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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.

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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.

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SHUGART & BISHOP  
Certified Court Reporters  
13 Corporate Square  
Suite 140  
Atlanta, Georgia 30329  
(770) 955-5252

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2  
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24 Also Present: Mary Jo Volkert  
25 Cynthia Hall

Videographer: Kennith Drake

26 - - -

27 (Whereupon, disclosure as required by the  
28 Georgia Board of Court Reporting was made by the  
29 court reporter, a written copy of which is  
30 attached hereto.)

1 THE VIDEOGRAPHER: This will be the  
2 videotaped deposition of Nancy Seamans  
3 taken by the plaintiffs in the matter of  
4 Cambridge University Press, et al. versus  
5 Mark P. Becker in his official capacity as  
6 Georgia State University president, et al.

7 The date is March the 10th, 2009. We  
8 are on the record at 10:15:07.

9 NANCY SEAMANS,

10 being first duly sworn, was examined and testified as  
11 follows:

12 EXAMINATION

13 BY MR. RICH:

14 Q Good morning, Ms. Seamans.

15 A Good morning.

16 Q My name is Bruce Rich. I'm a partner with  
17 the law firm of Weil, Gotshal & Manges, and I will be  
18 asking you some questions today.

19 First, would you state your name and  
20 address for the record, please?

21 A Nancy Seamans, Georgia State University,  
22 University Library, Atlanta, Georgia.

23 Q And have you ever had your deposition taken  
24 before?

25 A No.

1 Q Okay. If there's any aspect of this  
2 process that you don't understand, most particularly  
3 the questions I'm asking you, you can certainly feel  
4 free to seek a clarification. Of course, your  
5 counsel will keep me straight and narrow during the  
6 day today.

7 By whom are you employed, Ms. Seamans?

8 A Georgia State University.

9 Q And what is your position?

10 A I'm the dean of libraries.

11 MR. SCHAEZEL: Bruce, then,  
12 consistent with my obligation to keep us on  
13 the straight and narrow, first of all, the  
14 witness would prefer to read and sign, so  
15 I'd like to get that on the record.

16 And also, as I believe was done in  
17 Mr. Potter -- or Dr. Potter's deposition,  
18 we do intend to try and preserve the  
19 privilege and will from time to time raise  
20 that as appropriate.

21 MR. RICH: Okay.

22 MR. SCHAEZEL: Okay.

23 Q (By Mr. Rich) And when did you your assume  
24 your duties as -- is it dean of libraries?

25 A Yes. August 4th, 2008.

1 Q Congratulations on your new position.

2 A Thank you.

3 Q Prior to that time, I take it you were at  
4 the University of Iowa for a period of time?

5 A I was.

6 Q What was your last position at the  
7 University of Iowa?

8 A Associate university librarian for research  
9 and instructional services.

10 Q And approximately for what period of time  
11 did you hold that position?

12 A Three and a half years.

13 Q And your educational degrees are what?

14 A I have an undergraduate degree in political  
15 science from Virginia Tech. I have a master's degree  
16 in library and information science from UNC Chapel  
17 Hill, and I have a Ph.D. in instructional technology  
18 from Virginia Tech.

19 Q All right. At a general level, could you  
20 describe the duties you had as -- in your last  
21 position at the University of Iowa, please?

22 A Generally, I was responsible for services  
23 provided by the library to the constituent group,  
24 which is primarily (unintelligible).

25 Q And what is encompassed by the term

1 "services provided" to that constituent group?

2 A It was branch libraries, reference, media  
3 services, access services, interlibrary loan.

4 Q Did the university -- what were the various  
5 techniques by which course materials were read by  
6 students at the University of Iowa? How did they  
7 access such materials? What were the span of  
8 options?

9 A The ones that occur to me are accessing  
10 materials by purchasing them, by checking them out of  
11 the library, by using them on reserve, by using them  
12 on electronic reserve, by using them via materials  
13 handed out in a classroom setting. There are  
14 probably others, but that's what is coming to me  
15 quickly.

16 Q And by what techniques did students  
17 purchase -- typically purchase materials?

18 A Through the bookstore.

19 Q And did those purchases -- are you familiar  
20 with a concept called "coursepacks"?

21 A I am.

22 Q What do you understand that term to mean?

23 A Generally to be materials that a faculty  
24 member has determined are critical for instructional  
25 purposes and has arranged to have copied and



1 permissions received and sold to students.

2 Q Was such a practice engaged in by faculty  
3 at the University of Iowa?

4 A I don't know for sure, but I'm assuming so.

5 Q Did any aspect of what you describe as  
6 coursepacks fall within your jurisdiction?

7 A No.

8 Q At any time in your tenure at the  
9 University of Iowa?

10 A No.

11 Q Did your responsibilities while at the  
12 University of Iowa encompass reserve and E-Reserve  
13 usage of materials?

14 A Yes.

15 Q What level of role, involvement, or  
16 supervision did you have with respect to reserve and  
17 E-Reserve usage?

18 A I had a department head who reported to me,  
19 and that person was responsible for all of access  
20 services, which included circulation, interlibrary  
21 loan, reserve, E-Reserve.

22 Q And in relation to E-Reserve practice at  
23 the University of Iowa, did you have occasion to  
24 become familiar with the variety of course offerings  
25 that were scanned, I assume, and made available for

1 student access by the E-Reserve system?

2 A Only generally.

3 Q What was your general understanding of the  
4 nature of such uses of course materials?

5 A That faculty member determined whether or  
6 not supplemental materials were appropriate for the  
7 instructional setting and would make a request to  
8 have them available for their students.

9 Q You used the term "supplementary." Was it  
10 the practice at the University of Iowa that faculty  
11 members would only use E-Reserves for the purpose of  
12 supplementing otherwise required course readings?

13 A Generally, yes.

14 Q And in your experience, what volume of  
15 materials would be placed on E-Reserve? What's the  
16 range of volume that you experienced from low to  
17 high?

18 A I'm sorry, I really don't know.

19 Q Okay. Were you shown any statistics or  
20 received any reports about that sort of practice?

21 A I probably was, but I don't recall what the  
22 numbers were.

23 Q Okay. Now, would you generally describe  
24 your duties and supervisory responsibilities in your  
25 present position as dean of libraries at Georgia

1 State University?

2 A I am responsible for all functioning of the  
3 university library, not to include the law library.  
4 I am not responsible for that. That includes  
5 personnel, budget, collections, development. Those  
6 are probably the key pieces.

7 Q And --

8 A Services, instruction, outreach.

9 Q Pardon me.

10 A Services, instruction, outreach. Give me  
11 time, and I'll keep going.

12 Q I certainly want you to respond completely.  
13 To the extent that faculty and students  
14 utilized one or both of reserve and E-Reserve forms  
15 of access to course materials, what degree of  
16 involvement in those practices does your position  
17 entail?

18 A Very little.

19 Q Any at all?

20 A I am aware of what is going on with that,  
21 but there is a unit head, a department head, an  
22 associate university library, and then me, so it's  
23 several layers removed.

24 Q Can you identify each of those in that  
25 pyramid that you've described, please, by name and

1 title?

2 A Denita Hampton is the head of access  
3 services, and the associate university librarian is  
4 Laura Burtle.

5 Q I'm sorry. Ms. Burtle's title is?

6 A Associate university librarian.

7 Q To the extent that from time to time  
8 Georgia State University policies, with respect to  
9 usage of copyrighted materials by faculty or  
10 students, comes under scrutiny --

11 A Uh-huh.

12 Q -- what is your -- by the nature of your  
13 position, what is your role and responsibility with  
14 respect to the formation, shaping, and promulgation  
15 of such policies?

16 A Policies --

17 MR. SCHAEZEL: Objection as to form.

18 Go ahead.

19 THE WITNESS: Okay.

20 Q (By Mr. Rich) Do you have the question?

21 MR. SCHAEZEL: You can answer.

22 THE WITNESS: The policies in terms of  
23 just reserves?

24 MR. RICH: No, copyright --

25 THE WITNESS: Copyright --

1 MR. RICH: -- compliance generally.

2 THE WITNESS: That has very little to  
3 do with the library because the policy does  
4 not come from the library.

5 Q (By Mr. Rich) To the extent that Georgia  
6 State University at any point in time wishes to  
7 implement policy, for example, Regent policy --

8 A Uh-huh.

9 Q -- and to take steps to provide both  
10 technological and other means for faculty and  
11 students to work within those policies --

12 A Uh-huh.

13 Q -- again, what is your role and supervisory  
14 responsibility with respect to implementation of  
15 those policies?

16 A For the university?

17 Q Yes.

18 A We certainly do take policies that the  
19 university has and abide by them, so we are  
20 implementing policies that the university has in  
21 place and we are trying to work within those.

22 Q And you use the collective "we." For the  
23 moment, I'm trying to isolate out a bit your own  
24 personal --

25 A Okay.

1 Q -- role and responsibility in relation to  
2 implementation of copyright compliance policy.

3 A It would -- I'm very peripherally involved  
4 in that implementation.

5 Q And with respect to Ms. Burtle, is it --

6 A Uh-huh.

7 Q -- how would you describe the extent of her  
8 involvement in such matters, that is, implementation  
9 of policy?

10 A Probably slightly more than mine, but the  
11 policy comes from the university or from the Board of  
12 Regents, so it's how we go about implementing what  
13 they have given us. So she would be more involved  
14 than I would be, Ms. Hampton would be more involved  
15 than she would be, but most of it is trying to figure  
16 out, within the constraints of what the policy is  
17 that we have been given, how we make it work best.

18 Q What is the -- what is Ms. Hampton's  
19 background in terms of training; do you know?

20 A I don't.

21 Q Do you know if she has any special training  
22 in intellectual property matters?

23 A I do not.

24 Q And copyright matters in particular?

25 A I do not.

1 Q Same question with respect to Ms. Burtle.

2 A I do not.

3 Q To your knowledge, is either of them  
4 formally trained in law?

5 A No, not to my knowledge.

6 Q And I take it you do not have formal  
7 training in law?

8 A I do not.

9 Q How would you describe your knowledge of  
10 copyrights?

11 A On-the-job training.

12 Q Consisting of?

13 A Being in libraries and academic libraries  
14 for a number of years and seeing the evolution of  
15 reserve systems going from a paper-based system to an  
16 electronic system and trying to make sure that that  
17 transition is a smooth one, understanding what the  
18 copyright law is to the best of my ability as a  
19 nonlawyer.

20 Q What tools have you used to try to  
21 understand, as a nonlawyer, what copyright law is all  
22 about?

23 A Mostly reading.

24 Q For instance, any particular reading  
25 materials or types of materials come to mind?

1           A       There are a number of books on copyright  
2 law for librarians.

3           Q       And --

4           A       Increasingly, Web sites also provide  
5 material.

6           Q       Since joining Georgia State University this  
7 past August --

8           A       Uh-huh.

9           Q       -- have you had occasion to utilize, for  
10 purposes of reference or further education, any  
11 formal materials relating to copyright law?

12          A       "Formal" being --

13          Q       Published materials.

14          A       -- books, Web sites? Probably more Web  
15 sites than books.

16          Q       All right. The answer --

17          A       Yes.

18          Q       -- is yes?

19          A       Yes.

20          Q       And which would those have been?

21          A       Certainly the Columbia University Web site,  
22 the University of Minnesota Web site, Cornell  
23 University, the University of Washington. I'm sure  
24 there are others, but those are the ones that occur  
25 to me.



1 Q Were there particular reasons that you came  
2 to visit at least the four sites you identified?

3 A Uh-huh. As part of the Regent Select  
4 Committee on Copyright, we were given -- suggested  
5 that we look at a number of pages to review.

6 Q And was Cornell among those?

7 A Yes, I believe it was.

8 Q Did those suggestions come from counsel?

9 MR. SCHAEZEL: Objection. You're  
10 asking for privileged information and  
11 communication from counsel. Can you  
12 rephrase the question?

13 Q (By Mr. Rich) Where did these suggestions  
14 come from?

15 A From the chair -- chair of the committee.

16 Q Okay. In your -- and you have some working  
17 familiarity with the so-called fair use doctrine of  
18 copyright, correct?

19 A I'm familiar with fair use doctrine, yes.

20 Q In the course of your career, not limited  
21 now to Georgia State University, have you had  
22 occasion to think about applications of the fair use  
23 doctrine to day-to-day practice in the university  
24 setting?

25 A Certainly from a library perspective, yes.

1 Q Yes. And does that include during your  
2 tenure at Georgia State University?

3 A Generally, yes.

4 Q Okay. And what kinds of settings would  
5 come up where you would draw upon that learning and  
6 that set of understandings?

7 A Mostly in terms of how it might be  
8 implemented within a library.

9 Q Okay. And I take it you're aware that one  
10 of the elements generally considered in connection  
11 with the fair use doctrine is -- involves the amount  
12 of a particular work that may be excerpted, either as  
13 a percentage of the whole work or in some fashion?  
14 That's a concept you're familiar with, yes?

15 A Yes.

16 Q Have you developed any working  
17 understandings as to whether there is a threshold,  
18 sort of safe harbor --

19 A Uh-huh.

20 Q -- percentage of a work which, if a faculty  
21 member were to utilize, would insulate that use from  
22 any claim of copyright infringement?

23 A No.

24 Q Do you have any understanding as to whether  
25 there is any numerical percentage which acts as a

1 litmus test for determining the safe amount of a work  
2 which may be taken?

3 A It seems to me it would be very hard to  
4 have a numerical amount because each situation is  
5 different. So you would have to look at the given  
6 circumstances to determine that.

7 Q Another element of the fair use doctrine,  
8 I'm sure you know, sometimes called Factor 4,  
9 involves effect on the market for the work which has  
10 been taken. That's a concept you've heard before,  
11 yes?

12 A Yes.

13 Q Do you have a general sense for the dynamic  
14 of that? Again, as a layperson, what's your sense of  
15 how one should think about properly, in the fair use  
16 analysis, that aspect of the fair use test?

17 A It would be a component, my understanding,  
18 not as a lawyer --

19 Q Yes.

20 A -- that if there is an impact on the sale  
21 that would limit the sale or would keep the holder of  
22 copyright from having recompense for the use of that  
23 material, that that would be a factor to consider.

24 Q Have you considered the concept not simply  
25 of potential lost sale, but of a lost license or a

1 lost licensing income stream for that rights holder  
2 as part of that?

3 A Licensing and sale I would be thinking of  
4 in a similar way.

5 Q Okay.

6 A Yes.

7 Q And again, from your study, thinking,  
8 analysis, and reading, have you come to the view that  
9 one or more of the so-called fair use factors has  
10 more importance in the balance than any others?

11 A No. They're all important, all four of  
12 them.

13 Q What is your view of the ability of someone  
14 who has not studied, as you have, much of the  
15 literature on fair use and related -- what's your  
16 view of the ability of such an individual to perform  
17 a meaningful fair use analysis in a given setting?

18 A I believe that by providing any individual  
19 with a tool like the checklist, you are giving a  
20 reasonable person the opportunity to reasonably do  
21 that determination, that that makes them think about  
22 all of those four fair use factors and the components  
23 of the fair use factors. So I believe a reasonable  
24 person could use that tool and make a determination.

25 Q Do you have a view whether for that process

1 to function reasonably, there is also required any  
2 additional context, background setting, or other  
3 information?

4 A Absolutely.

5 Q And what does that include?

6 A It would be that the faculty member has to  
7 know what they are doing within the teaching setting.

8 Q And can you explain a little more what you  
9 mean by that?

10 A The person who can best determine whether a  
11 use is a fair use is the faculty who is teaching the  
12 class and is looking at material and trying to  
13 determine whether or not their use would be a fair  
14 use. They're the ones that know the course, they  
15 know what they're teaching, they know the points  
16 they're trying to make. And so they're best equipped  
17 to make that determination, so it would have to be in  
18 the context of a faculty member and a course.

19 Q Do you believe it to be of any importance  
20 that faculty, say at Georgia State University, who  
21 will be required, as I understand it, to apply the  
22 new fair use checklist, take some courses or attend  
23 some seminars in which more background about context  
24 for copyright law and fair use doctrine is spoken  
25 about?

1           A       Yes.

2           Q       Are you involved in any fashion? Do your  
3 responsibilities involve you, as part of the  
4 implementation of the new Regent policy, in  
5 fashioning such educational tools?

6           A       I have seen the training and I've seen the  
7 educational tools, but I was not involved in creating  
8 them.

9           Q       And when you say you've seen the training,  
10 what specifically are you referencing?

11          A       I attended a training session.

12          Q       And when was that?

13          A       Ten days ago, two weeks ago, three weeks  
14 ago. The policy was approved by the chancellor on  
15 February something, 19th, 17th. And the training we  
16 put into place from legal counsel at the university  
17 took place with the library staff within the next 10  
18 days after that.

19          Q       And can you describe --

20          A       Sometime before the end of February.

21          Q       Can you describe the format of that  
22 training session?

23          A       It was a presentation by one of the  
24 attorneys with a PowerPoint that had material about  
25 the new policy and implementation. And my

1 understanding is that that similar training would be  
2 made available for faculty members.

3 Q This particular one was for members of the  
4 library staff, did you say?

5 A Yes.

6 Q Approximately how many people attended?

7 A Ten.

8 Q And was that mandatory attendance --

9 A Yes.

10 Q -- the list of who was there?

11 A Yes.

12 Q And about how long did the presentation  
13 last?

14 A It was scheduled for an hour and ran over  
15 two.

16 Q Was there a Q&A --

17 A Yes.

18 Q -- portion of it as well?

19 A Yes.

20 Q And was that presentation made by Ms. Hall?

21 A Yes.

22 Q I'm going to show you a document we'll mark  
23 as --

24 MR. RICH: What's the next number?

25 (Discussion off the record.)

1 (Exhibit 17 marked for identification.)

2 Q (By Mr. Rich) Plaintiff's 17, a document  
3 bearing production Bates Nos. 21120 to 21148 titled  
4 "Copyright in Instruction & the New USG Copyright  
5 Policy," apparently authored by Cynthia V. Hall,  
6 Office of Legal Affairs, Georgia State University,  
7 dated January 23, 2009.

8 Do you recognize this to be the PowerPoint  
9 presentation you were just referring to?

10 A Without recalling --

11 Q Appear -- does this appear to be?

12 A This appears to be, yes.

13 Q Okay. Did you have any input in the  
14 creation of this document?

15 A No.

16 Q You first were exposed to it when it was  
17 presented?

18 A Yes.

19 Q Okay. Do you have any knowledge how this  
20 document came to be prepared, other than what appears  
21 to be obvious, that Ms. Hall had a significant hand  
22 in its preparation?

23 A And that much of it is from the new policy.

24 Q Any other understanding about how this --

25 A No.



1 Q -- was composed?

2 Did you ever have occasion to see any prior  
3 iterations of this PowerPoint or drafts of it?

4 A No.

5 Q If you would turn to the page  
6 Bates-numbered 21128, please. It indicates that -- I  
7 take it the broad reference to "USG Copyright Policy"  
8 is to the newly promulgated policy coming out of the  
9 committee work of which you were a part?

10 A Yes.

11 Q Okay. And the first bullet here by  
12 Ms. Hall indicates, "Inform and educate students,  
13 faculty, and staff on copyright."

14 A Uh-huh.

15 Q What did you understand that to say and  
16 what is your recollection of how Ms. Hall described  
17 that activity?

18 A That there would be a training opportunity  
19 for all faculty as part of the implementation of the  
20 policy.

21 Q And do you have an understanding whether  
22 that's an optional training for faculty, whether it's  
23 mandatory for some or all faculty?

24 A I do not know.

25 Q And the next bullet says, "Tools to assist

1 in copyright and fair use analysis (see fair use  
2 checklist)."

3 A Uh-huh.

4 Q Did you understand this or did Ms. Hall  
5 describe this as involving tools beyond resort to the  
6 fair use checklist?

7 A I believe the sense was that the Web site  
8 that is currently up includes additional information  
9 that faculty particularly could use in determining  
10 what fair use is and what materials might be covered  
11 by fair use, what you might not need permission for,  
12 that kind of thing. So the one specific tool is the  
13 checklist, but I think we see -- we heard that the  
14 entire Web site was a -- was, in a way, a tool.

15 Q And do you have any understanding on that  
16 subject, whether the preexisting Regents Guide --

17 A Uh-huh.

18 Q -- dating back to 1997 is intended to be a  
19 tool continuing to be available as a resource for  
20 people trying to understand copyright law within the  
21 University System?

22 A No.

23 Q No, you don't? No meaning --

24 A No, I do not think it is intended as a  
25 tool.

1 Q It's to be discontinued as a resource?

2 A It is a historical document, which I hope  
3 will be preserved, but I do not feel that it is  
4 intended to be used as a tool.

5 Q And what is your understanding as to the  
6 reason that it is being relegated to a historical  
7 document?

8 A Because there is a new policy in place.

9 Q And do you view the new policy as  
10 modifying, in one or more particulars, the guidance  
11 that was provided by the prior Regent Guide?

12 A Yes.

13 Q And in what particulars would you describe  
14 the new policy as diverging from the old?

15 A The first piece that to me is most  
16 interesting is that the former -- the Regents Guide  
17 was a guide, and what we now have is a policy. My  
18 sense is that a guide makes suggestions to people  
19 about how they might proceed, and a policy mandates  
20 that they must proceed in a certain way.

21 Q So --

22 A So I think they're --

23 Q I'm sorry, go ahead.

24 A I think they're very, very different in  
25 terms of implementation.

1 Q Could we explore that just for a couple of  
2 minutes so I understand your conception of that?

3 A Uh-huh.

4 Q What did you -- so I take it your  
5 understanding of the preceding guide was to give, for  
6 lack of a better word, guidance?

7 A Uh-huh.

8 Q But when you say it wasn't -- it wasn't  
9 mandated to be followed, is that your perspective?

10 A (Witness nods head affirmatively.)

11 Q And by that, you mean by each of the 35  
12 institutions within the University System?

13 A There's a difference between a policy and a  
14 guide. I mean, a guide is something that is a  
15 general understanding, something that provides, as  
16 you said, guidance. And a policy is, "Here is our  
17 policy and you will follow it." And this may be a  
18 peculiarity of academia, but there's a very distinct  
19 difference between a policy and a guide.

20 Q Okay. I interrupted you in sort of  
21 listing --

22 A Uh-huh.

23 Q -- changes that you thought were salient.  
24 Please continue.

25 A That with a policy, there is language in

1 that policy of what faculty must do. And with  
2 certain constraints provided, I think if you look at  
3 the policy, it tells people how to act, in a way.

4 Q In terms of substantive advice in terms of  
5 applying copyright and fair use principles --

6 A Uh-huh.

7 Q -- to particular applications, did you come  
8 to be of the view that the new superseding policy  
9 diverges in one or more particulars from the advice  
10 contained in the prior Regent Guide?

11 A I am not familiar enough with the prior  
12 guide to comment on that.

13 Q Did you have any occasion during the  
14 deliberations of the recent committee to look at  
15 draft materials, which I believe may have been  
16 circulated to the entire committee, in which some of  
17 the so-called scenarios which were contained in the  
18 1997 Regent Guide were republished for the  
19 committee's consideration, and in certain cases, I'll  
20 represent to you, certain modifications were made in  
21 the proposed analysis of the circumstances presented?  
22 Do you recall being exposed to that material?

23 A Yes.

24 Q And were you part of any committee  
25 discussions concerning those scenarios?

1           A       The discussion was that they were too tied  
2 to the former guide and that they would just be  
3 confusing to people if we included them in the new  
4 policy. So we didn't look at them closely.

5           Q       And what was the opportunity for confusion?

6           A       That they were two separate documents, and  
7 that by pulling pieces from one document into another  
8 one, it would just confuse users, and that we should  
9 leave one as a historical document and not try to  
10 modify it.

11          Q       Was there any consideration given to  
12 supplementing the current policy with those kinds of  
13 examples?

14               MR. SCHAEZEL: Objection as to form.

15               Can you answer that without divulging  
16 any attorney-client communication that --

17               MR. RICH: Yes, I don't want you to.

18               Thank you.

19               MR. SCHAEZEL: If you can -- and we  
20 can have the question read back so that you  
21 can hear it again, then we'll be pleased to  
22 answer it. Otherwise, I need to know if  
23 you would have to divulge communications at  
24 the hearing --

25               THE WITNESS: Can I hear the

1 question --

2 MR. SCHAEZEL: -- or at the committee  
3 meeting, excuse me.

4 (Record read.)

5 MR. RICH: Let me add whether the  
6 committee received legal advice as to the  
7 advisability of doing that or not, but  
8 rather, separate from that, there was any  
9 consideration to the advisability of  
10 incorporating those kinds of examples in  
11 the final policy.

12 MR. SCHAEZEL: Before you answer, I'd  
13 like for her to be able to answer the  
14 question. And I appreciate the distinction  
15 that you're trying to draw. What I would  
16 ask is, are we in agreement that by  
17 answering this question, we will have --

18 MR. RICH: Yes.

19 MR. SCHAEZEL: -- not acted --

20 MR. RICH: Yes.

21 MR. SCHAEZEL: -- in any way to waive  
22 the privilege --

23 MR. RICH: Yes.

24 MR. SCHAEZEL: -- so that -- okay.  
25 You might want to have the question read

1 back again after all this, but just --  
2 let's try and answer it as best we can.

3 (Record read.)

4 THE WITNESS: Yes.

5 Q (By Mr. Rich) And what was the nature of  
6 the discussion of it?

7 A One of the Web sites that we reviewed --  
8 and I'm sorry, I can't remember which institution --  
9 had provided some examples, and there was discussion  
10 of whether or not that was a good model to follow.  
11 The decision was made not to.

12 Q Did you have a point of view?

13 A No.

14 Q And the gist of the reasoning carried today  
15 as to not including it was -- apart from any legal  
16 input was what?

17 MR. SCHAE TZEL: Objection. I'm not  
18 sure that those two can be separated out --

19 MR. RICH: If they can.

20 MR. SCHAE TZEL: -- that easily.

21 MR. RICH: If they can.

22 MR. SCHAE TZEL: And objection, asked  
23 and answered, but go ahead.

24 THE WITNESS: Can I have the question  
25 again? I'm sorry.



1 (Record read.)

2 THE WITNESS: I don't have a sense of  
3 which way it went, no.

4 Q (By Mr. Rich) My -- several questions  
5 back, my sort of topic sentence question or topic  
6 paragraph question was, did you perceive there to be  
7 changes implemented in the policy or differences from  
8 the preexisting guide? You answered yes, and I had  
9 asked you to start listing them, and one was -- one  
10 was a guide --

11 A Uh-huh.

12 Q -- and one was a policy, yes?

13 A Uh-huh.

14 Q And I didn't mean to interrupt your list if  
15 there are other changes that you felt were important  
16 to point out.

17 A And again, I am not familiar enough with  
18 the original guide to make comparisons.

19 Q Are there any other things that come to  
20 mind that you think are salient distinctions  
21 substantively or procedurally from the prior guide?

22 A Not that I'm thinking of right now.

23 Q The third bullet on the page 21128 of  
24 Exhibit 17 says, "Facilitates use of materials  
25 currently licensed and provide information on

1 licensing."

2           What is your understanding and recollection  
3 as to what that is a reference to?

4           A       The library does -- excuse me, does have  
5 licensed material, and we would be involved in trying  
6 to make sure that faculty are aware of what we have  
7 licensed and what they can use without having to make  
8 any kind of fair use determination.

9           Q       So if I understand your answer, the policy  
10 contemplates first checking to see whether there  
11 exists license arrangements with respect to the  
12 materials proposed to be used; if so, that obviates a  
13 fair use analysis as to such materials, is that  
14 correct?

15           A       Yes.

16           MR. SCHAEZEL: Objection as to form.

17           Q       (By Mr. Rich) The last bullet is,  
18 "Individuals to counsel faculty and staff (Office of  
19 Legal Affairs, others)." What is your understanding  
20 of the meaning of that?

21           A       That should faculty and staff have  
22 questions, they have a resource in the Office of  
23 Legal Affairs.

24           Q       And were individuals identified as being  
25 that resource?

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           A       I don't believe it explicitly addresses  
2 that, but for implementation purposes, they would  
3 have to resubmit the request --

4           Q       You would --

5           A       -- and do the --

6           Q       Pardon me.

7           A       -- and do the analysis.

8           Q       And was that topic covered at this seminar?

9           A       Yes.

10          Q       What was said about it, just what you said?

11          A       (Witness nods head affirmatively.)

12          Q       Is there any presumption either favoring or  
13 disfavoring use in sequential semesters of the same  
14 material under the policy?

15          A       It would have to be determined by the fair  
16 use analysis, so the faculty member would have to go  
17 through the same steps, so no presumption either way.

18          Q       Turn to page 21146, "Copyright Myths."

19          A       Uh-huh.

20          Q       Did Ms. Hall cover this in her  
21 presentation?

22          A       She did.

23          Q       Second bullet says one of the myths is, "It  
24 is legal to copy as long as you don't copy the  
25 entirety (more than 25 percent, 20 percent, 10

1 percent, etc.) of the work."

2 Was there more conversation around this at  
3 the seminar, either in terms of how Ms. Hall  
4 presented this concept or from the feedback from the  
5 group?

6 A I believe there probably was. I'm not  
7 recalling specifically, but it's -- I'm guessing  
8 that -- as I'm thinking back, that there was more  
9 discussion of this, yes.

10 Q Can you recall any specifics about it?

11 A No, except that the idea that there is any  
12 percentage that you can attach and that makes it  
13 right or wrong was debunked as part of this  
14 discussion.

15 Q Was this lawsuit discussed during this  
16 presentation?

17 A Not that I recall.

18 Q Was any linkage between this lawsuit and  
19 the new policy discussed at this seminar?

20 A Not that I recall.

21 Q By the way, how did you prepare for today's  
22 deposition?

23 A I read the policy and I attended the  
24 session with Steve last Friday.

25 Q A preparation session?

1 A Preparation session.

2 Q And did you receive any kind of a briefing  
3 as to yesterday's deposition?

4 MR. SCHAEZEL: Objection as to form.  
5 That would be asking for communication  
6 between client --

7 MR. RICH: I'm only asking for yes or  
8 no.

9 MR. SCHAEZEL: Yeah, but that  
10 would -- no, it would go into -- whether or  
11 not any conversation occurred would go into  
12 whether or not we determined it  
13 substantial, or that would reflect our  
14 mental process in determining whether or  
15 not we thought it was substantial enough  
16 that we needed to talk with her about it.

17 Q (By Mr. Rich) In preparing for today, did  
18 you read any portion of yesterday's deposition  
19 transcript?

20 A No.

21 Q Okay.

22 MR. RICH: And you're suggesting that  
23 if I ask her if she was advised as to any  
24 of the questions or answers given  
25 yesterday, without identifying which ones,



1 you're not going to let her answer that?

2 MR. SCHAEZEL: I'm suggesting that  
3 that question asks for communications  
4 between client and counsel.

5 MR. RICH: No, I'm not asking her -- I  
6 would agree with you if I said, "What  
7 topics did your counsel go through with you  
8 yesterday that he or she thought was  
9 relevant to yesterday's session?" I  
10 wouldn't ask it because I wouldn't think it  
11 would be a proper question because that's  
12 privileged.

13 But I disagree that asking simply  
14 whether, as part of your preparation, you  
15 were advised as to certain of the questions  
16 propounded and certain of the answers  
17 given, without telling me which ones, at  
18 yesterday's deposition. That's all I'm  
19 asking. That calls for a yes or no.

20 MR. SCHAEZEL: The fact that it calls  
21 for a yes or no isn't determinative of the  
22 inquiry. Okay, I think I've heard now at  
23 least two -- what is your question? Put  
24 the question on the table so that I can  
25 determine an answer. What is your

1 question, Bruce, and --

2 Q (By Mr. Rich) As part of the preparation  
3 for your deposition, were you advised as to certain  
4 of the questions I asked yesterday of Mr. Potter and  
5 certain of the answers he provided? I'm just asking  
6 for a yes or no.

7 MR. SCHAEZEL: And that question  
8 calls for the substance of the  
9 communication between the client and  
10 counsel. I don't see how I can allow her  
11 to answer that question.

12 MR. RICH: I completely disagree with  
13 that. I'm entitled to know how this  
14 witness's knowledge was either gained or  
15 refreshed or otherwise embellished by any  
16 access to anything, whether it's -- you  
17 know, if I show her a particular document,  
18 I think you would agree I can ask her if  
19 she was shown that document during her  
20 preparation. That would be completely  
21 acceptable, as opposed to tell me all the  
22 documents you reviewed to prepare for your  
23 deposition, that would not be proper.

24 But otherwise, it's just fundamental  
25 for the Federal Rules of Evidence that I'm

1 entitled to know if she had her  
2 recollection refreshed in any way by, you  
3 know, information of that sort. That's  
4 just the fundamental, you know, basic rules  
5 of evidence.

6 MR. SCHAEZEL: I think I have a  
7 understanding of the rules of evidence, and  
8 we evidently have a disagreement about what  
9 is there. But in order to get us by this,  
10 if you'll agree that we're not waiving the  
11 privilege by having her answer this  
12 question, then I'll allow her to answer  
13 this one yes-or-no question and we'll take  
14 on -- we'll see what --

15 MR. RICH: No, I've indicated I wasn't  
16 going to ask beyond the yes or no in this.

17 Q (By Mr. Rich) So with that long  
18 colloquy...

19 A No, I was not told about specific questions  
20 that were asked, nor about specific answers that were  
21 given.

22 Q Thank you.

23 Are you familiar with an organization known  
24 as the Copyright Clearance Center?

25 A Yes.

1 Q How do you know about CCC?

2 A It has been around for years, and it is  
3 available to provide support for people trying to use  
4 copyrighted materials. And at some point in my  
5 career, I talked with them about using their services  
6 for a library that I was managing.

7 Q And when was that and where was that?

8 A It was in Roanoke, Virginia, and it was 20  
9 years ago.

10 Q And do you remember the form of license you  
11 were exploring with CCC --

12 A No.

13 Q -- at that point in time?

14 A No.

15 Q And did it culminate in a license  
16 arrangement?

17 A No.

18 Q In that interim since that 20-year-ago  
19 exposure to CCC, have you had other interaction with  
20 CCC?

21 A No.

22 Q Do you have any idea the extent to which  
23 other library staff at Georgia State University have,  
24 say in the past two years, had interactions with CCC?

25 A Not explicitly, no.

1 Q Not explicitly?

2 A Right.

3 Q I don't -- is there an implicit answer  
4 that's lurking?

5 A Probably so. My understanding is that CCC  
6 was contacted about a license and declined to make  
7 any proposal.

8 Q What's the basis for your understanding?

9 A Hearing it from someone. And I'm sorry, I  
10 don't recall who it was that told me that.

11 Q Do you know any more detail than what  
12 you've described?

13 A No. And I don't have a time frame for the  
14 question, though I believe it was after the lawsuit  
15 had been filed.

16 Q Okay. We talked briefly earlier about  
17 coursepacks, and you identified your understanding of  
18 that and we chatted very briefly about the practice  
19 at the University of Iowa.

20 Have you gained an understanding of the  
21 extent to which coursepacks are a source of providing  
22 students with reading materials on the Georgia State  
23 University campus?

24 A I don't know details, but would assume that  
25 coursepacks are available for purchase when a faculty

1 member has created one.

2 Q What is your understanding about the  
3 process by which coursepacks are made available for  
4 student purchase on this campus?

5 A I don't know details about what is done,  
6 but would assume it's the same as on most campuses,  
7 which is the permission is received, the copies are  
8 made, they are taken to the bookstore, and they're  
9 sold.

10 Q And is it your understanding that that  
11 occurs through a university bookstore, as opposed to  
12 an off -- an off-campus copy shop, for example?

13 A I don't know.

14 Q Okay. Okay. And are those activities at  
15 all within your province?

16 A No.

17 Q Who supervises, if anyone, coursepack  
18 practice, as it were, at GSU?

19 A My understanding was that it was initially  
20 done by an employee of the instructional -- the  
21 campus IT unit. And whether that's still the case,  
22 I'm not sure.

23 Q Respecting the new policy we've been  
24 talking about off and on and we'll talk a lot more  
25 about --

1 A Uh-huh.

2 Q -- what is your understanding about the  
3 applicability of the guidance provided and indeed of  
4 the checklist --

5 A Uh-huh.

6 Q -- to the creation of coursepacks?

7 A There's no link. A coursepack is a -- is  
8 like a textbook that is created and sold, and so  
9 there's not a need to -- I mean, you must get  
10 copyright permission to make the copies and to sell  
11 them.

12 Q And why is it that you have that  
13 understanding that the copyright law would require  
14 that? Is it because what has been created is  
15 tantamount to a textbook?

16 MR. SCHAEZEL: Objection as to  
17 form.

18 Q (By Mr. Rich) You can answer.

19 A It's that it's required material for a  
20 class, as opposed to supplemental material, and  
21 students are required to purchase it for that course.

22 Q So -- just so I'm clear, if a professor  
23 takes 20 excerpts of copyrighted materials, a chapter  
24 from a particular work, a journal article from  
25 journal issues, assembles it physically --

1 A Uh-huh.

2 Q -- into a coursepack and it becomes the  
3 required reading for that course, that's it, and if I  
4 had one, you know, I'd stack it up here, okay --

5 A Uh-huh.

6 Q -- that's it, takes it to the university  
7 bookstore, your understanding is that university  
8 policy would require that professor to obtain  
9 permissions with respect to the constituent elements;  
10 is that correct?

11 A If it is going to be sold in the bookstore,  
12 yes.

13 Q Yes, and that's because, again -- and  
14 that's irrespective of the size of any of the  
15 individual components that together create this  
16 textbook, as you describe it?

17 MR. SCHAEZEL: Objection as to form.

18 THE WITNESS: Irrespective of the  
19 size.

20 MR. RICH: Yeah.

21 Q (By Mr. Rich) Do you have any idea -- has  
22 anyone, to your knowledge, maintained records of the  
23 permissions fees that are paid associated with the  
24 creation of these coursepacks on the GSU campus?

25 A I don't know.



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 In that circumstance, where would the money  
2 come from for the faculty member to make the required  
3 permission payment?

4 A I don't know.

5 Q Is that something you've given any  
6 consideration to?

7 A Yes.

8 Q What has your thought been on that?

9 A I'm in the process of cutting a million  
10 dollars from my operating budget, and it's painful to  
11 have to do that; and at the same time, if we had  
12 faculty members who needed help to get permission, I  
13 would try to find the money to do that.

14 Q And are you --

15 A Financial support.

16 Q As part of your budgeting process, are you  
17 intending to earmark, however difficult it may be,  
18 some funds for that purpose specifically?

19 A Not specifically, no.

20 Q So you would just scratch and claw and try  
21 to find the money?

22 A That's what we're doing with everything  
23 else, yes.

24 Q Did the committee of which you were a  
25 member give consideration to this issue, namely the

1 financial impact of this or the funding aspect of  
2 this process insofar as the outcome might generate  
3 the need to secure permissions?

4 MR. SCHAEZEL: Objection as to  
5 form.

6 THE WITNESS: Not that I'm recalling,  
7 though there was discussion of how  
8 different campuses would be reacting,  
9 responding to the policy.

10 Q (By Mr. Rich) And in particular, what was  
11 the nature of that discussion?

12 A Just that there would be different ways  
13 that each campus would have to address how to  
14 implement the policy.

15 Q Including --

16 A Not --

17 Q -- finding permissions --

18 A -- not explicitly financial, not explicitly  
19 financial.

20 Q I see. And did that issue, namely the --  
21 where the money would come from to secure  
22 permissions, come up as part of Ms. Hall's late  
23 February presentation to the library staff?

24 A Not that I recall.

25 Q Have you done any estimates, formal or

1 informal, as to the amount that might reasonably be  
2 required during any academic term to cover  
3 permissions payments in respect of E-Reserve usage?

4 A No.

5 Q You have no sense of that at all?

6 A No.

7 Q What's your annual library budget?

8 A Eleven million.

9 Q Pre the million-dollar cut?

10 A Right.

11 Q And is there a fiscal year on which GSU  
12 operates?

13 A July 1 through June 30.

14 Q And what is -- to the extent you know  
15 these, and certainly estimates are fine, what's the  
16 size of the student body of GSU?

17 A 24,000 FTE.

18 Q Is that graduate and undergraduate?

19 A Yes.

20 Q Do you know the approximate breakdown  
21 between the two categories?

22 A No.

23 Q And do you have a sense of the size of the  
24 faculty?

25 A Around 1,200, I believe.

1 Q And are all of those full-time?

2 A I don't know.

3 Q Is it a practice on Georgia State  
4 University campus to have graduate students teaching  
5 courses or sections of courses from time to time?

6 A I assume so, yes.

7 Q And does Georgia State, to your knowledge,  
8 employ adjunct faculty from time to time?

9 A I assume so.

10 Q Other types of teaching assistance, are you  
11 aware of that?

12 A I don't know.

13 Q And again, at a general level -- strike  
14 that.

15 Are different undergraduate degrees  
16 conferred, or is there a single degree that every  
17 undergraduate student earns from Georgia State?

18 A I don't know.

19 Q Do you know any of the degrees that are  
20 offered, whether for everybody or for only some?

21 A I don't know.

22 Q Are there Ph.D. programs at Georgia State  
23 University?

24 A Yes.

25 Q And what disciplines do they span?

1           A       Arts and sciences, business, public policy,  
2 health sciences, law school.

3           Q       I take it from your earlier answer that the  
4 scope of your activities as dean of libraries  
5 encompasses collections and the like with respect to  
6 each of the degree programs and offerings you  
7 mentioned, other than the law school; is that  
8 correct?

9           A       Yes.

10          Q       Okay. Is that a matter of historic  
11 function, that the law school is carved out from the  
12 scope of responsibilities of the --

13          A       I don't know.

14          Q       -- dean of libraries?

15                 Who is your analog, if there is one, with  
16 respect to the law school?

17          A       There is a director of the law library.

18          Q       Named?

19          A       Nancy Johnson.

20          Q       Could you describe the academic calendar at  
21 the Georgia State University? When do the terms  
22 begin and end, roughly, by month?

23          A       Fall semester begins in August and ends in  
24 December, Spring semester begins in January and ends  
25 in late April, early May. There are -- there's a

1 Maymester that's a short-term summer session, and  
2 then there's a summer school.

3 Q And how long does the Maymester actually  
4 run?

5 A Three weeks, I believe.

6 Q Do you know that the -- the tuition that an  
7 in-state student pays today, undergraduate?

8 A I do not.

9 Q So I take it you don't know what an  
10 out-of-state student --

11 A No.

12 Q -- would pay today?

13 A More.

14 Q Of the \$11 million library budget --

15 A Uh-huh.

16 Q -- is there a line item covering acquiring  
17 licenses to STM or other journal publications to the  
18 extent such licenses are available?

19 A To the -- so subscriptions?

20 Q Yes.

21 A Yes.

22 Q And as part of those subscriptions, to your  
23 knowledge, are licenses provided by at least certain  
24 publishers allowing various forms of digital or  
25 electronic usage or sharing of the journals?

1           A       Yes.

2           Q       And how prevalent are those licenses, say  
3 as -- either in absolute number terms or as a  
4 percentage of the subscriptions that you carry?

5           A       I don't know.

6           Q       Have you -- do you have personal  
7 involvement -- have you had personal involvement,  
8 since coming to Georgia State, in negotiating terms  
9 of any of those licenses?

10          A       No.

11          Q       Whose responsibility is that?

12          A       The original -- the initial contract comes  
13 to the library, and it is then turned over to the  
14 Office of Legal Affairs to review.

15          Q       Have you had involvement in those types of  
16 licensing transactions prior to coming to Georgia  
17 State?

18          A       No.

19          Q       Have you ever seen any of those licenses?

20          A       Probably so, but I can't remember  
21 explicitly.

22          Q       When did you first become aware of this  
23 lawsuit?

24          A       April of 2008. And I'm going to guess it  
25 was April 17th, 18th, 19th, because it was whatever



1 morning the lawsuit was first made public.

2 Q How were you informed about it?

3 A I was talking to the provost on the phone  
4 about whether or not to accept the position here and  
5 he said, "We've been sued."

6 Q We've been -- he said, "We've been sued"?

7 A "You might want to look at the New York  
8 Times."

9 Q Did you have occasion to have subsequent  
10 discussions with the provost about the lawsuit?

11 A Very generally, yes.

12 Q Is this Mr. Henry?

13 A Yes.

14 Q And what was the general nature of those  
15 discussions at the time?

16 A Just that it happened and that he was not  
17 aware of what the circumstances were that had led to  
18 it and what he thought might happen in terms of how  
19 it would play out.

20 Q And what did he indicate he thought would  
21 happen as to how it might play out?

22 A That it would be resolved quickly.

23 Q Did he explain why he believed that?

24 A No. I think he was trying to hire me.

25 Q Did Mr. Henry indicate any form of

1 investigation that was going to be made concerning  
2 any of the allegations of the case?

3 A No.

4 Q Did you subsequently become aware of any  
5 investigations that were made about the allegations  
6 as to the copying practices that are cited in the  
7 complaint?

8 A No.

9 MR. SCHAEZEL: Objection as to form.

10 Q (By Mr. Rich) Did you ever have a chance  
11 to read either the original complaint or the amended  
12 complaint that was --

13 A Yes.

14 Q When did you do that?

15 A Sometime after April 18th, when it was made  
16 available online.

17 Q But prior to assuming your duties at  
18 Georgia State University?

19 A Yes.

20 Q Have you had any involvement in any aspect  
21 of the litigation, in relation to the defense of the  
22 litigation, since arriving at Georgia State, other  
23 than appearing today for your deposition?

24 A No.

25 Q Have you attended any meetings, other than

1 involving legal counsel, inside or outside, in which  
2 you and any colleagues have discussed the substance  
3 of the litigation?

4 A Yes.

5 Q Please describe any of those meetings.

6 A In almost any library community where  
7 people are aware that I am employed at Georgia State,  
8 the question of the lawsuit comes up.

9 Q And what do you tend to say when they ask  
10 you about the lawsuit?

11 A "I can't talk about it."

12 Q What is your understanding of the essence  
13 of the lawsuit? What's the essential complaint you  
14 understand of the publishers?

15 A That the Regents Guide -- the  
16 implementation of the Regents Guide at Georgia State  
17 University is in violation of copyright law.

18 Q Do you have any more specific understanding  
19 of the respects in which it's contended the copyright  
20 law is being violated?

21 A No.

22 Q Did you have occasion to consider -- from  
23 the examples cited in the complaint and in the  
24 exhibit to the complaint, did you have occasion to  
25 form a judgment, from your knowledge of copyright law

1 and your working with copyright law, as to the  
2 reasonableness of the contentions that the works  
3 cited exceeded fair use boundaries?

4 A No, because it seemed to hinge so much on  
5 the Regents Guide, which is -- seems to be different  
6 from the way many states have looked at how to  
7 implement copyright law.

8 Q I don't quite follow that answer.

9 MR. RICH: Can I hear the witness's  
10 answer back?

11 (Record read.)

12 Q (By Mr. Rich) Do I understand you to be  
13 saying that the proper way, as you think about it, to  
14 evaluate the claims of the complaint is to compare  
15 that practice against the Regent Guide, guidelines,  
16 to determine lawfulness, or am I misunderstanding  
17 your testimony?

18 MR. SCHAEZEL: Objection as to form.

19 THE WITNESS: The Regents Guide is  
20 what people have used to implement the  
21 policy, so that's what you use to implement  
22 the policy.

23 Q (By Mr. Rich) If, just for the sake of my  
24 question --

25 A Uh-huh.

1 Q -- one or more aspects of the Regent Guide  
2 were found by a court to be improper advice or  
3 provide inadequate guidance as to copyright values,  
4 do you have an understanding whether, if Georgia  
5 State followed those guides, even if those guides  
6 were by some court determined to be inappropriate in  
7 one or more particulars, that Georgia State's conduct  
8 therefore is innocent legally?

9 A I don't know.

10 MR. SCHAEZEL: Objection as to  
11 form.

12 Q (By Mr. Rich) You don't have a view?

13 A I'm sorry?

14 Q You don't have a view?

15 A I don't know.

16 Q You don't know.

17 In working with the committee process that  
18 just concluded, did you come to have an understanding  
19 whether the principal objective was to create a set  
20 of procedures that seemed reasonable, or did you come  
21 to a further conclusion that that isn't sufficient,  
22 that even following those procedures, it's important  
23 that the result itself comply with the copyright law?  
24 Do you understand my question?

25 A There seemed to be two of them there,

1 but...

2 Q All right, I'm sorry.

3 MR. SCHAEZEL: Objection as to form.

4 And to the extent you can answer the  
5 question without revealing communications  
6 at the -- that are privileged at the  
7 committee meeting, please try and answer  
8 whichever question you think is on the  
9 table.

10 THE WITNESS: It -- one of them was  
11 what the primary purpose was --

12 MR. RICH: Yes.

13 THE WITNESS: -- and the primary  
14 purpose, I believe, was to develop a  
15 policy, so not that the procedure was an  
16 important component of that, but that the  
17 policy was the piece that was most  
18 important.

19 Q (By Mr. Rich) Let me take an extreme  
20 example just to finish this line of questioning.  
21 Let's assume that a professor went through the  
22 checklist --

23 A Okay.

24 Q -- and to the best of that professor's  
25 ability and judgment, made decisions that taking 90

1 percent of several works was central to the  
2 pedagogical purpose of the course, was not a greater  
3 taking than absolutely necessary to achieve purposes,  
4 didn't believe it would hurt the market for the work,  
5 et cetera, so did his best --

6 A Uh-huh.

7 Q -- but came out with what other people  
8 might look at and say, "That's a very generous taking  
9 under copyright."

10 A Uh-huh.

11 Q Would that outcome trouble you?

12 A No. Because I would assume that there  
13 would also be the times when the determination would  
14 be made that it was not a fair use, when actually it  
15 was; and so there's actually, ultimately, a balance  
16 between when people make the wrong decision on either  
17 side.

18 Q That's a bit of a systemic look at this  
19 practice, you're saying?

20 A Uh-huh. And it's a very subjective  
21 determination. And I think it's just that you take  
22 all of the information, as a faculty member, that you  
23 have at hand and you make your determination and  
24 proceed.

25 Q What procedures, if any, exist or are

1 contemplated to create some degree of uniformity in  
2 outcomes in applying the fair use checklist to  
3 particularized works?

4 A What I'm --

5 Q Let's start within Georgia State  
6 University.

7 A What I am aware of within Georgia State  
8 University is the training that we've talked about  
9 that faculty will be going through.

10 (Mr. Krugman entered the proceedings.)

11 MR. RICH: That's Mr. Krugman here.

12 Hi, Edward.

13 Q (By Mr. Rich) And would you give the same  
14 answer across institutions within the University  
15 System --

16 A I don't know.

17 Q -- to see if there's some uniformity?

18 A I don't know.

19 Q As a practical matter, what is your  
20 expectation -- investing as many as potentially 1200  
21 faculty members, give or take, with the judgment to  
22 work through these checklists, what's your judgment  
23 about the variation in practice that will result?

24 A I don't know.

25 Q Was that something that your committee



1 thought about?

2 MR. SCHAEZEL: Objection to the form.

3 You're asking now for communications

4 between committee members --

5 MR. RICH: Yeah.

6 MR. SCHAEZEL: -- as to that --

7 MR. RICH: Yeah.

8 MR. SCHAEZEL: As you know, we've

9 asserted the privilege for that. Can you

10 rephrase that question?

11 Q (By Mr. Rich) Let me ask you first: Does

12 that concern you at some level, that is, delegating

13 essentially the fair use determination to so many

14 individual faculty members?

15 A I think it's exactly appropriate to put it

16 in the hands of the faculty member. They're the only

17 person who can make the determination.

18 Q And apart from training vehicles and the

19 ability of what you called, I think, technical

20 technicians --

21 A Uh-huh.

22 Q -- to reject what they might regard as

23 extreme cases of application of the checklists --

24 A Uh-huh.

25 Q -- for example, an entire work, yes, you

1 don't believe it appropriate -- I should say you --  
2 let's go to you, you don't believe it appropriate  
3 that there be any other oversight given to these  
4 determinations of the faculty?

5 A I don't think so, no.

6 Q And in all events, none is contemplated  
7 presently; is that correct?

8 A Not to my knowledge.

9 Q Okay. Did you have occasion to discuss  
10 this lawsuit with Charlene Hurt, whether before her  
11 retirement or since?

12 A Yes.

13 Q Please describe the nature of those  
14 conversations.

15 A It was a brief telephone conversation where  
16 she said that the suit had been filed and that there  
17 was information about it that I could look at online  
18 with the actual filing, and that legal counsel was  
19 involved and the attorney general's office was  
20 involved.

21 Q After arriving at GSU in August of 2008,  
22 did you do -- did you personally take any steps to  
23 familiarize yourself with the nature and  
24 extensiveness of the course offerings by the  
25 E-Reserve system?

1           A     No.

2           Q     Did anyone come and brief you on that  
3 subject?

4           A     No.

5           Q     Do you receive periodic reports on that  
6 topic?

7           A     No.

8           Q     Does anyone on the library team perform any  
9 of those --

10          A     I don't know.

11          Q     With respect to the 1997 Regents  
12 guidelines, since coming to GSU have you formed a  
13 judgment as to the degree to which the framework and  
14 recommendations of the guide have actually been  
15 followed by faculty in connection with E-Reserve's  
16 postings?

17          A     No.

18          Q     To your knowledge, has anybody on the  
19 library staff made it a part of his or her duties to  
20 ascertain the degree of which the implementation of  
21 the E-Reserves process comports with then-prevailing  
22 copyright guidelines?

23          A     I don't know.

24          Q     Is anyone assigned to perform that  
25 function?

1 A I don't know.

2 (Discussion off the record.)

3 MR. RICH: Let's mark as Plaintiff's  
4 18 -- these are the Bates numbers -- a  
5 document bearing Bates Nos. 2011-3  
6 through -- well, it's actually -- it's --  
7 the packet I have is misnumbered, but it's  
8 collectively 2011-1 to 2011-6, bearing the  
9 Georgia State University library logo and  
10 titled "Course Reserves, ERes Guidelines"  
11 at the first page.

12 (Exhibit 18 marked for identification.)

13 Q (By Mr. Rich) Do you recognize the  
14 documents which have been put in front of you?

15 A Yes.

16 Q And can you identify them, please?

17 A These are the Web site -- this is the Web  
18 site information for course reserves for Georgia  
19 State University Library.

20 Q And is --

21 A And they -- I believe they're all dated as  
22 to when they were revised or implemented.

23 Q At page dash 2, it says, "Revised  
24 November 10, 2005," is that correct?

25 MR. SCHAEZEL: Objection as to form.

1 Q (By Mr. Rich) Again, they may be stapled  
2 the way mine was originally; one and two are at the  
3 back of the package.

4 A Okay.

5 Q I apologize for that. Yeah.

6 A Uh-huh.

7 Q And the document 200 dash -- bearing Bates  
8 200 -- 2011-3 indicates a revision date also of  
9 November 10, 2005? That would be the first document,  
10 I think, in your statement package.

11 A Uh-huh, yes.

12 Q Are these still -- do these still reflect  
13 current Georgia State ERes guidelines?

14 A I don't believe so, no.

15 Q As of when have they become inoperative?

16 A When the new policy was approved by the  
17 chancellor.

18 Q That was extremely recently, yes?

19 A Yes.

20 Q Okay. So is it accurate that until  
21 literally days ago or, at most, weeks ago --

22 A Uh-huh.

23 Q -- Plaintiff's 18 represented the  
24 prevailing ERes guidelines at Georgia State?

25 A Yes.

1 Q Now, prior to today, what did you do after  
2 arriving at Georgia State to familiarize yourself  
3 with these guidelines?

4 A Along with all of the other documents that  
5 I was looking at for the library, I reviewed these  
6 documents online.

7 Q And did you develop any judgments about the  
8 degree to which, from your background and experience,  
9 they comported with copyright law?

10 A No.

11 Q No?

12 A No.

13 Q Did you have occasion to have any  
14 conversations with anybody on your library staff or  
15 otherwise about these guidelines?

16 A No.

17 Q Did you have occasion to inquire as to the  
18 degree to which these guidelines were, in fact, being  
19 complied with in practice?

20 A No.

21 Q Ask you a few specific questions about  
22 these, if I may.

23 A Uh-huh.

24 Q Let's stay in the order in which you have  
25 these documents, which is on the first page in the

1 package, which is 2011-3, "Course Reserves - About  
2 ERes."

3 A Uh-huh.

4 Q It's identified as an "Easy Resource &  
5 Efficient Service is the motto for our ERes system."  
6 Do you see that?

7 A Uh-huh.

8 Q Is there anything in the new set of  
9 policies that have replaced these that are intended  
10 to change what's being conveyed by that statement?

11 A I don't know.

12 Q Do you believe that it is still an intended  
13 function of E-Reserves to be an easy resource and  
14 efficient service for the GSU community?

15 A I hope so.

16 Q And in the body of this, it says, "For the  
17 students, ERes offers single point access for  
18 students to search both digital and physical copies  
19 of course reserves. An unlimited number of students  
20 may reference digital materials 24/7." Does that  
21 remain fundamentally true today?

22 A I'm not sure it was true then, actually. I  
23 think it's a -- I think the way it's stated is that  
24 the students enrolled in class, an unlimited number  
25 of students may search the system, but that actually

1 the ones that can get to the materials for their  
2 class are limited by the ones that are in the class.

3 Q So the point of difference you're pointing  
4 out is with the second sentence, an -- that I read,  
5 an unlimited number of students may reference the  
6 material?

7 A I think it's an interpretation of how you  
8 would read that. If you think that all students can  
9 get to all materials, the answer is that's not true  
10 and never has been true.

11 Q If it were construed as all students within  
12 the province of the courses for which they have  
13 signed up have access 24/7, would that be an accurate  
14 statement?

15 A Yes.

16 Q Farther down that paragraph, it states, "To  
17 comply with copyright restrictions, course pages  
18 containing copyrighted material will be password  
19 protected." Do you see that?

20 A Yes.

21 Q What's your understanding of the  
22 relationship of password protection to copyright law?

23 A That a -- that a piece of information that  
24 is provided to students to use for a course is only  
25 available to the students that are enrolled in that



1 course.

2 Q And what is the -- what is the copyright  
3 principle or -- what is the copyright principle that  
4 underlies or supports that practice, as you  
5 understand it?

6 A It's that it is necessary for that specific  
7 teaching situation by that specific faculty in that  
8 specific class.

9 Q To your knowledge, once a student in a  
10 course gains password access, what is that student  
11 entitled to do with the reading materials? What  
12 activities can that student engage in?

13 A I believe, generally, it would be the  
14 ability to see a citation, to read material that has  
15 been digitized, and to make a copy if the faculty  
16 member has left the material so that it could be  
17 copied, so a PDF file that you could then print.

18 Q And is there anything, to your knowledge,  
19 technologically that prevents a student from  
20 transmitting that PDF file to third parties who are  
21 not enrolled in the course?

22 A I don't know.

23 Q You don't know?

24 A I don't know.

25 Q Would that be a matter of interest to you

1 to know the answer, as a matter of copyright law?

2 A I don't know that it's terribly relevant  
3 because there's an acceptable use of materials that  
4 is part of the university policy to begin with, and  
5 that's that if you are receiving material that's  
6 password protected, then it is entitled just for that  
7 class. So it kind of is covered by another policy in  
8 terms of what students are doing.

9 Q So your understanding is that a student  
10 would violate some code of conduct --

11 A The acceptable use of technology --

12 Q -- if they were to engage in that --

13 A Right.

14 Q -- he or she were to engage in that  
15 technology?

16 A Yes.

17 Q Do you know, in fact, the degree to which,  
18 though, notwithstanding that policy constraint,  
19 students over time have distributed PDFs acquired  
20 through the E-Reserve system to third parties not  
21 entitled to receive them?

22 A I don't know.

23 Q Is the university -- is Georgia State  
24 University capable of tracking any such  
25 transmissions, to the extent they occur?

1           A       I don't know.

2           Q       What would be required to get an answer to  
3 that question?

4           A       I don't know.

5           Q       Who would you --

6           A       It would --

7           Q       -- want to inquire of to get the answer?

8           A       It would be a technology solution to a  
9 technology question, so it would have to involve  
10 campus IT people.

11          Q       How are passwords created, do you know?

12          A       I don't.

13          Q       Is it done by the individual instructor?

14          A       I don't know.

15          Q       Does anybody keep a sort of central  
16 repository of passwords in the library?

17          A       I don't know.

18          Q       Is there any minimum requirement of words,  
19 combination words, numbers, et cetera?

20          A       I don't know.

21          Q       Letters, numbers? Don't know?

22          A       No.

23          Q       Who would know?

24          A       The people who are creating the passwords  
25 and the technology people on campus.

1 Q Is there any one or several people on the  
2 technology side who would be most likely to know the  
3 answers?

4 A I don't know.

5 Q Is that a group of people who you supervise  
6 or, at least by function, oversee?

7 A The library people --

8 Q Library and technology people?

9 A -- would be, but not the campus technology  
10 people, no.

11 Q Now, am I correct that if a professor  
12 possesses, let's say, first-generation copyrighted  
13 works, those works can be offered up for E-Reserves  
14 provided they meet his assessment of the checklist,  
15 correct?

16 MR. SCHAEZEL: Objection as to form.

17 THE WITNESS: Yes.

18 Q (By Mr. Rich) And in addition, if works  
19 are part of the library collection, but not  
20 physically possessed or actually possessed by a given  
21 professor, he or she can request the library, once  
22 that fair use determination has been made, to access  
23 those materials and make sure they are also placed in  
24 the E-Reserve system; is that correct?

25 A There's a distinction between what we own

1 in terms of a physical piece --

2 Q Yes.

3 A -- and what we own in terms of licensed  
4 materials.

5 Q Yes.

6 A So the answer is yes, but I think that we  
7 would provide access in different ways.

8 Q Can you just go through the two  
9 distinctions in terms --

10 A Well --

11 Q -- of how that would happen?

12 A -- if it's a physical piece, the decision  
13 would then have to be made, in terms of fair use  
14 checklist, whether or not we would be making a  
15 digitized copy of a piece of that work --

16 Q Right.

17 A -- or whether or not, if it's something  
18 that we have licensed content, whether we would  
19 provide -- be providing a link to the licensed  
20 content that we already have available --

21 Q Right.

22 A -- that's available digitally.

23 Q If you would turn to the next page, which  
24 is dash 4 --

25 A Uh-huh.

1 Q -- and read to yourself the bullets under  
2 "Course Reserves - Printing Tips." I'll ask you a  
3 question or two.

4 A (Witness complies with request of counsel.)

5 Q For whose benefit is this -- is or was this  
6 document written?

7 A I don't know, but I am assuming it would be  
8 students.

9 Q And to your knowledge, did it accurately --  
10 does it accurately set forth the procedures by which  
11 students can print materials placed in the E-Reserve  
12 system?

13 A I don't know, because it would depend on  
14 whether they were printing from within the library or  
15 whether they were printing from home, office,  
16 someplace else.

17 Q If one were printing from home, for  
18 example, do you have an understanding of how one  
19 would access the E-Reserve system?

20 A Via one's PID and password.

21 Q Is one able via the E-Reserve system to  
22 print at home?

23 A I believe so, yes.

24 Q Print anywhere in the world if you can get  
25 access into the system?

1           A       And if you're somewhere that's -- taking a  
2 class that's got reserve materials, yes.

3           Q       To your knowledge, anything in the new  
4 policy that will alter the techniques or procedures  
5 by which students can access, read online, save  
6 documents to disks or locally, and/or print E-Reserve  
7 materials?

8           A       I don't believe the new implementation has  
9 any printing tips in it, but I'm not 100 percent sure  
10 of that.

11          Q       It doesn't mandate any change in those  
12 practices, correct?

13          A       Not to my knowledge.

14          Q       If you turn to the next page, please, which  
15 has the hyphenated -- dash 5, if you look at the  
16 question and answer under "Are textbooks  
17 automatically placed on reserve," do you see that  
18 section?

19          A       I do.

20          Q       States, "No. Only materials that  
21 instructors submit for their courses are considered  
22 for reserves. Reserves are intended to make scarce  
23 copies of supplementary materials available to  
24 students in a specific class. Students are  
25 responsible for purchasing the textbooks that they

1 need for their courses." Do you see that?

2 A Yes.

3 Q My question is: Is that statement intended  
4 to apply solely to physical reserve practices or to  
5 E-Reserve practices as well?

6 MR. SCHAEZEL: Objection as to  
7 form.

8 THE WITNESS: I don't know. But  
9 because textbooks are largely still in  
10 paper form, the assumption would be that  
11 it's paper.

12 Q (By Mr. Rich) Do you have an understanding  
13 whether existing practice at Georgia State  
14 University, with respect to E-Reserves, implicates  
15 the offer solely of supplementary course materials to  
16 students?

17 A Could you restate the question?

18 MR. RICH: Could you read it, please?

19 If after she reads it, you don't get  
20 it, I'll rephrase.

21 (Record read.)

22 MR. RICH: And supplementary as  
23 opposed to required.

24 THE WITNESS: Yes.

25 MR. SCHAEZEL: Objection as to form.



1 Please go ahead.

2 THE WITNESS: Yes.

3 Q (By Mr. Rich) You do have an understanding  
4 that that is the practice?

5 A That is the practice.

6 Q And what is your understanding based on?

7 A My reading of the guidelines that we have  
8 in place, the implementation that we have in place,  
9 and common practice.

10 Q Now, you testified a little earlier that  
11 you haven't really familiarized yourself with  
12 particulars of E-Reserve offerings, having received  
13 reports and the like --

14 A Uh-huh.

15 Q -- am I correct?

16 A Uh-huh.

17 Q How then are you able, with any degree of  
18 confidence, to provide the last answer, which is, I  
19 believe, that referencing activities --

20 "implementation that we have in place and common  
21 practice," how do you know what common practice is?

22 A By "common practice," I was referring to  
23 common practice in libraries.

24 Q Focusing, though, specifically on Georgia  
25 State University, what knowledge, if any, do you

1 possess as to the degree to which E-Reserves  
2 offerings, over the span of the time since you have  
3 even arrived, comprised solely supplemental as  
4 opposed to required course readings?

5 A I do not have that understanding.

6 Q Would that be something you would be  
7 interested in ascertaining, namely the answer to that  
8 question, in making judgments about how to apply fair  
9 use principles to E-Reserves listings?

10 A Only insofar as we were to do that going  
11 forward, not going backward.

12 Q Going forward, how would you be informed --  
13 let's assume you were to learn that practice has been  
14 a mix --

15 A Uh-huh.

16 Q -- in fact, that there are as many required  
17 course readings as there are supplemental. Going  
18 forward, what would the implications of that be, as  
19 you've thought about it, for future fair use  
20 determinations?

21 A I don't know what the implications would  
22 be.

23 Q You would need to think more about that?

24 A Yes.

25 Q You earlier testified that in the

1 coursepacks setting, since you were dealing with  
2 required readings --

3 A Uh-huh.

4 Q -- and the equivalent of a textbook was  
5 being created, it was evident that permissions would  
6 be required, correct?

7 MR. SCHAETZEL: Objection as to form.

8 THE WITNESS: And I used the textbook  
9 as an example and you picked that up, but  
10 yes, the permissions would be required for  
11 a coursepack.

12 Q (By Mr. Rich) Do you believe there's  
13 anything, as far as copyright law is concerned, that  
14 creates a difference in the application of  
15 fundamental copyright principles simply because  
16 copies are being made physically as opposed to  
17 electronically? In and of itself, do you find that  
18 that distinction should create different rules of  
19 copyright law, in your experience?

20 A I don't know.

21 Q Are you aware that the Regent Guide  
22 disclaimed any such distinction in copyright law?

23 A I did not know.

24 Q Okay. Are you aware of whether the current  
25 policy speaks to that issue?

1           A       I don't know.

2           Q       If you would turn to the next page, which  
3 is hyphen 6 at the top. Under "What I" -- "What do I  
4 need to know about copyright" --

5           A       Uh-huh.

6           Q       -- the statement is made that, "Students  
7 may print one copy of a text reserve item for  
8 personal reading, private study, research, or  
9 education." Do you see that?

10          A       Uh-huh.

11          Q       Do you understand that to be a statement  
12 being made in the context of physical reserve desk  
13 type activity?

14          A       I don't know.

15          Q       Reading this doesn't inform your judgment  
16 on that?

17          A       No.

18          Q       Would it comport with your understanding of  
19 the new policy were professors to put full text  
20 materials on physical reserve and were the policy --  
21 and were Georgia State University to permit students  
22 to make copies of the entire text for their personal  
23 study?

24                   MR. SCHAEZEL: Objection as to form.

25                   THE WITNESS: I don't know.

1 Q (By Mr. Rich) It wouldn't trouble you if  
2 that happened?

3 MR. SCHAEZEL: Same objection.

4 THE WITNESS: I can't envision it  
5 happening, so it's hard for me to decide  
6 whether it would bother me or not.

7 Q (By Mr. Rich) Do you interpret the  
8 statement "students may print one copy of a text  
9 reserve item for personal reading, private study,  
10 research, or education" as foreclosing that scenario?

11 A Not necessarily.

12 Q Let's turn to 2011-1, and the second block  
13 paragraph headed "Submission of Digital Print  
14 Requests," do you see that?

15 A Uh-huh.

16 Q The fourth bullet reads, "The GSU library  
17 will not accept coursepacks for electronic reserves."  
18 Do you see that?

19 A Uh-huh.

20 Q Do you have an understanding of what that  
21 means?

22 A That if a faculty member has created a  
23 coursepack for a class, that it cannot be put on  
24 reserve, either electronic or physically.

25 Q And for this purpose, do you have in mind

1 that the faculty member has put together and  
2 physically bound materials together, or not  
3 necessarily?

4 A Presumably it would be the coursepack that  
5 has been put together to be sold at the bookstore.

6 Q What if instead of -- what if instead of  
7 assembling it for purposes of the bookstore, the  
8 professor simply stacks on top of one another a  
9 series of articles or chapter excerpts that it wants  
10 to bring to the library staff, puts it down at the  
11 desk of the technical person, says, "Here's my  
12 checklist as to each item. It makes the grade.  
13 Please scan and put this body of material -- instead  
14 of bringing it to the bookstore, have the students  
15 buy it, please put it up on E-Reserves," permissible  
16 conduct?

17 A The faculty member has conducted a fair use  
18 analysis of all of the material, and if the faculty  
19 member has determined that that is fair use, then  
20 that is permissible conduct.

21 Q And what makes that material less of a  
22 coursepack as I described it?

23 A That the faculty member has determined that  
24 it is supplemental material for the course and that  
25 they have gone through and taken -- taken the time to

1 do the fair use analysis in order to determine that  
2 it is a fair use.

3 Q So if, instead, the professor comes in and  
4 says, "This is my required reading list for this  
5 course, but instead of having the students pay a lot  
6 of money at the bookstore for it, I've parsed each  
7 item and found out it meets the checklist, so here,  
8 please scan it and put it up," so the net effect for  
9 the student is exactly the same, requires the same  
10 body of material, but doesn't have to go to the  
11 bookstore to buy it, is that proper practice, in your  
12 estimation?

13 A You --

14 MR. SCHAEZEL: Objection as to form.  
15 Go ahead.

16 THE WITNESS: Sorry.

17 MR. SCHAEZEL: It's okay.

18 THE WITNESS: You used the word  
19 "required." It would not be an acceptable  
20 use of the E-Reserve system.

21 MR. RICH: Thank you.

22 Q (By Mr. Rich) If we go down, please, to  
23 "Please Note: Copyright Guidelines" --

24 A Uh-huh.

25 Q -- what I want to ask you is, as we go

1 through 1, 2, and 3 -- actually, 1 and 3, I would  
2 appreciate it if you could tell me first your  
3 understanding of the limitations as they appear here;  
4 and then secondly, I will ask you if you believe the  
5 new policy changes in any way those limitations,  
6 either presumptively or explicitly.

7 So let's start with No. 1. "Materials," it  
8 says, "that can be placed on electronic reserve  
9 without obtaining copyright permission include:

10 1) Articles from journals owned/subscribed to by  
11 GSU." Do you see that?

12 A I do.

13 Q Do you understand that to contain any  
14 limitation on the numbers of articles from a  
15 particular journal issue that can be offered?

16 A Not in terms of policy, but certainly in  
17 terms of practice.

18 Q I'm sorry, in terms of?

19 A Practice.

20 Q Can you explain what you mean by that?

21 A That if a faculty member were to bring a  
22 journal that were owned by the library and say, "I  
23 would like to put the whole journal" -- every article  
24 that's in it is something that's supplemental  
25 reading, there would presumptively be questions asked



1 by the staff.

2 Q But short of that example of the  
3 totality --

4 A Uh-huh.

5 Q -- do you understand these, at least, ERes  
6 guidelines to otherwise limit the number of takings  
7 from a journal issue? Is that solely in the  
8 discretion of the professor, short of the full  
9 taking?

10 A I don't know.

11 Q What would you want to know to help form a  
12 judgment?

13 A Whether or not the staff looked at this  
14 and -- I just don't know how they would respond to  
15 it. I would think that they would question large  
16 amounts of materials from one issue of a journal even  
17 if it were not the totality.

18 Q So your answer, though, sort of defaults to  
19 what library staff reaction might be. Do you have an  
20 understanding of what the ERes guidelines actually  
21 intended?

22 A I don't know about that.

23 Q Do you have an understanding of what the  
24 policy intends, the new policy intends with respect  
25 to use of journal articles?

1           A       It would require the faculty member to go  
2 through the fair use analysis of each piece and make  
3 that determination.

4           Q       Without any numerical limit per se on  
5 the --

6           A       Right.

7           Q       -- numbers of contributions from a  
8 particular journal issue that might qualify for fair  
9 use?

10          A       Right.

11          Q       No. 3 says, "One chapter or less" -- pardon  
12 me, "One chapter or less than 20 percent of the  
13 content from a book." Do you see that?

14          A       Uh-huh.

15          Q       Just looking at that, or otherwise informed  
16 by your knowledge of this, do you understand, is that  
17 a lesser than or greater than kind of concept? In  
18 other words, if I have a chapter that is 30 percent  
19 of the book, is that good; or does it have to be, at  
20 most, 20 percent of the book? How do you interpret  
21 this?

22          A       I don't know.

23          Q       You don't know, okay.

24                   Under the new policy, is there a similar  
25 one chapter or less than 20 percent of the content

1 for a book --

2 A No.

3 Q -- limitation?

4 What is the current method for determining  
5 the proper amount of a book that can be utilized for  
6 E-Reserves?

7 A The faculty member goes through the  
8 analysis and makes the determination.

9 Q Do you envision the possibility that, in  
10 one or more cases, it might be determined reasonably  
11 that more than 20 percent of a book qualifies for  
12 fair use?

13 A I can't think of specific examples, but I  
14 would think it could happen if the faculty member has  
15 done the analysis and has made that determination.

16 Q Do you have an absolute upper limit in your  
17 mind that says in no case could I envision more than  
18 X percent ever qualifying for fair use?

19 A I think it's impossible to put a number on  
20 this, so no, I don't have an upper or a lower limit  
21 in mind for this.

22 MR. RICH: I think we're out of tape.

23 Let's pause, and maybe you want to take a  
24 lunch break. Does this make sense?

25 MR. SCHAEZEL: Makes sense to me.

1 THE VIDEOGRAPHER: Off the record at  
2 12:20:21.

3 (Lunch recess taken.)

4 THE VIDEOGRAPHER: This is Tape 3. We  
5 are back on the record at 1:15:35.

6 MR. RICH: Good afternoon. Let's mark  
7 as Plaintiff's 19 a document bearing  
8 production numbers 370 to 371, labeled  
9 "ERes."

10 (Exhibit 19 marked for identification.)

11 Q (By Mr. Rich) Are you able to identify the  
12 document that's been placed in front of you and  
13 marked as Plaintiff's 19?

14 A I'm not. I'm sorry.

15 Q It appears on its face to be a form to be  
16 filled out by faculty wishing to place materials on  
17 ERes. Does that appear to you to be its function?

18 A It does.

19 Q Do you know if this form is still currently  
20 in use?

21 A I don't know.

22 MR. SCHAEZEL: Objection as to form.

23 Q (By Mr. Rich) To your knowledge, are  
24 documents of this sort, once completed, collected by  
25 anybody in the library staff?

1 MR. SCHAEZEL: Objection as to form.

2 THE WITNESS: I don't know.

3 Q (By Mr. Rich) Who would know the answer to  
4 a question like that?

5 A The person in charge of that unit or Laura  
6 Burtle.

7 Q And is Laura a direct report to you?

8 A Yes.

9 Q So if you, for example, were interested in  
10 requisitioning a file, if such a file existed, of  
11 completed ERes forms, you would contact Laura and  
12 make that request?

13 A Yes.

14 Q She would likely fulfill that request?

15 A I hope so.

16 Q To the best of her ability?

17 A To the best of her ability, yes.

18 Q Okay.

19 MR. RICH: Let's mark as Plaintiff's

20 20 a document bearing production numbers

21 7945.005.xls-1 through 377.

22 (Exhibit 20 marked for identification.)

23 Q (By Mr. Rich) I don't want you to read  
24 every line of this document, unless you care to.

25 A Good.

1 Q I'll represent to you that this production  
2 was made at the plaintiffs' request by your counsel  
3 in this litigation reflecting E-Reserves offerings  
4 from the period, as noted at the top, of 1/1/08  
5 through 5/15/08 with course names. Do you see that  
6 heading at the top?

7 A Yes.

8 Q And this was generated, we're advised, out  
9 of Georgia State's records reflecting that activity  
10 during the spring term.

11 My first question is whether, just scanning  
12 this, the volume of works offered on E-Reserve  
13 comports with your understanding of what one would  
14 expect over a period roughly of, you know, a  
15 semester?

16 A I don't know.

17 Q You don't know what you would have  
18 expected?

19 A I don't know what I would have expected  
20 because I'm not familiar enough with what's being  
21 taught at Georgia State in any given semester and how  
22 faculty members have traditionally used E-Reserve.

23 Q By our calculation, there are 426 courses  
24 listed in this material and about 4,000 reading  
25 files. More than 60 of the course pages contain 20

1 or more files, meaning 20 or more course reading  
2 materials. Seven of these course pages contain more  
3 than 50 files, meaning 50 sets of readings apiece.

4 As someone who supervises the library  
5 operations and the E-Reserve operations at GSU, does,  
6 for example, the notion that under the preexisting  
7 copyright guidance, seven course offerings contained  
8 more than 50 separate course readings, does that  
9 concern you as a matter of copyright law?

10 MR. SCHAEZEL: Objection as to  
11 form.

12 THE WITNESS: Not particularly.

13 Q (By Mr. Rich) What more would you want to  
14 know to get more -- or perhaps -- "not particularly"  
15 because what more would you need to know to have  
16 that concern?

17 A The role of those materials in the  
18 course --

19 Q Okay.

20 A -- and what the faculty member deemed  
21 necessary for the course and what the faculty member  
22 deemed supplemental to the course.

23 Q Okay. And since we're using those terms a  
24 fair amount today, could you define the distinction,  
25 as you understand it, between necessary and

1 supplemental?

2 MR. SCHAEZEL: Objection as to form.

3 THE WITNESS: Simplistically, it would  
4 be is it going to be on the exam.

5 Q (By Mr. Rich) And if it is?

6 A Then it's a required reading, it's a  
7 required piece of material. If it is something that  
8 is to enhance the student's understanding of what is  
9 going on, then it is a supplemental reading.

10 Q And why does it matter, for purposes of  
11 copyright law, whether it's necessary or supplemental  
12 if, in fact, the acts of copying are occurring?

13 MR. SCHAEZEL: Objection as to  
14 form.

15 THE WITNESS: Because with the ability  
16 to apply the fair use doctrine, that is one  
17 of the four factors that one looks at in  
18 terms of whether or not it is a required  
19 piece of material for the course or  
20 supplemental for the course.

21 Q (By Mr. Rich) You understand that  
22 distinction to be one of the four factors or to be --

23 A A component --

24 Q -- embedded in it?

25 A A component of one of the four factors..



1 Q Which one is that, which factor? I don't  
2 care by number, but what's the concept of the factor?

3 A I'm trying to think of the...

4 Q Would it help you to see --

5 A It would --

6 Q -- the section of the law?

7 A It would help me to see the section of the  
8 law.

9 Q Sure.

10 A There's four little things.

11 (Discussion off the record.)

12 MR. RICH: I just have one copy,  
13 Steve. I don't think we need to mark it.  
14 I'm just showing the witness Section 107 of  
15 the Copyright Act of 1976.

16 THE WITNESS: I think there are two  
17 pieces that it could fall into, the purpose  
18 and character of the use, which is whether  
19 or not it is a required piece of material  
20 for the course or not. And then you can --  
21 because it's a -- because it's so  
22 subjective, you could get into that, also,  
23 with the amount and substantiality of the  
24 use.

25 MR. RICH: Thank you. You can keep

1           that there if you want.

2           THE WITNESS: I'm not a lawyer,  
3           however, so...

4           MR. RICH: You're doing very well.

5           Q        (By Mr. Rich) Looking at this collection  
6           of offerings -- strike that.

7                    You testified earlier that you don't  
8           regularly receive reports, whether of this -- in this  
9           format or otherwise, as to the utilization of the  
10          E-Reserves system; is that correct?

11          A        Yes.

12          Q        You could request such reports in your role  
13          as dean of libraries?

14          A        Yes.

15          Q        And presumably, within the technical limits  
16          of the system, such reports would be generated at  
17          your request, correct?

18          A        There are technical limits of the system,  
19          but yes, there could be reports generated.

20          Q        And if you wanted, for example, to  
21          understand from this collection of works what the --  
22          on a per-course basis, what the total pages of  
23          copyrighted material comprising the course readings  
24          were, presumably that information could be generated  
25          as well, right?

1 MR. SCHAEZEL: Objection as to  
2 form.

3 THE WITNESS: The total number of  
4 pages for each course in terms of  
5 reading could be generated --

6 MR. RICH: Reflected on the E-Reserves  
7 list.

8 THE WITNESS: I believe that  
9 technically, we could do that, yes.  
10 Technologically, we could do that.

11 Q (By Mr. Rich) And you could track numbers  
12 of chapters of particular works in relation to the  
13 total number of chapters, if you wished to do that,  
14 correct, that data could be captured and reported,  
15 true?

16 A Not through the E-Reserve system. It would  
17 require additional work to go back to a -- the  
18 original work and determine how much of that work has  
19 been used. But yes, that could be determined.

20 Q Or alternatively, that information could be  
21 requested from the professor when the professor  
22 filled out whatever form that professor used to put  
23 the materials into the system, correct?

24 A I would think so, yes.

25 Q Have you given any thought to the kinds of

1 information beyond the completed fair use checklist  
2 in each case --

3 A Uh-huh.

4 Q -- that might actually be useful in  
5 informing a well-rounded fair use judgment?

6 MR. SCHAETZEL: Objection as to form.

7 THE WITNESS: I'd like to draw a  
8 distinction between, again, looking  
9 backward, which I am not doing, and looking  
10 forward, which I'm willing to do --

11 MR. RICH: Fine.

12 THE WITNESS: -- and could see that as  
13 we evaluate the success of the  
14 implementation of the policy, as well as  
15 the training that we're providing, that we  
16 would be looking at some of the materials  
17 that have been placed on reserve to  
18 determine whether we feel that faculty have  
19 a good understanding of what the fair use  
20 analysis is.

21 Q (By Mr. Rich) That's, sitting here today,  
22 normatively something you would like to do, I take  
23 it; is that your testimony?

24 A I would not use the work "like." I would  
25 feel that I probably should do that.

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. SCHAEZEL: 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 processing. Now, I am a professor of sociology, and  
2 I take it that under, certainly, the new policy, I  
3 now to have to put my proposed materials through this  
4 filter of this checklist. Is that correct?

5 A That is correct.

6 Q All right. And then I will be requested  
7 to -- and I probably should mark it because there's a  
8 new form, I believe, that may be in place here, so  
9 why don't we keep up with where we are here. Let me  
10 just find this document.

11 (Discussion off the record.)

12 MR. RICH: Let's mark this as  
13 Plaintiff's Exhibit 21, which is a  
14 collection of documents bearing Bates  
15 stamps 21107 through 21117.

16 (Exhibit 21 marked for identification.)

17 Q (By Mr. Rich) Do you recognize what we've  
18 marked as Plaintiff's Exhibit 21?

19 A I do.

20 Q Can you identify it?

21 A It is the printout of the electronic  
22 reserves request form interspersed with links out to  
23 some of the USG copyright policy.

24 Q Is this a relatively new set of  
25 documentation?

1 A It is.

2 Q And for what purpose was it created?

3 A In order to reflect changes that have taken  
4 place in the policy that was approved by the  
5 chancellor.

6 Q Okay. And can you tell me the principal  
7 people who were involved in the creation of these  
8 forms?

9 A Laura Burtle and the staff in the reserves  
10 department and me. And I believe Cynthia Hall did a  
11 final review of those.

12 Q And I take it the purpose of these is to  
13 assist in implementing the new policy; is that  
14 correct?

15 A Yes.

16 Q And did you receive any assistance from any  
17 resources outside of Georgia State University -- did  
18 you or your colleagues, to your knowledge, receive  
19 any assistance from outside of Georgia State  
20 University in preparing these materials?

21 A Not in terms of contacting anyone to help  
22 us with them, but in terms of looking at what other  
23 people have done with their E resources materials,  
24 yes, we looked at other Web sites.

25 Q Within the Georgia University System?



1           A       Both within the Georgia system and outside  
2 the system.

3           Q       I see. And did you, in fact, make changes  
4 to or adapt any of the forms that -- in their final  
5 form based on those reviews of other policies?

6           A       I don't recall.

7           Q       Am I correct that there was some  
8 communication in which you were involved dealing with  
9 the concept of perhaps creating some more uniform set  
10 of forms of this type across the various institutions  
11 within the University of Georgia system -- Georgia  
12 State system?

13          A       Not across the system. The -- the three  
14 major research institutions, we did talk about  
15 whether or not we could have some similar wording for  
16 our E-Reserve materials, yes.

17          Q       And where does that stand?

18          A       I don't believe it's gone anywhere, to be  
19 honest. I think that we were given contact names at  
20 both the University of Georgia and Georgia Tech, but  
21 I don't know that it's gone anywhere.

22          Q       If you flip several pages into this  
23 exhibit, I'm looking specifically at the third  
24 page -- the fourth page, I guess it is, "Electronic  
25 Reserves Request Form," page 21110. Indicates sort

1 of the menus of options available in terms of the  
2 forms to be filled out; is that correct?

3 A Yes.

4 Q And, for example, if I am in possession of  
5 a print book, excerpts of which I want to utilize  
6 with my students -- I'm back wearing my professor of  
7 sociology hat -- which of those forms do you  
8 understand I would fill out with as to that excerpt?

9 A If you were talking about parts of a  
10 book --

11 Q Yes.

12 A -- that you would like to make available --

13 Q Yes.

14 A -- it would be under electronic reserves,  
15 the second item.

16 Q And can you show me which page of this  
17 attachment reflects the form that I would fill out?

18 A The one that says, "Electronic: Book."  
19 It's 2115.

20 Q Okay. And then I am -- I, as the faculty  
21 member, will fill out the information, including  
22 responding to the "This item can be placed on  
23 electronic reserve because (choose one)" listing,  
24 correct? And if I have decided that it's not an item  
25 already available for permissioned use, and if I've

1 decided that it meets the criteria of the fair use  
2 checklist, I take it, I would blacken the second of  
3 the listed options there, "It falls under fair use  
4 according to the fair use checklist I completed," is  
5 that correct?

6 A Yes.

7 Q That would be the process I would engage  
8 in; is that correct?

9 A Yes. So -- this is all online, so this  
10 is -- it's a --

11 Q I would --

12 A Yes.

13 Q -- click that button as --

14 A Click that button, yes.

15 Q Okay. And to the jargon that my colleague  
16 to my right is far more fascinated than I am.

17 And then the information specifically that  
18 I would be required to put are listed in the  
19 following boxes, correct, including chapter or page  
20 numbers, correct?

21 A Yes.

22 Q And those are in the alternative, so that  
23 if I'm taking all of Chapter 1, I would simply insert  
24 "Chapter 1"?

25 A Yes.

1 Q And if I were using Chapters 1 and 3, I  
2 would say, "Chapter 1, 3," or something like that?

3 A (Witness nods head affirmatively.)

4 Q Whereas, if I was taking portions of  
5 chapters or the book doesn't lend itself to chapter  
6 designation, I would list the inclusive page numbers  
7 I was taking?

8 A Yes.

9 Q Okay. And if you go back one -- or forward  
10 one page, back to 1114, I take it that reflects the  
11 form that I, as the professor, would fill out with  
12 respect to any journal articles, let's say, that I  
13 propose to use as well; is that correct?

14 A Yes.

15 Q And the -- moving again towards the front,  
16 there is a listing at 21111 which says, "Print:  
17 Book." What is that designed to fulfill? Is that a  
18 physical reserve form as opposed to an electronic  
19 reserve form?

20 A This would be a hard-copy book.

21 Q Hard-copy book?

22 A Uh-huh.

23 Q So is the reference to "Electronic:  
24 Reserves Request Form" a misnomer as to that?

25 A No, because you are making the request

1 electronically. Faculty members do not have to come  
2 into the library to make the request.

3 Q So in this --

4 A So it's not -- in this case.

5 Q Unlike the normal connotation, this means  
6 the manner in which the request is being fulfilled as  
7 opposed to the medium on which the works are being  
8 made available?

9 MR. SCHAEZEL: Objection as to  
10 form.

11 Q (By Mr. Rich) Is that correct?

12 A But we have put this all together -- yes,  
13 it is in this case. But because there are so many of  
14 our materials that are being done in an electronic  
15 environment, it falls in there with the rest of the  
16 materials.

17 Q Okay. And do you understand these forms to  
18 supersede, at least as regards E-Reserves listings,  
19 what we marked as Plaintiff's 19? Do you know one  
20 way or the other?

21 A That is my understanding.

22 Q Okay.

23 A Yes.

24 Q So as far as the process has gotten now, I  
25 have filled this out for the various works that I --

1           A       Uh-huh.

2           Q       -- propose.  Where does -- where do  
3 these -- who receives these?  These are prepared  
4 online.  Is that the only format in which these forms  
5 will be accepted?  Is there a -- an ability to fill  
6 them out physically, or will there be?

7           A       I believe there still is the ability to  
8 fill them out physically.

9           Q       Okay.  So let's start with the physical  
10 forms.

11          A       Uh-huh.

12          Q       To whom will those forms -- are those forms  
13 to be delivered?

14          A       They will be taken to the reserve desk in  
15 the library.

16          Q       Okay.  And that's both for both physical  
17 reserve requests as well as electronic reserve  
18 requests?

19          A       Yes.

20          Q       And will there be a designated custodian  
21 who will do whatever needs to be done with those  
22 forms, including maintain them or archive them?

23          A       It is the function of that department to  
24 maintain them under whatever limits I provide.

25          Q       Have you determined limits?

1 A At this point, we keep them per semester.

2 Q Okay. And with respect to materials to be  
3 offered students via E-Reserves, I take it that the  
4 professor at some point needs to deliver any copies  
5 that he or she, him or herself, possess for the  
6 purpose of getting them scanned; is that correct?

7 A If they are in paper format, yes.

8 Q If they're in paper format?

9 A Yes.

10 Q And again, if they're in the electronic  
11 collection of the library, that's different?

12 A Right.

13 Q Right. So what do I do? I've now got my  
14 12 paper excerpts that I want scanned and put up on  
15 the system. Where do I bring those?

16 A To the library.

17 Q Same place?

18 A Uh-huh.

19 Q Reserve desk?

20 A Uh-huh.

21 Q And they're simply then collected with or  
22 somehow married to the request forms that I will have  
23 filled out?

24 A Yes.

25 Q Okay. And so even if those have been

1 prepared online, there will be some technique. What  
2 is the technique to marry the online submissions to  
3 the physical stack?

4 A It would be, I believe, a manual process of  
5 taking the request and taking the physical objects  
6 and linking them together.

7 Q Okay. And then what is the next step that  
8 occurs with respect to those materials?

9 A They are checked against the collection  
10 that we have to make sure that they're not something  
11 that we already have available as part of our  
12 licensed collection. Regardless of whether the  
13 faculty member has asked for that, we will be doing  
14 that.

15 Q Is that an online search?

16 A It can be an online search, it can be a  
17 physical going into the stacks in the library and  
18 looking at materials, yes; but for the most part, it  
19 would be an electronic search.

20 Q Is that a new practice to be implemented  
21 contemporaneously with the new policy, or is it your  
22 understanding that that process of checking against  
23 existing collections and licenses has been an ongoing  
24 practice?

25 A I believe that is a new practice.



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 lose in that case. Again, it would be on a  
2 case-by-case determination. There's very little way  
3 to make a blanket determination about that.

4 But I think certainly a component of this  
5 is our desire to help faculty understand what is  
6 going on in terms of fair use and that it is much  
7 more complex, that it is an educational fair use,  
8 which is what many faculty kind of blanket assume.  
9 So I think there would have been a huge teachable  
10 moment there.

11 Q As far as the process is concerned --  
12 correct me if I'm misunderstanding the way it's  
13 contemplated to work at Georgia State University --  
14 in filling out the fair use checklist, if the  
15 professor should have a question about the proper  
16 application to a given work or set of works, that  
17 professor will have access to resources, particularly  
18 in the Office of Legal Affairs, correct?

19 A Yes, in the Office of Legal Affairs and  
20 also on the Web site that has been put up that has a  
21 whole --

22 Q Yes.

23 A -- lot of supporting information.

24 Q Yes, I understand that.

25 A So yes.

1 Q That has to be actuated about the  
2 professor's own judgment about whether to seek out  
3 another viewpoint, correct?

4 A Generally, yes, but I think there could be  
5 prompting from both the library or from the Office of  
6 Legal Affairs that would suggest that they would go  
7 back and look at --

8 Q Well, I'm getting there.

9 A Okay.

10 Q I'm saying so at the first leg, at the  
11 point of --

12 A Yes.

13 Q -- filling it out --

14 A Okay.

15 Q -- it's up to me, Bruce Rich, professor of  
16 sociology, whether I feel comfortable enough with my  
17 fair use judgments to simply fill out the sheets or,  
18 instead, to seek some guidance, correct?

19 A Yes.

20 Q Okay. After I've made -- let's assume I've  
21 made my judgment without any other intervention --

22 A Uh-huh.

23 Q -- requested and then I present it as we've  
24 discussed --

25 A Uh-huh.

1 Q -- the remaining, but only remaining avenue  
2 of review, as it were, would be when that intake  
3 person, yes, ranging from high school educated to  
4 postgrad degree --

5 A Uh-huh.

6 Q -- were to flag an item as being  
7 potentially problematic; is that correct?

8 A Yes.

9 Q Okay. So if it makes it past that first  
10 point of processing, this is all I'm trying to  
11 establish --

12 A Uh-huh.

13 Q -- there is no other point contemplated in  
14 the process for another look at those fair use  
15 determinations; is that correct?

16 A To reinforce the point that I've made, the  
17 person who is best able to make the determination is  
18 the faculty member.

19 Q I understand that. Now, I think you may  
20 have testified to it, but I've lost the thought,  
21 which is, where does the scanning actually take  
22 place? And maybe we didn't get there.

23 A It -- I'm not sure we got there.

24 Q Okay, we didn't get there.

25 A So there is the paper copy of the

1 material --

2 Q Yes.

3 A -- and in the library --

4 Q Yes.

5 A -- a scan will be made.

6 Q Okay. And is there presently existing  
7 equipment that will continue to be used for that  
8 process as there is today with current E-Reserves?

9 A Yes.

10 Q Is that equipment owned by GSU, leased by  
11 GSU?

12 A I'm assuming it's leased by GSU, but it  
13 could be owned, yes.

14 Q And when those leasing arrangements are  
15 negotiated, who handles those within the university?

16 A I have no idea.

17 Q Who is responsible for maintaining the  
18 equipment, the scanning equipment, and making sure  
19 it's functional at any one point in time?

20 A With some of it, we have contracts with  
21 people who do come in. In some cases, we do not have  
22 contracts, and so we do it on a case-by-case basis in  
23 terms of whether we need to do in-house repairs or  
24 whether we would call out for someone.

25 Q And when you use the "we" in this --



1 A This would be the library.

2 Q The library?

3 A The library, yes.

4 Q Ultimate point of supervision of all of  
5 that, although I realize you're not there turning the  
6 widgets, is you, correct?

7 A Yes.

8 Q The buck stops with you?

9 A Yes.

10 Q Okay. And so you have this scanning  
11 equipment right on premises in the library --

12 A Uh-huh.

13 Q -- through which the hard copies are  
14 converted, yes?

15 A Uh-huh.

16 Q Into PDF format files?

17 A And other formats.

18 Q And other format.

19 A Yes.

20 Q What are the other available formats?

21 A Well, if it's a print document, it would  
22 probably be a PDF file. If it's another kind of  
23 document, it could be a JPEG or it could be a TIF  
24 file or something like that. It would depend on what  
25 the -- best suits the materials that we're making

1 available digitally.

2 Q Who makes the judgments as to format?

3 A The person who is doing the scanning.

4 Q Okay. And who actually does the scanning?

5 Is that someone with any special technical or other  
6 expertise?

7 A Largely undergraduates.

8 Q Okay. And -- all right. So now we have  
9 some materials that are scanned.

10 A Uh-huh.

11 Q Where do they reside at that point in time?

12 A On a server -- ultimately on a server. I'm  
13 not familiar enough with the process to know whether  
14 there's an intervening step where they would be on a  
15 hard drive of a cache machine or whether they get  
16 immediately saved to a server. But they would be  
17 placed on a server to be made available.

18 Q Which is located where?

19 A In the computing center.

20 Q Of?

21 A The campus.

22 Q The campus?

23 A The campus.

24 Q Okay. Now, at some point, course pages,  
25 so-called, are created; is that correct?

1           A       When a faculty member has materials that  
2 are to go on reserve, yes, a course page is made for  
3 that course.

4           Q       Can you just describe that process, how  
5 that works?

6           A       It's identifying the course, the number,  
7 the section, the faculty member.

8           Q       And how is it actually created? Is this,  
9 again, an electronic document that appears only  
10 online?

11          A       It would be a Web site --

12          Q       A Web site?

13          A       -- yes.

14          Q       Specific to a particular course, which  
15 then --

16          A       A particular course and a particular  
17 section of a course.

18          Q       Fine, okay. And now, how do we sort of  
19 complete the steps of getting students enrolled in  
20 the courses able to access those course pages and  
21 ultimately access the material which is done through  
22 this process?

23          A       Uh-huh. The faculty member is provided  
24 with a password to that course page, and the faculty  
25 member then distributes the password to the students

1 enrolled in the course and they then have access to  
2 that course page.

3 Q And I think we discussed earlier and looked  
4 at some documents about the techniques of which the  
5 students could access --

6 A Uh-huh.

7 Q -- store, display, print, as it were, the  
8 various materials, correct?

9 A (Witness nods head affirmatively.)

10 Q And that aspect of the process, I take it  
11 from your earlier answer, is not likely to change  
12 with the advent of the new policy, correct?

13 A Not the implementation, how the students  
14 implement it, no.

15 Q Right. Right. Now, we talked a bit about  
16 that red-flag screening. Up until the new policy was  
17 promulgated, was there an analogous red flag or other  
18 screening for E-Reserves determinations of the type  
19 that are reflected in Plaintiff's Exhibit 20?

20 A I don't know.

21 MR. SCHAEZEL: Objection as to  
22 form.

23 MR. RICH: Okay.

24 THE WITNESS: I don't know.

25 Q (By Mr. Rich) You don't know. Has it ever

1 come to your attention that there was any  
2 disagreement at any level as to the propriety of a  
3 given E-Reserve listing as a matter of copyright  
4 practice, putting aside this lawsuit?

5 A I don't know.

6 Q None that come to mind?

7 A No.

8 Q And none that have reached your desk?

9 A No.

10 Q By the way, have you ever taught during  
11 your career?

12 A I'm sorry?

13 Q Have you ever taught during your career,  
14 taught any classes?

15 A I have.

16 Q What areas?

17 A I taught a one-semester, one-credit-hour  
18 course at the School of Library and Information  
19 Science at the University of Iowa.

20 Q Was that one time taught or one course --

21 A One time -- one time, one course.

22 Q What level of students were you teaching?

23 A Graduate students.

24 Q Graduate?

25 A Uh-huh.

1 Q Have you any plans to do any teaching while  
2 at GSU?

3 A No plans.

4 Q Who do you report to?

5 A The provost.

6 Q His name is, for the record?

7 A Ron Henry.

8 Q If it were to come to your attention while  
9 this new system is operating that somehow, for some  
10 reason, materials were posted that there can be no  
11 serious dispute in your mind should not have been  
12 posted on E-Reserves, for whatever reason, what is  
13 the process for taking those down out of the system?

14 A If that came to my attention, I would ask  
15 the staff person to remove them, would notify the  
16 faculty member, and would probably also notify legal  
17 counsel.

18 Q Are you aware of any instances during your  
19 tenure at GSU where, for whatever reason, copyright  
20 or otherwise, materials have had to be removed from  
21 the system?

22 A I'm not aware of any.

23 Q One second, please.

24 A variation of the last scenario, if a  
25 student is, say, suspended during an academic term or

1 otherwise drops out of a course -- two examples --  
2 does there exist the capability of locking that  
3 student out from access to the course materials to  
4 which he or she otherwise was given access by  
5 password?

6 A I believe it would depend on whether or not  
7 the student had been dismissed from the university  
8 versus dropping a course versus -- I'm trying to  
9 think of -- there are about three or four different  
10 scenarios, and I think some of them, you would  
11 automatically lock them out of everything having to  
12 do with the university; and in others, it would be  
13 something that would be a little bit harder to do  
14 technologically.

15 Q What is the practice, to your knowledge, to  
16 date, with respect to students who simply drop  
17 courses, in terms of having continued password access  
18 to E-Reserve materials for those courses?

19 A I don't know.

20 Q Is there a proposal in place for how that  
21 situation will be dealt with going forward?

22 A Not to my knowledge.

23 Q Do you have a view as to what the best  
24 practice would be?

25 A Certainly a component of it would be

1 whether or not a student was accessing the syllabus  
2 and the password through the course management  
3 system, in which case they would automatically not  
4 have access to that course through the course  
5 management system any longer. So if that is a  
6 practice that we're seeing, and I believe it is  
7 something that we're seeing increasingly, then they  
8 would -- we would very effectively be limiting their  
9 access to the materials.

10 MR. RICH: May I hear that answer  
11 back?

12 (Record read.)

13 Q (By Mr. Rich) Describe "accessing  
14 materials through the course management system."

15 A A course management system is an electronic  
16 framework for delivering quizzes, chat, course  
17 discussions, syllabus, that most campuses are using.  
18 I know that Georgia State University does use a  
19 course management system.

20 I also am aware that students are  
21 increasingly asking for access to materials through  
22 course management systems, and so I'm thinking that  
23 probably we are seeing an increased use of those for  
24 most courses. I believe that most, if not all,  
25 courses that are offered, a course management system



1 site is established for those courses. I'm not going  
2 to swear to that, but I think that's the case.

3 Q Does the new copyright policy apply with  
4 equal force to course offerings made available  
5 through individual faculty Web sites or through the  
6 course management system outside of the library  
7 E-Reserves system?

8 A Fair use is fair use. It doesn't matter  
9 what they're using materials for, of course.

10 Q The answer is yes?

11 A Yes. It also applies to situations outside  
12 of teaching. I mean, we're talking about the  
13 instructional uses, but it applies generally.

14 Q What red flag review is available if I, as  
15 a professor, decide not to bring my ERes material to  
16 the reference desk or the reserve desk, but rather to  
17 post it through some other Web site which my students  
18 can access?

19 A There's not the same red-flag mechanism in  
20 place.

21 Q Is there a policy that indicates that one  
22 versus another channel for posting electronically  
23 such material is the acceptable practice at GSU?

24 A Not to my knowledge.

25 Q What would be the variables that you would

1 think would influence an individual faculty member's  
2 decision as to the method by which he or she makes  
3 the materials electronically available to students?

4 A Though certainly not definitive, I would  
5 think one of them would be a comfort level with  
6 technology.

7 Q Because the scanning and all would need to  
8 be done other than through utilizing the resources  
9 that the library makes available?

10 A And all of the management of the materials  
11 and how you would upload them onto a server and  
12 naming protocols and all of that kind of stuff.

13 Q Now, just so I'm clear from a couple of  
14 answers ago, what is it you were mentioning was an  
15 increasing practice with --

16 A The use of course management system by  
17 faculty members and students.

18 Q And do you -- what do you attribute that  
19 to?

20 A Demand by students to have the materials  
21 available electronically.

22 Q But then if that demand could be as easily  
23 fulfilled by using the ERes system supervised by the  
24 library and operated by the library, why would it  
25 matter? What am I missing, in other words?

1           A        Because there's a whole lot more to a  
2 course than their supplemental readings. A course  
3 management system allows -- I'm trying to think of  
4 all the variables. It allows the posting of grades,  
5 it allows test taking, it allows chat functions. I'm  
6 missing some, but they're very, very complicated  
7 systems that actually can be used completely for  
8 distance education -- I mean, if you chose to go into  
9 that way -- but also can be used to just complement  
10 the materials that you're doing in a face-to-face  
11 setting.

12           Q        Who are the principal vendors of the GSU  
13 course management system? Is it Blackboard?

14           A        I believe it's Blackboard.

15           Q        Now -- so I'm a tech-savvy professor --

16           A        Uh-huh.

17           Q        -- in this case, it can't be Bruce Rich,  
18 but assume I were, and I decide that I like all the  
19 bells and whistles that could accompany my own site  
20 and all these other things that I would like to offer  
21 my students in one place, easy, and I've got this  
22 body of material. Now, under the new policy, am I  
23 still required to fill out a fair use checklist with  
24 respect to every item, even if I'm not offering it up  
25 through the ERes system?

1           A       Yes.

2           Q       And what is your understanding as to where  
3 copies of those filled-out forms are supposed to  
4 reside?

5           A       My understanding is they reside with the  
6 faculty member.

7           Q       Is there any plan on the part of GSU to  
8 have a central repository for all such filled-out  
9 forms?

10          A       Not to my knowledge.

11          Q       So that doesn't get me off the hook as a  
12 professor, in other words, I still have to go through  
13 the same exercise no matter where the materials will  
14 be electronically posted, correct?

15          A       Yes.

16          Q       Okay. However, again, just so I'm clear  
17 factually, if I decide to undertake the technology  
18 steps that are involved on my own, then by  
19 definition, I don't present it to that first-level  
20 person at the desk who might have that red-flag  
21 review opportunity, correct?

22                   MR. SCHAEZEL:  Objection as to  
23 form.

24                   MR. RICH:  Objection?

25                   MR. SCHAEZEL:  As to form.

1 Q (By Mr. Rich) You can answer.

2 A And the faculty member, again, is the  
3 person who can best determine this regardless of  
4 whether there's a red-flag person or not. I mean,  
5 they're the ones -- the clerical person seeing  
6 something is -- I mean, it's important, but it's not  
7 that important in the whole process. It's the  
8 faculty member who is the one who knows how the  
9 material is being used in the course. They're the  
10 ones that best understand how to make the fair use  
11 determination.

12 Q So the matter of overall copyright  
13 compliance, is it a matter of no consequence of the  
14 manner in which these materials are posted, that is,  
15 on the one hand, through use of the course management  
16 system, let's say, versus through the library  
17 E-Reserve system?

18 A As long as those are the two options that  
19 are -- that you're positing, I think there probably  
20 is not a whole lot of difference.

21 Q And with respect to access to materials on  
22 course management systems, is it the case or is it  
23 not the case that, again, practice has been that it  
24 requires passwords for students to access those  
25 materials?

1 A Yes.

2 MR. RICH: I think we're out of tape,  
3 so we'll take a little break.

4 THE VIDEOGRAPHER: Off the record at  
5 2:11:48.

6 (Recess taken.)

7 THE VIDEOGRAPHER: This is Tape 4. We  
8 are back on the record at 2:24:52.

9 Q (By Mr. Rich) Under the new policy, how  
10 long are professors going to be required to retain  
11 copies of their filled-out fair use checklist?

12 A I don't know.

13 Q What is it proposed -- what is proposed to  
14 be done if a professor, after a given academic term,  
15 leaves the institution? Where -- is he supposed to  
16 maintain his checklist and take it with him or leave  
17 it behind at the university or what?

18 A I don't know.

19 Q Looking at the preexisting E-Reserve  
20 system, have you been made aware of a single instance  
21 in which a request by a professor to post materials  
22 to E-Reserves has been turned down on copyright  
23 grounds?

24 A No.

25 Q How important is it to students attending

1 Georgia State University to be able to obtain  
2 materials via the E-Reserve system free of charge?

3 MR. SCHAETZEL: Objection as to  
4 form.

5 THE WITNESS: I don't know.

6 Q (By Mr. Rich) Do you have a view as to  
7 what the impact on Georgia State University would be  
8 if permissions fees were paid with respect to an  
9 increased percentage of works which today claim fair  
10 use protection?

11 A Yes.

12 Q What is your viewpoint?

13 A My viewpoint is that the materials would  
14 not be used, but that rather than go through the  
15 process of investigating this, figuring out what  
16 was -- what needed to be done, paying the fee, the  
17 faculty member would just decide not to use the  
18 supplemental materials.

19 Q And built into that assumption is that  
20 there would or would not be funding resources made  
21 available by the library?

22 A I think that's almost irrelevant to the  
23 question. I think it -- it just -- I don't think it  
24 would happen because faculty members would choose not  
25 to provide the supplemental materials.

1 Q Now, your answer assumes that such  
2 offerings are, in fact, supplemental offerings,  
3 correct?

4 A Yes.

5 Q To the extent it were to be the case that  
6 some or, in some cases, all of the course offerings  
7 were required readings, I take it you would have a  
8 different answer as to the impact of paying  
9 permissions fee?

10 A We have a mechanism in place to address  
11 that through coursepack, so it would just be moving  
12 things to the coursepacks.

13 Q And would there be any reason, mechanically  
14 or economically, why if the same materials as  
15 constitute a paper coursepack constitute the  
16 equivalent electronic coursepack, that the same  
17 levels of permissions fees would be, for any reason,  
18 less suitable --

19 MR. SCHAEZEL: Objection as --

20 Q (By Mr. Rich) -- or more objectionable?  
21 Let me rephrase. Poorly phrased --

22 A Please.

23 Q -- question.

24 A Thank you.

25 Q Based on your knowledge of many years as a



1 librarian in this setting, do you have any reason to  
2 believe that paying equivalent levels of permissions  
3 fees for electronic coursepacks as are already paid  
4 for paper coursepacks would have any detrimental  
5 impact on GSU's operations?

6 MR. SCHAEZEL: Objection as to  
7 form.

8 THE WITNESS: So there are electronic  
9 coursepacks that students can buy, so  
10 faculty members create a coursepack, it is  
11 a required reading, and all the material  
12 is -- is made available electronically. So  
13 I think if you're talking about  
14 coursepacks, paper versus electronic, it's  
15 still a coursepack. And that is separate  
16 from E-Reserves, whether it's in a paper  
17 format or in an electronic format.

18 Q (By Mr. Rich) What's your knowledge of the  
19 extent to which licensed electronic coursepacks are  
20 offered to GSU students?

21 A I don't --

22 MR. SCHAEZEL: Objection as to form.  
23 Go ahead.

24 THE WITNESS: I don't know.

25 Q (By Mr. Rich) Do you have any idea

1 whatsoever?

2 A No.

3 Q Can you identify even a single such  
4 offering that's currently licensed?

5 A Not at GSU, no.

6 Q Do you discern -- well, let's assume that a  
7 paper coursepack for which permissions have been  
8 sought comprises 10 articles from scientific,  
9 technical, or medical journals, and it's bound --  
10 velo bound together and it's made available either at  
11 the university copy center or at an off-campus copy  
12 shop, and a permissions fee of, I don't know, let's  
13 just make this up for the sake of my question, \$20 is  
14 charged for all of the copyright rights. Can we  
15 agree that sort of practice occurs today, correct, as  
16 far as you understand it?

17 MR. SCHAEZEL: Objection as to  
18 form.

19 Q (By Mr. Rich) Required reading.

20 A Required reading, that there is a fee  
21 involved, I don't know what the --

22 Q Okay. Let's assume that same professor  
23 prefers his students, for required reading, to access  
24 those very same 10 journal articles, and so he goes  
25 through this same process here, okay, but decides,

1 consistent with the practice on the paper side, that  
2 permissions ought to be sought for those 10, all  
3 right? And let's assume those permissions would come  
4 to the same \$20, okay? Is it of any different  
5 consequence, from the standpoint of the interests of  
6 GSU, whether permissions fees are charged simply  
7 because in one case the materials are being offered  
8 in paper form, and in my other example the same  
9 materials are being offered in electronic form?

10 MR. SCHAEZEL: Objection as to form.

11 THE WITNESS: It's still material that  
12 is required for the course, so it's  
13 irrelevant.

14 Q (By Mr. Rich) It's irrelevant from the  
15 standpoint of the institution, correct?

16 A Yes.

17 Q Now, in that example, exact example I gave  
18 you, if that professor instead decided that because  
19 the works were being offered on the E-Reserve system,  
20 he could treat it as something other than a  
21 coursepack, even though it's the identical reading  
22 material and it's just because it's not velo bound,  
23 but it's offered as individual files on E-Reserve, do  
24 you believe that's a valid basis for making a  
25 different fair use determination, required reading?

1 A No.

2 MR. SCHAEZEL: Objection as to  
3 form.

4 THE WITNESS: Not if it's required  
5 reading.

6 MR. RICH: Okay, I think I repeated  
7 myself on that from earlier. Thank you.

8 Q (By Mr. Rich) Do you recall how you came  
9 to be involved in the committee that generated the  
10 new policy?

11 A Yes.

12 Q How did that happen?

13 A I received a call from Burns Newsome asking  
14 me if I would be willing to serve on that committee,  
15 and then that was followed by a letter from the  
16 chancellor appointing me to the committee.

17 MR. RICH: Let's mark that chancellor  
18 letter. Is this 22? Mark as Plaintiff's  
19 Exhibit 22 a document, I believe, just  
20 produced by defense counsel yesterday. It  
21 doesn't yet have a Bates number, but it's a  
22 10/27/08 e-mail from Burns Newsome to Nancy  
23 Seamans.

24 (Exhibit 22 marked for identification.)

25 Q (By Mr. Rich) Is this the formal

1 invitation that you referred to?

2 A No. I have a letter also from the  
3 chancellor.

4 Q Do you believe it's the same -- that it's  
5 the same text?

6 A The chancellor's letter was much shorter.

7 Q Was much shorter?

8 A Yeah.

9 Q I'm sorry, this is from Mr. Newsome.

10 A Uh-huh.

11 Q Yeah, okay. You're right. I'm getting  
12 tired as well.

13 In the conversation with Mr. Newsome, what  
14 did he describe the purpose of this committee to be?

15 A To review the existing Regents Guide and to  
16 create a policy for the USG system for copyright in  
17 an educational setting.

18 Q In the e-mail in front of you, Mr. Newsome  
19 writes in the second sentence, "As you know, the  
20 Board of Regents Guide to Copyright is a central part  
21 of the lawsuit filed by the publishing industry  
22 against the Board and Georgia State University." Do  
23 you see that?

24 A Yes.

25 Q What did you understand that to mean?

1           A       That the Board of Regents had been included  
2 in the lawsuit and that that was reflected in terms  
3 of how we would look at the policy and the  
4 guidelines.

5           Q       Did you understand Mr. Newsome to be of the  
6 view that a central element of the lawsuit was a set  
7 of guidelines as opposed to a set of practices at  
8 Georgia State University?

9           A       So -- can I ask you to repeat the question?

10          Q       Of course. Did you understand Mr. Newsome  
11 to suggest that the -- a central aspect of this case  
12 was a set of written guidelines, as opposed to actual  
13 practice, in terms of copying under the auspices of  
14 E-Reserve?

15          A       They're inextricably linked because the  
16 practice was based on the guide. So I don't know --  
17 I'm not sure what you're asking me to differentiate  
18 between.

19          Q       What knowledge do you have as to what  
20 dictated actual practice by individual faculty at  
21 Georgia State University during the time when you had  
22 not yet arrived at Georgia State University?

23          A       None.

24          Q       Just supposition on your part?

25          A       Right.

1           Q       What did you understand Mr. Newsome to have  
2 in mind when he writes, "Given that the Regents Guide  
3 is more than 11 years old and does not contemplate  
4 many of the digital technologies available to  
5 research libraries, we believe it is time to revisit  
6 the Regents guidelines"?

7                   Did you have an understanding, either from  
8 this or from your conversation with Mr. Newsome, what  
9 he had in mind by many of the digital technologies  
10 available to research libraries not having been  
11 contemplated by the other guideline?

12           A       My understanding from my conversation with  
13 him was that the guide was dated because it did not  
14 take into consideration the way -- the different ways  
15 of delivering accessed materials that are now  
16 available to us.

17           Q       Did -- do you have any such different  
18 techniques in mind, namely what's available now from  
19 what was contemplated in 1997?

20           A       Personally, my sense of this? We're  
21 talking from -- about going from a paper environment  
22 to an electronic environment, where, I mean,  
23 reserves, as I used them, were you walked into the  
24 library and you went to the shelf and you pulled a  
25 piece of material off the shelf and you used it in

1 whatever way you chose to, including copying it, and  
2 that no longer is the only way we can make materials  
3 available to students.

4 Q But neither was that the case in 1997;  
5 isn't it true?

6 A '97 was still a largely paper environment  
7 for reserves, I would guess. I'd have to go back and  
8 look, but...

9 Q Did you ever have occasion to sit and read  
10 the old Regents Guide?

11 A Not in any detail, no.

12 Q I'll represent to you that it talks about  
13 electronic reserves and good copyright practice with  
14 respect to electronic reserves. It makes specific  
15 reference to the need to be cognizant of new  
16 technological means and electronic means of  
17 delivering content.

18 Does that ring a bell with you in terms of  
19 it really addressing some of those matters?

20 A But not in any way the way things have  
21 changed in the 12 years since those were written.

22 Q Do you have any --

23 A The environment has changed in those 12  
24 years.

25 Q And could you describe a little bit from



1 your own experience how the environment has changed?

2 A I think, from my own experience, the sense  
3 that there is a student expectation in terms of where  
4 they get their material, their willingness to use  
5 materials that are print-based versus their  
6 willingness to use ones that are electronic, access  
7 in terms of a 24/7 model rather than a limited by the  
8 library hours model.

9 I think probably as much as anything, it's  
10 a -- in terms of scale, that they were -- we were  
11 beginning to see the electronic access being made  
12 available 12 years ago, and now it's just  
13 pervasive.

14 Q And at a very broad level, do you have a  
15 sense of what the implications of those trends for  
16 copyright law and copyright and fair use ought to be,  
17 or is that too broad a question?

18 A I think that's too broad a question.

19 Q Okay. Did you understand the mission of  
20 the committee, at least when it was organized, to add  
21 refinements or amendments or addenda to the old  
22 guidelines rather than place them altogether?

23 THE WITNESS: I don't think that was  
24 explicit. I think it was that we have  
25 these existing guidelines and that we need

1 to review them and find out where it is we  
2 go next. And it was up to the committee to  
3 make that determination.

4 Q (By Mr. Rich) Did you know any of the  
5 other committee members from prior involvements?

6 A I had certainly met Bill Potter because he  
7 is a peer and a colleague. I had met Cynthia Hall  
8 because she was on campus. I think that's it.

9 Q Do you remember any particular member of  
10 the committee standing out for his or her  
11 contributions, insights, putting esteemed legal  
12 counsel --

13 A Not particularly, no.

14 Q How would you describe Mr. Potter's role in  
15 terms of substantive contribution?

16 A He was a very good facilitator of the  
17 process, and he certainly had the knowledge of the  
18 process from the guide, the -- the development of the  
19 guide in '97 because he had been part of that process  
20 also.

21 Q How would you describe how active a role  
22 you yourself played in the process?

23 A On a scale of 1 to 10, a 4, because part of  
24 it was being new to Georgia, being new to the old  
25 guide, being new to this process.

1           For the first six weeks, I'm thinking, I  
2 probably was more an observer than anything else and  
3 in that time was kind of hearing how the guide had  
4 been developed, how that affected where we were going  
5 with the new policy. And so probably there was less  
6 participation from me than I might normally have done  
7 just because I was new to the whole thing.

8           Q       What time constraints did the committee  
9 believe it was operating under?

10          A       The need to be done expeditiously.

11          Q       What was your understanding as to the  
12 reason for that?

13          A       That if you give a roomful of academics an  
14 unlimited time frame, they will take it, and that I  
15 think Bill felt the need to have a deadline in order  
16 to not let this go on for the next year or two, which  
17 I think it could conceivably have done.

18          Q       That is, the process go on?

19          A       Right.

20          Q       Did you sense that there was some sense of  
21 urgency with putting processes in place that would  
22 ameliorate some, at least, of the complaints lodged  
23 by our clients in litigation?

24          A       Not necessarily.

25          Q       But not necessarily not, either?

1           A       Right. I think that was certainly a  
2 consideration, but not a primary one.

3           Q       And just again, at the risk of having to  
4 repeat -- we'll try not to do that too much today --  
5 what would you say the primary consideration for the  
6 committee was?

7           MR. SCHAETZEL: Objection as to form.

8           Asked and answered.

9           THE WITNESS: To review what was in  
10 place and to try to bring it into the 21st  
11 century.

12          Q       (By Mr. Rich) Do you think the committee  
13 succeeded?

14          A       I do.

15          Q       How would you characterize the variety of  
16 viewpoints that were bandied about during the process  
17 before the final set of papers were written?

18          MR. SCHAETZEL: I'm sorry, could you  
19 read that question back? I didn't...

20          (Record read.)

21          MR. SCHAETZEL: All right. In other  
22 words, without --

23          MR. RICH: I'm not asking --

24          MR. SCHAETZEL: I understand, I think,  
25 the distinction you're trying to draw, but

1 I would caution the witness, to the extent  
2 that you can do that without disclosing the  
3 communications -- the question, I don't  
4 believe, is intended to ask for the nature  
5 of the communications, but rather how one  
6 would describe --

7 MR. RICH: How diverse it was. Thank  
8 you.

9 THE WITNESS: Because of the nature of  
10 the people sitting around the table, it was  
11 very diverse. There were certainly faculty  
12 perspectives, there were administrative  
13 perspectives, there were library  
14 perspectives and legal perspectives, so it  
15 was quite broad.

16 Q (By Mr. Rich) And at the end of the day,  
17 putting legal perspective to the side because I don't  
18 want to intrude on it, did one set of perceptions, in  
19 terms of one set of perspectives, tend to dominate  
20 the ultimate outcome, in your view?

21 A In my view, yes.

22 Q And how would you describe that?

23 A The need to provide the best educational  
24 opportunity to students that we possibly could within  
25 the constraints of copyright law.

1 Q Was that a controversial proposition?

2 A No, but it took a while to get to that  
3 because you get distracted by so many things that are  
4 being discussed.

5 Q Did you receive -- did you attend all of  
6 the -- each of the committee meetings?

7 A Yes.

8 Q How many were there?

9 A I don't recall, but I believe five.

10 Q In person or in person/conference call?

11 A Five in person and then there were several  
12 conference calls in addition to that.

13 Q Okay.

14 A Could have been four, could have been six.

15 Q And was it Mr. Potter's practice to send  
16 out summaries of -- of each of those meetings at  
17 their conclusion, following their conclusion?

18 A I know he summarized at the end of each  
19 meeting, and I'm sorry, I don't recall whether he  
20 also followed up with e-mail.

21 Q Do you recall any noncommittee members  
22 attending the meeting, other than counsel for the  
23 university or for individual units of the university?

24 MR. SCHAEZEL: Objection as to form.

25 THE WITNESS: No.

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 addition, there's also -- the Office of Legal Affairs  
2 on each campus is available, somebody is available to  
3 consult with. And then Mr. Newsome is also a  
4 resource. So I think there are a number of different  
5 ways one can proceed with this.

6 Q So are you suggesting that where it's a  
7 close case, you would expect that a number of  
8 professors will avail themselves of some one or more  
9 of those resources you just identified in making a  
10 decision?

11 A I would assume so, yes.

12 Q And presumably others will just make the  
13 decision from the face of this document, correct?

14 A I would assume so.

15 Q Did the committee -- apart from faculty  
16 members sitting on the committee, did the committee  
17 review any other University System of Georgia faculty  
18 to get their input on the feasibility of this  
19 process?

20 A No.

21 Q Okay. Did it do any tests or trials of it  
22 for a sample of materials, either that have been  
23 placed on E-Reserves previously or that might be  
24 future candidates for E-Reserves?

25 A That didn't seem to be something that was

1 particularly productive because I think we felt that  
2 there is no way to know what the specific  
3 circumstances are in a course. So to my  
4 recollection, we discussed that, but we did not go  
5 through any exercise of looking at the sociology  
6 professor, for example.

7 Q If you look at the first factor, please.

8 A Uh-huh.

9 Q Among the listed criteria is the issue of  
10 whether the use is transformative or  
11 nontransformative. Do you see that?

12 A I do.

13 Q Do you have an understanding of that  
14 concept within the context of this exercise?

15 A I believe I do.

16 Q Please tell me what your understanding is.

17 A The example that's easiest for me to use is  
18 Pretty Woman and 2 Live Crew and the use of the music  
19 and whether it was a transformative use, and it was  
20 determined to be a transformative use. It's the  
21 example that libraries tend to use.

22 Q Bring that home to practice in terms of  
23 application to textual material.

24 A It would be taking a -- taking a piece of  
25 material and turning it into something that is a new

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 necessary in order to teach the students what they're  
2 intending to -- intending for them to learn in that  
3 course.

4 Q How narrow or broad a conception of  
5 "necessary" do you read into this? I mean,  
6 technically, there's probably no one piece of  
7 information that's necessary to teach a course, yet a  
8 slightly broader conception of necessity is, "Well,  
9 to achieve my pedagogical purpose, I need to have the  
10 students exposed to this essay or this interpretation  
11 of this historical event." How do you think about  
12 that?

13 A Again, I think -- what I think is  
14 irrelevant. It's the faculty member having to look  
15 at what they're trying to accomplish and what they're  
16 trying to teach the student, what they want the  
17 student to learn, what the outcome of the course is,  
18 and they're the ones that are going to have to make  
19 the determination.

20 Q So necessity is in the eye of the  
21 individual course-generating professor?

22 MR. SCHAEZEL: Objection as to form.

23 THE WITNESS: Content is in the eye of  
24 the faculty member, yes.

25 Q (By Mr. Rich) But making the judgment as

1 to the nexus between course material and the  
2 pedagogical purposes to be furthered is in the  
3 subjective judgment of the professor, correct?

4 A Certainly not in anyone else's hands, no.  
5 So yes, I agree.

6 Q And so conceivably if a course is on  
7 brilliant rhetoric and in order to achieve the  
8 objective, the professor determines that he needs to  
9 use the entirety of certain famous speeches, Daniel  
10 Webster, Cicero, you name it, because it's necessary  
11 to understand the concept of brilliant rhetoric to  
12 expose the student to the total construction of the  
13 piece and so forth, I assume it would be reasonable  
14 in that situation for the professor at least to  
15 conclude that using the entirety of the work is  
16 necessary to achieve the intended educational  
17 purpose, true?

18 A You have, however, the fact that you are  
19 requiring the student to read those, requiring them  
20 to read the whole thing in their entirety, which  
21 would suggest that it comes outside of this and goes  
22 in another direction.

23 Q Not within this factor, maybe within --

24 A Right --

25 Q -- a different factor?

1 A -- looking at it in the whole.

2 Q But looking at Factor 1 and saying -- just  
3 taking my fact scenario, you could envision in that  
4 situation a professor legitimately concluding, "I  
5 need to do that," yes?

6 A Uh-huh.

7 Q Factor 3 goes to amount and substantiality.  
8 The phraseology adopted in the first boxes across  
9 horizontally are small portion of work used and large  
10 portion or entire work used. Again, those seem to be  
11 capable of a fair amount of interpretation, is that  
12 fair --

13 A Yes.

14 Q -- the concept small and large?

15 A Yes.

16 Q And was that deliberate on the part of the  
17 drafters?

18 MR. SCHAEZEL: Would you read that  
19 question back for me, please?

20 (Record read.)

21 MR. RICH: Drafters.

22 THE COURT REPORTER: Oh, drafters.

23 Sorry.

24 MR. SCHAEZEL: Okay. Let me ask --  
25 there's a potential for that question to

1 raise the specter of attorney-client  
2 privilege, given that you're now asking for  
3 what the witness at least conceivably has  
4 been told by other drafters. By answering  
5 this question, are you willing to agree  
6 that we're not waiving the privilege?

7 MR. RICH: Yes.

8 MR. SCHAEZEL: Please answer the best  
9 you can.

10 THE WITNESS: Can you repeat the  
11 question?

12 MR. RICH: Go ahead, please.

13 (Record read.)

14 THE WITNESS: To say that there are  
15 two sides to this, yes.

16 Q (By Mr. Rich) No, to use words capable of  
17 as much interpretation as small versus large?

18 A Certainly so much of this is subjective  
19 that I think, again, it becomes to some extent  
20 irrelevant, yes.

21 Q When you say -- what is it that becomes  
22 irrelevant?

23 A The use of the -- all of this is a faculty  
24 member making their best determination as to how this  
25 fits the material that they're intending to use. So

1 trying to give them something that is fairly explicit  
2 is -- I think was deliberate.

3 Q What tools of interpretation do faculty  
4 have, whether from the policy or other guidance, in  
5 terms of how to think about the concept of a small  
6 portion or a large portion?

7 A Certainly the whole list of factors that  
8 you're looking at because they are intertwined, and  
9 then, again, the resources that are available to  
10 them, if they choose to avail themselves of them, on  
11 the Web site, through legal counsel.

12 Q Well, for example, the -- one of the  
13 documents we looked at earlier that was a preexisting  
14 guidance on the Georgia State site indicated that  
15 works of one chapter or 20 percent or less would be  
16 accepted. Do you recall seeing that?

17 A I do.

18 Q And it appears that at least at that level,  
19 those concepts have not been worked into this  
20 checklist, correct?

21 A That's correct.

22 Q And I believe you earlier testified that in  
23 some situations, possibly more than 20 percent of a  
24 work could be warranted under a fair use analysis,  
25 correct?



1           A       What I think I said was that I think it's  
2 impossible to put percentages on those --

3           Q       Yes.

4           A       -- that it can range from nothing to  
5 everything.

6           Q       Yes. But what I -- my more focused  
7 questions really are, again, trying to understand,  
8 putting this in the hand of any of the 1200 faculty  
9 at GSU, how they are supposed to think about small  
10 portion. I think inevitably some will think in terms  
11 of percentages of the whole. I mean, if they come to  
12 Ms. Hall or they go to Mr. Newsome or somewhere else  
13 and say, "Can I use not more than X percent", what is  
14 the committee -- what is the committee's  
15 understanding about what they're likely to hear?

16          A       It would depend on the course, it would  
17 depend on the content of the course, it would depend  
18 on what the faculty member was trying to accomplish  
19 in the course. And that's one piece of the amount  
20 of substantiality. It's trying to take this,  
21 Section 107, and give it something that people can  
22 understand in a more manageable way and using common  
23 practice to do that.

24          Q       The next facts within -- or criteria within  
25 Factor 3 are "portion used is or is not central or

1 significant to the entire work as a whole." Do you  
2 see that?

3 A I do.

4 Q The heart-of-the-work concept. How do you  
5 envision a faculty member making that determination  
6 as to works they're not the authors of?

7 A I would assume that if they are teaching  
8 the course, they are familiar with the material that  
9 is relevant to that course, and so they would have a  
10 sense of that better than anyone else would have who  
11 would be determining whether or not it was a fair use  
12 of the material.

13 Q What is the intended meaning of the third  
14 set of criteria there, "The amount taken is narrowly  
15 tailored to educational purpose such as criticism,  
16 research," and then I'm particularly interested in  
17 "or subject being taught"? What is intended to be  
18 conveyed there?

19 A The idea that the material is specifically  
20 relevant and that the amount being used is targeted  
21 to the educational purpose trying to be accomplished  
22 in the course.

23 Q Strikes me, might you agree, that it  
24 overlaps a fair amount with an earlier concept we  
25 talked about under Factor 1, which is "use is

1 necessary to achieve your intended educational  
2 purpose" --

3 A And I think I --

4 Q -- similar in concept?

5 A -- made that point earlier, yes. I think  
6 it is very hard to take any of these in isolation. I  
7 think they're not intended to be taken in isolation,  
8 that there are four factors and it's the four factors  
9 that have to be analyzed.

10 Q Looking at Factor 4 -- actually, if you --  
11 if you, the faculty member, determine that you  
12 prevail on three of the four, you don't really need  
13 to analyze all four, do you?

14 A Of course you do.

15 Q Why?

16 A Because you have to look at all four  
17 factors to see if there -- if it's a fair use. You  
18 might get to the fourth one -- you've got three that  
19 are in your favor and you get to the fourth one and  
20 you start realizing, "Hmm, that doesn't weigh in my  
21 favor," and it makes you question things that you  
22 decided previously.

23 Q So that you would recalibrate your  
24 judgments --

25 A You might recalibrate --

1 Q -- on 1 to 3?

2 A You might recalibrate your judgment.

3 Q But if you're very firm in your judgments  
4 as to 1 to 3, you say, "I win"? No?

5 A You still have to do the fourth one.

6 Q What's the penalty if you leave that one  
7 blank when you hand your form in, or you don't have  
8 to hand it in to anybody? Who's going to know?

9 A There is a -- faculty members want to do  
10 the right thing partly because they're also holders  
11 of copyright. They're not only using someone else --  
12 I mean, in my opinion, I mean, they are people who  
13 also have created works that other people are using,  
14 and I think they want their works used appropriately,  
15 as well as they want to use other people's works  
16 appropriately.

17 Q I don't doubt that to be true to some  
18 extent, although you might agree with me, wouldn't  
19 you, that faculty members often have different  
20 motivations to be published than other authors do?

21 A Certainly.

22 Q How would a -- looking at Factor 4, how  
23 would a faculty member be in a position to discern  
24 the effect on the market or potential market for  
25 copyrighted work based upon the proposed taking?

1           A       Again, I would speculate that a faculty  
2 member is in the best position to know that because  
3 they are aware of what is going on in their  
4 discipline and what the market is for the materials  
5 that are being published.

6           Q       Are they required, in your view, to make  
7 some investigation as to, for example, whether there  
8 is a license available, through an organization like  
9 the CCC, for accessing the material that they wish to  
10 use?

11          A       Are they?

12          Q       Required to make that kind of --

13          A       Required to make that --

14          Q       -- investigation in assessing this factor.

15          A       I think it would depend on whether they  
16 thought there was enough question in their mind that  
17 they should investigate that. But the fact that a  
18 license is available does not preclude fair use. The  
19 use could still be fair even if there is a license  
20 available, or at least that is my understanding of  
21 the law.

22          Q       Sure, but looking at this factor, which is  
23 designed to measure precisely a displacement of  
24 income --

25          A       Right.

1 Q -- it's a little circular to say that  
2 doesn't foreclose the fair use determination when  
3 that's an element you have to weigh in the  
4 determination to begin with, correct?

5 A It is one of --

6 MR. SCHAEZEL: Objection as to form.

7 I didn't want to interrupt you.

8 THE WITNESS: Okay. It's one of four  
9 factors.

10 Q (By Mr. Rich) Sure. So I'm saying, how do  
11 you know, if you're a professor, whether you have  
12 impaired an existing viable licensing mechanism for  
13 some or all of the materials if you have made no  
14 investigation, you just say, "Well, nobody is going  
15 to be the worse off from me handing out 20 copies to  
16 my students"? Is that the level of investigation  
17 we're talking about here?

18 MR. SCHAEZEL: Objection as to  
19 form.

20 THE WITNESS: That is assuming that a  
21 faculty member is not aware of what is  
22 happening in their discipline, and a  
23 faculty member, unless they are a brand-new  
24 one, is going to have a very good sense of  
25 what the marketability is of materials in

1 their discipline.

2 Q (By Mr. Rich) Excerpts of materials?

3 A I would speculate that it would be all  
4 materials in their discipline, yes.

5 Q Down that left-hand column on Factor 4 is  
6 "licensing or permission unavailable." How is a  
7 faculty member going to ascertain that information?

8 A I don't know definitively, but some  
9 opportunities would be to contact the person who  
10 created the work, contact the library, use something  
11 like the Copyright Clearance Center. I think there  
12 are several different ways you could do that.

13 Q Would you expect that it would be proper  
14 practice for faculty going through this checklist to  
15 make that kind of investigation before completing the  
16 checklist?

17 A I think it would be up to the individual  
18 faculty member, as they weigh all of the factors, to  
19 decide whether that's one that bears further  
20 investigation.

21 Q What expertise do they possess to determine  
22 which factors should be viewed as significant versus  
23 other factors?

24 A The expertise of their discipline, their  
25 awareness of the course, awareness of the educational

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           A       At the worst end, they can be dismissed  
2 from school.

3           Q       It violates the code of conduct for them to  
4 cheat, doesn't it?

5           A       It does.

6           Q       They're expected to act appropriately,  
7 correct?

8           A       As are faculty members --

9           Q       And if --

10          A       -- in terms of using materials  
11 appropriately in their teaching, yes.

12          Q       If faculty members plagiarized, are they  
13 subject to discipline?

14          A       Of course.

15          Q       What would be the discipline?

16          A       Would depend on how it's happened and how  
17 it gets addressed. I don't know the --

18          Q       What could be the range of --

19          A       The ultimate could be that they are  
20 dismissed.

21          Q       What other acts by faculty could lead to  
22 discipline at the university level, in your  
23 experience?

24          A       Misappropriation of funds, inappropriate  
25 relationships with students. There are a number of

1 them.

2 Q Yes. And those all violate norms of  
3 conduct, correct?

4 A They violate norms of conduct and law.

5 Q But if they violate norms of conduct and  
6 copyright laws, there is -- there are not going to be  
7 any copyright police; is that correct?

8 A You're putting words in my mouth. What I  
9 have said is that there are -- there is every effort  
10 made to allow -- to give the tools to the faculty  
11 member and allow them to make the determination. How  
12 we enforce -- to use your word, enforce that, is  
13 something that we just have not put into place at  
14 this point, and I don't know what that would be.

15 Q Well, that's a slightly different answer  
16 than your prior answer, which was, "We don't intend  
17 to be copyright police."

18 MR. SCHAEZEL: Objection as to  
19 form.

20 THE WITNESS: And the "we" at that  
21 point that I was referring to -- and I'm  
22 sorry, I was not explicit -- was the  
23 library, the library will not be the  
24 copyright police, no.

25 Q (By Mr. Rich) Let me be more clear, then,

1 with my question.

2 A Okay.

3 Q Do you believe there will be  
4 university-based enforcement mechanisms, whether  
5 legal or the chancellor level, to enforce compliance  
6 with the new policies?

7 A I do not know. They're presumably will be  
8 consequences for flagrant violation of any policy in  
9 place on campus.

10 Q And given the current structure for  
11 E-Reserves, how would such flagrant violations come  
12 to the university's attention but for the high school  
13 student, to post Ph.D. candidates, sitting at the  
14 reserve desk flagging it?

15 THE WITNESS: No, not you?

16 MR. SCHAEZEL: Not me.

17 THE WITNESS: As we've already talked  
18 about, I think that there is the red flag  
19 that is going to be raised by that person.  
20 It gets bumped to someone else to determine  
21 and ultimately gets bumped to legal counsel  
22 to determine.

23 Q (By Mr. Rich) Are you of the view that  
24 everything that the faculty member needs to evaluate  
25 is embedded in these four factors, that is,

1 everything necessary to a fair use evaluation?

2 A That is certainly my understanding of  
3 Section 107, that that does cover the four fair use  
4 factors, yes.

5 Q Another element of the policy, and I can  
6 show it to you if you care -- I'm trying to save a  
7 little bit of time at this hour --

8 A Uh-huh.

9 Q -- indicates that the four factors are  
10 nonexclusive, that there can be other factors that  
11 can bear on a fair use outcome, does that sound  
12 familiar?

13 A I think if you look at 107, it does address  
14 that.

15 Q Yes.

16 A Yes.

17 Q How does the checklist deal with that fact,  
18 deal with that recognition?

19 A If you look at the directions for that, I  
20 believe it kind of points people towards the legal  
21 office if they have questions beyond what they think  
22 is being covered by the four fair use factors and the  
23 checklist.

24 Q But if you're not initiated in copyright  
25 law at some level, you wouldn't necessarily know what

1 those other factors are, would you?

2 A No, but you certainly have the tools  
3 available to find that out should you choose to. And  
4 I believe that we have provided, certainly, the  
5 common understanding of how faculty members are  
6 determining fair use throughout the United States and  
7 how they use materials.

8 Q What is the RACL?

9 A The Regents Advisory -- no, Regents  
10 Academic Advisory Committee on Libraries, Regents  
11 Advisory Committee. It's a library group of regents  
12 institutions.

13 Q Are you a part of that?

14 A I am.

15 Q And my limited question there is: What  
16 role, if any, did that group of people have in the  
17 formulation of the new policy?

18 A To the best of my knowledge, none.

19 Q They were given an advance courtesy copy;  
20 is that correct?

21 A Yes.

22 Q Okay.

23 A Because those would be the institutions  
24 that would be having to implement the policy once it  
25 is approved.

1 Q We are getting there.

2 A I'm fine.

3 (Discussion off the record.)

4 MR. RICH: How are we doing on time?

5 Why don't we take a short break, okay?

6 THE VIDEOGRAPHER: Off the record at  
7 3:19:42.

8 (Recess taken.)

9 THE VIDEOGRAPHER: This is Tape 5. We  
10 are back on the record at 3:33:51.

11 (Exhibit 23 marked for identification.)

12 Q (By Mr. Rich) The reporter has placed  
13 before you the next exhibit, which is Plaintiff's 23,  
14 which is a document without Bates numbers, but  
15 produced by the defendants, I believe were taken off  
16 the Web site, the lead page of which says "Course  
17 Reserves," and ask you if you're able to identify  
18 this exhibit.

19 MR. SCHAETZEL: Do you have a copy for  
20 us?

21 MR. RICH: I'm sorry.

22 MR. SCHAETZEL: This is exhibit which  
23 now?

24 THE WITNESS: Twenty-three.

25 MR. SCHAETZEL: Thank you.

1 THE WITNESS: It doesn't have the  
2 Georgia State University logo on it, but I  
3 believe it is part of the Web site for  
4 course reserves.

5 Q (By Mr. Rich) You understand this to be a  
6 recent addition to the Web site as well?

7 A I believe it is.

8 Q And is it designed to reflect the work of  
9 your committee and the resulting policy?

10 A As it references that policy, I believe it  
11 does, yes.

12 Q And who is the author of these -- of this  
13 Web site material?

14 A I believe, again, the same people who were  
15 doing the Web page that we talked about before, so it  
16 would be the folks in the E-Reserve unit, plus the  
17 supervisor of that unit, plus Laura Burtle, plus me,  
18 with some input from legal counsel, I believe.

19 Q Have you personally received any feedback  
20 from anyone in the GSU community to any of the  
21 recently posted materials or to the policy?

22 A Not yet.

23 Q Do you expect to be deluged?

24 A Not deluged, but I expect to hear things,  
25 yes.



1 MR. RICH: Let's mark next the amended  
2 complaint in this action, first amended,  
3 Plaintiff's 24.

4 (Exhibit 24 marked for identification.)

5 MR. RICH: Thank you.

6 Q (By Mr. Rich) I'm actually not going to  
7 ask you any questions about the body of the document,  
8 but rather only relating to one of the exhibits to  
9 it. But I'll ask -- I'll represent to you that this  
10 is a copy of the amended complaint filed in this  
11 action.

12 If you would turn, please, to Exhibit 1  
13 towards the back, "Schedule of Works." Prior to  
14 today, have you had a chance to review that schedule?

15 A No. I've seen it, but I have not looked at  
16 it closely.

17 Q I'll represent to you that these are works  
18 of the three plaintiffs to this action, Cambridge,  
19 Oxford, and Sage, which serve as examples for the  
20 kind of practices to which our clients object in this  
21 lawsuit. And we provided a few samples to gain your  
22 reaction to them.

23 And why don't we begin with -- on page 1 of  
24 the schedule, the bottom row, there's a book called  
25 Focus on the Language Classroom." And the two

1 excerpts taken from that by the professor of the  
2 course called "Practicum" in the fall of 2007 were  
3 Chapters 9 and 10, which we'll jointly mark as the  
4 next exhibit number.

5 (Exhibit 25 marked for identification.)

6 MR. RICH: I'm going to mark, although  
7 we don't have multiple copies today, but  
8 we'll have the reporter -- we'll provide  
9 the reporter with a picture of the cover of  
10 the work from which these chapters were  
11 taken, namely the hard-cover version of  
12 Focus on the Language Classroom, Cambridge  
13 University Press, and I'll mark it as an  
14 exhibit, which, again, we'll put a place  
15 holder in for now and provide copies of the  
16 title page, but it's a resource available  
17 to you as we discuss it now.

18 What number will that be?

19 THE COURT REPORTER: Twenty-six.

20 MR. RICH: That will be Plaintiff's  
21 26.

22 Q (By Mr. Rich) What I would interested in,  
23 recognizing and accepting the fact you are not the  
24 faculty member who selected these materials, nor is  
25 this your area of expertise, I'm interested in using

1 this and perhaps one or two other examples as  
2 illustrative of the way you, from your committee  
3 experience here, would anticipate a faculty member  
4 thinking of using these excerpts from this work, how  
5 you would anticipate that he or she would go through  
6 this checklist exercise, as far as you're able to  
7 take it. And if you're unable in places, I'm sure  
8 you'll say to me, "I can't make the judgment," but I  
9 think if we can use this in a dynamic exercise in a  
10 few examples, we at least could find that helpful.

11 And so if you have the checklist in front  
12 of you, and again, the premise is that the professor  
13 in this class is proposing to take two chapters out  
14 of what I believe are 11 chapters in all -- you can  
15 look at the table of contents in this book -- for use  
16 in this course. And so what are you able to offer  
17 and what are you unable at this point, without more  
18 information, to offer as you course through the  
19 checklist? Take your time.

20 A Go back to my paper here. So since this is  
21 not owned by my library, for starters, it wouldn't  
22 make the first cut. Can we stop there? It's owned  
23 by Emory.

24 Q Fair point.

25 A Okay. Are we over?

1 Q Let's -- that's very -- very well done.

2 A You're not going to let me get away with  
3 that one, are you?

4 Q Let's change that.

5 A Shucks.

6 Q This comes off --

7 A Okay.

8 Q -- the professor's collection, okay?

9 A All right.

10 Q That was a very good catch, however.

11 A All right. I have to go back through my  
12 papers. Because it is for a course -- and I am going  
13 to qualify this. This is -- I am doing this blind, I  
14 am extrapolating --

15 Q Absolutely.

16 A -- what I can from this. I am not the  
17 faculty member. I am not teaching the course.

18 Q Understood.

19 A You know all of that.

20 Q Understood.

21 A But based on what I'm seeing here and here,  
22 I would say that I would be fairly comfortable that  
23 it is a nonprofit educational use.

24 Q Yes.

25 A I am not sure that I would be willing to

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 is not highly creative, and it is not consumable.  
2 So again, I would say that in this case, factors  
3 favor fair use.

4 Small portion, that's something that I  
5 would have a hard time deciding in terms of kind of  
6 kind of how it weighs against the whole work and how  
7 it's used in the classroom setting. So I would  
8 probably --

9 Q Well, if the work is about 220 pages and  
10 this is maybe --

11 A Two chapters.

12 Q -- 35 pages, it's about roughly 15 percent.  
13 Does that affect your thinking?

14 A Not really. I mean, it's kind of whether  
15 it's -- it's how it plays into the rest of things. I  
16 would maybe even come back to that one --

17 Q Okay.

18 A -- in order to fill it out.

19 I don't know enough about this work to know  
20 whether the portion used is central or significant to  
21 the work, so I would have to spend some time during  
22 that analysis in a different kind of way. And again,  
23 I don't know what the educational purpose is, so I'm  
24 not sure how this is being used for that class.

25 I might, given what you're saying, check

1 here the large portion being used; but I think,  
2 again, it would depend on how we would -- we would  
3 determine that in the context of the class. The  
4 portion used is central, again, I don't know that.

5 Q Right.

6 A Amount taken necessary, this one, I would  
7 almost have to skip over.

8 Q You don't have enough information?

9 A Because I don't have enough information.

10 Q And the fact -- I take it the fact that  
11 it's two chapters is not, in and of itself,  
12 determinative one way or the other?

13 A I would think not, no.

14 Q Okay.

15 A Effect on the market, though my background  
16 is education, it's not language teaching, so I would  
17 not know what the effect might be, so that one would  
18 be one that I just couldn't determine. I could see  
19 the use stimulating the market for the original work,  
20 that a student uses this and realizes that it's so  
21 important that they need to have this, that they  
22 would go out and buy a copy.

23 I don't know about products marketed by the  
24 copyright holder. I don't know if it's still in  
25 print. What is the date of the copyright? '91, so



1 that one -- I would have to determine that, whether  
2 it's still in print or whether there's a new edition  
3 or something available.

4 Don't know about licensing or commission,  
5 so I would have to find that out. Presumably it is a  
6 supplemental classroom reading. Given the nature of  
7 the class, as I'm understanding it, there would be  
8 the one copy made, so presumably that would argue in  
9 favor. Original --

10 Q Can you explain that, because isn't the  
11 intent of this E-Reserve list to make copies  
12 potentially available to every -- every student in  
13 the course? Isn't that the correct way to interpret  
14 that element?

15 MR. SCHAEZEL: Objection as to  
16 form.

17 THE WITNESS: Not explicitly, no.  
18 It's that there is one copy made available  
19 in the same way that one copy was made  
20 available in a copy environment, except  
21 that it's now in an electronic environment.  
22 What the student chooses to do with that  
23 one copy is what the student chose to do in  
24 the paper environment, take notes from it,  
25 make a copy of it. It's very analogous to

1 the paper environment.

2 Q (By Mr. Rich) Let me understand your  
3 interpretation. If there are 15 students in a  
4 course --

5 A Uh-huh.

6 Q -- is there only one copy being made  
7 available or 15 copies being made available, as you  
8 think about it?

9 A From an E-Reserve system, it would be one  
10 copy.

11 Q Even though the students are able to make  
12 further copies themselves?

13 A Again, it's analogous to the paper  
14 environment where the library makes one copy  
15 available and multiple copies can be made by the  
16 students.

17 MR. RICH: Sorry, I was distracted.  
18 If I could just hear the -- that last  
19 answer.

20 (Record read.)

21 Q (By Mr. Rich) In the library environment,  
22 in the hard-copy environment, you would agree with me  
23 that that cannot be done, at a minimum,  
24 simultaneously by all students, correct?

25 A To the best of my knowledge, no.

1 Q And by what techniques would students  
2 checking reserve books out in hard copy in a library  
3 physically make copies?

4 A They would check them out and they would  
5 take them to a copy machine and they would make a  
6 copy.

7 Q And would they normally pay a fee to do  
8 that?

9 A They would pay 10 cents a page or whatever  
10 the cost is.

11 Q Right. Now, you agree with me that  
12 downloading and oftentimes at least printing from  
13 electronic reserves is an easier and perhaps more  
14 cost-effective way of making a copy than through  
15 physical reserves?

16 A I would say it might be easier. I would  
17 not say it's more cost-effective.

18 Q And the reason for the latter is?

19 A That when one factors in the cost of the  
20 technology and printer cartridges and printing at  
21 home and all of that kind of stuff, or at a -- or at  
22 the library, that it's not necessarily more  
23 cost-effective.

24 Q Okay, why don't you keep going?

25 A This is my copy of the book, so I obtained

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           A       Not necessarily, I don't believe.

2           Q       Looking within Factor 4, are there one or  
3 more elements that you think deserve more weight  
4 compared to others?

5           A       Because, as I've said, I think one of the  
6 things that faculty members would be thinking about  
7 would be what the impact could be on materials for  
8 which they hold the copyright, I would think a  
9 faculty member would weigh more the impact or the  
10 effect on market or potential market for the  
11 copyrighted work.

12          Q       There's no explicit guidance that would  
13 require that, however, correct?

14          A       No.

15          Q       So that in theory, if someone was doing  
16 this somewhat mechanically --

17          A       Uh-huh.

18          Q       -- you could find -- you could make a  
19 judgment that there could be a very significant  
20 impairment of the market, yet find a majority of  
21 other factors favoring fair use that could lead the  
22 faculty member doing the math, as it were, within  
23 Factor 4 to say, "I still win Factor 4," that's  
24 feasible, correct?

25          A       It's feasible.

1 Q Do you think that would be a desirable  
2 outcome?

3 A Not if I were the holder of the copyright,  
4 no.

5 Q Let's do one or two more of these. We're  
6 not going to belabor this exercise.

7 A I would think that my answers would be  
8 quite similar, to be honest, if I take --

9 Q I understand that. There's some where you  
10 just don't have information, I understand that.

11 A There's no way I can do those.

12 Q We appreciate that. Thank you for your  
13 patience in doing it.

14 A Uh-huh.

15 Q Then if you'd turn the page to the bottom  
16 of the second page, the next item we'll mark deal  
17 with "The Slave Community, Plantation Life in the  
18 Antebellum South," and the excerpt is Chapter 4  
19 called "The Slave Family." It's an Oxford University  
20 Press work.

21 (Discussion off the record.)

22 MR. RICH: So the -- Chapter 4 will be  
23 marked as Plaintiff's 27.

24 (Exhibit 27 marked for identification.)

25 MR. RICH: And the work itself -- have

1 we got that -- is in -- looks like trade  
2 paperbound --

3 THE WITNESS: Uh-huh.

4 MR. RICH: -- we'll mark as  
5 Plaintiff's 28 and offer it to the  
6 witness for her perusal, if she would like  
7 to see it.

8 (Discussion off the record.)

9 THE WITNESS: Same thing, it's not my  
10 book, so presumably this is my book?

11 MR. RICH: Presumably, yes.

12 THE WITNESS: Okay.

13 (Discussion off the record.)

14 MR. SCHAEZEL: How are we numbering  
15 now so that it's clear on the record and I  
16 have it as well?

17 THE COURT REPORTER: That book is  
18 going to be 26, and this book is going to  
19 be 28.

20 MR. SCHAEZEL: The book is 28.

21 MR. RICH: The excerpt is 27.

22 MR. SCHAEZEL: Okay.

23 Q (By Mr. Rich) Let me ask you  
24 preliminarily, just looking at the schedule entry --

25 A Uh-huh.

1 Q -- are you familiar with the course  
2 offering "African-American Male/Female  
3 Relationships"?

4 A I am not.

5 Q Do you know what the reference "AAS" is?

6 A I'm assuming African-American Studies, but  
7 I don't know that --

8 Q Okay.

9 A -- specifically.

10 Q Okay. Please, if you would give us your --

11 A Again, the book is owned by Atlanta-Fulton  
12 Public, so not my book, but we'll pretend it is.

13 Q I believe this is a 42-page excerpt,  
14 incidentally.

15 A Again, going through the Factor 1 --

16 Q Yes.

17 A -- nonprofit educational, in this case it  
18 looks to be more explicitly for teaching, so I would  
19 probably check that one. I would perhaps be less  
20 likely at this point to check research and  
21 scholarship, less likely to check criticism,  
22 transformative for personal study. And again, I  
23 don't know the course well enough to know whether the  
24 use is necessary to achieve the intended educational  
25 purpose.



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 you indicated; and then, of course, up to the  
2 professor to make the judgment, at a minimum, whether  
3 the use is necessary or not, correct?

4 A Though I think -- I think keeping in mind  
5 that there are for-profit educational settings.  
6 Georgia State University is not one of them, but  
7 there are for-profit educational settings.

8 Q Right. But focusing --

9 A And I think that --

10 Q That's a fair comment, but --

11 A Okay.

12 Q -- would you think that offering E-Reserves  
13 in a for-profit educational setting would entail  
14 either commercial activity or profiting from use; is  
15 that your understanding?

16 A It certainly would be -- it would change  
17 the way I would have to look at this, yes.

18 Q Uh-huh. But here in this setting, wouldn't  
19 invariably an E-Reserves offering in the classroom  
20 setting award Factor 1 to the professor unless the  
21 professor said, "While I'm offering this work for my  
22 students, it's not really necessary to achieve my  
23 purpose"?

24 MR. SCHAEZEL: Objection as to form.

25 THE WITNESS: And I do think that

1           you -- the criticism piece, I think, would  
2           be one that would take it over even  
3           stronger over onto the -- onto --

4           MR. RICH:    Yeah.

5           THE WITNESS:  -- the side that favors  
6           fair use.  And I do think that there are  
7           ways that -- I think, yes, you're generally  
8           right, but I think there are some instances  
9           where it would weigh against fair use.

10          MR. RICH:    Okay.

11          THE WITNESS:  I don't think you could  
12          automatically say, "Well, I don't need to  
13          check this one because it always weighs in  
14          my favor."

15          Q        (By Mr. Rich)  Now you can proceed, I'm  
16          sorry, with Factor 2, 3, 4.

17          A        Here, it would be a published work and  
18          presumably a work of nonfiction.  Again, I'm not  
19          familiar enough with it to know, but I'm making that  
20          assumption.  Again, the question about important to  
21          educational objectives would be up to the faculty to  
22          decide.

23                 I -- again, because I don't know, I don't  
24          know whether it's highly creative.  So, I mean, this  
25          one, I would have a little bit of a hard time

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

1 setting, it would be one copy.

2 Q And you don't believe that the copies being  
3 available to multiple students in the class is a  
4 distribution of more than one copy?

5 A No.

6 Q Okay.

7 A And again, I would draw the analogy to the  
8 print environment that one copy is made available.  
9 What the student chooses to do with that copy is the  
10 student's call.

11 Q Okay.

12 MR. RICH: Give me a second, please.

13 Can we go off the record?

14 THE VIDEOGRAPHER: Off the record at  
15 4:05:55.

16 (Recess taken.)

17 (Exhibits 26 and 28 marked for  
18 identification.)

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1 THE VIDEOGRAPHER: Back on the record  
2 at 4:18:52.

3 Q (By Mr. Rich) Ms. Seamans, did you  
4 maintain any notes of the committee meetings which  
5 you participated in relating to the formulation of  
6 the new policy?

7 A No.

8 Q Is it your normal practice not to do so, or  
9 were you -- were you recommended not to do so?

10 A It's normal practice.

11 Q Okay.

12 MR. RICH: I have no further  
13 questions.

14 MR. SCHAEZEL: We have no questions.

15 THE VIDEOGRAPHER: Off the record at  
16 4:19:19.

17 (Deposition concluded at 4:19 p.m.)  
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E R R A T A P A G E

Pursuant to Rule 30(e) of the Federal Rules of Civil Procedure and/or Georgia Code Annotated 9-11-30(e), any changes in form or substance which you desire to make to your deposition testimony shall be entered upon the deposition with a statement of the reasons given for making them. To assist you in making any such corrections, please use the form below. If supplemental or additional pages are necessary, please furnish same and attach them to this errata sheet.

I, the undersigned, NANCY SEAMANS, do hereby certify that I have read the foregoing deposition and that, to the best of my knowledge, said deposition is true and accurate with the exception of the following corrections below.

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\_\_\_\_\_  
NANCY SEAMANS

Sworn to and subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

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C E R T I F I C A T E

STATE OF GEORGIA  
COBB COUNTY

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages represent a true and correct transcript of the evidence given upon said hearing. I further certify that I am not of kin or counsel to the parties in the case, am not in the regular employ of counsel for any of said parties, nor am I in anywise interested in the result of said case.

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CCR-B-2165

1 DISCLOSURE

2 STATE OF GEORGIA

3 COUNTY OF DEKALB

4  
5 Deposition of NANCY SEAMANS

6  
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