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WEIL, GOTSHAL & MANGES LLP

767 FIFTH AVENUE
NEW YORK, NY 10153
(212) 310-8000
FAX: (212) 310-8007

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SILICON VALLEY
WARSAW
WASHINGTON, D.C.

R. BRUCE RICH
DIRECT LINE (212) 310-8170
E-MAIL: r.bruce.rich@weil.com

May 30, 2008

George S. Zier, Esq.
State of Georgia Office of the Attorney General
Senior Assistant Attorney General
40 Capitol Square, SW
Atlanta, GA 30334

Re: Cambridge University Press et al. v. Patton et al.

Dear George:

At our May 20th meeting, we agreed to provide you with our thoughts as to a basic set of understandings that could enable settlement discussions to move forward while the litigation was put on hold for up to a six-month period. I am pleased to enclose for your consideration a document along those lines that has been approved by our clients.

As we understand the concept, assuming agreement can be reached on what we have termed First Principles, the parties will engage in a collaborative process -- which will also include the Board of Regents -- aimed at resolving the litigation via statewide reform of existing copyright guidelines and the implementation of "best practices" for ensuring copyright compliance at state colleges and universities on an ongoing basis.

I would welcome your feedback on our draft as well as your ideas as to what steps the settlement process would entail and the timeline on which it would proceed. In this connection, we note that there is a scheduled Board of Regents meeting this June 10-11. Can you advise us whether this topic is on the agenda?

I look forward to hearing from you and want to thank you and the others with whom we met for the cordial spirit of these discussions and for your willingness to entertain constructive ways to resolve the litigation.

WEIL, GOTSHAL & MANGES LLP

George S. Zier, Esq.
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I should note for the record that the enclosed proposal is offered for settlement purposes only, is subject to the strictures of Rule 408, and is without prejudice to the positions to be taken by our clients should the litigation proceed.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce Rich", with a long horizontal flourish extending to the right.

R. Bruce Rich

RBR:hf
Enclosure

cc: Mary Jo Volkert
Allan Adler
Edward Krugman

**First Principles Agreed Upon as a Basis for Resolution of
the Cambridge University Press et al. v. Patton et al. Litigation (the “Litigation”)**

1. The parties, through their counsel, have agreed to pursue a settlement process designed to achieve an amicable resolution of the Litigation within a six-month framework of discussion and preparation for implementation (“Settlement Term”).
2. In recognition of the relevance to such resolution of the policy-making role of the State of Georgia Board of Regents (“Regents”) in general, and of the 1997 Regents Guide to Understanding Copyright & Educational Fair Use in particular, it is understood and agreed that the settlement process will include participation and action by the Regents. In turn, the process will aim for a set of copyright guidelines and practices that will be applicable to all of the state colleges/universities under the aegis of the Regents.
3. As a basis for this process and a foundation for settlement, the State Attorney General’s Office is prepared to recommend the adoption by the Regents, and incorporation by each affected educational institution, of revised copyright guidelines that recognize (without necessarily being limited to) the following basic principles¹:

(a) The copyright principles that apply to use of copyrighted works in electronic environments are the same as those that apply to such use in paper environments. Any use of copyrighted course content that would require permission from the copyright owner when made available in paper format would likewise require the copyright owner's permission when made available in an electronic format.

(b) The fact that one or more individual copyrighted excerpts proposed to be copied and utilized as course material (whether physically or in electronic format) might, viewed in isolation, qualify for fair use protection does not mean that the assembly and offer of multiple excerpts of copyrighted works as part of required or supplemental course readings for a given course so qualify. As a general rule, such anthologizing – whether in the form of paper course packs or electronic course reading materials – requires obtaining permission from the owners of the copyrights in the constituent elements of the anthology.

(c) The fact that particular copyrighted material is being used for the first time in a course does not, by itself, make the use a fair use. This recognition is not

¹ This list is not meant to be exhaustive of the list of undertakings that ultimately may be agreed upon as appropriate in relation to any eventual formal settlement agreement.

altered by the fact of ownership or other lawful possession by a professor or university library of a physical or digital copy of a copyrighted work. Nor is it affected by whatever separate privileges may be conferred on the owner of a copy of a copyrighted work by the so-called "first sale doctrine," or by the fact that a reading is characterized for purposes of course use as supplemental, optional or ancillary (rather than required, assigned or recommended).

(d) The fact that copyrighted material is being used for an educational purpose does not, by itself, make the use a fair use.

(e) Repeated use of excerpts from the same copyrighted works over different academic terms is presumptively not fair use.

4. The State Attorney General's Office additionally supports the following procedures, whereby each state institution under Regents supervision will:

(a) Adopt any revised copyright guidelines resulting from this settlement process.

(b) Advise faculty, students and administrators of the existence of these guidelines, of the importance of adherence to them, and of the consequences of failure to comply.

(c) On an ongoing basis, hold educational/training seminars/fora at which the guidelines are discussed.

(d) Appoint a senior administrator with expertise in copyright law as (a) an ongoing resource to faculty and (b) a screening mechanism to ensure that course packs, electronic course postings, and the like comport with the guidelines and copyright law.

(e) On an ongoing basis, take such measures as may be necessary to ensure that the guidelines are complied with across all platforms: paper course pack offerings, electronic reserves, Blackboard/WebVista postings, faculty or department web pages, and any other such paper or electronic resources employed.

(f) Enable the monitoring by the publishers of compliance with the guidelines.

5. The parties shall promptly discuss, and Georgia State shall adopt, interim measures designed to forestall continued unlicensed copying and distribution of plaintiffs' and other publishers' works of the nature identified in the complaint while settlement talks proceed.

6. In the event a settlement is reached, the plaintiffs shall be reimbursed their reasonable attorneys' fees.

7. The parties will jointly move the Court to stay the Litigation during the Settlement Term, subject to a mutual understanding that settlement discussions are without prejudice to the plaintiffs' right to reactivate the Litigation prior to the expiration of the Settlement Term in the event that satisfactory progress towards an amicable resolution is not being made. The Litigation will automatically reactivate following expiration of the Settlement Term unless the parties jointly request the Court to extend the stay.

8. The parties shall be free to communicate the terms of these understandings publicly.