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

CAMBRIDGE UNIVERSITY PRESS, et al.,
Plaintiffs,

CIVIL ACTION FILE

vs.

NO. 1:08-CV-1425-ODE

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

Defendants.

Videotaped deposition of NANCY SEAMANS, taken on
behalf of the Plaintiffs pursuant to Rules 26 and 30
of the Federal Rules of Civil Procedure, before
Michelle M. Boudreaux, Georgia Certified Court
Reporter, at the Offices of Legal Affairs for Georgia
State University, 10 Park Place South Building,
Atlanta, Georgia, on the 10th day of March 2009,
commencing at the hour of 10:15 a.m.

SHUGART & BISHOP
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Suite 140
Atlanta, Georgia 30329
(770) 955-5252

1 A Specifically Cynthia, because she was doing
2 the training session, but the sense that there were
3 other people in the Office of Legal Affairs who were
4 available also.

5 Q And was there discussion around that
6 concept, either in terms of the presentation made by
7 Ms. Hall or any Q&A about the situations that it
8 might be expected that questions would occur and the
9 frequency with which it was expected that faculty
10 might invoke the availability of legal counsel?

11 A Not specifically, no.

12 Q Turning the page, please, to the next page,
13 21129. This PowerPoint is headed "USG Guidelines on
14 Electronic Reserves." The first bullet reads,
15 "Instructors evaluate whether permissions needed or
16 fair use -- know details of work and use."

17 I take it that denotes the policy/procedure
18 requiring instructors to go through the fair use
19 checklist with respect to each otherwise unlicensed
20 work which they propose to use on E-Reserve; is that
21 correct?

22 A That's my understanding.

23 Q And do you have any understanding of what
24 checks and balances, if any, are built into the
25 system to make judgments about the reasonableness of

1 the determinations that individual instructors would
2 be making?

3 A I'm not sure I'm following your question.

4 Q Is it your understanding that the policy
5 contemplates any form of supervision, auditing,
6 sampling, review, or the like of the individual
7 determinations that will be made by faculty members
8 to determine the reasonableness of those
9 determinations?

10 A I'm not aware of any.

11 Q And specifically in relation to Georgia
12 State University, are you aware of any plans or
13 processes either now in place or to be put in place
14 to serve that function?

15 A If there is anything that I would see going
16 forward -- and this is -- because this is new to us,
17 we're still figuring this out, from the library
18 perspective, that there would be a sense that staff,
19 when in doubt, would question -- would take the issue
20 to legal counsel, that there would be not an
21 automatic acceptance of what a faculty member has
22 said if there is something that raises a red flag for
23 a faculty -- for a staff member in the library.

24 Q And when you reference staff members in
25 this connection, what are we talking about, who are

1 we talking about?

2 A We're talking about technicians, clerks,
3 library clerks. So it would be something that would
4 have to be pretty egregious to make them question
5 something, but they are given the authority to raise
6 questions if they see something that bothers them.

7 Q Was that communicated during this seminar?

8 A Yes.

9 Q Were any examples given of what might be
10 viewed as egregious?

11 A It mostly focused on quantity, that if
12 somebody asked that an entire book be scanned, for
13 example, would the staff accept that, and we
14 generally said probably not, that they would ask that
15 legal counsel be involved.

16 Q Any other examples that came up of that
17 kind of egregious --

18 A Not that I'm thinking of.

19 Q Turning to page 21130, the second bullet
20 indicates, "Remove materials at the end of each
21 semester." Do you see that?

22 A Yes.

23 Q Does the policy contemplate what's to be
24 done if a professor wants to offer the same materials
25 in one or more succeeding academic terms?

1 Q Okay. Do you have any idea how the
2 permissions process works with respect to those
3 coursepacks?

4 A I don't know.

5 Q Do you know whether it is the assigned
6 duty/obligation of the professor to secure the
7 permissions, as opposed to via some unit of the
8 university that facilitates acquiring permission?

9 A I don't know.

10 MR. RICH: Okay. Why don't we take a
11 two- or three-minute break.

12 THE WITNESS: Okay.

13 MR. RICH: We need to change the tape.

14 THE VIDEOGRAPHER: Off the record at
15 11:10:58.

16 (Recess taken.)

17 THE VIDEOGRAPHER: This is Tape 2. We
18 are back on the record at 11:20:58.

19 Q (By Mr. Rich) To the extent a faculty
20 member, having gone through the new fair use
21 checklist, were to make a determination that in order
22 to use a particular copyrighted work, he or she would
23 require permission, does your library have a budget
24 to accommodate seeking such permission?

25 A No.

1 Q But sitting here today, no plan for
2 implementing that kind of examination is yet in
3 place; is that correct?

4 A In the couple of weeks that we have had, we
5 have not implemented that plan, no.

6 Q Do you have any notion of over what time
7 period that plan will or may be implemented?

8 A I think the first piece that we're looking
9 at is how do we implement the process that will take
10 us through the end of this semester knowing that we
11 have -- this will be a very light load for us because
12 we're part way into the semester, and then we would
13 be looking at what we would be doing differently over
14 the summer in order to implement this in the fall,
15 because it will be significantly different when we
16 have to do a full semester's worth of implementation.

17 Q Do you --

18 A So --

19 Q Thank you.

20 Do you have an impression, when the new
21 policy is in place, overall how practice under that
22 policy, say with respect to a compilation of works of
23 this scale over a term, is likely to differ from
24 prior practice?

25 A I don't know, because it will be dependent

1 on how the faculty member goes through the checklist
2 and --

3 Q As the committee pursued its work --

4 A Uh-huh.

5 Q -- was there any assumption whether, at the
6 end of the new process, on average, there will be
7 fewer, more, or about the same works for which a fair
8 use determination has been made which are placed into
9 the E-Reserve system of the various institutions?

10 MR. SCHAETZEL: Objection as to form.

11 And please answer to the extent you
12 can without divulging any attorney-client
13 communications.

14 THE WITNESS: I don't recall there
15 being any discussion of quantity, whether
16 it would go up, down, or stay the same.

17 Q (By Mr. Rich) I'm going to ask you a
18 series of questions just about the mechanics of the
19 E-Reserves process. And in providing these answers,
20 if convenient for you, if you could identify in any
21 particular where you would expect the aspect you're
22 discussing to change under the new policy, I would
23 appreciate your flagging that for me.

24 I would like to just sort of take it
25 through the intake process and then through the

1 Q Okay. Please proceed. Following that?

2 A Following that, because the faculty member
3 has gone through the process of telling us that this
4 is an appropriate and acceptable use, the staff would
5 then make the materials available in the format that
6 the faculty member has requested unless there is
7 something that is a red flag to that staff that makes
8 them say, "Hmm, we need to investigate this further."

9 Q And as you testified this morning, if I
10 recall it correctly, the one red-flag example that
11 came to mind was, well, wait a minute, this looks
12 like an entire textbook, let's say, I'm not so sure
13 this is --

14 A Uh-huh.

15 Q -- appropriate. Now, if that staff member
16 makes that judgment, what does he or she do at that
17 point?

18 A The first piece that we have asked the
19 staff to do is to notify the faculty member and say,
20 "This one seems questionable to us. Can you
21 reinforce for us that you have gone through this
22 process?"

23 Q And let's assume that person comes to me,
24 I'm the sociology professor, and I say --

25 A Uh-huh.

1 Q -- "I'm comfortable. I think it's the
2 right choice" --

3 A Uh-huh.

4 Q What happens next?

5 A At that point -- and again, understand we
6 are in a new implementation here -- my guess is that
7 the clerical person, the staff person in the library
8 would go to a supervisor and say, "I'm still
9 uncomfortable with this one. Would you look at it?"
10 And so a supervisor would be involved at this point
11 in looking at that question.

12 Q Tell me the basic sort of education levels
13 of the first-level person at the desk and then the
14 next-level person at the desk at that point. What
15 are their backgrounds?

16 A It would depend on what hour of the day you
17 came into the library.

18 Q I'll take all the different variations.

19 A All the different variations, it could be
20 everyone from a student who has been hired to staff
21 that desk and basically is just kind of standing
22 there and saying, "Yes, thank you, I'll see what I
23 can do with it," to someone who has maybe a high
24 school degree, to someone who has finished college,
25 to someone who may have a library degree or a

1 master's degree in some area. Experience could range
2 from almost nothing to 8, 10, 15 years of experience
3 working in a library, so a very wide range.

4 Q It's a function of who will take that
5 position --

6 A Uh-huh.

7 Q -- effectively, yes?

8 A Uh-huh.

9 Q And at the next level, what did you call
10 it, a system supervisor?

11 A Is somebody who has -- in our instance,
12 it's someone who has many years of experience, I'm
13 thinking in excess of 20, in the library and would be
14 very comfortable going back to a faculty member and
15 saying that, "We would like you to rethink this one,"
16 or just saying, you know, "Rather than get involved
17 in this back-and-forth, I'm going to bump it upstairs
18 or send it over to legal."

19 Q Now, "bumping it upstairs," do you mean
20 bumping it to --

21 A Would be coming to me --

22 Q -- you?

23 A -- or to Laura Burtle, yes, depending on
24 which one of us is available.

25 Q And would Laura's or your judgment be .

1 final --

2 A No.

3 Q -- in that situation?

4 A No. We will not -- we will not make
5 decisions about things like this, but we would
6 support the staff member's decision to recommend that
7 it be bumped over to legal.

8 Q Final determination would be made by legal
9 in that situation?

10 A I don't think so, because I think it would
11 be legal's -- I think legal would work with the
12 faculty to make sure that they have gone through that
13 fair use analysis. The faculty member is the person
14 who best understands how this is going to fit and how
15 they're going to use it and whether there's a fair
16 use determination that can be made.

17 Q Now, at the end of the day, if all avenues
18 of appeal, as we call it, or review are exhausted --

19 A Uh-huh.

20 Q -- is it your understanding that if a
21 faculty member stands her ground and says, "I respect
22 your view, I disagree" -- what happens? Who wins?

23 A Who wins? I would think that if the Office
24 of Legal Affairs said, "We respectfully disagree with
25 your determination," that the faculty member would

1 (Discussion off the record.)

2 Q (By Mr. Rich) I'm going to show you a
3 document that's been previously marked as Plaintiff's
4 Exhibit 15.

5 MR. RICH: And we'll hand out clean
6 copies for whoever needs --

7 MR. SCHAEZEL: Thank you.

8 THE WITNESS: Uh-huh.

9 (Discussion off the record.)

10 Q (By Mr. Rich) Do you recognize what's
11 being previously marked as Plaintiff's Exhibit 15?

12 A Yes.

13 Q What is it?

14 A It is the fair use checklist that was
15 created by the Regent Select Committee on Copyright.

16 Q I take it this is the document to which
17 we've been referring on and off during the entire
18 day, yes, the document to be filled out by individual
19 faculty members?

20 A Uh-huh.

21 Q And am I correct -- is it your
22 understanding that the way this process is to work,
23 in respect of any given copyrighted work, the
24 professor checks the appropriate boxes, weighs the
25 outcome within each factor, and then sees if a

1 majority of factors favors either fair use or weigh
2 against fair use; is that correct?

3 A That's my understanding, yes.

4 Q And in the case of a 2 to 2 outcome, as it
5 were --

6 A Uh-huh.

7 Q -- the preamble to this appears to indicate
8 that in that situation, instructors should consider
9 the total facts weighing in favor of fair use as
10 opposed to the total facts weighing against fair use,
11 is that correct, in terms of coming up with an
12 outcome?

13 A That's my understanding.

14 Q And focusing on that, so now a professor
15 has gone through this exercise and has a bunch of
16 checkmarks throughout --

17 A Uh-huh.

18 Q -- what is your sense of the tools that the
19 professor is supposed to use then to break the tie?
20 How do you think the professor ought to be thinking
21 about these things?

22 A In terms of resources, as opposed to tools,
23 the resources certainly are all of the supporting
24 information that has been made available on the USG
25 Web site, where the checklist is available. In

1 work, having transformed it into something by adding
2 additional material to that work.

3 Q I take it, from that conception, a
4 straightforward photocopy or electronic copy of the
5 identical work by itself and without more would not
6 be treated as -- would not be treated as
7 transformative; is that correct?

8 A That would be my interpretation, yes.

9 Q And if you stitched a series of those exact
10 copies together into a compendium or anthology of
11 works or a coursepack, I take it your view would be
12 that also would not thereby transform all of that
13 into a transformative work, correct?

14 A That would be my interpretation.

15 Q Okay. How would you expect that a faculty
16 member would, in practice, make a determination as to
17 the bottom left most factor and bottom right most
18 factor, namely whether the proposed use is necessary
19 to achieve his or her intended educational purpose?
20 How would one go about making that judgment, do you
21 think?

22 A They would be looking at the course that
23 they are teaching, the content of that course, what
24 is necessary to convey that content, and whether this
25 piece of material, this piece of information is

1 purposes of the course, the need for material to
2 support their teaching.

3 Q Most of which would tend in favor of making
4 a fair use determination, would they not?

5 A I think it would depend on a case-by-case
6 basis how they go through it. I don't think you can
7 generalize that, no.

8 Q Under what analysis would a faculty member,
9 all other things equal, feel himself or herself
10 benefiting from putting him or herself or GSU the
11 burden of getting permissions for the materials they
12 want to use in their course?

13 A Because it's the right thing to do. It's a
14 legal and ethical issue that -- I mean, academic
15 integrity requires that.

16 Q And what enforcement mechanisms are
17 proposed within GSU to make sure that the policies
18 are being properly implemented by individual faculty
19 members?

20 MR. SCHAEZEL: Objection. Asked and
21 answered.

22 THE WITNESS: Enforcement is --
23 there's not an enforcement mechanism. This
24 is a -- this is a -- we teach the faculty,
25 we give them the tools that they have, we

1 try to make sure it doesn't happen. But
2 there are no copyright police out there
3 beating up on people if they make the wrong
4 determination. I mean, this is something
5 where a faculty member has to process all
6 of this. It is a learning process, as they
7 do it for each piece of material that
8 they're using.

9 Q (By Mr. Rich) So you seem to think that
10 it's a pejorative to enforce copyright laws, that
11 it's --

12 A I have not said that.

13 Q You used the word "copyright police."

14 A You're asking about enforcement --

15 Q Yes.

16 A -- how is it going to be enforced.

17 Q Yes.

18 A There is a difference between making sure
19 that people have the tools to do their job and making
20 sure that they make their best determination, and
21 then it's being proactive versus reactive.

22 Q If students cheat on examinations, are
23 there any consequences to their career at GSU?

24 A Yes.

25 Q What?

1 check that it is a teaching use, because if it is for
2 a practicum, that's kind of a different kind of
3 teaching. It's one that I would probably kind of
4 have to think about there.

5 Q Could you, for the uninitiated, describe
6 what a practicum is?

7 A I am guessing, again, that since this is --
8 and I don't know what the numbering system means, but
9 it's a graduate class of some sort, I am guessing,
10 that would be putting a teacher in a classroom
11 setting, so probably a language arts teacher --

12 Q Okay.

13 A -- in a classroom setting.

14 Q Okay.

15 A So I'm not sure how we would do the --

16 Q Okay.

17 A -- teaching aspect of that. I would say
18 that it is probably not research, but might be
19 counted as scholarship. It is not criticism, it is
20 not comment, news reporting, or parody. It is not
21 transformative, it is not personal study. I don't
22 know about the use necessary to achieve the intended
23 purpose.

24 Q Okay.

25 A It is not for a commercial activity. I

1 don't see a place where somebody is profiting from
2 use of this. I certainly would not think it would be
3 for entertainment, though one never can tell. It is
4 nontransformative. There does not appear to be a
5 publication that would take place here. This would
6 not be public distribution. And again, I don't --

7 Q Yes.

8 A -- know the use --

9 Q Yes.

10 A -- piece. So at that point on this one, we
11 would be saying nonprofit. We don't know about --

12 Q Possibly research or scholarship?

13 A Possibly that one.

14 Q And possibly the last?

15 A And possibly the last. And on the opposite
16 side, you would be possibly the last. So in that
17 case, I would say it would favor -- the factors favor
18 fair use.

19 Q Okay.

20 A It is a published work. It is, I'm
21 assuming, factual, certainly nonfiction.

22 Q Right.

23 A And again, the question about important to
24 educational objectives, I would have a hard time
25 knowing. So that means that it is not unpublished,

1 it lawfully. And I have limited access by putting it
2 on E-Reserve behind a password protection. Again,
3 the effect on market, as I indicated when we looked
4 at it on the weighing in favor, I don't know, because
5 I don't know the discipline well enough.

6 I don't know whether or not licensing or
7 commission is reasonably available, so that would be
8 one that, if I were actually trying to make a
9 determination and were going through all of this,
10 that might be one that I would pursue further.

11 Numerous copies are not being made or
12 distributed. I don't know, again, the discipline
13 enough to know about the long-term use. It is not a
14 required classroom reading, and I do own the copy of
15 the book and the Web access is limited.

16 Q Are you in a position, even with your
17 limited knowledge, to make a fair use judgment?

18 A Because one factor we left completely
19 undetermined, no.

20 Q Staying in the fourth factor for a
21 minute --

22 A Uh-huh.

23 Q -- are each of those factors within -- are
24 each of those elements within a factor entitled to
25 equal weight?

1 Looking on the weighs against fair use, it
2 is not a commercial activity, it is not profiting
3 from the use, it does not appear to be entertainment,
4 there does not appear to be a nontransformative use.
5 It does not appear to be for publication or for
6 public distribution. And again, I can't know about
7 the use and how it fits into the intent of the
8 course.

9 Q Did you say it does not appear to be
10 nontransformative or it does not appear to be
11 transformative?

12 A Transformative, right.

13 Q So that --

14 A That one --

15 Q -- box would be checked?

16 A -- would be checked.

17 Q Okay.

18 A Yes, yes. Sorry. It is a published work,
19 it is --

20 Q Let me pause on Factor 1 for a minute,
21 if --

22 A Okay.

23 Q -- I may, a couple of questions.

24 A Uh-huh.

25 Q If a work is being offered in the classroom

1 setting by the professor, focusing on the right-side
2 factors --

3 A Uh-huh.

4 Q -- will it not almost invariably be the
5 case that it does not involve commercial activity,
6 that the -- there's no profiting from use, that it's
7 not entertainment, that it's not for publication, and
8 it's not for publication distribution, wouldn't you
9 normally say those automatically are ruled out in the
10 classroom environment/teaching offer?

11 A I would think generally you would, but I
12 think the intent of the fair use checklist is not
13 just for classroom use, it's for fair use of
14 materials.

15 Q I understand that, but I'm saying as
16 applied to E-Reserve course offerings, what I'm
17 saying --

18 A Right.

19 Q -- would generally be the case, would it
20 not?

21 A Right.

22 Q And would it also be the case in the class
23 setting that almost invariably it would be nonprofit
24 educational; teaching, if it's in a traditional class
25 setting as opposed to the practicum kind of setting

1 determining without knowing the discipline and the
2 area a little bit more. The ways it's described on
3 the list, that it was a course, and I could see that
4 you could -- you could be using something that is a
5 work of fiction to illustrate something in a course,
6 and that would change the whole thing, but I just
7 don't know this one well enough to know that.

8 Q Just stepping back again and looking at
9 Factor 2 --

10 A Uh-huh.

11 Q -- is it accurate that on a numerical count
12 basis, in awarding Factor 2 one way or the other, the
13 simple fact that a work is a published factual or
14 nonfiction work will award that factor to a fair use,
15 will it not?

16 A If it were published factual in a workbook,
17 the answer would be no, to my mind. That would
18 require a judgment call on my part. That's something
19 that is a consumable work, is -- kind of bumps it
20 over --

21 Q Even though --

22 A -- and I --

23 Q -- it would be 2 to 1?

24 A It would be 2 to 1, and I would have to
25 think about that. Because as a consumable work, it's

1 something that you would presumably be asking
2 students to use, work through, turn in, do something
3 with.

4 Q And then what degree of confidence do you
5 have that other faculty would process that in a
6 similar way?

7 A That, again, is kind of a judgment call on
8 my part, but I would have a fairly high level of
9 confidence.

10 Q And if it's not consumable, though, my
11 proposition would be correct that a --

12 A Published work of nonfiction.

13 Q Would avoid that factor in the E-Reserve
14 classroom setting to fair use?

15 A Generally, yes.

16 Q Okay.

17 A Factor 3, again, this is the one that I had
18 so much trouble with the last time, I'm going to have
19 the same trouble with it this time, so I think here
20 it's hard to know how it would come down in terms of
21 one way or the other.

22 Q And your reaction to 40 pages out of a work
23 of approximately -- without the tables at the back,
24 it looks like it 341 pages -- 343 pages.

25 A I'm not sure that's terribly relevant.

1 Q If you were staring at 75 pages, would that
2 become more relevant to you?

3 A I certainly would think twice about it. I
4 mean, if you -- if you're -- if you are starting to
5 say, you know, you must read the whole book, yes, I
6 mean, if it's -- if it continues to be supplemental
7 material and, you know, it's 75 pages, I might be
8 looking for something else that I could offer for
9 them to use.

10 Q Okay.

11 A And again, with Factor 4, I don't know the
12 discipline well enough to know whether this is the
13 only book on the market that's out there that's -- I
14 mean, what the effect would be. Kind of similar
15 answers to what I gave before in terms of not really
16 knowing kind of how it would play out.

17 Q Can I ask you, in the E-Reserve setting, is
18 the "one or few copies made or distributed" box
19 routinely to be checked under your interpretation?

20 A I don't know.

21 Q Can you think of any situation where, as
22 you think about it, more than one copy is being made
23 or distributed?

24 A I -- I was thinking of another question, so
25 let me say -- I would say that here, in the E-Reserve