

EXHIBIT A

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

CAMBRIDGE UNIVERSITY PRESS,
et al.,

Plaintiffs,

v.

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

Defendants.

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

[PROPOSED] ORDER AND INJUNCTION

This action having been tried by the Court without a jury, the Honorable Orinda D. Evans, District Judge, presiding, on May 17, 2011–June 7, 2011, and the Court having duly entered an opinion dated May 11, 2012, with findings of fact and conclusions of law, it is ORDERED AND ADJUDGED that:

I. For purposes of this Order:

- A. The term “GSU” includes each and every Defendant, and all of their agents, servants, employees, representatives, and successors, all other persons acting under their direction, control, or supervision, including all part-time or full-time faculty employed by, and students enrolled at, Georgia State University, and all those in active concert or participation with them.

- B. The terms “Work” or “Works” shall mean any non-fiction book other than a textbook in hardcopy, e-book or any other format now in existence or yet to be published in which Cambridge University Press, Oxford University Press, Inc., or SAGE Publications, Inc. (hereafter “Plaintiffs”) own or control the exclusive right under copyright that GSU seeks to exercise.
 - C. The term “GSU Electronic Course Systems” shall include EReserves, uLearn, faculty websites, course websites, or any other system now in existence or hereinafter developed that is owned, licensed, used, or controlled by GSU or the Board of Regents of the University System of Georgia through which course reading materials (whether required, additional, supplemental, optional or otherwise) are made available to Georgia State University students electronically. Any copying, posting, uploading, downloading, or other distribution done on any GSU Electronic Course System shall, for purposes of this Order, be attributed to and be considered done by GSU.
- II. GSU has infringed Plaintiffs’ copyrights by copying and distributing excerpts from the following works on GSU Electronic Course Systems:
- A. *The Sage Handbook of Qualitative Research (Third Edition)* (SAGE Publications, Inc. 2005) (copied and distributed for Professor Kaufmann’s EPRS 8500 Qualitative/Interpretive Research in Education I in Maymester 2009);
 - B. *The Sage Handbook of Qualitative Research (Second Edition)* (SAGE Publications, Inc. 2000) (copied and distributed for Professor Kaufmann’s EPRS 8510 Qualitative/Interpretive Research in Education II – Data Collection in Summer 2009);
 - C. *The Sage Handbook of Qualitative Research (Third Edition)* (SAGE Publications, Inc. 2005) (copied and distributed for Professor Kaufmann’s EPRS 8500 Qualitative/Interpretive Research in Education II in Fall 2009);
 - D. *The Power Elite* (Oxford University Press 1956) (copied and distributed for Professor Harvey’s SOCI 8030 Social Theory I in Fall 2009);

- E. *Utilization-Focused Evaluation (Third Edition)* (SAGE Publications, Inc. 1997) (copied and distributed for Professor Ohmer's SW 8200 Evaluation and Technology in Fall 2009).

The Court finds that GSU's infringement of Plaintiffs' copyrights is ongoing and continuous.

- III. Subject only to the provisions of Paragraph IV hereof, GSU shall be and is permanently enjoined and restrained from creating, reproducing, transmitting, selling, or in any manner distributing copies of Works or portions thereof on GSU Electronic Course Systems and from assisting, participating in, soliciting, encouraging, or facilitating the creation, reproduction, download, display, sale, or distribution of copies in any form of any and all Works or portions thereof on GSU Electronic Course Systems.
- IV. Nothing in this Order shall be deemed to enjoin or restrain GSU from making or distributing copies of excerpts of any Works on GSU Electronic Course Systems where either A or B below is satisfied.
- A. GSU or the individual faculty member or instructor has obtained permission or authorization from the copyright owner or the copyright owner's authorized agent (such as Copyright Clearance Center, Inc.) to make such use.
- B. In the event permission has not been granted in accordance with Paragraph IV.A, the copies to be made or distributed:
1. are made and/or distributed by GSU without charge strictly for nonprofit educational purposes; AND
 2. fulfill a legitimate purpose in the course curriculum and are narrowly-tailored to serve a nonprofit educational purpose; AND
 3. do not constitute the "heart of the work"; AND
 4. constitute a decidedly small excerpt in accordance with the following criteria:

- a. if from a book that is not divided into chapters or contains fewer than ten chapters and for which a license for digital academic use is available, do not exceed ten (10) percent of the pages in the Work; or
 - b. if from a book that contains ten or more chapters and for which a license for digital academic use is available, do not exceed one (1) chapter; or
 - c. if, after a reasonable investigation that shall at a minimum include consulting both the copyright owner and its authorized agent (such as Copyright Clearance Center, Inc.), GSU determines that the digital excerpt cannot be licensed or purchased for use on GSU Electronic Course Systems, and that the excerpt is sufficiently small so as not to cause actual or potential market harm to the Work; AND
 5. are not from works intended to be “consumable” in the course of study or of teaching, including but not limited to workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material; AND
 6. are protected by a non-transferable, non-assignable username and password and may be accessed only by GSU students currently enrolled in the relevant course during the academic term in which the course is offered.
- C. For all excerpts of Works for which permission has not been obtained that is distributed through GSU Electronic Course Systems pursuant to Paragraph IV(B) above, designated GSU personnel shall confirm that the excerpt meets these criteria and shall retain for at least three (3) years a record identifying at least the title, author, and publisher of the Work, the pages or chapter copied, as relevant, the total pages or chapters of the Work, the sources consulted to determine whether licensing was available (including without limitation, Copyright Clearance Center and the publisher), and the date of such investigation.

- V. GSU shall promptly, and in no event any later than 45 days following entry of this Order, take all appropriate steps to modify its existing copyright policies governing the activities of GSU so as to comport with all aspects of this Order, including without limitation by notifying faculty and other instructors that the criteria for fair use determinations set forth in this Order supersede use of GSU's existing "fair use" checklist.
- VI. GSU shall promptly and in no event later than 30 days following entry of this Order provide a copy of this Order to all faculty and other instructors and users as well as to all other administrative and technical personnel who have to date been, or are reasonably likely in the future to be, involved in the development, operation, or maintenance of GSU Electronic Course Systems. In addition:
- A. Whether in conjunction with such communication or otherwise, GSU shall make clear the importance of compliance with the terms of the Order and that violations will be subject to disciplinary sanctions and, potentially, to legal actions for copyright infringement; and
 - B. GSU shall post the full Order on the GSU website in an appropriately prominent manner and shall cause the provisions of Paragraphs III and IV of the Order to appear on the screen before a faculty member, library employee, or other GSU personnel is able to upload, post, or otherwise make available any copyrighted material via GSU Electronic Course Systems; and
 - C. GSU shall incorporate reference to this Order, including either by reproducing its text or otherwise providing advice on how the reader can easily locate it, in all university-wide handbooks or the like that set forth codes of faculty, student, or employee conduct. Users must be reminded of the limitations imposed on their conduct by copyright law and must be prohibited from distributing copies otherwise permitted by this Order to others.
- VII. Within forty-five (45) days of the entry of the Order, GSU shall certify to the Court, and shall serve on plaintiffs, a report detailing the measures it has taken to comply with the Order. The report shall include a certification signed by the Provost of GSU that all Works that reside or have resided on any GSU Electronic Course System have been brought into compliance with

this Order. In addition, for each academic term (Spring, Maymester, Summer, Fall, and Winter) for three (3) years following the effective date of this Order, the GSU Provost shall certify to the Court, with a copy to Plaintiffs' counsel, that based on diligent monitoring efforts GSU is in compliance with the terms of the Order for all GSU Electronic Course Systems, including but not limited to with respect to the ERes and uLearn systems or their equivalents.

- A. Such certification shall be accompanied by a standard ERes report in the same format as was produced during the litigation (or an equivalent report from any similar system) listing the title, author, and publisher for all reading materials present on the ERes system during that semester, the course-reserves page for which the materials are listed, and the pages or chapter made available to students during that semester.
 - B. Upon request made no more frequently than once each semester, GSU shall provide such access to the GSU Electronic Course Systems and any relevant records concerning activities subject to this Order, including the uLearn system (or its equivalent), and to the certifications referred to in Paragraph IV(C) above, to a designated representative of Plaintiffs as will enable Plaintiffs to confirm GSU's compliance with the terms of the Order. Access shall be afforded at reasonable times during GSU's business hours upon fifteen (15) days' advance notice. In the event that any use or posting on any GSU Electronic Course System is not in compliance with this Order, GSU will make best efforts to timely bring such use or posting into compliance.
- VIII. Nothing herein is intended to prescribe the extent to which GSU may be permitted to use copyrighted material other than the Works as defined herein without securing the permission of the owners of copyright in such materials.
- IX. The Court shall retain jurisdiction of this case and over judgment-compliance issues and shall entertain such requests for modification of its terms as may be warranted based upon technological or other future developments.

- X. Unless stayed by the United States Court of Appeals for the Eleventh Circuit, this Order shall remain in full force and effect during the pendency of any appeals filed by the parties.

SO ORDERED this ____ day of ____, 2012.

Hon. Orinda D. Evans
United States District Judge