

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

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

Plaintiffs,

- v. -

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

Defendants.

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

DECLARATION OF EDWARD B. KRUGMAN

I, Edward B. Krugman, declare as follows:

1. I am a partner in the law firm Bondurant, Mixson & Elmore LLP, counsel to Plaintiffs in this action. I submit this declaration in support of Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion for Protective Order.
2. I make this declaration based upon my own knowledge and that of my firm.

3. Attached as Exhibit A is a true and correct copy of an email from Jim Palmour to Nancy Kropf, dated October 31, 2006, bearing Bates number GaState0004844.
4. Attached as Exhibit B is a true and correct copy of a document titled Annual Report of Institutional Progress, 2005 – 2006, “Action Plan 2007 Development,” bearing Bates number GaState0023319–38.
5. Attached as Exhibit C is a true and correct copy of a letter from R. Bruce Rich to Carl V. Patton, dated April 18, 2007.
6. Attached as Exhibit D is a true and correct copy of a letter from Kerry Heyward to R. Bruce Rich, dated July 20, 2007.
7. Attached as Exhibit E is a true and correct copy of Plaintiffs’ Response to Defendants’ Interrogatory No. 8.
8. Attached as Exhibit F is a true and correct copy of a letter from R. Bruce Rich to George S. Zier, dated May 30, 2008.
9. Attached as Exhibit G is a true and correct copy of an email from Burns Newsome to Nancy Seamans, dated October 27, 2008, bearing Bates number GaState023024.
10. Attached as Exhibit H is a true and correct copy of an email from William Potter to Beth Brigdon, dated Nov. 7, 2008, bearing Bates number GaState0020869.

11. Attached as Exhibit I is a true and correct copy of an email from Beth Brigdon to Ray Lee, dated January 8, 2009, bearing Bates number GaState0020797.

12. Attached as Exhibit J are true and correct copies of relevant excerpts from the transcript of the deposition of William Gray Potter, held March 9, 2009.

13. Attached as Exhibit K is a true and correct copy of a web page titled "Policy on the Use of Copyrighted Works in Education and Research," available at <http://www.usg.edu/copyright>.

14. Attached as Exhibit L is a true and correct copy of a document titled "Fair Use Checklist," available at http://www.usg.edu/copyright/documents/fair_use_checklist.pdf.

15. Attached as Exhibit M are true and correct copies of relevant excerpts from the transcript of the deposition of Nancy H. Seamans, held March 10, 2009.

16. Attached as Exhibit N and Exhibit O are true and correct copies of spreadsheets entitled "Doc Hit Report 1.1.05-1.30.09 with course names.xls" and "Doc Hit Report 1.1.09-1.30.09 with course names.xls," bearing Bates ranges GSU007945.001.xls-000001 through GSU007945.001.xls-001971 and GSU007945.006.xls-000001 through GSU007945.006.xls-000232, respectively.

- a. The reports in Exhibits N and O were generated by the standard reporting function of the Georgia State University electronic reserves system (“ERes”) using date ranges provided by Plaintiffs. Defendants subsequently provided the reports to Plaintiffs, in Microsoft Excel format, as part of the discovery process in this case.
- b. I understand, pursuant to Defendants’ representations, that the Document Hit Reports depict usage of ERes. I understand data in the column headed “Hit Count” reflect the number of times the corresponding work identified in the “Document” column has been accessed through ERes during the time period listed in the “Date Range” column.
- c. By counting the number of rows in each spreadsheet, one can determine the approximate number of readings offered through ERes during a given semester.
- d. One can further approximate the number of courses represented on the ERes system, as well as the number of reading excerpts offered for each course, by using

Microsoft Excel's standard "sort" function to organize the data according to the column headed "Course Reserves Page."

- e. From the foregoing analysis, it is apparent that:
 - (i) some 4,000 to 5,000 copyrighted excerpts have been offered via ERes each semester since 2005;
 - (ii) in the aggregate, these works have been accessed, or "hit," as many as 127,000 times per semester;
 - (iii) in January, 2009, at least 2,400 readings were available on ERes, which were "hit" a total of 28,625 times (*See Exhibit O*); and
 - (iv) as of January, 2009, the ERes offerings for some 30 courses contained twenty or more excerpts each. Of those, nearly ten courses offered collections of 40 or more excerpts each.
- f. While the Document Hit Reports appear to reflect some posting of materials other than copyrighted literary works (*e.g.*, class notes, PowerPoint presentations, etc.), the quantity of such material is *de minimis* in relation to overall ERes activity, and do not significantly impact the totals described above.

17. Attached as Exhibit P is a true and correct copy of a document titled "Course Reserves—ERes Guidelines," which was available at

<http://www.library.gsu.edu/services/pages.asp?ldID=68&guideID=281&ID=2609>

prior to February 2009.

18. Attached as Exhibit Q is a true and correct copy of an email from Denise Dimsdale to Kim Reimann, dated August 14, 2007, bearing Bates number GaState0003415.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

This 3rd day of April, 2009.



Edward B. Krugman