Studies Department at Georgia State University. (Trial

Transcript, May 24, 2011, Testimony of Jennifer Esposito (herein “Esposito Tr.”), 6-52:5-7.)

242. Professor Esposito’s assignment of excerpts from books for classroom purposes has resulted in her students purchasing the entire books from which the excerpts were selected. (Esposito T. Vol. 6 at 91:14-92:2, 92:10-93:12.)

1. EPSF8280 – Anthropology of Education – Summer Semester 2009

243. Professor Jennifer Esposito taught approximately twenty-two doctoral students in her EPSF8280 class during Summer Semester 2009, which explored the methodology of ethnography, a research methodology that generally studies culture through narrative research methods, such as participant observation and interviewing. (Esposito T. Vol. 6 at 52:8-12, 80:22-81:8, 91:14-22; PX 547.)

244. Professor Esposito required her students in EPSF8280 to purchase five books: *Prom Night* (Best); *Teaching Black Girls* (Evans-Winters); *Race in the Schoolyard* (Lewis); *Hopeful Girls, Troubled Boys* (Lopez); and *Homegirls* (Mendoza-Denton). The cost of all five books totaled approximately \$150. (PX 547 at 1-2; Esposito T. Vol. 6 at 79:22-70:22.)

a. Handbook of Ethnography

245. Professor Esposito assigned an excerpt by Tuula Gordon, Janet Holland, and Elina Lahelma entitled “Ethnographic research in educational settings”

(herein the “Gordon excerpt”), found in *The Handbook of Ethnography*, for her June 11th class of EPSF8280. (PX 547 at 4; Esposito T. Vol. 6 at 54:25-55:11.)

246. *The Handbook of Ethnography*, published by SAGE, is a factual, collective work consisting of individual chapters from several different contributors. Totalling 525 pages, the book focuses on research and review of social interaction, cultural studies, critical ethnography, and feminism. (PX 239; Esposito T. Vol. 6 at 82:21-83:7.)

247. The Gordon excerpt, found at pages 188-203, totals 16 pages and amounts to 3% of *The Handbook of Ethnography*. It is a secondary source that reviews specific literature on ethnography in a school setting, supporting Professor Esposito’s “Ethnography and Education” theme for her June 11th class. (PX 547 at 4; Esposito T. Vol. 6 at 82:21-83:12; Dkt. No. 384-2 at 1.)

248. Prior to requesting the Gordon excerpt be posted on GSU’s e-Res system, Professor Esposito performed a fair use analysis, considering each of the four statutory fair use factors, which is reflected by the fair use checklist that she completed. Professor Esposito found that all four factors weighed in favor of fair use. (PX 567; Esposito T. Vol. 6 at 66:9-23, 67:1-69:9, 70:24-71:13, 72:8-15, 73:23-25, 83:13-20.)

249. The Gordon excerpt had a hit count of 62 on the e-Res system for the Summer Semester 2009. (JX 2 at 45.)

b. Handbook of Feminist Research: Theory and Praxis

250. Professor Esposito assigned an excerpt by Wanda Pillow and Cris Mayo entitled “Toward Understandings of Feminist Ethnography” (herein the “Pillow excerpt”) found in The Handbook of Feminist Research: Theory and Praxis (herein “The Handbook of Feminist Research”) for her June 16th class of EPSF8280. (PX 547 at 4; Esposito T. Vol. 6 at 56:11-23.)

251. The Handbook of Feminist Research, published by SAGE, is a non-fiction, factual collective work consisting of individual chapters from several different contributors. It focuses on feminist theory and research, and totals 767 pages. (PX 243; Esposito T. Vol. 6 at 69:7-9, 70:24-71:8, 6-82:21-83:7.)

252. The Pillow excerpt, found at pages 155-172, totals 18 pages and amounts to 2.4% of The Handbook of Feminist Research. It is a secondary source that illustrates a critique of the ethnography field from a feminist perspective, supporting Professor Esposito’s “Critiques of Anthropology” theme for her June 16th class. (PX 547 at 4; Esposito T. Vol. 6 at 83:22-84:10; Dkt. No. 384-2 at 1.)

253. Prior to requesting the Pillow excerpt be posted on GSU’s e-Res system, Professor Esposito performed a fair use analysis, considering each of the

four statutory fair use factors, which is reflected by the fair use checklist that she completed. Professor Esposito found that all four factors weighed in favor of fair use. (PX 566; Esposito T. Vol. 6 at 66:9-23, 67:1-69:9, 70:24-71:13, 72:8-15, 73:23-25, and 86:1-13.)

254. The Pillow excerpt had a hit count of 22 on the e-Res system for the Summer Semester of 2009. (JX 2 at 77.)

c. The SAGE Handbook of Qualitative Research (2nd edition)

255. Professor Esposito assigned an excerpt by Barbara Tedlock entitled “Ethnography and Ethnographic Representation” (herein the “Tedlock excerpt”), found in The Sage Handbook of Qualitative Research (2nd edition), for her June 11th class of EPSF8280. (PX 547 at 4; Esposito T. Vol. 6 at 53:23-54:9.)

256. The Sage Handbook of Qualitative Research (2nd edition), published by SAGE, is a factual collective work consisting of individual chapters from several different contributors. The Sage Handbook of Qualitative Research (2nd edition) focuses on qualitative research and totals 1229 pages. (PX 267; Esposito T. Vol. 6 at 69:7-9, 70:24-71:8.)

257. The Tedlock excerpt, found at pages 455-486, totals 32 pages and amounts to 2.6% of The Sage Handbook of Qualitative Research (2nd edition). It is a secondary source that reviews the history of ethnography’s use in anthropology,

supporting Professor Esposito’s “Entthropology and Education” theme for her June 11th class. (PX 547, Esposito 6-81:16-82:11; Dkt. No. 384-2 at 1.)

258. Prior to requesting the Tedlock excerpt be posted on GSU’s e-Res system, Professor Esposito performed a fair use analysis, considering each of the four statutory fair use factors, which is reflected by the fair use checklist that she completed. Professor Esposito found that all four factors weighed in favor of fair use. (PX 565; Esposito T. Vol. 6 at 67:1-69:6, 69:7-9, 70:24-71:4, 71:6-13, 6-72:8-15, 74:3-14, 82:12-20.)

259. The Tedlock excerpt had a hit count of 98 on the e-Res system for the Summer Semester of 2009. (JE 2 at 88.)

d. The SAGE Handbook of Qualitative Research (1st edition)

260. Professor Esposito assigned an excerpt by Michelle Fine entitled “Working the hyphens: reinventing self and other in qualitative research” (herein the “Fine excerpt”), found in The Sage Handbook of Qualitative Research (1st edition), for her June 23rd class. (PX 547 at 5; Esposito T. Vol. 6 at 57:10-18.)

261. The Sage Handbook of Qualitative Research (1st edition), published by SAGE, is a factual collective work consisting of individual chapters from several different contributors. The Sage Handbook of Qualitative Research (1st edition)

focuses on qualitative research and totals 653 pages. (DX 739; Esposito T. Vol. 6 at 69:7-9, 70:24-71:8.)

262. The Fine excerpt, found at pages 70-82, totals 13 pages and amounts to 2.0% of The Sage Handbook of Qualitative Research (1st edition). It critiques how individuals write about and represent the people that they research, supporting Professor Esposito's "Writing and Representation" theme for her June 23rd class. (PX 547 at 5, Esposito 6-84:21-85:10; Dkt. No. 384-2 at 1.)

263. Prior to requesting the Fine excerpt be posted on GSU's e-Res system, Professor Esposito performed a fair use analysis, considering each of the four statutory fair use factors, which is reflected by the fair use checklist that she completed. Professor Esposito found that all four factors weighed in favor of fair use. (PX 564; Esposito T. Vol. 6 at 67:1-69:11-25, 68:4-13, 69:7-9, 70:24-71:13, 71:2172:15, 73:23-25, 74:3-14, 85:18-25.)

264. The Fine excerpt had a hit count of 25 on the e-Res system for the Summer Semester of 2009. (JE 2 at 36.)

2. EPRS8520 – Qualitative Research in Education III – Fall Semester 2009

265. Professor Esposito taught fourteen doctoral students in her EPRS8520 class during Fall Semester 2009, which provided theoretical and practical

understandings of qualitative research, focusing on data analysis. (PX 513 at 1; Esposito Tr., 6-21-25:8-12, 87:14-22.)

266. Professor Esposito required her students in EPRS8520 to purchase two books: *Qualitative Data Analysis: An Introduction* (Grhich) and *The Coding Manual for Qualitative Researchers* (Saldaña). The cost of both books totaled approximately \$120. (PX 513 at 2; Esposito T. Vol. 6 at 87:5-13.)

a. Theoretical Frameworks in Qualitative Research

267. Professor Esposito assigned two excerpts from *Theoretical Frameworks in Qualitative Research*, portions of the Introduction and the Conclusion, for her December 3rd class of EPRS8520 during Fall Semester 2009. (PX 513 at 9; Esposito T. Vol. 6 at 63:23-64:3.)

268. *Theoretical Frameworks in Qualitative Research*, published by SAGE, is a factual collective work consisting of individual chapters from several different contributors. *Theoretical Frameworks in Qualitative Research* focuses on frameworks in qualitative research and totals 237 pages. (PX 305; Esposito T. Vol. 6 at 69:7-9, 70:24-71:8.)

269. While the Introduction of *Theoretical Frameworks in Qualitative Research* is found at xii-xxx, totaling 19 pages, Professor Esposito only required pages xxiii-xxx to be read for her class. The portion of the Introduction assigned

discussed how to utilize a theoretical framework while pointing students to multiple references for further study. The Conclusion, found at 189-196 (totaling 8 pages), discussed how to find a theoretical framework. Both excerpts supported Professor Esposito's "Theoretical Frameworks" theme for her December 3rd class. The two excerpts totaled 27 pages, or 11.4% of Theoretical Frameworks in Qualitative Research. (PX 305; PX 513 at 9, Esposito 6-88:18-89:20; Dkt. No. 384-3 at 6.)

270. Prior to requesting that both excerpts be posted on GSU's e-Res system, Professor Esposito performed a fair use analysis for each excerpt, considering each of the four statutory fair use factors, which is reflected by the fair use checklists that she completed. Professor Esposito found that all four factors weighed in favor of fair use for each excerpt. (PX 639 and 643; Esposito T. Vol. 6 at 64:12-15.)

271. The excerpts from Theoretical Framework for Qualitative Research had a combined hit count of 4 (1 for the introduction; 3 for the conclusion) on the e-Res system for the Fall Semester of 2009. (JE 3 at 22.)

D. Professor Patricia Dixon

272. Professor Dixon is a tenured professor, having taught at GSU for 17 years. (T. Vol. 9 at 55.) She has authored approximately 10 articles and three books. (T. Vol. 9 at 55, 56.) She taught a course in the Fall of 2009, AAS 3000, entitled African-American Family. (T. Vol. 9 at 56.) PX 542 is the syllabus for the

course. (T. Vol. 9 at 56.) She required students to purchase three textbooks, one of which, “Ensuring Inequality,” is an Oxford University Press publication. (T. Vol. 9 at 57.) Professor Dixon did not post any of the reading material on U-Learn; (T. Vol. 9 at 58.)

273. Of the four excerpts used in Dixon’s Fall 2009 class about which Plaintiffs complain, only one, Chapter 7 from *The Slave Community*, PX 460, was required reading for the whole class. (T. Vol. 9 at 58, 59.) Dixon owns several copies of the book. (T. Vol. 9 at 59.) She assigned Chapter 7, which consists of 35 pages (pp. 249-283), or 9.7% of the 400 page work. (T. Vol. 9 at 59; PX 460; JX 5.)

274. Dixon’s purpose in using that chapter was to give students some idea of the reality of slave life on a plantation. (T. Vol. 9 at 59.) Chapter 7, in her view, is not the heart of the work, because the book talks about several aspects of slave life and Chapter 7 deals with only one component of that life. (T. Vol. 9 at 59.)

275. As for the other three excerpts about which Plaintiffs complain, only two-to-three students in the class were expected to read the excerpt; those students would then report to the other students about the content of the excerpt. (T. Vol. 9 at 62, 9-64, and 9-67.)

276. The second of these three excerpts was one chapter by Randolph at 117-145 from the book *African-American Single Mothers*, or 15.9% of the work. (T.

Vol. 9 at 60, 61.) Dixon does not consider this chapter to be the heart of the work; it covers only one of several aspects covered in the book. (T. Vol. 9 at 62, 63.)

277. The third excerpt used was one chapter, Ch. 9 at 73-96, from the book “Black Children,” PX 209, roughly 10% of the book. (T. Vol. 9 at 63, 64.) Dixon owns the book. (T. Vol. 9 at 63.) Chapter 9 is not, in Dixon’s view, the heart of the work, because again it deals with one of many aspects covered in the book. (T. Vol. 9 at 65.)

278. The fourth excerpt is Chapter 12 at 214-233, from the book “Black Families,” 3rd edition, DX 749. (T. Vol. 9 at 65.) This constituted 5.5% of the work. (T. Vol. 9 at 67.) Dixon also put the 4th edition of the book on hard copy reserve at the library. (T. Vol. 9 at 66.) Dixon does not consider Chapter 12 to be the heart of the work because again it covers only one of the many aspects of black family life covered in the book. (T. Vol. 9 at 68.)

279. Dixon used fair use checklists in deciding to post each of these four excerpts. (T. Vol. 9 at 68.) She had been trained on the new policy. (T. Vol. 9 at 68, 69.) The room was full of attendees at her training session. (T. Vol. 9 at 69.) DX 140 is the PowerPoint presentation that was used in the training. (T. Vol. 9 at 69.)

280. The training on the new policy changed Professor Dixon's understanding and practices at GSU. (T. Vol. 9 at 70.) First, the training explained things that had not been clear. Also, the fair use checklist was now required, and it changed how she considered this question of fair use. (T. Vol. 9 at 70.) Also, Professor Dixon chose to put more books on hard copy reserve as a result of her training and the new policy. (T. Vol. 9 at 71, 72.)

281. Dixon physically filled out a fair use checklist for each excerpt before the Fall 2009 course and kept them. (T. Vol. 9 at 72.) She was not able to retrieve them because her thumb drive failed, (T. Vol. 9 at 72), and later re-created them. (T. Vol. 9 at 73.) The re-created checklists generally reflect the analysis she performed in 2009. (T. Vol. 9, 73.)

282. In applying the fair use checklists, she concluded that the use of each excerpt would constitute fair use. (T. Vol. 9 at 77, 79, 80, 82.)

283. The re-created checklists that are DX 428 & DX 429 are for the Slave Community chapter, created on Nov. 22 & 29, respectively. (T. Vol. 9 at 73-74.) Professor Dixon felt that assigning one chapter of Slave Community might encourage students to buy the book. She had bought books as a student after excerpts were assigned by professors. (T. Vol. 9 at 77.)

284. DX 347 is the fair use checklist for the use of the chapter of “Black Children.” (T. Vol. 9, 77.) She used Chapter 6. (T. Vol. 9, 78.) Her failure to check that she owned a copy was an oversight, as she does own a copy. (T. Vol. 9 at 78-79.)

285. DX 348 is her re-created fair use checklist for chapter 7 of “African-American Single Mothers.” (T. Vol. 9 at 79-80.) She again erred by failing to check that she owned a copy. (T. Vol. 9 at 80.)

286. DX 346 is the re-created fair use checklist for chapter 12 of “Black Families.” (T. Vol. 9 at 81.)

287. If Professor Dixon had determined that the use of the chapter of Slave Community was not fair use, she would not have put it on e-Reserve; she would have either used something else or sought permission. (T. Vol. 9 at 81.) Dixon indicated she likely would not have used the chapter from African-American Single Mothers. (T. Vol. 9 at 82, 83). Regarding the other two excerpts, she would have either used something else or sought permission. (T. Vol. 9 at 83.)

288. Professor Dixon would not have assigned the excerpts if each student would have to pay \$14.42; she thinks that other material could have achieved her teaching purpose. (T. Vol. 9 at 90).

E. Professor Daphne Greenberg

289. Professor Greenberg has taught at GSU since 2001, and is a tenured associate professor. (Depo at 6, 36, 37.) She teaches in Educational Psychology and Special Education. (Depo. at 7.) She is the Director of GSU's Coalition for the Study of Adult Literacy. (Depo. at 9.) Greenberg has published several articles and chapters of two books. (Depo. at 7, 47; DX 905; Depo. at 26; T. Vol. 12 at 41.)

290. Professor Greenberg taught the class "Understanding and Facilitating Adult Learning" in the Fall of 2009. (Depo. at 9.) DX 605 is the syllabus for the course. (Depo. at 9; T. Vol. 12 at 41.) The students were required to purchase two textbooks. (Depo. at 10.)

291. Plaintiffs challenged her use of excerpts of two chapters, pages 52-70 of Chapter 3 & pp. 455-475 of Chapter 20 of DX 740, "Handbook of Adult Learning." (JX 5; Depo. at 13; T. Vol. 12 at 41.) The book is 536 pages in length (or over 563 pages in length when counting the index and bibliography), consisting of 22 chapters; Professor Greenberg used less than 8% of the work in the course. (Depo. at 11-13.)

292. Professor Greenberg's purpose for assigning the portion of chapter 3 was to give students an introduction to methodologies for computer research in adult

learning. (Depo. at 13, 14.) Her purpose in assigning part of chapter 20 was to give students an example of one kind of adult learner, a doctoral student. (Depo. at 14.)

293. Professor Greenberg does not view these two excerpts as the heart of the work; they are just two of 22 chapters, one an introduction to research, the other discussing one kind of learner. (Depo. at 14.) These are minor aspects of the book. (Depo. at 14.) Both Professor Greenberg and the library owned a copy of the book. (Depo. at 14, 15.)

294. Professor Greenberg used the fair use checklist in deciding to use these two excerpts of the book. (Depo. at 15.) DX 464 (Depo. Exh 4) is the checklist she completed on July 1, 2009. (Depo. at 17.)

295. At the time Professor Greenberg prepared the reading list for the Fall 2009 class, she had been trained on the new Copyright Policy. (Depo. at 15.) Greenberg read the GSU policy (depo. at 40) and understood there were resources available on-line and personnel available if she had questions. (Depo. at 16.)

296. In completing her fair use checklist, Professor Greenberg checked that the use might stimulate the market as a whole because she thought if the students found the chapters interesting, they might want to buy the whole book. (Depo. at 19, 20.) She corrected the form to check these were required readings. (Depo. at 20.)

297. Professor Greenberg's overall evaluation was that the uses constituted fair use. (Depo. at 20, 21.) She took the fair use evaluations process very seriously. (Depo. at 22.) That is why she corrected her checklist. Id. Greenberg gave the students instructions, both in writing in the course syllabus, and orally in class, about not copying others works. (Depo. at 22, 23.) She does that in every class. (Depo. at 23.)

298. Professor Greenberg has completed fair use checklists and found the contemplated use of certain works to be not a fair use and in those instances she did not use the works. (Depo. at 23.) In this case, if she had determined that, in her view, the use of Chapters 3 & 20 would not constitute fair use, she would not have used them in the e-Res system. (Depo. at 23, 24.)

299. The new Copyright policy changed Professor Greenberg's practices about putting excerpts on e-Reserve. She realized it was not just a matter of the number of pages; she had to go through the four fair use factors of the checklist. (Depo. at 25.)

F. Professor Melinda Hartwig

300. Professor Melinda Hartwig is currently employed as a professor in the Art History Department at Georgia State University. (9-26:18-20.)

301. Professor Hartwig believes that anything over 10% is too large a portion to be considered fair use. If Professor Hartwig wanted to use an excerpt that was over 10% of a work, she would seek permission to do so. (Hartwig 9-43:14-25, 50:2-13.)

1. AH 4900 – Materiality of Egyptian Paintings

302. Professor Hartwig taught 13 undergraduate and graduate students in her AH4900 class during Fall Semester 2009, which explored the materials used in ancient Egyptian paintings and the historical context of such paintings, including their iconography. (9-29:6-30:7; PX 550 at 1; JX 5.)

303. Professor Hartwig required her students in AH4900 to purchase Colour and Painting in Ancient Egypt (Davies). (PX 550 at 1.)

304. Professor Hartwig required readings for this course that were mostly in the form of soon-to-be published articles. She also provided supplemental or “Helpful Publications” for her students to read on the e-Res system. (PX 550 at 1 and 5; 9-38:2-17 and 21-23.)

a. Ancient Egyptian Materials and Technology

305. Professor Hartwig placed portions of two chapters, one entitled “Painting Materials” and the other entitled “Stone”, both from Ancient Egyptian Materials and Technology, on the e-Res system for her AH4900 course. Neither

portion was required reading, and only the “Painting Materials” portion was listed as a helpful publication. (DX 436; PX 550, p.7; 9-33:21-34:7.)

306. Ancient Egyptian Materials and Technology, published by Cambridge, is a factual Egyptology reference book that contains numerous articles on Egyptian materials and technology, including painting materials, binders and adhesives, hair, brewing, and wine making, that totals 732 pages. (PX 6; Hartwig 9-33:8-17.)

307. Professor Hartwig only posted a portion, pages 44-54, of the “Stone” chapter as an excerpt from Ancient Egyptian Materials and Technology. Professor Hartwig included the whole “Painting Materials” chapter as an excerpt, which ranges from pages 104-120. Combined, Professor Hartwig posted 28 pages of Ancient Egyptian Materials and Technology, accounting for 3.8% of the work. (PX 6 at iii; Hartwig 9-35:23-36:10; Dkt. No. 384-3 at 1.)

308. Prior to requesting that the library put the excerpts from Ancient Egyptian Materials and Technology on GSU’s e-Res system, Professor Hartwig performed a fair use analysis, completing GSU’s fair use checklist by considering each of the four fair use factors and determining whether each factor favored fair use. Professor Hartwig found that all four factors weighed in favor of fair use for both excerpts, which is shown in her email communication with the e-Res staff as

well as the recreated checklist completed as a result of misplacing her originally completed checklist. (DX 436; DX 509; Hartwig 9-39:3-16, 41:1-45:22.)

309. The excerpts from Ancient Egyptian Materials and Technology had a hit count of 25 on the e-Res system for the Fall Semester of 2009. (JX 3 at 191.)

G. Professor Hankla

310. Charles Hankla is an Associate Professor in the Department of Political Science at Georgia State University. T. Vol. 8 at 97. Professor Hankla taught an undergraduate-level course entitled U.S. Foreign Policy, POLS 3450, in the Fall of 2009. T. Vol. 8 at 100; DX 623. The first course component covered a historical overview of U.S. foreign policy. T. Vol. 8 at 100. The second course component covered different theoretical explanations for U.S. foreign policy. T. Vol. 8 at 100-101. The third course component covered current issues, such as terrorism, humanitarian intervention, and economic globalization. T. Vol. 8 at 101. Professor Hankla conveyed the subject matter to his students through both lecture and class discussion. T. Vol. 8 at 101. Roughly (45) students were enrolled in the course. T. Vol. 8 at 100.

311. Professor Hankla required that his students purchase two books for this course: McDougall, Walter A., *Promised Land, Crusader State: The American Encounter with the World Since 1776* (Houghton Mifflin 1997) and Wittkopf and

McCormick, *The Domestic Sources of American Foreign Policy: Insights and Evidence*, Fifth Edition (Rowen and Littlefield 2008). T. Vol. 8 at 102; DX 623. The students were required to purchase these books, since they used a large portion of those books in class. T. Vol. 8 at 103-104. Professor Hankla also assigned other readings to his students, including licensed journal articles and some book excerpts, which he made available to his students through GSU's e-Reserve system. T. Vol. 8 at 103-105; DX 623.

312. One of the readings Professor Hankla assigned was an excerpt by Jeffrey Lantis and Eric Moskowitz entitled "The Return of the Imperial Presidency? The Bush Doctrine and U.S. Intervention in Iraq" from the book *Contemporary Cases in U.S. Foreign Policy* (CQ Press 2005). T. Vol. 8 at 105-106; DX 623; DX 776. The *Contemporary Cases* book is a 471-page book that is a collection of analyses of different U.S. foreign policy decisions written by different authors. T. Vol. 8 at 105; DX 776. The "Imperial Presidency" chapter appears on pages 89 through 122 of the *Contemporary Cases* book, and therefore, Professor Hankla assigned only 7.2% of the book. T. Vol. 8 at 107; DX 776. Professor Hankla assigned this excerpt as background reading for the second class component (dealing with theoretical explanations) because his students needed a single case example to

which they could apply the theories they were discussing in class. T. Vol. 8 at 107-108.

313. Another reading Professor Hankla assigned was an excerpt by Stephen Hook entitled “Chapter 6: The Foreign-Policy Bureaucracy” from the book U.S. Foreign Policy (CQ Press 2005). T. Vol. 8 at 123-124; DX 623; DX 777. The U.S. Foreign Policy book is a 487-page book that covers all aspects of U.S. foreign policy. T. Vol. 8 at 124; DX 777. The “Foreign-Policy Bureaucracy” chapter appears on pages 153 through 186 of the U.S. Foreign Policy book, and therefore, Professor Hankla assigned only 7% of the book. T. Vol. 8 at 125; DX 623; DX 777. Professor Hankla assigned this excerpt because it explained the nuts and bolts of how the foreign policy bureaucracy works. T. Vol. 8 at 126-127.

314. Professor Hankla made the “Imperial Presidency” and “Foreign-Policy Bureaucracy” excerpts available on GSU’s e-Reserve system. T. Vol. 8 at 109, 127. Prior to requesting that the excerpts be made available on e-Reserve, Professor Hankla mentally completed for each excerpt a fair use checklist under GSU’s Copyright Policy. T. Vol. 8 at 109, 127; see also Tr. at 137-139; DX 508. On November 16, 2010, Professor Hankla recreated the checklists on paper as he mentally completed them in the Fall 2009. T. Vol. 8 at 110, 127-128; DX 480; DX 481.

315. With respect to the “Imperial Presidency” excerpt, Professor Hankla analyzed each of the four factors identified in the checklist (including all of the subfactors) and concluded that the four factors weighed in favor of fair use. T. Vol. 8 at 111-112, 116-117, 119; DX 480. With respect to Factor 1 (Purpose and Character of the Use), Professor Hankla concluded that this factor weighed in favor of fair use because his use was a nonprofit educational use, it was for teaching, and the use was necessary to achieve his intended educational purpose of the second course component. T. Vol. 8 at 111-113; DX 480. Professor Hankla did not select either transformative or non-transformative because he believed both could apply. T. Vol. 8 at 115-116; DX 480. With respect to Factor 2 (Nature of Copyrighted Work), Professor Hankla concluded that this factor weighed in favor of fair use because the excerpt was published, the excerpt was factual and nonfiction, and his use of the “Imperial Presidency” excerpt was important to his educational objectives because it offered a balanced discussion regarding the decision-making process that gave rise to the Iraq War. T. Vol. 8 at 116-117; DX 480. With respect to Factor 3 (Amount and Substantiality of Portion Used), Professor Hankla concluded that this factor weighed in favor of fair use because he used a small portion of the work (7.2%), the excerpt used was not central or significant to the entire book as a whole, and the amount taken was narrowly tailored to his educational purpose. T. Vol. 8 at

118-119; DX 480. With respect to Factor 4 (Effect on Market of the Original), Professor Hankla concluded that this factor weighed in favor of fair use for several reasons. T. Vol. 8 at 119-123; DX 480. First, Professor Hankla concluded that his assignment of the excerpt to his students would not have a significant effect on the market or potential market for the book, since it would not make them any less likely to purchase a copy of the entire book. T. Vol. 8 at 120; DX 480. Professor Hankla also concluded that his use might stimulate the market for the book since his students might be attracted to the book as a resource for their term paper. T. Vol. 8 at 120-121; DX 480. Moreover, Professor Hankla was not aware of any other similar product marketed by the copyright holder, he believed based on prior experiences that licensing or permission would be unavailable, he owned a copy of the book, and only students in his class would have restricted, time-limited password-protected access to the excerpt. T. Vol. 8 at 121-122; DX 480. While Professor Hankla believed that the fact it was a required reading weighed against fair use, Professor Hankla concluded, after considering all of the subfactors, that Factor 4 weighed in favor of fair use. T. Vol. 8 at 122-123; DX 480.

316. With respect to the “Foreign-Policy Bureaucracy” excerpt, Professor Hankla concluded that Factor 1 (Purpose and Character of the Use) weighed in favor of fair use because his use was a nonprofit educational use, it was for teaching, and

the use was necessary to achieve his intended educational purpose (namely, to explain how the executive branch functions). T. Vol. 8 at 130-131; DX 481. Professor Hankla did not select either transformative or non-transformative because he believed both could apply. T. Vol. 8 at 130-131; DX 481. With respect to Factor 2 (Nature of Copyrighted Work), Professor Hankla concluded that this factor weighed in favor of fair use because the excerpt was published, the excerpt was factual and nonfiction, and his use of the excerpt was important to his educational objectives. T. Vol. 8 at 131-132; DX 481. With respect to Factor 3 (Amount and Substantiality of Portion Used), Professor Hankla concluded that this factor weighed in favor of fair use because he used a small portion of the work (7%), the excerpt used was not central or significant to the entire book as a whole (which focuses on a wide variety of different aspects of U.S. Foreign Policy), and the amount taken was narrowly tailored to his educational purpose. T. Vol. 8 at 132-133; DX 481. With respect to Factor 4 (Effect on Market of the Original), Professor Hankla concluded that this factor weighed in favor of fair use for several reasons. T. Vol. 8 at 133-136; DX 481. First, Professor Hankla concluded that his assignment of the excerpt to his students would not have a significant effect on the market or potential market for the book, since he would not have assigned the reading or the book if he could not post the reading on e-Reserve. T. Vol. 8 at 135; DX 481. Professor Hankla also

concluded that his use might stimulate the market for the book since his students might be stimulated to purchase the entire book to help them with their studying and to use as a resource for their term paper. T. Vol. 8 at 135; DX 481. Moreover, Professor Hankla was not aware of any other similar product marketed by the copyright holder, he believed based on prior experiences that licensing or permission would be unavailable, he owned a copy of the book, and only students in his class would have restricted, time-limited password-protected access to the excerpt. T. Vol. 8 at 136; DX 481. While Professor Hankla believed that the fact it was a required reading weighed against fair use, Professor Hankla concluded, after considering all of the subfactors, that Factor 4 weighed in favor of fair use. T. Vol. 8 at 136; DX 481.

317. If it were determined that Professor Hankla's use of the "Imperial Presidency" excerpt and the "Foreign-Policy Bureaucracy" was not a fair use, Professor Hankla would find other readings to use. T. Vol. 8 at 139-140.

H. Professor Florencia Anggoro

318. Professor Florencia Anggoro is no longer employed at GSU. During the Fall 2009 Semester, Professor Florencia Angorro was employed in the College of Education at GSU. (DX 610 .)

1. EPY8960 – Seminar in Educational Psychology – Fall Semester 2009

319. Professor Anggoro taught nine students in her EPY8960 Class in Fall Semester 2009. (DX 610; JX 5; Dkt. No. 384-3 at 6.)

a. Language Acquisition and Conceptual Development

320. Professor Anggoro assigned an excerpt, “Covariation between spatial language and cognition” by Levinson (herein the “Levinson excerpt”) from Language Acquisition and Conceptual Development for her September 16 class for EPY8960 Fall Semester 2009. (DX 610, p.3.) Language Acquisition and Conceptual Development, published by Cambridge, is a collective factual work including chapters from several different contributors that total 614 pages. (PX 119.)

321. An application to register the Copyright for Language Acquisition and Conceptual Development was not filed with the U.S. Copyright Office until January 7, 2011, approximately ten years after the date of Language Acquisition and Conceptual Development’s first publication, January 11, 2001. (PX 122.)

322. The Levinson excerpt, found at pages 566-588, totals 23 pages, amounting to 3.8 % of Language Acquisition and Conceptual Development. (DX 610 at 3; Dkt. No. 384-3 at 6.)

323. The Levinson excerpt had a hit count of 14 on the e-Res system for the Fall Semester of 2009. (JX 3 at 161.)

I. Professor Jennifer Barker

324. Professor Jennifer Barker was employed as a professor in the Communications Department at GSU during Fall Semester 2009. (PX 977 at 2.)

1. FILM4750 – Film Theory and Criticism – Fall Semester 2009

325. Professor Barker taught approximately 22 students in her FILM4750 Class in Fall Semester 2009. (PX 978.)

326. Professor Barker required her students to purchase one book, Film Studies: Critical Approaches (Hill), for her FILM4750 class. (PX 533 at 2.)

a. Film Language: A Semiotics of the Cinema

327. Professor Barker assigned an excerpt from Film Language: A Semiotics of the Cinema (herein “Film Language”) for her October 14th class. (PX 533 at 8.)

328. Film Language, published by Oxford, is a factual work that totals 282 pages. (DX 765.)

329. While a translation agreement for Film Language between Oxford and Klincksieck Publications has been produced, Oxford failed to produce an assignment between Christian Metz, the author of Film Language, and Klincksieck Publications. (PX 393.)

330. The Film Language excerpt, found at pages 108-148, totals 41 pages and amounts to 14.5 % of the book. The excerpt is from a chapter titled “Problems of Denotation in the Fiction Film,” and is in line with Professor Barker’s structuralism and semiotics theme for her classes of October 12th and 14th of FILM4750. (PX 533 at 8; DX 765; Dkt. No. 384-3 at 6.)

331. Prior to requesting the excerpt be posted on GSU’s e-Res system, Professor Barker performed a fair use analysis, considering each of the four statutory fair use factors by filling out a fair use checklist. Professor Barker found that her use was fair, as reflected in her checklist. (PX 558.)

J. Professor Gabler-Hover

332. Janet Gabler-Hover is a Professor in the Department of English at Georgia State University. T. Vol. 8 at 165. Professor Gabler-Hover taught an undergraduate-level course entitled Cyborgs in American Culture, English 4200, in the Fall of 2009. T. Vol. 8 at 167; DX 599. The purpose of the course was to evaluate cyborg movies and to segue those movies with current investigations into cybernetics and the different ways in which humans are considered cyborgs. T. Vol. 8 at 167-168. Thirty (30) students were enrolled in this course in the Fall of 2009. T. Vol. 8 at 169.

333. Professor Gabler-Hover required that her students purchase five fictional books for this course. T. Vol. 8 at 170; DX 599. Professor Gabler-Hover also assigned an excerpt by Stacy Gillis entitled “Feminist criticism and technologies of the body” from the book *History of Feminist Literary Criticism* (2007). T. Vol. 8 at 172-174; DX 599; PX 103. *History of Feminist Literary Criticism* is a 352-page multi-chapter compilation of bibliographical essays written by different authors in different branches of feminist literary theory. T. Vol. 8 at 172-174; PX 103. The “Feminist criticism” excerpt appears on pages 322 through 335 of the *History of Feminist Literary Criticism* book, and therefore Professor Gabler-Hover assigned only 4% of the book. T. Vol. 8 at 174; PX 103. Professor Gabler-Hover assigned the “Feminist criticism” excerpt as a reading because her class was studying *Neuromancer* (a novel), and the excerpt provides an attack directly on *Neuromancer*. T. Vol. 8 at 175-176.

334. Professor Gabler-Hover made the “Feminist criticism” excerpt available to her students through GSU’s e-Reserve system. T. Vol. 9 at 2-3; DX 599. Prior to requesting that the excerpt be made available on GSU’s e-Reserve system, Professor Gabler-Hover completed an analysis of the fair use checklist in accordance with GSU’s Copyright Policy. T. Vol. 9 at 3; DX 213.

335. Professor Gabler-Hover analyzed each of the four factors identified in the checklist (including the subfactors) and concluded that the four factors weighed in favor of fair use. T. Vol. 9 at 4-11. With respect to Factor 1 (Purpose and Character of the Use), Professor Gabler-Hover concluded that this factor weighed in favor of fair use because the purpose of her use of the excerpt was for nonprofit educational use, it was for teaching, the use was transformative, and the use was necessary to achieve her intended educational purpose. T. Vol. 9 at 5. With respect to Factor 2 (Nature of Copyrighted Work), Professor Gabler-Hover concluded that this factor weighed in favor of fair use because the excerpt was published, the excerpt was factual and nonfiction and not highly creative, it was not a workbook or test, and her use of the excerpt was important to her educational objectives. T. Vol. 9 at 7. With respect to Factor 3 (Amount and Substantiality of Portion Used), Professor Gabler-Hover concluded that this factor weighed in favor of fair use because she used a small portion of the book (4%), the excerpt she used was not central or significant to the entire book as a whole, and the amount taken was narrowly tailored to her educational purpose. T. Vol. 9 at 7. The excerpt did not go to the heart of the book, and was not central to the book. T. Vol. 9 at 7-8. With respect to Factor 4 (Effect on Market of the Original), Professor Gabler-Hover concluded that this factor weighed in favor of fair use because her assignment of the

excerpt would not have a significant effect on the market or potential market for the book, she was not aware of any other similar product marketed by the copyright holder, she owned a copy of the book, the assignment was a required reading that supplemented her class, only one or a few copies were distributed, and access to the excerpt was restricted. T. Vol. 9 at 9-11. While Professor Gabler-Hover believed that the fact the excerpt was a required reading weighed against fair use, Professor Gabler-Hover concluded, after considering all of the subfactors, that Factor 4 weighed in favor of fair use. T. Vol. 9 at 11.

K. Professor Nathaniel Leon Orr

336. Professor Nathaniel L. Orr is a tenured professor in the Art History Department at Georgia State University. (Trial Testimony of Nathaniel L. Orr (“Orr Tr.”), May 25, 2011, Vol. 7 at 55:17-23; PX 913).

337. Professor Orr read the 2009 Copyright Policy when it was presented to the GSU faculty. (Orr Tr., Vol. 7 at 60:6-17).

338. Professor Orr understood that he was to follow a Fair Use Checklist to make fair use determinations. (Orr Tr., Vol. 7 at 60:23-61:3).

339. Before the adoption of the 2009 Copyright Policy, Professor Orr understood that he should not post more than 20% of a work; he normally tried to keep his post under 10%. (Orr Tr., Vol. 7 at 72:3-11, 93:15-94:13).

340. If the students in Professor Orr's class had to pay for the use of an excerpt on the e-Res System, he would place the hardcopy book on library reserves. (Orr Tr. Vol. 7 at 75:24-76:2, 76:12-14, 78:23-79:11, 81:4-7 at 84:24-85:5, 89:7-14, 90:18-91:1).

341. Students of Professor Orr have bought books from which he assigned excerpts in his classes. (Orr Tr. Vol. 7 at 94:14-22).

1. MUS 8860 – Romantic Period 1800 to 1900 – Summer Semester 2009

342. Professor Orr taught 10 graduate students in his MUS8860 class during Summer Semester 2009, which surveyed the ways music was composed, practiced, completed, received, described and published from the nineteenth century (from Beethoven's late period into the late operas of Verdi). (Orr Vol. 7 at 56:2-7; PX 523; PX 914).

343. Professor Orr required his students in MUS8860 to purchase the following two books for his MUS8860 class: Romantic Music (Plantinga) and 19th Century Piano Music (Todd). (PX 523, p. 2; Orr Vol. 7 at 56:16-24).

a. Liszt: Sonata in B Minor

344. Professor Orr assigned an excerpt from Liszt: Sonata in B Minor for his June 24th Class of MUS8860. (PX 523, p. 3; PX 130; Orr Tr., Vol. 7 at 66:4-11).

345. Liszt: Sonata in B Minor, published by Cambridge, is a factual work with a focus on Liszt's Sonata and his development of that piece that totals 101 pages. (PX 130, back cover).

346. An application to register the copyright for Liszt: Sonata in B Minor was not filed with the U.S. Copyright Office until December 27 at 2010, fourteen years after the date of Liszt: Sonata in B Minor's first publication, August 28, 1996. (PX 151).

347. Plaintiffs provided no evidence that permissions are available for Liszt: Sonata in B Minor.

348. The Liszt: Sonata in B Minor excerpt, found at pages 28-48, (totaling 21 pages amounting to 25.6% (Defendants count 20.8%)), is about the different theories behind the formation of the sonata, in line with Professor Orr's theme for his June 24th class, which focuses on composers, and their music, who resided in Paris from 1830-1848, including Liszt. (PX 523, p. 3; Orr Tr., Vol. 7 at 67:12-22).

349. 6 pages (31, 35, 37 at 41, 43 and 45) of the excerpt that Professor Orr selected for the June 24th class included several bars from Liszt's Sonata, which is in the public domain, thereby reducing Professor Orr's use of copyrighted material to 14.9%, or 15 pages. (Orr Tr., Vol. 7 at 71: 19-72:2; PX 130).

350. Prior to requesting the Liszt: Sonata in B Minor excerpt be posted on GSU's e-Res system, Professor Orr completed a fair use analysis by mentally filling out a fair use checklist and considering each of the four statutory fair use factors. Professor Orr found that his use was fair. (Orr Tr., Vol. 7 at 67:23-75:16, 87:21-88:10).

351. The Liszt: Sonata in B Minor excerpt had a hit count of 8 on the e-Res system for the Summer Semester of 2009. (JX 2, p. 42)

b. Cambridge Companion to Mendelssohn

352. Professor Orr assigned an excerpt from Cambridge Companion to Mendelssohn for his July 13th Class of MUS8860. (PX 523, p. 3; PX 65; Orr Tr., Vol. 7 at 77:2-78:4).

353. Cambridge Companion to Mendelssohn, published by Cambridge, is a collection of non-fiction factual essays by different authors that surveys the life, work, and reception of Mendelssohn that totals 331 pages. (PX 65, back cover; Orr Tr., Vol. 7 at 77:2-5).

354. No U.S. registration application was filed with the U.S. Copyright Office for Cambridge Companion to Mendelssohn.

355. The Cambridge Companion to Mendelssohn excerpt, found at pages 96-111, (totaling 16 pages amounting to 5.6% (Defendants count 4.8%)) is a portion of

Chapter 6, which runs from pages 91-111. The excerpt concerns Mendelssohn's characteristic symphonies, which are among the first important early romantic German symphonies, in line with Professor Orr's theme for his July 13th class, which focused on Mendelssohn's symphonies. (PX 523, p. 3; Orr Tr., Vol. 7 at 78:4-9).

356. 3 pages of (96, 97 at and 99) of the excerpt that Professor Orr selected for the July 13th class included several bars from one of Mendelssohn's symphonies and passages of two poems by Goethe, which are both in the public domain, thereby reducing Professor Orr's use of copyrighted material to 3.9%, or 13 pages. (PX 65).

357. Prior to requesting the Cambridge Companion to Mendelssohn excerpt be posted on GSU's e-Res system, Professor Orr completed a fair use analysis, mentally filling out a fair use checklist by considering each of the four statutory fair use factors. Professor Orr ultimately found that his use was fair. (Orr Tr., Vol. 7 at 67:23-75:16, 78:10-22, 87:21-88:10).

358. The Cambridge Companion to Mendelssohn excerpt had a hit count of 9 on the e-Res system for the Summer Semester of 2009. (JX 2, p. 66).

c. Cambridge Companion to Schumann

359. Professor Orr assigned an excerpt from Cambridge Companion to Schumann for his June 29th, July 1st and 8th classes of MUS8860. (PX 523, p. 3; PX 75; Orr Tr., Vol. 7 at 79:18-80:9).

360. Cambridge Companion to Schumann, published by Cambridge, is a collection of non-fiction factual essays by different authors that surveys the life, work, and style and œuvre of Schumann that totals 324 pages. (PX 75, back cover; Orr Tr., Vol. 7 at 80:25-81:3).

361. No U.S. registration application was filed with the U.S. Copyright Office for Cambridge Companion to Schumann.

362. Plaintiffs provided no evidence that permission was available for Cambridge Companion to Schumann.

363. The Cambridge Companion to Schumann excerpt, found at pages 105-119, (totaling 15 pages amounting to 5.1% (Defendants count 4.6%)) is a portion of Chapter 6, which runs from pages 102-122. The excerpt discusses Schumann's Lieder, in line with Professor Orr's Lieder theme for his June 29th, July 1st and 8th classes. (PX 523, p. 3; Orr Tr., Vol. 7 at 80:3-16).

364. 3 pages (114, 116 and 118) of the excerpt that Professor Orr selected for the June 29th, July 1st and 8th classes included several bars from one of Schumann's

Opus 25 and a passage from a poem by Heine, which are both in the public domain, thereby reducing Professor Orr's use of copyrighted material to 3.7%, or 12 pages. (PX 75).

365. Prior to requesting the Cambridge Companion to Schumann excerpt be posted on GSU's e-Res system, Professor Orr completed a fair use analysis, mentally filling out a fair use checklist and considering each of the four statutory fair use factors. Professor Orr ultimately found that his use was fair. (Orr Tr., Vol. 7 at 67:23-75:16, 81:8-10, 87:21-88:10).

366. The Cambridge Companion to Schumann excerpt had a hit count of 5 on the e-Res system for the Summer Semester of 2009. (JX 2, p. 76).

d. Cambridge Companion to Beethoven

367. Professor Orr requested an excerpt from The Cambridge Companion to Beethoven be placed on the e-Res System his MUS8860 class. (PX 53; Orr Tr., Vol. 7 at 81:16-82:1).

368. The Cambridge Companion to Beethoven, published by Cambridge, is a collection of non-fiction factual essays by different authors that provides a wide perspective on Beethoven, his music and the personal and historical contexts in which his music was composed and received that totals 387 pages. (PX 53, back cover; Orr Tr., Vol. 7 at 82:7-9).

369. An application to register The Cambridge Companion to Beethoven was not filed with the U.S. Copyright Office until December 27 at 2010, ten years after the date of Cambridge Companion to Beethoven's first publication, May 29, 2000. (PX 56).

370. The Cambridge Companion to Beethoven excerpt, found at pages 165-185, (totaling 21 pages amounting to 6.9% (Defendants count 5.4%)) was never assigned for any of Professor Orr's classes. (PX 523, p. 3; Orr Tr., Vol. 7 at 82:14-25).

371. 5 pages (174-75 and 178-80) of the excerpt that Professor Orr requested be posted on the e-Res System included several bars from three of Beethoven's symphonies all found in the public domain, thereby reducing Professor Orr's use of copyrighted material to 4.1%, or 16 pages. (PX 53).

372. Prior to requesting the Cambridge Companion to Beethoven excerpt be posted on GSU's e-Res system, Professor Orr completed a fair use analysis, mentally filling out a fair use checklist and considering each of the four statutory fair use factors. Professor Orr ultimately found that his use was fair, as reflected in his email communication with the e-Res System staff. (Orr Tr., Vol. 7 at 67:23-75:16, 82:21-83: 7 at 87:21-88:10; DX 521, p. 3).

373. The Cambridge Companion to Beethoven excerpt had a hit count of 2 on the e-Res system for the Summer Semester of 2009. (JX 2, p. 86).

e. The Music of Berlioz

374. Professor Orr requested an excerpt from The Music of Berlioz be placed on the e-Res System classes of MUS8860 for his June 29th, July 1st and 8th classes. (PX 523, p. 3; PX 427; Orr Tr., Vol. 7 at 81:16-82:1).

375. The Music of Berlioz, published by Oxford, is a monograph discussing Berlioz's life, techniques, and works that totals 379 pages. (PX 427 at p. ix-x; Orr Tr., Vol. 7 at 83:22-24).

376. No U.S. application to register Music of Berlioz was filed with the U.S. Copyright Office.

377. Plaintiffs provided no evidence that permissions was available for Music of Berlioz.

378. The Music of Berlioz excerpt, found at pages 250-267 at (totaling 18 pages amounting to 5.2% (Defendants count 4.8%)) discusses Berlioz's Symphonie fantastique, one of the topics for Professor Orr's classes of June 29th, July 1st and 8th. (PX 523, p. 3; Orr Tr., Vol. 7 at 83:25-84:20).

379. 2 pages (260 and 262) of the excerpt that Professor Orr requested be posted on the e-Res System included several bars from Berlioz's Symphonie

fantastique, found in the public domain, reducing Professor Orr's use of copyrighted material to 4.1%, or 16 pages. (PX 427).

380. Prior to requesting the Music of Berlioz excerpt be posted on GSU's e-Res system, Professor Orr completed a fair use analysis, mentally filling out a fair use checklist and considering each of the four statutory fair use factors. Professor Orr ultimately found that his use was fair, as reflected in his email communication with the e-Res System staff. (Orr Tr., Vol. 7 at 67:23-75:16, 84:21-23: 7 at 87:21-88:10; DX 521, p. 3).

381. The Music of Berlioz excerpt had a hit count of 2 on the e-Res system for the Summer Semester of 2009. (JX 2, p. 86).

2. MUS 8840 – Baroque Music– Fall Semester 2009

382. Professor Orr taught 18 graduate students in his MUS8860 class during Fall Semester 2009, which surveyed the ways music was composed, practiced, completed, received, described and published from the 16th century into the middle 18th century. (Orr Vol. 7 at 85:6-11; PX 524, p. 1; PX 914, p.2).

a. The Organ As a Mirror of Its Time: North European Reflections 1610-2000

383. Professor Orr assigned an excerpt from The Organ As a Mirror of Its Time: North European Reflections 1610-2000 (herein "The Organ As a Mirror of Its

Time”) for his September 28th class of MUS8840. (PX 524, p. 2; PX 441; Orr Tr., Vol. 7 at 86:2-6).

384. *The Organ As a Mirror of Its Time*, published by Oxford, is a collection of non-fiction factual essays by different authors discussing the organ’s historical and cultural significance from the 1600s to the present that totals 392 pages. (PX 441, back cover; Orr Tr., Vol. 7 at 87:7-9).

385. Plaintiffs provided no evidence that permission was available for *The Organ As a Mirror of Its Time*.

386. *The Organ As a Mirror of Its Time* excerpt, found at pages 78-91, (totaling 14 pages amounting to 4% (Defendants count 3.6%)) discusses the organ in 17th Century Cosmology, in line with Professor’s “The Later 17th Century in the Empire” theme for his class of September 28th. (PX 524, p. 2; PX 441, p. 78; Orr Tr., Vol. 7 at 87:10-15; JX 3, p. 234).

387. 5 pages (80-83 and 89) of the excerpt that Professor Orr posted on the e-Res System included illustrations from the 17th century, as well as a few bars from Kircher’s harmony of the planets, all found in the public domain, thereby reducing Professor Orr’s use of copyrighted material to 2.3%, or 9 pages. (PX 441).

388. Prior to requesting *The Organ As a Mirror of Its Time* excerpt be posted on GSU’s e-Res system, Professor Orr completed a fair use analysis, mentally filling

out a fair use checklist and considering each of the four statutory fair use factors. Professor Orr found that his use was fair, as reflected in his email communication with the e-Res System staff. (Orr Tr., Vol. 7 at 67:23-75:16, 87:21-88:10; DX 521, p. 8).

389. The Organ As a Mirror of Its Time excerpt had a hit count of 12 on the e-Res system for the Fall Semester of 2009. (JX 3, p. 234).

b. North German Church Music in the Age of Buxtehude

390. Professor Orr assigned an excerpt from North German Church Music in the Age of Buxtehude (herein “North German Church Music”) for his September 28th class of MUS8840. (PX 524, p. 2; PX 49; Orr Tr., Vol. 7 at 86:2-6, 90:9-12).

391. North German Church Music, published by Oxford, is a monograph that totals 248 pages. (PX 49; Orr Tr., Vol. 7 at 89:22-24).

392. No U.S. application to register the copyright for North German Church Music was filed with the U.S. Copyright Office.

393. Plaintiffs provided no evidence that permission was available for North German Church Music.

394. The North German Church Music excerpt, found at pages 9-26, (totaling 18 pages amounting to 8% (Defendants count 7.3%)) focuses on music in an educational and religious context in the 17th century, in line with Professor’s

“The Later 17th Century in the Empire” theme for his class of September 28th. (PX 524, p. 2; PX 49; Orr Tr., Vol. 7 at 89:25-90:8; JX 3, p. 262).

395. 1 page (24) of the excerpt that Professor Orr requested be posted on the e-Res System included bars of music found in the public domain, thereby reducing Professor Orr’s use of copyrighted material to 6.9%, or 17 pages. (PX 49).

396. Prior to requesting North German Church Music excerpt be posted on GSU’s e-Res system, Professor Orr completed a fair use analysis, by mentally filling out a fair use checklist and considering each of the four statutory fair use factors. Professor Orr found that his use was fair, as reflected in his email communication with the e-Res System staff. (Orr Tr., Vol. 7 at 67:23-75:16, 87:21-88:10, 90:14-17; DX 521, p. 6).

397. North German Church Music excerpt had a hit count of 10 on the e-Res system for the Fall Semester of 2009. (JX 3, p. 262).

L. Professor Marni Davis

398. Professor Marni Davis is currently employed as a professor in the History Department at GSU. (Testimony of Marni Davis, May 25, 2011, T. Vol. 7 at 95:19-22.)

399. Before the adoption of the 2009 Copyright Policy, Professor Davis had considered all uses under 12% of a work to be a fair use, per instructions of her supervisor. (T. Vol. 7 at 96:12-97:8.)

1. HIST7010 – Issues and Interpretations in American History (Fall 2009)

400. Professor Davis taught fifteen graduate students in her HIST7010 Class in Fall Semester 2009, which examined a selection of scholarly works about the social, cultural, political and economic history of the United States from colonization to the present. (T. Vol. 7 at 104:25-105:15, 106:4-9; PX 512.)

401. Professor Davis required her students in HIST7010 to purchase the following fourteen works: *Manliness and Civilization* (Bederman); *A Nation Among Nations* (Bender); *A Story of American Freedom* (Foner); *Roll, Jordan, Roll* (Genovese); *A History of American People* (Johnson); *The Known World* (Jones); *Amusing the Million* (Kasson); *White Flight* (Kruse); *American Slavery, American Freedom* (Morgan); *The Wages of Whiteness* (Roediger); *Blood Done Sign My Name* (Tyson); *The Search for Order 1877-1920* (Wiebe); *The Radicalism of American Revolution* (Wood); *The Strange Career of Jim Crow* (Woodward). (PX 512; T. Vol. 7 at 160:15-161:14.)

a. Region, Race and Reconstruction

402. Professor Davis assigned an excerpt by Barbara Jeanne Fields entitled “Ideology and Race in American History,” (herein the “Fields excerpt”) found in Region, Race, and Reconstruction for her September 16th class of HIST7010. (PX 512 at 4; T. Vol. 7 at 113:10-13, 141:24-142:2.)

403. Region, Race, and Reconstruction, published by Oxford, is a factual collective work consisting of individual chapters from several different contributors, with a focus on the history of the south, that totals 500 pages. (DX 769; T. Vol. 7 at 143:2-16.)

404. The Fields excerpt, found at pages 143-177, totals 35 pages and amounts to 7.0 % of the book. The excerpt concerns racial ideology and theory in America, in line with Professor Davis’s racial ideology theme for her September 16th class. (PX 512 at 4; T. Vol. 7 at 142:3-18; Dkt. No. 384-3 at 6.)

405. Prior to requesting that the Fields excerpt be posted on GSU’s e-Res system, Professor Davis performed a fair use analysis, considering each of the four statutory fair use factors and, using the fair use checklist as a guide, finding that her use was fair. Professor Davis’s fair use analysis is reflected in her recreated checklist. (PX 945 at 2; T. Vol. 7 at 144:23-146:18; DX 473.)

406. The Fields excerpt had a hit count of 12 on the e-Res system for the Fall Semester of 2009. (JX 3 at 154.)

b. The Unpredictable Past

407. Professor Davis assigned an excerpt by Lawrence Levine entitled “Slave Songs and Slave Consciousness” (herein the “Levine excerpt”) found in The Unpredictable Past for her October 7th class of HIST7010. (PX 512 at 4; T. Vol. 7 at 110:12-20, 148:21-149:2.)

408. The Unpredictable Past, published by Oxford, is a factual collective work consisting of individual essays by Lawrence Levine with an overarching theme of cultural history that totals 394 pages. (PX 477; T. Vol. 7 at 149:3-13.)

409. The Levine excerpt, found at pages 35-58 totals 24 pages and amounts to 6.1 % of the book. The excerpt attempts to explain what life was like for slaves under slavery through spirituals, in line with Professor Davis’s slavery life theme for her October 7th class. (PX 512 at 4; PX 477; T. Vol. 7 at 149:5-21, 151:14-23, 152:18-25; Dkt. No. 384-3 at 6.)

410. Prior to requesting the Levine excerpt be posted on GSU’s e-Res system, Professor Davis performed a fair use analysis, considering each of the four statutory fair use factors and using the fair use checklist as a guide. Professor Davis found that the contemplated use was fair. Professor Davis’s fair use analysis is

reflected in her recreated checklist. (PX 945 at 2; T. Vol. 7 at 153:17-156:3; DX 474.)

411. The Levine excerpt had a hit count of 15 on the e-Res system for the Fall Semester of 2009. (JX 3 at 161.)

M. Professor Carrie Freeman

412. Professor Carrie Freeman is employed in the Communications Department at GSU. (PX 535 at 1.)

1. JOUR4800 – Media Ethics & Society – Fall Semester 2009

413. Professor Freeman taught nineteen students in her JOUR4800 Class in Fall Semester 2009. (PX 535; JX 5; Dkt. No. 384-3 at 7.)

414. Professor Freeman required her students to purchase Ethics in Media Communications (Day) for her JOUR4800 Fall Semester 2009 class.

a. Living Ethics: Across Media Platforms

415. Professor Freeman assigned an excerpt from Living Ethics: Across Media Platforms (herein “Living Ethics”) for her Week 16 classes, the last week of the class. (PX 535, p.8.)

416. Living Ethics, published by Oxford, is a factual work that totals 365 pages. (PX 423.)

417. Professor Freeman assigned pages 299-305 a portion of Chapter 10, from Living Ethics, in line with her Week 16 theme “Your ethical value system.” Plaintiffs allege that Professor Freeman requested Pages 116-121 of Living Ethics, a portion of Chapter 3, be placed on GSU’s e-Res System as well. The two portions total 13 pages, or 3.6%, of Living Ethics. Pages 116-121 contain 6 pages of images from other sources or 1.9%, of the work . (PX 423; PX 535 at 8; Dkt. No. 384-3 at 7.)

418. The Living Ethics excerpt had a hit count of 5 on the e-Res system for the Fall Semester of 2009. (JX 3 at 46.)

N. Professor Denis Gainty

419. Professor Denis Gainty is currently employed as a professor in the History Department at Georgia State University. (Deposition Testimony of Denis Gainty read into Trial Record, May 27, 2011, 9-98:20-99:1.)

1. HIST 4820 – Cross-Cultural Encounters in World History

420. Professor Gainty was scheduled to teach the undergraduate course HIST 4820 in Fall Semester 2009, which focused on contact among and between different cultures throughout the world before Columbus, emphasizing the connectivity of different cultures before that time. However, HIST 4820 was cancelled after one class meeting due to under-enrollment. (9-99:17-101:15.)

421. Professor Gainty prepared a syllabus for his Fall Semester 2009 course of HIST 4820, but did not keep a hard or electronic version due to the course's cancellation. However, Professor Gainty's Fall Semester 2010 syllabus for the same course is identical except for the course registration number, the location of the class, and the dates for the schedule of class meetings. (T. Vol. 9 at 101:19-20, 101:23-104:3, PX 539.)

422. Professor Gainty required the following five books to be purchased for his cancelled class: *Old World Encounters* (Bentley); *Religions of the Silk Road* (Foltz); *Plagues and Peoples* (McNeill); *Japan's Colonization of Korea* (Dudden); and *The Apotheosis of Captain Cook* (Obeyesekere). (T. Vol. 9 at 104:14-105:4, PX 539 at 2.)

a. The Cambridge History of China, Vol. VIII, Part 2

423. Professor Gainty planned on assigning to his Fall Semester 2009 HIST 4820 class an excerpt, entitled "Sino-Korean Tributary Relations Under the Ming (herein the "Tributary excerpt"), from *The Cambridge History of China Vol. VIII, Part 2*. (PX 539 at 5; T. Vol. 9 at 105:17-106:19.)

424. *Cambridge History of China Vol. VIII, Part 2*, published by Cambridge, is a multipart, multivolume factual work that contains many writings, by different

authors, that relate to the history of China. Part II of the eighth volume contains 1231 pages. (PX 79; T. Vol. 9 at 106:20-107:10.)

425. The Tributary excerpt, ranging from pages 272-300 (equaling 2.4% of Cambridge History of China Vol. VIII, Part 2) that Professor Gainty contemplated using deals with the question of how China interacted with Korea at a specific point in China's history, in line with Professor Gainty's contemplated theme about Chinese interaction with other Asian cultures. (T. Vol. 9 at 107:11-13, 107:21-108:24; Dkt. No. 384-3 at 6.)

426. Prior to requesting that the library put the excerpts from Cambridge History of China Vol. VIII, Part 2 on GSU's e-Res system, Professor Gainty performed a fair use analysis, completing GSU's fair use checklist by considering each of the four fair use factors and determining whether each factor favored fair use. Professor Gainty found that all four factors weighed in favor of fair use, which is shown in his recreated checklist. Professor Gainty discarded his originally completed checklist for the Tributary excerpt since the HIST 4820 Fall Semester 2009 class was cancelled. (PX 938; T. Vol. 9 at 110:1-23, 111:17-123:6.)

427. The excerpt from Cambridge History of China Vol. VIII, Part 2 had a hit count of 1 on the e-Res system for the Fall Semester of 2009. (JX 3 at 59.)

O. Professor Harvey

428. Professor Adia Harvey is employed as a professor in the Sociology Department at GSU. (PX 530.)

1. SOCI8030 – Social Theory I- Fall 2009

429. Professor Harvey taught sixteen graduate students in her SOCI8030 Class in Fall Semester 2009. (PX 530 at 1; Dkt. No. 384-3 at 8.)

430. Professor Harvey required her students to purchase the following books for SOCI8030: Classical Sociological Theory; Social Theory (Goodwin); Social Theory: Roots and Branches Readings (3d edition) (Kivisto). (PX 530 at 2.)

a. The Power Elite

431. Professor Harvey assigned an excerpt from The Power Elite for her November 19th class of SOCI8030. (PX 530 at 3.)

432. The Power Elite, published by Oxford, is a factual work that totals 448 pages. (PX 448.)

433. An application to register The Power Elite was not filed with the U.S. Copyright Office until December 30, 2008, over eight years after the date of The Power Elite's first publication, February 17, 2000. (PX 450.)

434. The excerpt from The Power Elite, found at pages 269-324, totals 56 pages, or 12.5%, of the work. (PX 448; PX 530 at 3; Dkt. No. 384-3 at 8.)

435. Prior to requesting the excerpt from *The Power Elite* be posted on GSU's e-Res system, Professor Harvey performed a fair use analysis, filling out a fair use checklist. Professor Harvey found that her use was fair, as represented in her e-Res system Request Form. (DX 510 at 2.)

436. The excerpt from *The Power Elite* had a hit count of 14 on the e-Res system for the Fall Semester of 2009. (JX 3 at 180.)

P. Professor Youjin Kim

437. Professor Youjin Kim is currently employed as a professor in the Applied Linguistics and English as a Second Language Department at GSU. (T. Vol. 6 at 96:4-8.)

438. Professor Kim understood that the 2009 Copyright Policy applied to both the e-Res and uLearn systems, and completed fair use checklists for excerpts she posted on both systems. (T. Vol. 6 at 130:24-131:5.)

1. AL8500 – Second Language Evaluation and Assessment – Fall 2009

439. Professor Kim taught 16 graduate students in her AL8500 Class in Fall Semester 2009, which assists in-service and pre-service teachers in becoming acquainted with existing testing techniques and being able to design effective classroom-based tests. (T. Vol. 6 at 96:9-13, 140:4-23; PX 519.)

440. Professor Kim required her students in AL8500 to purchase H.D. Brown's Language Assessment: Principles of Classroom Practices, which costs approximately \$55 new. (PX 519 at 2; T. Vol. 6 at 135:14-17.)

441. Professor Kim placed multiple books on library reserves and she placed excerpts from those books on the e-Res and uLearn systems. (T. Vol. 6 at 136:15-139:18; PX 519 at 3.)

442. Professor Kim modified her class reading assignments as the Fall Semester 2009 progressed, reducing the amount of required reading by selecting specific pages from the assigned reading represented in her class syllabus. (T. Vol. 6 at 143:11-144:11.)

443. As a student at Northern Arizona University, Professor Kim was assigned the same excerpts from the same books she assigned in her AL8500 Fall Semester 2009 class by her Arizona professor for a similar course. Her experience with these reading assignments, as a student and as a future professor, led her to purchase the same books and use them in her class, and led her to believe that assigning these books would stimulate the market for the purchase of the books by students. (T. Vol. 7 at 27:17-28:19.)

444. On many occasions students did not read Professor Kim's reading assignments. (T. Vol. 7 at 41:12-15.)

a. Language Testing in Practice

445. Professor Kim assigned an excerpt covering two chapters from Language Testing in Practice for her Week 2 classes, and another excerpt covering one chapter from the work for her Week 4 classes. (PX 519 at 7; T. Vol. 6 at 98:20-23, 99:22-100-1.)

446. Language Testing in Practice, published by Oxford, is a factual work that totals 383 pages. (PX 418; Kim T. Vol. 6 at 98:24-99:4.)

447. An application to register the Copyright for Language Testing in Practice was not filed with the U.S. Copyright Office until March 15, 2011, fourteen years after the date of Language Testing in Practice's first publication, September 12, 1996. (PX 420.)

448. The excerpt from Language Testing in Practice for Week 2, found at pages 17-60, discusses factors that make tests useful. The excerpt also provides an explanation of tasks found in tests. The explanation is in line with Professor Kim's basic concept of test usefulness (including qualities of language tests) which was the theme for her Week 2 classes. (PX 519 at 7; T. Vol. 6 at 141:16-142:12.)

449. The excerpt from Language Testing in Practice for Week 4, is found at pages 85-94. The excerpt fits with Professor Kim's test development theme for her Week 4 classes. (PX 519 at 7; PX 418.)

450. The excerpts total 54 pages amounting to 14.8 % of Language Testing in Practice. (PX 418; T. Vol. 7 at 2:17-3:8, 4:11-19.)

451. Professor Kim selected only 35 total pages for required reading from the two excerpts, or 10% of the work. (Tr., Trial Testimony, May 25, 2011, Vol. 7 at 2:17-3:8.)

452. Language Testing in Practice includes the following statement by the publisher:

“Every effort has been made to trace the owners of copyright material... We apologize for any apparent negligence.”

(PX 418 at vi.)

453. Prior to posting the two excerpts on GSU’s uLearn system, Professor Kim performed fair use analyses, considering each of the four statutory fair use factors, filling out fair use checklists. Professor Kim found that her uses of the two excerpts were fair, as reflected in her checklists. (Kim T. Vol. 6 at 99:12-18, 6-99:22-100-1, 6-142:16-143:8; PX 655.)

b. Assessing Language for Specific Purposes

454. Professor Kim assigned an excerpt from Assessing Language for Specific Purposes for her Week 3 classes. (PX 519 at 7; T. Vol. 6 at 100:12-19.)

455. Assessing Language for Specific Purposes, published by Cambridge, is a factual work that totals 330 pages. (PX 20; T. Vol. 6 at 100:12-21.)

456. No application to register the copyright for Assessing Languages for Specific Purposes was ever filed with the U.S. Copyright Office. (PX 22)

457. The excerpt, found at pages 24-40, totals 17 pages or 6% of Assessing Language for Specific Purposes. The excerpt concerns language ability and how to test it, in line with Professor Kim's English language testing and interpreting test scores theme for her Week 3 classes. (PX 519 at 7; T. Vol. 6 at 100:22-25, 145:1-9, Vol. 7 at 3:13-19.)

458. Professor Kim modified her original reading assignment concerning pages 24-40, and asked her students to read only pages 25-28, 29, and 34-36, with the remaining pages being optional as a reading assignment. (T. Vol. 6 at 144:18-25, 145:10-24.)

459. Assessing Language for Specific Purposes includes the following statement:

“The authors and publishers are grateful to those authors, publishers and others who have given permission for the use of copyright material identified in the text. It has not been possible to identify, or trace, sources of all the materials used and in such cases the publishers would welcome information from copyright owners.”

(PX 20 at xi-xii.)

460. The excerpt contains a total of 10 pages referring to the notes of other authors. Thus, the original material in this excerpt constituted only in 2.1% of *Assessing Language for Specific Purposes*. (PX 20; Dkt. No. 384-3 at 3.)

461. Prior to posting the excerpt on GSU's uLearn system, Professor Kim performed a fair use analysis, considering each of the four statutory fair use factors, filling out a fair use checklist. Professor Kim found that her use was fair, as reflected in her recreated checklist. (T. Vol. 6 at 100:16-19; 6-101:4-5, 6-145:25-146:15; PX 649.)

c. Fundamental Considerations in Language Testing

462. Professor Kim provided an excerpt from *Fundamental Considerations in Language Testing* as an optional reading for her Week 3 classes. (PX 519 at 7; T. Vol. 6 at 101:8-23.)

463. *Fundamental Considerations in Language Testing*, published by Oxford, is a factual work that totals 420 pages. (PX 406; T. Vol. 6 at 101:24-25.)

464. An application to register the Copyright for *Fundamental Considerations in Language Testing* was not filed with the U.S. Copyright Office until March 15, 2011, nearly twenty-one years after the date of *Fundamental Considerations in Language Testing*'s first publication, April 19, 1990. (PX 408.)

465. The excerpt, found at pages 81-110, totals 30 pages or 7.1 % of the work. The excerpt discusses the meaning of language ability, in line with Professor Kim's English language testing and interpreting test scores theme for her Week 3 classes. (PX 519 at 7; T. Vol. 6 at 102:1-6, 146:23-147:9, Vol. 7 at 3:23-4:7.)

466. The excerpt contains a total of 25 pages referring to the work of other authors. Thus the original material used in the excerpt constitutes only 1.2% of Fundamental Considerations in Language Testing. (PX 406; Dkt. No. 384-3 at 2.)

467. Prior to posting the excerpt on GSU's uLearn system, Professor Kim performed a fair use analysis, considering each of the four statutory fair use factors, filling out a fair use checklist. Professor Kim found that her use was fair, as reflected in her checklist. (T. Vol. 6 at 102:7-9, 6-147:10-19; PX 654.)

d. Assessing Grammar

468. Professor Kim assigned two excerpts from Assessing Grammar for her Week 6 classes. (PX 519 at 7; T. Vol. 6 at 102:10-17.)

469. Assessing Grammar, published by Cambridge, is a factual work that totals 317 pages. (PX 15; T. Vol. 6 at 102:20-21.)

470. An application to register the copyright for Assessing Grammar was not filed with the U.S. Copyright Office until December 27, 2010, six years after the date of Assessing Grammar's first publication, November 18, 2004. (PX 17.)

471. Plaintiffs provided no evidence that permissions may be obtained to use excerpts from *Assessing Grammar*.

472. The two excerpts, found respectively at pages 49-82, and 100-145, are about creating grammar tests. Both excerpts, which together total 80 pages (making up 29.9% of *Assessing Grammar*), are in line with Professor Kim's evaluating grammar theme for her Week 6 classes. (PX 519 at 7; T. Vol. 6 at 102:22-103:5, 6-147:23-148:9, T. Vol. 7 at 5:2-8.)

473. The excerpt contains a total of 33 pages referring to the work of other authors, including 13 pages of example problems (129-135, 137-138, 141-144.) When that material is excluded, Kim used 14.8% of *Assessing Grammar* without permission. (PX 15; DX 752; Dkt. No. 384-3 at 2; T. Vol. 6 at 148:10-12, 6-148:19-150:20.)

474. Prior to requesting the *Assessing Grammar* excerpt be posted on GSU's e-Res system, Professor Kim performed a fair use analysis, considering each of the four statutory fair use factors, filling out a fair use checklist. Professor Kim found that her use was fair, as reflected in her checklist. (T. Vol. 6 at 103:8-13, 6-152:11-22; PX 596.)

475. The *Assessing Grammar* excerpt had a hit count of 1 on the e-Res system for the Fall Semester of 2009. (JX 3 at 210.)

e. Assessing Vocabulary

476. Professor Kim assigned an excerpt from Assessing Vocabulary for her Week 7 classes. (PX 519 at 7; Kim T. Vol. 6 at 103:23-104:4.)

477. Assessing Vocabulary, published by Cambridge, is a factual work that totals 293 pages. (PX 44; Kim T. Vol. 6 at 104:5-6.)

478. An application to register the Copyright for Assessing Vocabulary was not filed with the U.S. Copyright Office until March 7, 2011, almost eleven years after the date of Assessing Vocabulary's first publication, February 13, 2000. (PX 40.)

479. The excerpt, found at pages 150-187, (totals 38 pages and amounts to 15.1% of Assessing Vocabulary). The excerpt provides examples for creating vocabulary tests, in line with Professor Kim's evaluating vocabulary theme for her Week 7 classes. (PX 519 at 7; T. Vol. 6 at 104:10-17, 6-150:21-151:24, T. Vol. 7 at 5:12-17.)

480. Assessing Vocabulary includes the following statement:

“The authors and publishers are grateful to those authors, publishers and others who have given permission for the use of copyright material identified in the text. It has not been possible to identify, or trace, sources of all the materials used and in such cases the publishers would welcome information from copyright owners.”

(PX 44 DX 810 at xii.)

481. The excerpt contains a total of 16 pages referring to the work of other Authors. Thus the original material used in the excerpt constitutes only 7.5% of Assessing Vocabulary. (PX 44; T. Vol. 6 at 151:17-24.)

482. Prior to posting the excerpt on GSU's uLearn system, Professor Kim performed a fair use analysis, considering each of the four statutory fair use factors, filling out a fair use checklist. Professor Kim found that her use was fair, as reflected in her recreated checklist. (T. Vol. 6 at 104:20-23, 6-151:25-152:10; PX 652.)

f. Learning Vocabulary in Another Language

483. Professor Kim assigned an excerpt from Learning Vocabulary in Another Language for her Week 7 classes. (PX 519 at 7; T. Vol. 6 at 105:2-8, Vol. 7 at 6:10-16.)

484. Learning Vocabulary in Another Language, published by Cambridge, is a fact work that totals 491 pages. (PX 125.)

485. An application to register the Copyright for Learning Vocabulary in Another Language was not filed with the U.S. Copyright Office until March 7, 2011, almost ten years after the date of Learning Vocabulary in Another Language's first publication, March 15, 2001. (PX 127)

486. The excerpt, found at pages 344-379, totals 36 pages and amounts to 8.4% of Learning Vocabulary in Another Language. The excerpt concerns different standardized test questions which may be used to measure students' vocabulary knowledge, in line with Professor Kim's evaluating vocabulary theme for her Week 7 classes. (PX 519 at 7; T. Vol. 6 at 105:9-16, 17-7:7.)

487. While Professor Kim originally assigned all 36 pages in her syllabus, she modified the required reading assignment for this excerpt, limiting it to pages 344-345, 347, 352-353, 359-360, 368-369, 372, and 375-377. (T. Vol. 7 at 8-24.)

488. The excerpt contains a total of 25 pages referring to the work of other authors. Thus the original material used constitutes only 2.2% of Learning Vocabulary in Another Language. (PX 125; Dkt. No. 384-3 at 3)

489. Prior to posting the excerpt on GSU's uLearn system, Professor Kim performed a fair use analysis, considering each of the four statutory fair use factors, filling out a fair use checklist. Professor Kim found that her use was fair, as reflected in her recreated checklist. (T. Vol. 6 at 105:20-22, Vol. 7 at 258:13; PX 651.)

g. Assessing Reading

490. Professor Kim assigned an excerpt from Assessing Reading for her Week 8 classes of AL8500. (PX 519 at 7 at 4; T. Vol. 6 at 105:23-106:3,T. Vol. 7 at 8:14-24.)

491. Assessing Reading, published by Cambridge, is a factual work that totals 413 pages. (PX 29; DX 558; T. Vol. 6 at 106:5-6,T. Vol. 7 at 8:14-21.)

492. No U.S. Copyright registration was ever obtained for Assessing Reading from the U.S. Copyright Office. (PX 31.)

493. The excerpt, found at pages 202-270, totals 69 pages and amounts to 19.3% of Assessing Reading. The excerpt concerns different techniques for testing reading skills, including different types of questions to test reading capability, in line with Professor Kim's evaluating reading theme for her Week 8 classes. (PX 519 at 7; Dkt. No. 384-3 at 2; T. Vol. 6 at 106:12-16,T. Vol. 7 at 9:3-21.)

494. Assessing Reading includes the following statement:

“The authors and publishers are grateful to those authors, publishers and others who have given permission for the use of copyright material identified in the text. It has not been possible to identify, or trace, sources of all the materials used and in such cases the publishers would welcome information from copyright owners.”

(PX 29 p. xii.)

495. The excerpt contains a total of 25 pages referring to the work of other Authors. Thus the original material used constitutes only 1.2% of Assessing Reading. (PX 29; T. Vol. 7 at 9:22-10:25.)

496. Prior to posting the excerpt on GSU's uLearn system, Professor Kim performed a fair use analysis, considering each of the four statutory fair use factors, filling out a fair use checklist. Professor Kim found that her use was fair, as reflected in her checklist. (T. Vol. 7 at 11:1-15; DX 558.)

h. Assessing Listening

497. Professor Kim assigned an excerpt from Assessing Listening for her Week 9 classes. (PX 519 at 7; T. Vol. 6 at 106:21-107:1.)

498. Assessing Listening, published by Cambridge, is a factual work that totals 293 pages. (PX 24.)

499. An application to register the Copyright for Assessing Listening was not filed with the U.S. Copyright Office until March 7, 2011, almost ten years after the date of Assessing Listening first publication, April 12, 2001. (PX 26.)

500. Plaintiffs provided no evidence that permission to use excerpts was available for Assessing Listening.

501. The excerpt, found at pages 116-153 totals 38 pages and amounts to 14.8% of Assessing Listening. The excerpt concerns different types of existing test items for use in listening tests, in line with Professor Kim's evaluating listening theme for her Week 9 classes. (PX 519 at 7; T. Vol. 6 at 107:3-5, T. Vol. 7 at 11:21-12:1, T. Vol. 7 at 12:16-10.)

502. While Professor Kim originally assigned all 38 pages of this excerpt as required reading, she later reduced her assignment to only pages 132-146 and 149-150. (T. Vol. 7 at 13:11-16.)

503. Assessing Listening includes the following statement:

“The authors and publishers are grateful to those authors, publishers and others who have given permission for the use of copyright material identified in the text. It has not been possible to identify, or trace, sources of all the materials used and in such cases the publishers would welcome information from copyright owners.”

(PX 24 at xii.)

504. The excerpt contains a total of 20 pages referring to the work of other Authors. Thus the original material used constitutes only 6.3% of Assessing Listening. (PX 24; T. Vol. 7 at 13:17-24.)

505. Prior to posting the excerpt on GSU's uLearn system, Professor Kim performed a fair use analysis, considering each of the four statutory fair use factors,

filling out a fair use checklist. Professor Kim found that her use was fair, as reflected in her checklist. (T. Vol. 6 at 107:6-7, T. Vol. 7 at 13:25-14:13; PX 648.)

i. Assessing Speaking

506. Professor Kim assigned two excerpts from *Assessing Speaking* for her Week 10 classes. (PX 519 at 7; T. Vol. 6 at 107:17-23, Vol. 7 at 14:14:17.)

507. *Assessing Speaking*, published by Cambridge, is a factual work that totals 228 pages. (PX 34; T. Vol. 6 at 107:24-25.)

508. An application to register the Copyright for *Assessing Speaking* was not filed with the U.S. Copyright Office until on March 17, 2011, almost seven years after the date of *Assessing Speaking*'s first publication, June 17, 2004.

509. The first excerpt, found at pages 55-95 concerns speaking scales. The second excerpt, found at pages 139-169, concerns developing speaking tasks. Both excerpts (which total 68 pages, or 35.6% of *Assessing Speaking*), are in line with Professor Kim's evaluating speaking theme for her Week 10 classes. (PX 519 at 7; T. Vol. 6 at 108:1-4, T. Vol. 7 at 14:22-15:12, T. Vol. 7 at 15:24-16:5, T. Vol. 7 at 17:25-18:7; PX 34; DX 808.)

510. The excerpts contains a total of 50 pages referring to the work of other Authors. Thus the original material used constitutes only 7.9% of *Assessing*

Speaking. (PX 34 DX 808; Dkt. No. 384-3 at 3; T. Vol. 7 at 16:6-17:24, 18:8-20:18.)

511. Prior to posting the excerpt on GSU's uLearn system, Professor Kim performed a fair use analysis, considering each of the four statutory fair use factors, filling out a fair use checklist. Professor Kim found that her use was fair, as reflected in her recreated checklist. (T. Vol. 6 at 108:10-12, T. Vol. 7 at 20:19-21:5; PX 650.)

j. Assessing Writing

512. Professor Kim assigned an excerpt from Assessing Writing for her Week 11 classes. (PX 519 at 8; T. Vol. 6 at 108:22-109:4, T. Vol. 7 at 21:6-19.)

513. Assessing Writing, published by Cambridge, is a factual work that totals 282 pages. (PX 39; Kim T. Vol. 6 at 109:5-6.)

514. An application to register the Copyright for Assessing Writing was not filed with the U.S. Copyright Office until March 7, 2011, almost nine years after the date of Assessing Writing's first publication, May 27, 2002. (PX 41.)

515. Plaintiffs provided no evidence that permission to use excerpts was available for this work.

516. The excerpt, totaling two chapters (Chapters 5 & 6), found at pages 77-139, totals 63 pages and amounts to 25.8% of Assessing Writing. The excerpt

concerns designing tasks for assessing writing ability, in line with Professor Kim's evaluating writing theme for her Week 11 classes. (PX 519 at 8; T. Vol. 6 at 109:11-13,T. Vol. 7 at 21:6-19,T. Vol. 7 at 22:1-20.)

517. Assessing Writing includes the following statement:

“The authors and publishers are grateful to those authors, publishers and others who have given permission for the use of copyright material identified in the text. It has not been possible to identify, or trace, sources of all the materials used and in such cases the publishers would welcome information from copyright owners.”

(PX 39 at xiii.)

518. The Assessing Writing excerpt contains a total of 47 pages (25 pages in Chapter 5, 22 pages in Chapter 6) referring to the work of other Authors. Thus the original material used constitutes only 5.7% of Assessing Writing. (PX 39; Vol. 7 at 22:21-24:19.)

519. Prior to posting the Assessing Writing excerpt on GSU's uLearn system, Professor Kim performed a fair use analysis, considering each of the four statutory fair use factors, filling out a fair use checklist. Professor Kim found that her use was fair, as reflected in her recreated checklist. (T. Vol. 6 at 109:14-16, Vol. 7 at 24:20-25:6; PX 653.)

k. Criterion-Referenced Language Testing

520. Professor Kim assigned an excerpt from Criterion-Referenced Language Testing for her Week 14 classes. (PX 519 at 8; T. Vol. 6 at 109:23-110:6,T. Vol. 7 at 25:7-15.)

521. Criterion-Referenced Language Testing, published by Cambridge, is a factual work that totals 336 pages. (PX 85; T. Vol. 6 at 110:7-8,T. Vol. 7 at 25:7-15.)

522. An application to register the Copyright for Criterion-Referenced Language Testing was not filed with the U.S. Copyright Office until December 27, 2010, eight years after the date of Criterion-Referenced Language Testing's first publication, May 20, 2002. (PX 87.)

523. The excerpt, found at pages 101-148, totals 48 pages and amounts to 16.5% of Criterion-Referenced Language Testing. The excerpt concerns developing criteria to determine whether a student passes a language course, in line with Professor Kim's theme of reliability for criterion-referenced tests, for her Week 14 classes. (PX 519 at 8; T. Vol. 6 at 110:9-11,T. Vol. 7 at 25:19-26:14.)

524. While Professor Kim originally assigned all 48 pages of the Criterion-Referenced Language Testing excerpt in her syllabus, she modified the required

reading for this excerpt, limiting it to pages 104-106, 111 and 115-118. (T. Vol. 7 at 26:15-227:3.)

525. Criterion-Referenced Language Testing includes the following statement:

“The authors and publishers are grateful to those authors, publishers and others who have given permission for the use of copyright material identified in the text. It has not been possible to identify, or trace, sources of all the materials used and in such cases the publishers would welcome information from copyright owners.”

(PX 85; p. xi.)

526. Prior to requesting the Criterion-Referenced Language Testing excerpt be posted on GSU’s e-Res system, Professor Kim performed a fair use analysis, considering each of the four statutory fair use factors, filling out a fair use checklist. Professor Kim found that her use was fair, as reflected in her checklist. (Kim T. Vol. 6 at 110:12-14, T. Vol. 7 at 27:4-16; PX 595.)

527. The Criterion-Referenced Language Testing excerpt had a hit count of 1 on the e-Res system for the Fall Semester of 2009. (JX 3 at 44.)

Q. Professor Matthew Lasner

528. Professor Matthew Lasner was employed as an assistant professor in the History Department at GSU in the Fall of 2009. (PX 537.)

1. PERS2001 – Comparative Culture – Fall Semester 2009

529. Professor Lasner taught one hundred fourteen undergraduate students in his PERS2001 Class in Fall Semester 2009, which focused on the growth of cities and their problems. (PX 537 at 1.)

a. Crabgrass Frontier: The Surbanization of the United States

530. Professor Lasner assigned an excerpt from Crabgrass Frontier: The Suburbanization of the United States (herein “Crabgrass Frontier”) for his October 7th class. (PX 537 at 5.)

531. Crabgrass Frontier, published by Oxford, is a factual work that totals 405 pages. (PX 368; PX 600.)

532. The Crabgrass Frontier excerpt entitled “The Drive-in Culture of Contemporary America,” found at pages 246-271 totals 26 pages, or 8.5% of the book. The excerpt supports the Suburban Paradigm theme of Professor Lasner’s October 7th class. (PX 537 at 5; PX 368.)

533. Prior to requesting the Crabgrass Frontier excerpt be posted on GSU’s e-Res system, Professor Lasner performed a fair use analysis, considering each of the four statutory fair use factors, filling out a fair use checklist. Professor Lasner found that his use was fair, as reflected in his checklist and correspondence with the e-Res system staff. (PX 600; PX 515 at 4.)

b. The Politics of Public Housing: Black Women's Struggles Against Urban Inequality

534. Professor Lasner assigned an excerpt from *The Politics of Public Housing: Black Women's Struggles Against Urban Inequality* (herein "The Politics of Public Housing") for his September 30th class. (PX 537 at 5.)

535. *The Politics of Public Housing*, published by Oxford, is a factual work that totals 306 pages. (PX 445; PX 601.)

536. The *Politics of Public Housing* excerpt entitled "Creating a Little Heaven for Poor People: Decent Housing and Respectable Communities," found at pages 21-53 totals 33 pages, or 13.5% of the book. The excerpt supports the Social Democratic City theme of Professor Lasner's September 30th class. (PX 537 at 5; PX 445.)

537. Prior to requesting *The Politics of Public Housing* excerpt be posted on GSU's e-Res system, Professor Lasner performed a fair use analysis, considering each of the four statutory fair use factors, filling out a fair use checklist. Professor Lasner found that his use was fair, as reflected in his checklist and correspondence with the e-Res system staff. (PX 601; DX 515 at 4.)

R. Professor Jennifer McCoy

538. Professor Jennifer McCoy is currently employed as a professor in the Political Science Department at GSU. (Deposition Testimony of Jennifer McCoy on

February 3, 2011, played by video at Trial, June 2, 2011 (herein “McCoy Depo.”) 10:1-4; PX 899.)

539. Professor McCoy read the 2009 Copyright Policy after it was issued. (McCoy Depo., 12:10-31:1.)

540. Professor McCoy was aware that permissions may be obtained through the Copyright Clearance Center. (McCoy Depo., 16:20-17:13.)

541. Professor McCoy understood that the 2009 Copyright Policy applied to both the e-Res system and uLearn. (McCoy Depo., 17:20-18:10.)

542. Professor McCoy knows that she can turn to the office of legal affairs if she has questions about fair use. (McCoy Depo. 19:6-14.)

543. Professor McCoy has required that her students purchase books if she determines that her use of portions of the book would not constitute fair use. (McCoy Depo., 42:6-43:8, 43:16-49:5.)

544. Professor McCoy has had students buy books after she assigned excerpts from the books in her classes. (McCoy Depo., 63:9-66:5.)

1. POLS8250 – Latin American Politics – Fall Semester 2009

545. Professor McCoy taught twelve graduate students in her POLS8250 Class in Fall Semester 2009. (McCoy Depo., 23:25-24:2; PX 900 at 7.)

546. Professor McCoy required her students to purchase five books for her POLS8250 class: *New Latin American Left* (Barrett, Chanet & Rodriguez-Garavito); *Leftovers: Tales of Two Latin American Lefts* (Castaneda); *Third Wave of Democratization in Latin America* (Hagopian, Mainwaring); *Informal Institutions and Democracy* (Helmke); *Latin American Democracy* (Millett, Holmes, Perez); and *Latin American Political History* (Schneider). (PX 901 at 1.)

a. Regimes and Democracy in Latin America: Theories and Methods

547. Professor McCoy assigned an excerpt from *Regimes and Democracy in Latin America: Theories and Methods* (herein “Regimes and Democracy in Latin America”) for her August 31st class of POLS8250. (PX 901 at 3.)

548. *Regimes and Democracy in Latin America*, published by Oxford, is a factual collective work, made up of chapters prepared by several different contributors, that totals 299 pages. (PX 452; PX 606.)

549. No application to register the Copyright for *Regimes and Democracy in Latin America* was ever filed with the U.S. Copyright Office.

550. The excerpt includes the introduction and Chapters 1 and 2 of *Regimes and Democracy in Latin America*, ranging from pages 1-51, totaling 51 pages, or 20.4% of the work. The excerpt supports Professor McCoy’s Study of Democracy in Latin America theme for her August 31st class. (PX 452; PX 901 at 3.)

551. The introduction and Chapter 1 of Regimes and Democracy in Latin America are authored by Gerado Munck, the editor, totaling 38 pages. Chapter 2, authored by Sebastian Mazzuca, totals 12 pages. Plaintiffs only produced an assignment from the editor, and failed to produce any agreement from Sebastian Mazzuca assigning his copyright in Chapter 2 to Oxford. When chapter 2 is excluded (because Oxford apparently does not own the Copyright for that portion of the work), the amount used without permission is reduced to 12.7% of Regimes and Democracy in Latin America. (PX 452; PX 453; PX 901 at 3)

552. Prior to requesting the Regimes and Democracy in Latin America excerpt be posted on GSU's e-Res system, Professor McCoy performed a fair use analysis, considering each of the four statutory fair use factors, filling out a fair use checklist. Professor McCoy found that her use was fair, as reflected in her checklist. (PX 606.)

553. The Regimes and Democracy in Latin America excerpt had a hit count of 20 on the e-Res system for the Fall Semester of 2009. (JX 3 at 186.)

S. Professor Susan McCombie

554. Professor Susan McCombie is currently employed as a professor in the Department of Anthropology at GSU. (PX 536.)

1. ANTH4440 – Epidemiology and Anthropology – Fall Semester 2009

555. Professor McCombie taught twenty-nine graduate and undergraduate students in her ANTH4440 Class in the Fall Semester 2009. This class covered the basic principles of epidemiology, including the history and uses of epidemiology. (PX 536 at 1 and 6; Dkt. No. 384-3 at 4.)

556. Professor McCombie required her students in ANTH4440 to purchase one book, Control of Communicable Diseases Manual (Heymann), and recommended that her students purchase a second book: Rats, Lice and History (Zinsser). (PX 536.)

a. International Health Organisations and Movements, 1918-1939

557. Professor McCombie assigned an excerpt from International Health Organisations and Movements, 1918-1939 (herein “International Health Organisations”) for her Week 12 classes of ANTH4440. (PX 536 at 4.)

558. International Health Organisations, published by Cambridge, is a factual work that totals 355 pages. (PX 108; PX 602.)

559. An application to register the Copyright for International Health Organisations was not filed with the U.S. Copyright Office until January 7, 2011,

over fifteen years after the date of International Health Organization's first publication, July 20, 1995. (PX 111.)

560. The International Health Organisations excerpt titled "The cycles of eradication," found at pages 222-243, totals 22 pages and amounts to 6.8% of International Health Organisations. This excerpt supports Professor McCombie's eradication theme for her Week 12 classes of ANTH4440. (PX 108; PX 536 at 4.)

561. Prior to requesting the International Health Organisations excerpt be posted on GSU's e-Res system, Professor McCombie performed a fair use analysis, considering each of the four statutory fair use factors, filling out a fair use checklist. Professor McCombie found that her use was fair, as reflected in her checklist and email correspondence with the e-Res System staff. (PX 602; DX 518 at 3.)

b. Evolution of Infectious Disease

562. Professor McCombie assigned an excerpt from Evolution of Infectious Disease for her Week 5 classes. (PX 536 at 3.)

563. Evolution of Infectious Disease, published by Oxford, is a factual work that totals 305 pages. (PX 388; PX 603.)

564. The excerpt is entitled "Symptomatic Treatment," found at pages 15-34, totals 20 pages and amounts to 9.3% of Evolution of Infectious Disease. The

excerpt supports Professor McCombie's emerging disease agents theme for her Week 5 classes. (PX 388; PX 536 at 3.)

565. Prior to requesting the Evolution of Infectious Disease excerpt be posted on GSU's e-Res system, Professor McCombie performed a fair use analysis, considering each of the four statutory fair use factors, filling out a fair use checklist. Professor McCombie found that her use was fair, as reflected in her checklist and email communication with the e-Res System staff. (PX 603; DX 518 at 4.)

566. The Evolution of Infectious Disease excerpt had a hit count of 64 on the e-Res system for the Fall Semester of 2009. (JX 3 at 94.)

T. Professor Margaret Moloney

567. Professor Margaret Moloney is currently employed as an associate professor in the School of Nursing at GSU and is the school's doctoral program coordinator. (T. 9 at 132:19-21.)

1. NURS 8035 – Theoretical and Philosophical Foundations of Nursing – Fall Semester 2009

568. Professor Moloney taught fourteen (14) doctoral students in her NURS8035 class in the Fall Semester 2009. This class addressed the impact that general philosophy and science have on each other, as well as the impact of both on the nursing practice and research. (9-133:23-134:18; PX 545.)

569. Professor Moloney's class is an internet enhanced program that has real time classes on campus once a month with the other classes occurring online. (9-134:19-135:11.)

570. Professor Moloney required that her students purchase three books for the course: Perspectives on Philosophy of Science in Nursing (Polifroni); Perspectives on Nursing Theory (Reed); and Strategies for Theory Construction in Nursing (Walker). (PX 545 at 7; 9-136:5-21.)

a. Handbook of Mixed Methods in Social & Behavioral Research

571. Professor Moloney assigned an excerpt from The Handbook of Mixed Methods in Social and Behavioral Research for her week 14 class of NURS8035 class. (PX 545 at 6; 9-136:22-137:3.)

572. The Handbook of Mixed Methods in Social and Behavioral Research, published by SAGE, is a factual work that contains examples of mixed method studies and research in various disciplines that totals 784 pages. (DX 773; 9-137:19-138:2.)

573. The excerpt by Twinn (herein the "Twinn excerpt"), found at pages 541-556, totals 16 pages or 2.0% of the work. The excerpt concerns the status of nursing in using mixed methods studies, in line with Professor Moloney's mixed

method approaches to theory and research theme for her Week 14 class. (PX 545 at 6; 9-138:3-139:15; DX 773.)

574. Prior to requesting the Twinn excerpt be posted on GSU's e-Res system, Professor Moloney performed a fair use analysis, considering each of the four statutory fair use factors, and found that her use of the excerpt was fair. During her analysis, Professor Moloney electronically filled out a fair use checklist, which she failed to print. However, her analysis is represented in her email communications with the e-Res system staff and the checklist she filled out the following day. (9-139:20-145:14, 157:9-18; DX 519; PX 608.)

575. The Twinn excerpt had a hit count of 27 on the e-Res system for the Fall Semester of 2009. (JX 3 at 255.)

U. Professor John Murphy

576. Professor John Murphy is currently employed as a tenured full professor in the Department of Applied Linguistics and English as a Second Language at GSU. (T. Vol. 10 at 77:10-13.)

577. Professor Murphy understood that there was a market for licensing and permissions. (11-24:21-25:4.)

578. Professor Murphy uses no more than 20% of a book as a benchmark in determining whether or not a portion of a work is small. (11-55:18-56:5.)

1. AL 8480 – Classroom Practices in Second/Foreign Language Teaching - Maymester 2009

579. Professor Murphy taught 10 graduate students in his AL8480 Class during Maymester 2009, which focused on practical implementation of language lessons in a classroom setting. (10-78:22-79:17; PX 540.)

580. Professor Murphy required his students in AL8480 to purchase four books: *New Ways in Teaching Reading* (Day); *Keep Talking* (Klippel); *Grammar Practice Activities* (Ur), and *Writing* (Hedge). (PX 540, pp. 1-2; T. Vol. 10 at 80:10-23.)

581. The excerpts that Professor Murphy placed on GSU's e-Res System were posted as supplemental readings. (10-81:2-24.)

582. None of the students in Professor Murphy's AL8480 Maymester 2009 class used the materials posted on e-Res in their course work. (10-83:14-24, 11-62:11-25.)

a. Pronunciation Games

583. Professor Murphy requested an excerpt from *Pronunciation Games* be placed on GSU's e-Res System for supplemental reading for his AL8480 class. (10-84:15-17.)

584. *Pronunciation Games* was not required reading, nor was it listed on the Maymester 2009 syllabus. (10-128:20-129:3; PX 540.)

585. Pronunciation Games, published by Cambridge, is a factual work, with a focus on the teaching of proper pronunciation through language learning activities in a classroom setting, that totals 112 pages. (PX 138;T. Vol. 10 at 84:8-14.)

586. No U.S. copyright registration application for this work was ever filed for Pronunciation Games. (PX 140).

587. No evidence was provided to show permission was available for Pronunciation Games.

588. Pronunciation Games provides that:

“[i]t is normally necessary for written permission for copying to be obtained in advance from a publisher. The worksheets, role play cards, tests and tapescripts at the back of this book are designed to be copied and distributed in class. The normal requirements are waived here and it is not necessary to write to Cambridge University Press for permission for an individual teacher to make copies for use within his or her own classroom. Only those pages which carry the wording ‘© Cambridge University Press’ may be copied.”

(10-85:20-86:22; PX 138, copyright page).

589. The excerpt from Pronunciation Games Professor Murphy requested be posted includes pages 8-27, totaling 20 pages. 11 pages of the excerpt, (pages 9, 11, 13, 14, 17-18, 20-21, 23, and 25-26) are photocopyable, while the remaining nine pages (8, 10, 12, 15, 16, 19, 22, 24, and 27) are not. Thus, Professor Murphy posted

8% of Pronunciation Games without permission Plaintiffs contend 8.3%. (PX 138;T. Vol. 10 at 86:24-87:6.)

590. Prior to requesting the excerpt from Pronunciation Games be posted on GSU's e-Res system, Professor Murphy completed a fair use analysis, considering each of the four statutory fair use factors found in GSU's fair use checklist. Professor Murphy found that his use was fair, as reflected in his recreated checklist. (T. Vol. 10 at 87:7-92:6, Vol. 11 at 21:2-11; PX 656.)

591. The excerpt had a hit count of 3 on the e-Res system for the Maymester of 2009. (JX 1 at 43.)

b. Keep Talking

592. Professor Murphy requested an excerpt from Keep Talking be placed on GSU's e-Res System for supplemental reading for his AL8480 class. (T. Vol. 10 at 93:21-24.)

593. Keep Talking, published by Cambridge, is a factual work with a focus on spoken language activities that totals 208 pages. (PX 114;T. Vol. 10 at 92:11-18.)

594. Professor Murphy required his students to purchase Keep Talking. (T. Vol. 10 at 92:19-24; PX 540 at 1.)

595. No U.S. copyright registration application was ever filed for Keep Talking. (PX 116.)

596. Keep Talking: provides that

“[i]t is normally necessary for written permission for copying to be obtained in advance from a publisher. Certain parts of this book are designed to be copied and distributed in class. The normal requirements are waived here and it is not necessary to write to Cambridge University Press for permission for an individual teacher to make copies for use within his or her own classroom. Only those pages which carry the wording ‘© Cambridge University Press 1984’ may be copied.”

(PX 114.)

597. The excerpt from Keep Talking Professor Murphy requested be posted ranged from 58-98, totaling 41 pages, or 21.2%% of Keep Talking. (PX 114;T. Vol. 10 at 94:7-25; Dkt. No. 384-1 at 1.)

598. Prior to requesting the excerpt from Keep Talking be posted on GSU’s e-Res system, Professor Murphy completed a fair use analysis, considering each of the four statutory fair use factors found in GSU’s fair use checklist. Professor Murphy found that his use was fair, as reflected in his recreated checklist. (10-95:1-98:17, 11-21:2-11; PX 657.)

599. The excerpt from Keep Talking had a hit count of 2 on the e-Res system for the Maymester of 2009. (JX 1 at 55.)

c. More Grammar Games

600. Professor Murphy requested an excerpt from More Grammar Games be placed on GSU's e-Res System for supplemental reading. (T. Vol. 10 at 99:1-3, 99:17-19.)

601. More Grammar Games was not required reading, nor was it listed on the Maymester 2009 syllabus. (10-128:20-129:3.)

602. More Grammar Games, published by Cambridge, is a factual work with a focus on the teaching of grammar that totals 192 pages. (PX 134; Vol. 10 at 98:22-25.)

603. An application to register the Copyright for More Grammar Games was not filed with the U.S. Copyright Office until December 20, 2010, over five years after the date of More Grammar Games's first publication, May 4, 1995. (PX 136.)

604. No evidence was provided to show permission was available for More Grammar Games.

605. More Grammar Games provides that

“[i]t is normally necessary for written permission for copying to be obtained in advance from a publisher. The worksheets, role play cards, tests and tapescripts at the back of this book are designed to be copied and distributed

in class. The normal requirements are waived here and it is not necessary to write to Cambridge University Press for permission for an individual teacher to make copies for use within his or her own classroom. Only those pages which carry the wording ‘© Cambridge University Press’ may be copied.”

(PX 134;T. Vol. 10 at 100:1-23.)

606. The excerpt from More Grammar Games Professor Murphy requested be posted ranged from 58-93, totaling 36 pages. The excerpt focused on the unorthodox teaching of language. Ten pages of the excerpt, (pages 63, 67, 68, 74, 77, 80, 81, 82, 87, and 88) are photocopiable. Thus, Professor Murphy posted 13.5% of More Grammar Games without permission Plaintiffs contend 20.7%. (PX 134;T. Vol. 10 at 99:10-25, T. Vol. 10 at 100:24-101:9.)

607. Prior to requesting the excerpt from More Grammar Games be posted on GSU’s e-Res system, Professor Murphy completed a fair use analysis, considering each of the four statutory fair use factors found in GSU’s fair use checklist, which he electronically completed. Professor Murphy found that his use was fair, as reflected in his recreated checklist. (T. Vol. 10 at 101:13-104:23, Vol. 11 at 21:2-11; PX 658.)

608. The excerpt from More Grammar Games had a hit count of 5 on the e-Res system for the Maymester of 2009. (JX 1 at 79.)

d. Grammar Practice Activities (1st Edition)

609. Professor Murphy requested that an excerpt from Grammar Practice Activities be placed on GSU's e-Res System for supplemental reading for his AL8480 class. (10-105:17-20.)

610. Grammar Practice Activities, published by Cambridge, is a factual work that presents activity-type descriptions for teaching grammar. The work totals 296 pages in length. (DX 788; T. Vol. at 105:8-12.)

611. Grammar Practice Activities was a required text that students purchased for Professor Murphy's AL8480 class. (PX 540 at 2; T. Vol. 10 at 105:13-16.)

612. No U.S. copyright registration was ever obtained for Grammar Practice Activities. (PX 101.)

613. Grammar Practice Activities provides that

“[i]t is normally necessary for written permission for copying to be obtained in advance from a publisher. Because Grammar Practice Activities contains resource material, those activities which the wording ‘© Cambridge University Press 1988’ may be photocopied. The normal requirement is waived here and it is not necessary to write to Cambridge University Press for permission.”

(DX 788; T. Vol. 10 at 106:23-107:17.)

614. The excerpt from Grammar Practice Activities that Professor Murphy requested be posted ranged from pages 44-102. The total of 59 pages, provided

illustrations of language lesson activities. Of those pages, 37 pages, (pages 45, 46, 49, 50, 51, 56, 57, 58, 59, 60, 61, 65, 66, 67, 69, 70, 71, 73, 74, 76, 77, 81, 83, 84, 85, 86, 87, 88, 91, 92, 93, 95, 96, 97, 100, 101, and 102) were photocopiable. Thus, Professor Murphy used only 22 pages without permission, or 7.4% of Grammar Practice Activities. Plaintiffs allege 20.9%. (DX 788;T. Vol. 10 at 106:7-108:8; Dkt. No. 384-1 at 1.)

615. Prior to requesting the excerpt from Grammar Practice Activities be posted on GSU's e-Res system, Professor Murphy performed a fair use analysis, considering each of the four statutory fair use factors found in GSU's fair use checklist. Professor Murphy found that his use was fair, as reflected in his recreated checklist. (10-108:11-111:24, 11-21:2-11; PX 659.)

616. The excerpt from Grammar Practice Activities had a hit count of 2 on the e-Res system for the Maymester of 2009. (JX 1 at 95.)

e. Five Minute Activities: A Resource Book of Short Activities

617. Professor Murphy requested that an excerpt from Five Minute Activities: A Resource Book of Short Activities (herein "Five Minute Activities") be placed on GSU's e-Res System for supplemental reading for his AL8480 class. (10-112:16-19.)

618. The Five Minute Activities excerpt was not required reading, nor was it listed on Professor Murphy's Maymester 2009 syllabus. (10-129:4-24.)

619. Five Minute Activities, published by Cambridge, is a factual work that presents short language learning activities that total 117 pages in length. (PX 90;T. Vol. 10 at 112:11-15.)

620. An application to register the Copyright for Five-Minute Activities was not filed with the U.S. Copyright Office until December 20, 2010, eighteen years after the first publication date of Five-Minute Activities, January 1, 1992. (PX 92.)

621. No evidence was provided to show permission was available for Five Minute Activities.

622. The excerpt from Five Minute Activities that Professor Murphy requested be posted ranged from pages 1-23, totaling 23 pages. The excerpt provides illustrations of language learning activities and uses 19.7% of Five Minute Activities. Plaintiffs contend 22.8%. (PX 90;T. Vol. 10 at 112:25-113:2.)

623. Prior to requesting the excerpt from Five Minute Activities be posted on GSU's e-Res system, Professor Murphy performed a fair use analysis, considering each of the four statutory fair use factors found in GSU's fair use checklist. Professor Murphy found that his use was fair, as reflected in his recreated checklist. (10-113:14-116:17, 11-21:2-11; PX 660.)

624. The excerpt from Five Minute Activities had a hit count of 3 on the e-Res system for the Maymester of 2009. (JX 1 at 96.)

f. Newspapers

625. Professor Murphy requested that an excerpt from Newspapers be placed on GSU's e-Res System for supplemental reading for his AL8480 class. (10-117:5-7.)

626. The Newspapers excerpt was not required reading, nor was it listed on Professor Murphy's Maymester 2009 syllabus. (10-129:4-24.)

627. Newspapers, published by Oxford, is a factual work that uses previously published newspaper articles for the purpose of language teaching. The work totals 144 pages in length. (PX 433;T. Vol. 10 at 116:25-117:4.)

628. No U.S. copyright registration was ever obtained for Newspapers. (PX 378).

629. Plaintiffs failed to provide evidence that permission was available for Newspapers.

630. Newspapers provides that:

“[t]he Publisher grants permission for the photocopying of those pages marked ‘photocopiable’ according to the following conditions. Individual purchasers may make copies for their own use or for use by classes they teach. School purchasers may make copies for use by staff and

students, but this permission does not extend to additional schools and branches.”

(PX 433;T. Vol. 10 at 118:2-23.)

631. The excerpt from Newspapers that Professor Murphy requested be posted ranged from pages 30-58. The excerpt totaled 29 pages, and provided illustrations for use as reading activities. Two pages of the excerpt, (pages 57 and 58) are photocopiable. Thus, Professor Murphy used 18.8% of Newspapers without permission. Plaintiff contends 22.5% (PX 433;T. Vol. 10 at 117:13-16,T. Vol. 10 at 117:19-118:1.)

632. Prior to requesting that the excerpt from Newspapers be posted on GSU’s e-Res system, Professor Murphy performed a fair use analysis, considering each of the four statutory fair use factors found in GSU’s fair use checklist. Professor Murphy found that his use was fair, as reflected in his recreated checklist. (10-119:7-122:7, 11-21:2-11; PX 661.)

633. The excerpt from Newspapers had a hit count of 3 on the e-Res system for the Maymester of 2009. (JX 1 at 42.)

g. Role Play: Resource Books for Teachers

634. Professor Murphy requested an excerpt from Role Play: Resource Books for Teachers (herein “Role Play”) be placed on GSU’s e-Res System for supplemental reading for his AL8480 class. (10-122:18-20.)

635. The Role Play excerpt was not required reading, nor was it listed on Professor Murphy's Maymester 2009 syllabus. (10-129:4-24.)

636. Role Play, published by Oxford, is a factual work that presents a large series of role plays for use in teaching language. The work totals 191 pages in length. (PX 458;T. Vol. 10 at 122:14-17.)

637. No U.S. copyright registration was ever obtained for Role Play. (PX 378).

638. No evidence was provided to show permission was available for Role Play.

639. Role Play provides that

“[t]he Publisher grants permission for the photocopying of those pages marked ‘photocopiable’ according to the following conditions. Individual purchasers may make copies for their own use or for use by classes they teach. School purchasers may make copies for use by staff and students, but this permission does not extend to additional schools or branches.”

(PX 458;T. Vol. 10 at 123:17-124:9.)

640. The excerpt from Role Play that Professor Murphy requested be posted ranged from pages 24-62. The excerpt totaled 39 pages and provided role playing activities. Nine pages of the excerpt, (pages 40, 42, 43, 44, 46, 47, 53, 54, and 62) were photocopiable. Thus, Professor Murphy used 15.7% of Role Play without

permission. Plaintiff contend 21.4% (PX 458;T. Vol. 10 at 123:2-6,T. Vol. 10 at 123:9-16,T. Vol. 10 at 124:10-17.)

641. Prior to requesting that the excerpt from Role Play be posted on GSU's e-Res system, Professor Murphy performed a fair use analysis, considering each of the four statutory fair use factors found in GSU's fair use checklist. Professor Murphy found that his use was fair, as reflected in his recreated checklist. (10-124:21-127:22, 11-21:2-11; PX 662.)

642. The excerpt from Role Play had a hit count of 3 on the e-Res system for the Maymester of 2009. (JX 1 at 56.)

V. Professor Mary Ohmer

643. Professor Mary Ohmer is currently employed as a professor in the School of Social Work at GSU. (PX 522 at 1.)

1. SW8200 – Evaluation and Technology – Fall Semester 2009

644. Professor Ohmer taught forty-two undergraduate students in her SW8200 Class in Fall Semester 2009. The course addressed the role of evaluation and technology in the modern social environment. (Dkt. No. 384-3 at 8; PX 522 at 1.)

645. Professor Ohmer required her students to purchase two books for her class: Program Evaluation: An Introduction (Royse) and SPSS for Social Workers (Blanksby). (PX 522 at 2.)

a. The SAGE Handbook of Qualitative Research (2nd Edition)

646. Professor Ohmer assigned an excerpt by Eben Weitzman (herein the “Weitzman excerpt”), from The Sage Handbook of Qualitative Research (2nd Edition), for her November 5th class. (PX 522 at 2 and 6.)

647. The Sage Handbook of Qualitative Research (2nd Edition), published by SAGE, is a factual collective work consisting of individual chapters from several different contributors that totals 1142 pages. (PX 265.)

648. The Weitzman excerpt, found at pages 803-820, totals 18 pages or 1.7% of The Sage Handbook of Qualitative Research (2nd edition). The excerpt is titled “Software and Qualitative Research,” in line with Professor Ohmer’s “Qualitative Data Analysis” topic for her November 5th class. (PX 522 at 2 and 6; PX 265; Dkt. No. 384-3 at 8.)

649. Prior to requesting that the Weitzman excerpt be posted on GSU’s e-Res system, Professor Ohmer performed a fair use analysis by completing a fair use checklist. Professor Ohmer found that her use was fair, as reflected in her correspondence with the e-Res System staff. (DX 520 at 1.)

b. Utilization-Focused Evaluation: The New Century Text (3rd Edition)

650. Professor Ohmer assigned an excerpt from Utilization-Focused Evaluation: The New Century Text (3rd Edition) (herein “Utilization-Focused Evaluation”) for her August 27th class. (PX 522 at 2 and 6.)

651. Utilization-Focused Evaluation, published by SAGE, is a factual work that totals 447 pages in length. (PX 316.)

652. The Utilization-Focused Evaluation excerpt, found at pages 1-38, totals 38 pages or 9.8% of the work. It contains two chapters, titled “Evaluation Use” and “What is Utilization-Focused Evaluation,” supporting Professor Ohmer’s “course introduction” theme for her August 27th class. (PX 522 at 2 and 6; Dkt. No. 384-3 at 8.)

653. Prior to requesting the Utilization-Focused Evaluation excerpt be posted on GSU’s e-Res system, Professor Ohmer performed a fair use analysis by completing a fair use checklist. Professor Ohmer found that her use was fair, as reflected in her correspondence with the e-Res System staff. (DX 520 at 1.)

W. Professor Kathleen Whitten

654. Professor Kathleen Whitten was employed as a professor in the Psychology Department at GSU during Fall Semester 2009.

1. PSYC 4030 Cross-Cultural Psychology Fall Semester 2009

655. Professor Whitten taught thirteen undergraduate students in her PSYC4030 Class in Fall Semester 2009. (PX 557; Dkt. No. 384-3, p.8.)

656. Professor Whitten required her students in PSYC4030 to purchase Culture and Psychology (Matsumoto). (PX 557 at 1.)

a. A World of Babies

657. Professor Whitten assigned two excerpts from A World of Babies for her September 23rd class of PSYC4030. (PX 557 at 6.)

658. A World of Babies, published by Cambridge, is a collective factual work, made up of chapters from several different contributors, that totals 293 pages. (PX 147.)

659. An application to register the Copyright for A World of Babies was not filed with the U.S. Copyright Office until January 7, 2011, ten years after the date of A World of Babies' first publication, May 18, 2000. (PX 151.)

660. The excerpts, found at pages 27 and 91-112, total 23 pages, or 10.5% % of A World of Babies. (PX 147; PX 557 at 6; Dkt. No. 384-3 at 8.)

661. Page 27 is an excerpt from Chapter 1, a chapter by Judy S. DeLoache and Alma Gottlieb, which covers Pages 1 to 28. Plaintiffs provided a contributing author agreement for one of the authors, but not both. (PX 147; PX 149; PX 150.)

662. Pages 91-112 of the excerpt are from Chapter 4, which ranges from pages 91 to 117. (PX 147.)

663. Prior to requesting that the excerpts be posted on GSU's e-Res system, Professor Whitten performed a fair use analysis by filling out a fair use checklist. Professor Whitten found that her use was fair, as reflected in her checklist. (PX 613.)

VI. PLAINTIFFS' PROPOSED INJUNCTION

664. Plaintiffs' proposed injunction would require the GSU library to control and manage the behaviors of the 8,000 to 12,000 daily users of the GSU library, which includes faculty, GSU students, visiting students, researchers, and members of the public. (Seamans Tr., Vol. 12 at 98:14-100:25.)

Respectfully submitted, this 22nd day of July, 2011.

SAMUEL S. OLENS
Georgia Bar No. 551540
Attorney General

R. O. LERER
Georgia Bar No. 446962
Deputy Attorney General

DENISE E. WHITING-PACK
Georgia Bar No. 558559
Senior Assistant Attorney General

MARY JO VOLKERT
Georgia Bar No. 728755
Assistant Attorney General

KING & SPALDING LLP

/s/ Stephen M. Schaetzel

Stephen M. Schaetzel
Georgia Bar No. 628653
John W. Harbin
Georgia Bar No. 324130
Natasha Moffitt
Georgia Bar No. 367468
Mary Katherine Bates
Georgia Bar No. 384250
KING & SPALDING LLP
1180 Peachtree Street, N.E.
Atlanta, GA 30309
Telephone: (404) 572-4600
Facsimile: (404) 572-5100
Email: sschaetzel@kslaw.com

Anthony B. Askew
Georgia Bar No. 025300
Special Assistant Attorney General
McKeon, Meunier, Carlin & Curfman, LLC
817 W. Peachtree Street NW, Suite 900
Atlanta, GA 30308
Phone: 404-645-7709
Fax: 404-645-7707
taskew@m2IPlaw.com

Katrina M. Quicker
Georgia Bar No. 590859
BALLARD SPAHR LLP
999 Peachtree Street, Suite 1000
Atlanta, GA 30309-3915
Telephone: (678) 420-9300
Facsimile: (678) 420-9301

Email: quickerk@ballardspahr.com

Attorneys for Defendants

CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to L.R. 5.1B and 7.1D of the Northern District of Georgia, that the foregoing DEFENDANTS' PROPOSED FINDINGS OF FACT complies with the font and point selections approved by the Court in L.R. 5.1B. The foregoing pleading was prepared on a computer using 14-point Times New Roman font.

/s/ Stephen M. Schaetzel _____
Stephen M. Schaetzel
Georgia Bar No. 628653

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

CAMBRIDGE UNIVERSITY PRESS,
et al.,

Plaintiffs,

-vs.-

MARK P. BECKER, in his official
capacity as Georgia State University
President, et al.,

Defendants.

Civil Action No.
1:08-CV-1425-ODE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 22nd day of July, 2011, I have electronically filed the foregoing DEFENDANTS' PROPOSED FINDINGS FACT with the Clerk of the Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorneys of record:

Edward B. Krugman
krugman@bmelaw.com
Georgia Bar No. 429927
Corey F. Hirokawa
hirokawa@bmelaw.com
Georgia Bar No. 357087
John H. Rains IV
Georgia Bar No. 556052

BONDURANT, MIXSON &
ELMORE, LLP
1201 West Peachtree Street NW
Suite 3900
Atlanta, GA 30309
Telephone: (404) 881-4100
Facsimile: (404) 881-4111

R. Bruce Rich
Jonathan Bloom
Randi Singer
Todd D. Larson

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

/s/ Stephen M. Schaetzel
Stephen M. Schaetzel
Georgia Bar No. 628653