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

CAMBRIDGE UNIVERSITY)
PRESS, et al.,)
)
Plaintiffs,)
)
vs.) Civil Action File
) No. 1:08-CV-1425-ODE
MARK P. BECKER, in his)
official capacity as)
Georgia State University)
President, et al.,)
)
Defendants.)

- - -

Videotaped deposition of LAURA G. BURTLE,
taken on behalf of the plaintiffs, pursuant to the
stipulations contained herein, before Sharon A.
Gabrielli, RPR, CCR No. B-2202, at 104 Marietta Street,
6th floor, Room 3, Atlanta, Georgia, on Friday, April
24, 2009, commencing at the hour of 9:13 a.m.

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

7 The date is April 24th, 2009. We are on
8 the record at 9:13:42.

9 Swear the witness, please.

10 LAURA G. BURTLE,

11 having been first duly sworn, was deposed and testified
12 as follows:

13 EXAMINATION

14 BY MS. SINGER:

15 Q Good morning, Ms. Burtle. My name is Randi
16 Singer. I'm from the law firm of Weil, Gotshal &
17 Manges. And we represent Cambridge University Press,
18 Oxford University Press, and Sage Publications.

19 Could you please state your name and address
20 for the record?

21 A Laura Burtle, 1542 Marbut Avenue, Southeast,
22 Atlanta, Georgia.

23 Q Okay. Have you ever been deposed before,
24 Ms. Burtle?

25 A No.

1 Q Okay. I'll be asking you some questions this
2 morning, and you've agreed to answer them truthfully
3 and completely. Okay?

4 A Yes.

5 Q Okay. So let's go over just a quick few
6 ground rules. Your answers need to be verbal so that
7 the court reporter can take them down. She can't get
8 nods and hand gestures. Okay?

9 A Okay.

10 Q If you don't understand a question, please
11 let me know, and I'll repeat it or rephrase it. Okay?

12 A Okay.

13 Q If you answer it, we'll assume that you have
14 understood it; is that fair?

15 A Yes.

16 MR. ASKEW: I would not make that
17 assumption. If she answers it, then she will
18 be reviewing the transcript, and it may be
19 that during her review she may find that
20 there's a question that she did not
21 understand.

22 MS. SINGER: Fair enough.

23 Q (BY MS. SINGER) And if you need a break at
24 any point, please let me know and we'll take one.

25 Did you do anything to prepare for your

1 deposition today?

2 A Yes.

3 Q What did you do?

4 A Met with counsel.

5 Q When did you meet with him?

6 A Yesterday.

7 Q For about how long was that meeting?

8 A About two-and-a-half hours.

9 Q Was anybody there besides Mr. Askew?

10 A Yes, Ms. Swift and Hall.

11 Q Ms. Swift and Ms. Hall?

12 A Yes.

13 Q Okay. Did you look at any documents when you
14 were preparing?

15 A Yes.

16 Q Okay. Did you have any conversations with
17 anyone other than -- than counsel in preparation for
18 the deposition?

19 A No.

20 Q Did you talk to Ms. Seamans about her
21 deposition?

22 A Only that she had done it.

23 Q Okay. Did you search your files at any time
24 for documents to produce in this litigation?

25 A Yes.

1 Q And when was that?

2 A I don't recall exactly. Whenever they were
3 requested, and that request was sent to me to do.

4 Q Okay. Would that have been within the last
5 six months?

6 A I think so, but I'm not certain.

7 Q Okay. Do you think it was calendar year 2009
8 or before that?

9 A No, probably before then.

10 Q Okay. Have you been asked to search them
11 again at any point since then or just that one initial
12 search?

13 A No. I was advised not to delete anything,
14 but I have not researched.

15 Q Okay. And did you search your files
16 yourself, or did someone search them for you?

17 A Myself.

18 Q What were you asked to look for?

19 A A list of key words.

20 Q Okay. And did you search email and whatever
21 paper files you have?

22 A Yes.

23 Q Anything else?

24 A Papers on my local hard drive and the
25 networked hard drive that I access at work.

1 Q Okay. Great. Is there any kind of automatic
2 deletion on your emails after a certain period of time?

3 A No.

4 Q No. So you would have all of your emails
5 going back unless you manually deleted them?

6 A That's correct. They're archived
7 automatically.

8 Q Okay. And how far back does that archive go,
9 approximately?

10 A Maybe 2003.

11 Q Okay. Could you briefly tell me about your
12 educational background?

13 A I have an undergraduate degree from the
14 College of William & Mary, Bachelor's degree, and I
15 have a Master's in Library and Information Science from
16 the University of North Carolina.

17 Q Okay. What year did you graduate from
18 William & Mary?

19 A 1988.

20 Q And then did you go straight to -- for your
21 Master's?

22 A No.

23 Q What did you do -- what did you do after you
24 graduated from William & Mary?

25 A I worked in a library in between as a staff

1 person.

2 Q Okay. And where was that library?

3 A Washington, D.C.

4 Q Was that a -- was that a university, or was
5 that a --

6 A Yes, Johns Hopkins School of Advanced
7 International Studies.

8 Q Okay. And so you were there from 1988 until
9 when?

10 A 2002.

11 Q What was your job responsibilities or your
12 job description during that period?

13 A I was their systems librarian and I did
14 acquisitions for a library in Beijing, China that was
15 affiliated -- or Manjing, China that was affiliated.

16 Q Okay. And was that your description for the
17 whole 14 years?

18 A Four years, yes.

19 Q Four years. 19 -- I'm sorry, I --

20 A Oh, I'm sorry.

21 Q You graduated from William and --

22 A I -- I left there in 1992, not 2002.

23 Q Oh, okay. I'm sorry. What did you do, then,
24 from 1992 to 2002?

25 A 1992 to 1994 I was in graduate school.

1 Q Okay. And --

2 A 1994 I began working at Georgia State.

3 Q Okay. Thank you for clarifying that. I
4 appreciate it.

5 So when -- what was your position when you
6 started at Georgia State?

7 A I was a systems librarian and reference
8 librarian.

9 Q What did that involve?

10 A Well, the reference was working at the
11 reference desk answering general questions; and the
12 systems piece, I administered a CD-ROM network and a
13 Novell network that was used in the library.

14 Q And have you been at Georgia State since
15 1994?

16 A Yes.

17 Q Employed by Georgia State since 1994. Okay.

18 A Yes.

19 Q Has your job description changed at all
20 during that period?

21 A Yes.

22 Q Okay. Could you walk me briefly through the
23 positions you've held at Georgia State.

24 A I was the head of instruction after my
25 initial job, and then I was the head of information

1 services. And in 2003, I became associate university
2 librarian for technology services and, in 2005,
3 associate university librarian for learning and
4 technology initiatives.

5 Q Okay. How did your responsibilities, if at
6 all, change in 2005, when you became the associate
7 librarian for learning and technology services?

8 A The departments that reported to me changed.

9 Q Okay. How did your -- did your day-to-day
10 responsibilities change?

11 A No, not beyond different reports.

12 Q Okay. And that's -- is that your current
13 position?

14 A Yes.

15 Q Okay. So which departments currently report
16 to you, as we sit here today?

17 A Access and media services, which includes the
18 reserves unit; learning commons, which is the reference
19 desk; the instruction department, the training and
20 assessment department, and digital library services, as
21 well as our creative manager.

22 Q Okay. Approximately how many people report
23 to you?

24 A I believe I have six direct reports.

25 Q And how many reports do they have? Ballpark.

1 I'm just trying to get a --

2 A Maybe 40.

3 Q Okay. And who do you report to?

4 A I report to the dean of libraries.

5 Q And that's Nancy Seamans?

6 A Yes.

7 Q And before she came, you reported to Charlene
8 Hurt?

9 A Correct.

10 Q Let's -- very briefly, the learning commons,
11 you said, is the reference desk. Could you tell me --

12 A Includes.

13 Q -- a little bit -- includes the reference --

14 A Includes the reference desk. That's where
15 they provide assistance to students, research
16 assistance. It also includes technology assistance,
17 all the public computers.

18 Q How about instructional services?

19 A They manage the instruction -- librarians
20 do -- for classes, for them to do their research in
21 particular subject areas.

22 Q Are those -- are those standalone classes
23 that students would sign up for, or are those within
24 the context of another instructor's course?

25 A The vast majority are within another

1 instructor's course.

2 Q Okay. And the training department?

3 A Training does internal staff training, as
4 well as assessment activities.

5 Q And by "assessment," is that staff assessment
6 for --

7 A Staff assessment, statistical reports for
8 national organizations, service assessment.

9 Q Okay. And the digital library services?

10 A Digital library services includes the systems
11 department that manages the hardware in the library and
12 the Web services that manages the Website in the
13 library.

14 Q Okay. And the creative manager?

15 A He's responsible for public relations,
16 marketing, graphic design.

17 Q Who are your six direct reports?

18 A Denita Hampton.

19 Q And she -- is she --

20 A She's access and media.

21 Q Okay.

22 A Laloria Konata, L-A-L-O-R-I-A --

23 Q Okay.

24 A -- K-O-N-A-T-A, learning commons.

25 Q Okay.

1 A Jennifer Link Jones, training and assessment.

2 Q Okay.

3 A Doug Goans, Web development.

4 Q Okay.

5 A Rob Bustos, systems librarian; and Christian
6 Steinmetz, creative manager.

7 Q Now, we learned yesterday that library
8 support systems has been -- I think Mr. Palmour called
9 it disbanded?

10 A That's probably pretty accurate.

11 Q Okay.

12 A I believe he's the only employee left.

13 Q Okay. When did that happen?

14 A I believe the completion was in April of this
15 year.

16 Q Do you know why that was disbanded?

17 A There's an organizational review going on
18 in IS&T, information systems and technology, that
19 that's a unit of and some changes at the Board of
20 Regents that affected all of the positions in that
21 unit.

22 Q Okay. Who -- who currently performs the
23 services that LSS used to perform for the library?

24 A They -- they -- one of their main
25 responsibilities was managing our catalog, as well as

1 the catalog of 22 other libraries, and that function
2 has been moved to the Board of Regents in Athens. They
3 also were responsible for working with our DSpace
4 institutional repository, our ETD service, electronic
5 thesis and dissertations, and the EReserve system. We
6 are in the process of migrating the repository and the
7 ETDs to a commercial-hosted system, so nobody is doing
8 that anymore.

9 Q Okay.

10 A And the reserve system, the server contact
11 has been removed into the server unit in IS&T.

12 Q And who is your contact in the server unit at
13 IS&T?

14 A Right now I'm still working through Jim
15 Palmour as an intermediary. Behind him is Keith -- I
16 don't think I know Keith's last name -- Keith in the
17 server unit.

18 Q Okay. Do you know if the plan is ultimately
19 for Keith in the server unit to take over Mr. Palmour's
20 responsibilities?

21 A I do not know.

22 Q Okay. Do you know who would know that?

23 A The unit is part of university academic
24 technology services, which is run by Mike -- Michael
25 Russell, who reports to J.L. Albert.

1 Q Okay. Have you ever had any formal training
2 in copyright?

3 A No.

4 Q Do you have the power to hire or fire any of
5 your direct reports?

6 A Yes.

7 Q Do you have the power to do both?

8 A Yes.

9 Q Okay. Do you control any lines in the
10 university budget?

11 A No.

12 Q Okay. How are the budget responsibilities
13 for the library apportioned?

14 A The dean of libraries, in consultation with
15 the library academic officer, manage the budget. Money
16 might be allocated, but it's not controlled.

17 Q Do you control any of the -- do you -- strike
18 that.

19 Do you have any input into how the library
20 budget is allocated?

21 A Yes.

22 Q Could you tell me briefly which areas you
23 have input into?

24 A The two library -- associate university
25 libraries, as well as the dean of libraries and the

1 college administrative officer make decisions about the
2 budget allocations jointly.

3 Q Okay. What is the current library budget?

4 A Around \$11 million.

5 Q And approximately how much of that 11 million
6 is allocated to the six areas under your umbrella?

7 A I don't think I can answer that.

8 Q Okay. Approximately, if you -- if you know
9 or if you're able to take a broad swath at, how much of
10 that is for the access and media piece?

11 A It would be for the staff in access and media
12 almost exclusively.

13 Q Okay.

14 A I -- approximately ten staff would be my
15 estimation. I'm not sure.

16 Q Okay. And what would that translate to in --
17 very roughly in budget terms?

18 A \$250,000.

19 Q Okay.

20 A Roughly.

21 Q Roughly. That's -- I'm not going to hold you
22 to it.

23 How about for the physical part of the
24 reserves, the actual servers?

25 A The server is paid for out of the IS&T. The

1 library does not pay for the server.

2 Q Okay. And the -- the labor of actually
3 put -- uploading things on to the ERes system, is that
4 IS&T, or is that out of access and media?

5 A That's out of access and media.

6 Q And those would be those ten staffers that we
7 just talked about?

8 A Primarily four of them.

9 Q Which four is that?

10 A That would be Denise Dimsdale, Marjorie
11 Denise Dimsdale, Cory Schlotzhauer, Malia Cargile,
12 actually -- actually, I think those are the three
13 primaries, so three.

14 Q Okay. Who does now the actual scanning of
15 materials, if a faculty member brings in a book, who
16 would actually do the scanning?

17 A One of those three.

18 Q One of those three. Do you have the scanners
19 in the library?

20 A Correct.

21 Q What are the different methods available to
22 instructors at GSU for distributing course reading
23 material?

24 A I -- I wouldn't know the full extent of that.

25 Q Okay. What -- which ones are you aware of?

1 A They can put things on reserve.

2 Q Okay.

3 A They can require students to buy textbooks.

4 Those are the two that I'm most intimately familiar
5 with and that I've actually talked to a faculty member
6 about them.

7 Q Fair enough. And when you say "reserve," are
8 you talking about hard copy, actually put the books
9 behind the counter reserve, or are you talking about
10 EReserves?

11 A Both.

12 Q Are you familiar with the uLearn system?

13 A Yes.

14 Q What -- what can you tell me about the uLearn
15 system; what is it?

16 A It's a course -- a course management system.

17 Q Do you have any responsibilities for that?

18 A No.

19 Q Do you have any involvement with uLearn?

20 A No.

21 Q How about Coursepacks? Are you aware -- are
22 you familiar with a Coursepack?

23 A I know what a Coursepack is, yes.

24 Q Okay. What's a Coursepack?

25 A Coursepack is a collection of readings that a

1 commercial vendor sells to support students in a
2 course.

3 Q Do you have any responsibility for
4 Coursepacks?

5 A No.

6 Q Who would have responsibility for
7 Coursepacks, as you've described them?

8 A I believe Jim Palmour has offered Coursepacks
9 in a small sense. Beyond that, I don't know.

10 Q Do you have any knowledge of how many
11 professors take advantage of Coursepacks?

12 A No.

13 Q Do you have any familiarity with how many
14 professors take advantage of the uLearn system?

15 A No.

16 Q How about how many professors take advantage
17 of reserves, either hard copy reserves or electronic
18 reserves?

19 A I don't know a number.

20 Q Do you have a sense of what the percentage of
21 professors might be?

22 A No.

23 Q Okay. How many professors are there at
24 Georgia State?

25 A I believe around a thousand, but I don't

1 know.

2 Q Okay. Do you think -- is your sense that
3 more than half of them would use the reserve system?

4 A I don't sense that, no.

5 Q Okay. Do you have a sense of how many of
6 them take advantage of hard copy reserves as opposed to
7 EReserves?

8 A No. We have very few hard copy reserves.

9 Q Okay. So more -- more professors would take
10 advantage of EReserves then of the hard copy reserves?

11 A Of the professors that use reserves, that
12 would be true.

13 Q Okay. Do you have any sense of whether that
14 has changed at all in the time you've been at Georgia
15 State University?

16 A Yes.

17 Q And would it be fair to say that the number
18 of professors who use EReserves has increased in the
19 time you've been at Georgia State University?

20 A Yes.

21 Q Okay. Is there any preference amongst the --
22 are -- strike that.

23 Are you aware whether there's any preference
24 amongst the administrators at Georgia State University
25 for the use of one system over another, whether it's

1 uLearn or EReserves --

2 A No.

3 Q -- Coursepacks?

4 A (Shakes head negatively.)

5 Q Is there any preference amongst faculty or
6 instructors that you're aware of?

7 A No, I wouldn't know that.

8 Q How about in the library; what's -- what's
9 the library's preference for which system professors
10 should use?

11 A I don't believe we pressure faculty to use
12 one system or another.

13 Q Okay. In your experience, are there any
14 advantages or disadvantages to using EReserves over any
15 of the other electronic course management systems?

16 A I'm sorry, I don't understand the question.

17 Q Well, okay. Fair enough. Let's take a step
18 back.

19 Can you describe for me briefly what
20 EReserves is?

21 A EReserves is a way of providing reserve
22 course reading to students electronically.

23 Q And when you say "reserve course reading,"
24 what do you mean by that?

25 A Items professors choose to have their

1 students read as part of their course work.

2 Q Would those items be required reading or
3 supplemental reading?

4 A I believe they're usually supplemental, but
5 that's not something we ask the faculty when they put
6 something on reserve.

7 Q Would you have any way of knowing whether a
8 particular reserve course reading was supplemental or
9 required?

10 A No.

11 Q What is your understanding of what
12 supplemental reading is?

13 A Something that's not required but is
14 recommended for a student to achieve their learning
15 outcomes.

16 Q In your experience, do students generally
17 read supplemental readings?

18 A Some.

19 Q And how would you define required reading?

20 A Something a student is required to read for
21 the course.

22 Q Okay. Are you familiar with the Copyright
23 Clearance Center?

24 A Yes.

25 Q What's the Copyright Clearance Center?

1 A It is an organization that provides the
2 opportunity to pay royalty payments for readings, for
3 electro- -- or -- well, we use it for interlibrary
4 loan. That's my familiarity with it.

5 Q What is interlibrary loan?

6 A Where we share materials that we own with
7 other schools for their students to use -- or really
8 other libraries, not other schools.

9 Q What's the distinction you're drawing between
10 other libraries and other schools?

11 A It might not be a university.

12 Q Oh, okay. And how do you use CCC in
13 conjunction with interlibrary loan?

14 A There are standards agreed on within the
15 interlibrary loan community for when materials may be
16 shared without paying a royalty and when the royalty
17 payment is required. That's the extent of what I know.
18 I have not been involved in interlibrary loan directly.

19 Q Have you ever had occasion to interact with
20 anybody at CCC?

21 A No.

22 Q And is that true for your entire career or
23 just Georgia State?

24 A Entire career.

25 Q Okay. Does Georgia State have any

1 interaction with the Copyright Clearance Center with
2 regard to licensing for EReserves?

3 A No.

4 Q Does anyone at Georgia State University have
5 any interaction with CCC for the licensing of
6 Coursepacks?

7 A I don't know anything about that.

8 Q Okay. Are you aware of whether anyone at
9 Georgia State University has any interaction with CCC
10 for any other kind of licensing, other than
11 interlibrary loan or Coursepacks?

12 A I'm not aware, but I wouldn't know.

13 Q Okay. Is there any funding in the library
14 budget to pay licensing fees?

15 A There is funding to pay licensing for
16 database access. We license an enormous number of
17 databases and electronic journals.

18 Q Okay. Approximately how much, either in
19 numbers or percentages, of the library budget is for
20 licensing of databases or electronic journals?

21 A I don't know specifically. Probably half
22 the -- I believe the library materials budget is
23 approximately \$5 million. I may be off on that. 4 to
24 5 million. And I would estimate at least half of that
25 is for licensing, but I -- I don't know that directly.

1 Q And when you say "licensing," you're talking
2 about licensing databases and electronic journals?

3 A Correct.

4 Q And when -- are any of these licensed
5 databases or electronic journals used for the reserve
6 course reading?

7 A Yes.

8 Q Is there readings used in the electronic
9 course readings that are not licensed databases or
10 electronic journals?

11 A Yes.

12 Q Do you have a sense of how much on the
13 EReserve system is not licensed databases or electronic
14 journals?

15 A I would estimate 40 to 50 percent, but I
16 don't know -- I don't know the exact number.

17 Q Okay. Do you know whether the GSU library
18 has ever considered taking a license from CCC, other
19 than for interlibrary loan?

20 A Not that I'm aware of.

21 Q Let's take a look at a document Bates
22 numbered Georgia State 926.

23 MR. ASKEW: Have you got an exhibit
24 number on that?

25 MS. SINGER: Okay. I believe this is

1 going to --

2 MR. ASKEW: Exhibit number?

3 MS. SINGER: This is going to be Exhibit
4 P-72.

5 MR. ASKEW: Exhibit 72.

6 MS. SINGER: That's why I was handing it
7 to you. I'm sorry.

8 (Whereupon, there was a discussion off the record.)

9 (WHEREUPON, Plaintiffs' Exhibit 72 was marked for
10 identification.)

11 Q (BY MS. SINGER) Ms. Burtle, you have in
12 front of you what's been marked as Plaintiffs' Exhibit
13 72. It bears the Bates stamp Georgia State 926. Are
14 you familiar with this document?

15 A Yes.

16 Q Okay. Could you describe what P -- P-72 is?

17 A It's an email that said that there's attached
18 information about how much Georgia State has paid to
19 the Copyright Clearance Center.

20 Q Okay. And that's an email dated May 12th,
21 2008, from Carmen Newton to Charlene Hurt in which you
22 are CC'ed?

23 A Correct.

24 Q Okay. Who is Carmen Newton?

25 A The library administrative officer.

1 Q Okay. Do you know why she was sending this
2 information?

3 A I do not.

4 Q Okay.

5 MS. SINGER: If you would mark this as
6 P-73, please.

7 MR. ASKEW: Exhibit 73?

8 MS. SINGER: Yes.

9 (WHEREUPON, Plaintiffs' Exhibit 73 was marked for
10 identification.)

11 Q (BY MS. SINGER) Ms. Burtle, you have in
12 front of you what's been marked as P-73. And
13 Plaintiffs' Exhibit 73 is Bates stamped Georgia State
14 824. It's an Excel file entitled "GSU Cost '98 to
15 Pres" -- P-R-E-S -- ".xls."

16 And if you look on P-72, the attachment to
17 that document is "GSU Cost '98 to Pres.xls." Do you
18 see that.

19 A Yes.

20 Q Okay. Have you ever seen Plaintiffs' 73
21 before?

22 A Apparently, since I was copied on this email.

23 Q Can you tell us what P73 is, please?

24 A It's a spreadsheet showing payments to the
25 Copyright Clearance Center.

1 Q Okay. And if we look on the last page of
2 P73, the total at the bottom there is \$18,905.42. Do
3 you see that?

4 A Yes.

5 Q Okay. And that's, based on the title of the
6 spreadsheet, from 1998 to probably sometime in early
7 2008?

8 A Yes. Although it doesn't go back to 1998 --
9 oh, never mind. It does.

10 Q Are you aware -- if you look at the -- the
11 fourth column of the last page appears to be a
12 description. And we see at the top about \$3,287.91
13 looks to have been from ILL. Is that interlibrary
14 loan?

15 A Yes.

16 Q Okay. So that's what we were discussing, the
17 fees paid to CCC for -- for interlibrary loan?

18 A Correct.

19 Q And then the bottom section has -- the
20 description entries are copyright royalties, executive
21 leadership, copyright approval, copyright fees. Are
22 you familiar with what those payments would have been
23 for?

24 A No.

25 Q Who would be familiar with that?

1 A Well, whoever entered them.

2 Q Do you know who that would have been?

3 A I don't know. The last column would
4 indicate, but I don't know the key that goes with those
5 codes.

6 Q Okay. You anticipated my next question. To
7 go back to P-72 for a moment, the email says, "Here's
8 the information you requested. Lee pulled the
9 information out of Spectrum from 1998 to present." Who
10 is Lee?

11 A Lee is the library business manager.

12 Q Okay. And what is Spectrum?

13 A Spectrum is the university's financial
14 system.

15 Q Do you have access to Spectrum?

16 A No, I do not.

17 Q Do you have any opinion about whether
18 approximately \$19,000 paid to CCC over a period of ten
19 years is a large amount, a small amount?

20 A I have no context to answer that.

21 Q Okay.

22 MS. SINGER: Let's -- let's mark this
23 Exhibit 74, please.

24 (WHEREUPON, Plaintiffs' Exhibit 74 was marked for
25 identification.)

1 Q (BY MS. SINGER) Ms. Burtle, you have in
2 front of you what's been marked as Plaintiffs' Exhibit
3 74. It bears the Bates stamp Georgia State 906. Are
4 you familiar with this document?

5 A Yes.

6 Q What is P-74?

7 A It is an email from me to Sheryl Williams.

8 Q Who is Sheryl Williams?

9 A She is interlibrary loan librarian.

10 Q And it looks like Sheryl Williams was writing
11 to you on May 14th, 2008, and she says, "Well, sorry, I
12 didn't get as far as I thought I would on their Web
13 pages." And then she goes on to show you a link to
14 www.copyright.com/cc. Do you see that?

15 A Yes.

16 Q Is that the Copyright Clearance Center?

17 A As far as I know, yes.

18 Q Okay. Do you know what Sheryl Williams was
19 looking for, had you given her any instructions?

20 A I asked her to find out what the annual
21 copyright license fee for academic -- they have an
22 academic package, something they sell.

23 Q Okay. Where does this inquiry stand today?

24 A The CCC refused to respond to us on the basis
25 of this lawsuit.

1 Q Okay. Was there any other discussions of it,
2 other than this email chain?

3 A No. She contacted them, and they refused
4 to -- their lawyer called.

5 Q Okay. What did you do with that information?
6 Did you communicate to anyone?

7 A I don't recall.

8 Q Okay. Do you recall why you asked Sheryl
9 Williams to investigate this?

10 A Not specifically, but I'm sure it was a
11 result of reading the Complaint and wanting to get all
12 of the information I could.

13 Q Okay. In your opinion, did GSU need a
14 license from CCC?

15 A No.

16 Q Then why would you ask her to look into it?

17 A Because the Complaint indicated that they
18 thought maybe we did need one, so I wanted to have all
19 of the information about what that meant.

20 Q Okay. And what's the basis for your opinion
21 that GSU did not need a license from CCC?

22 A Because we've been paying individually, and
23 it didn't seem to me that that was a -- from what I
24 knew of the academic license, it would not cover much
25 of what we used; and it did not seem appropriate, as

1 much of what we use, particularly in EReserves, is fair
2 use. There's no need to pay a license for it. So
3 having a blanket license would be a waste of our money.

4 Q Well, when you say much of it was licensed
5 anyway, what do you mean by that?

6 A The electronic databases and journals.

7 Q Okay.

8 A Particularly the journals.

9 Q How did you -- strike that.

10 You said much of your use was fair use. What
11 do you mean by "fair use"?

12 A It was use that was educational and it fell
13 within the guidelines of the copyright law that defined
14 fair use.

15 Q Okay. Well, we'll come back to that.

16 A I'm sure we will.

17 Q How did you become aware of the CCC's blanket
18 license?

19 A They sent out advertising.

20 Q When was that? Do you remember?

21 A No. But whenever they started offering to
22 academic libraries is when they started advertising.

23 Q Okay. Are you aware of any other
24 university's library experience -- university library's
25 experience with the CCC blanket license?

1 A Yes.

2 Q And which universities is that?

3 A Hofstra, and I'm aware the University of
4 Texas decided, but I'm not aware of their experience
5 once they did. And the University of Pennsylvania, I
6 believe, is the other one that I've read about.

7 Q Okay. How did you come to be familiar with
8 those universities' experiences with CCC's blanket
9 license?

10 A I was sent something about Hofstra's license,
11 and the other two published in a -- a library
12 publication that was distributed, they had a -- two
13 articles about their experiences with CCC.

14 Q Can you tell me generally what your
15 understanding is of Hofstra's experience with the CCC
16 blanket license?

17 A They found it to be not cost effective.

18 Q Do you know why they found it to not be cost
19 effective?

20 A I don't recall what their reasoning was.

21 Q What's your general understanding of the
22 University of Texas's experience?

23 A All I know is that they decided to purchase a
24 license. I know nothing about what came after that.

25 Q Okay. How about the University of

1 Pennsylvania?

2 A I believe they found it expensive, but I
3 don't remember the details of the article.

4 Q Okay. Could you describe briefly the
5 library's role in the ERes system?

6 A Could you clarify the time periods you're
7 talking about?

8 Q Well, let -- let's start with as we sit here
9 today.

10 A Today. The library is responsible for
11 accepting requests from faculty members to put things
12 on reserve. They're responsible for searching for
13 electronic versions to link to. Failing that, they're
14 responsible for identifying -- or locating the print
15 version in the library and scanning it. They're
16 responsible for creating the course page that students
17 use to access the material. They're responsible for
18 providing the password to access the course page to the
19 instructor. I think that covers it.

20 Q Okay. How is that -- strike that.

21 Are the responsibilities that you just
22 listed, as we sit here today, different than the
23 responsibilities at the beginning of the current
24 semester, spring 2009?

25 A Yes.

1 Q How are they different?

2 A We were not systematically searching for an
3 electronic version to link to at the beginning of 2009,
4 of spring 2009.

5 Q Any other differences?

6 A At some point in the last six months, we took
7 over the scanning operation from Jim Palmour into the
8 library, but I do not recall exactly when that was.

9 Q Okay. So other than taking over the scanning
10 and other than now you search for the electronic
11 version, are there any other differences in the
12 process?

13 A In the -- well, from the faculty point of
14 view, but the library receives -- the faculty member is
15 required to -- to complete a fair use analysis for each
16 item that is -- that is requested for reserve. And the
17 form that they submit, they do indicate by what
18 rationale this is legitimate to put on electronic
19 reserves. So it falls under fair use or they own the
20 copyright to it personally; it's course notes or
21 something like that. It's public domain. So we -- we
22 receive that information, which we did not receive
23 before.

24 Q What do you do with that information?

25 A It's saved.

1 Q Saved how?

2 A It's -- it comes in through an email form and
3 it's saved in the email system.

4 Q Approximately when did that change take
5 place?

6 A Within two or three weeks after the USG
7 copyright policy was enacted.

8 Q Do you remember about --

9 A Sometime in the middle of the semester. I
10 don't remember exactly the date.

11 Q Okay.

12 A And the checking of a link began before the
13 new Web forms went up that required the faculty to
14 indicate...

15 Q Okay. So today the -- how do the requests
16 come in from the faculty? What form?

17 A The form that we have created on the library
18 Website.

19 Q Okay. So it comes in, it's an electronic
20 version. Do you ever get paper versions of the form,
21 or all the requests come in electronically now?

22 A The vast majority come in electronically.
23 I'm not aware that we're getting any in print, but I
24 wouldn't --

25 Q Okay.

1 A It's possible.

2 Q There's always a few who refuse to deal with
3 the computers.

4 Okay. So what does the library do when it
5 receives the electronic form?

6 A It checks to see if the item is available
7 electronically.

8 Q And how -- what does that entail?

9 A We use a tool available to us on our Website
10 called a citation linker or the electronic journal
11 locator that -- or our catalog. There are multiple
12 ways we can identify whether something is available
13 electronically through one of our licensed databases,
14 so we check all of those. And if it is available, we
15 create what's called a open URL or a persistent link to
16 use for students to access.

17 Q Okay. So if you get a request, and you --
18 you check all of those available tools and the
19 requested reading is not available, what does the
20 library do next?

21 A Checks to see if we have the item in a paper
22 format.

23 Q How would you do that?

24 A Look in the catalog.

25 Q If the work is in the catalog, then what

1 happens?

2 A A student assistant retrieves it from the
3 shelf.

4 Q And then what?

5 A And it is brought down to the reserves unit,
6 where the section is scanned and then entered into the
7 EReserve system. And if any questions come up while
8 they're scanning it, like if something seems off,
9 they'll contact me or the dean of libraries with
10 questions.

11 Q Has that happened, has anyone contacted you
12 with questions because something seems off?

13 A Yes.

14 Q How many times has that happened?

15 A It's happened once since our new policy went
16 into effect.

17 Q Can you tell me about that incident?

18 A They thought that the material being scanned
19 was far too much and so they contacted me.

20 Q How much was -- were they requesting?

21 A A lot of a book.

22 Q When you say "a lot" --

23 A Most of it.

24 Q Most of it.

25 And what did you do upon receiving that

1 question or inquiry?

2 A I asked the staff member if they had spoken
3 to the faculty member, and they said they had told them
4 no. And I said, "Did they accept that?" And they
5 said, "Yes."

6 And I said, "Well, if they give you any
7 trouble, please refer them to me and I'll either speak
8 to them or, if need be, I'll refer them to legal."

9 Q Okay. Did you hear anything else about that
10 incident?

11 A No.

12 Q Do you know how much of the book ultimately
13 ended up on the EReserve system?

14 A None of it.

15 Q None of it. Do you know who the professor
16 was?

17 A No.

18 Q Do you know what department it was from?

19 A No.

20 Q Do you know what the book was?

21 A No.

22 Q Who was the staff member who came to you with
23 questions?

24 A Denise Dimsdale.

25 Q Am I correct in -- I think you said the

1 student assistant is the person who retrieves the book
2 and brings it to the reserves unit?

3 A Yes.

4 Q And those students are current GSU students?

5 A Correct.

6 Q Who does the actual scanning of the book?

7 Would that be the student assistant?

8 A I'm not certain. I believe it's the staff.

9 Q When you say "staff," who do you mean?

10 A The people who work in the reserves unit; the
11 three names I gave you earlier.

12 Q Okay. So you think one of those three is
13 responsible for all of the scanning for the EReserve
14 system?

15 A I think so.

16 Q Who would know that for sure?

17 A Denise Dimsdale.

18 Q Okay. If the book is in the catalog, it goes
19 automatically to the reserves unit, there's no other
20 oversight from the library in terms of copyright
21 compliance?

22 A No.

23 Q Okay.

24 A I'm not sure that there's a need for
25 copyright compliance checking when a book goes from the

1 shelf to the reserves unit.

2 Q I'm sorry?

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

4 Q I'm sorry. Let me -- let me withdraw that
5 question.

6 When the request comes in and you -- you --
7 is there any point during which there's a check for
8 copyright compliance from the library?

9 MR. ASKEW: I'll object to the form of
10 the question --

11 MS. SINGER: Okay.

12 MR. ASKEW: -- as being vague as to what
13 you mean by copyright compliance.

14 MS. SINGER: Okay.

15 Q (BY MS. SINGER) Why don't we take a step
16 back, then.

17 Let's look at what was previously marked as
18 Plaintiffs' Exhibit 19.

19 MR. ASKEW: Do you know which deposition
20 this was used in?

21 MS. SINGER: It was Nancy Seamans', I
22 think.

23 Q (BY MS. SINGER) Ms. Burtle, are you familiar
24 with the Plaintiffs' Exhibit 19?

25 A Not directly, no.

1 Q When you say "not directly," are you
2 generally aware of what this -- this form is?

3 A It looks like an old form, yes.

4 Q Okay. So am I correct, then, that
5 Plaintiffs' Exhibit 19 is not the form that's currently
6 used for faculty to request materials to be placed on
7 the EReserve system?

8 A Yes, you are correct.

9 Q Okay. Do you know when Plaintiffs' Exhibit
10 19 stopped being the form that was used?

11 A I cannot date this.

12 Q Okay. Do you know who created Plaintiffs'
13 Exhibit 19?

14 A No.

15 Q Was Plaintiffs' Exhibit 19 the form that was
16 in use when you became responsible for the access and
17 media department for EReserves?

18 A I don't know.

19 Q Who would know that?

20 A Probably Denise Dimsdale.

21 Q Okay. Was Denise there when Georgia State
22 first began using the EReserve system?

23 A Yes.

24 Q Would she have been either involved with or
25 responsible for creating the forms and the procedures?

1 A Probably involved with. I don't know how
2 much responsibility she had for it.

3 Q Okay. Who -- do you know who would have been
4 responsible?

5 A Probably her direct supervisor at that point.

6 Q Were you -- were you responsible for the
7 access and media department when EReserves first began
8 to be used at Georgia State University?

9 A No.

10 Q No. Who was -- at what point did you become
11 responsible for the EReserve system?

12 A In 2005, when I moved into that position, to
13 have that unit reporting to me.

14 Q Okay. I'm going to show you what has
15 previously been marked as Plaintiffs' Exhibit thirty --
16 it's been marked both as Plaintiffs' Exhibit 21 and
17 then somewhat more legibly as Plaintiffs' Exhibit 37.
18 I have -- this is the official marked version of 21.

19 MS. SINGER: Do you have the clean 37?

20 Do you have any other copies?

21 MR. ASKEW: I'm not sure this exhibit is
22 legible. I -- I certainly can't read most of
23 it.

24 MS. SINGER: I know, that's -- I believe
25 that's why we remarked it as 37 yesterday.

1 So I don't know if you have in your pile 37.

2 Can we go off the record for a moment
3 just to -- do we need to change the tape
4 anyway?

5 THE VIDEOGRAPHER: Yes.

6 MS. SINGER: Okay. So let's go off the
7 record and change the tape.

8 THE VIDEOGRAPHER: Off the record at
9 10:08:50.

10 (Whereupon, there was a brief recess.)

11 THE VIDEOGRAPHER: This is Tape 2, we
12 are back on the record at 10:24:34.

13 Q (BY MS. SINGER) Okay. Ms. Burtle, I am
14 handing you what has been previously marked as
15 Plaintiffs' Exhibit 37, which is a little bit more
16 legible, I think.

17 A Yes.

18 Q Are you familiar with Plaintiffs' 37?

19 A Yes.

20 Q What is Plaintiffs' 37?

21 A This is a collection of the new Web pages
22 that we are using in the library for electronic
23 reserves requests -- or for all reserves requests.

24 Q Okay. So let's look at the first page of
25 Plaintiffs' 37. Can you tell me what we're looking at?

1 A This is the initial page that comes up for a
2 professor to request materials to go on reserve, with
3 instructions.

4 Q Okay. So it says, "Before submitting a
5 reserve request, you must determine under what
6 circumstances each item can be placed in electronic
7 reserves." It says, "Check to see if the library
8 already has a license for the electronic version,"
9 number 1.

10 Is the library doing that, or is the
11 professor?

12 A The library is doing it. We ask the
13 professor to do it with no real expectation that they
14 will.

15 Q Okay. And then instruction number 2 is,
16 "Determine if the item is in the public domain." Is
17 that something that you expect the professor to do, or
18 is that something that the library will help out with?

19 A We will certainly help with any of this.

20 Q Okay. How -- if a professor wanted help, how
21 would they get it?

22 A They would most likely contact the reserves
23 unit, who would refer them to the subject liaison that
24 their department falls under. Every department has a
25 subject librarian who works with them and that

1 librarian would likely be the person to help them.

2 Q Would that librarian have any formal
3 copyright training, do you know?

4 A They will have been trained by legal here.
5 Beyond that, I will not -- I do not know. It would
6 vary.

7 Q Do the personnel in the reserves department
8 to whom the faculty would initially be referred, do
9 they have any formal copyright training?

10 A The training that was provided here, but
11 not -- beyond that, I wouldn't know.

12 Q What -- what kind of training was provided at
13 Georgia State University?

14 A When the new Board of Regents' copyright
15 policy was enacted, the legal department, Cynthia, came
16 over and went through the copyright policy with us, the
17 fair use checklist, other copyright, legal copyright
18 things that might come into play, like the TEACH Act
19 that we don't deal with directly, but just so if
20 faculty came, we would know what they were talking
21 about. And they -- she that for all the people who
22 work in the reserves unit.

23 Q And that was -- would that be all -- I think
24 we talked about ten staff members?

25 A No. It would be all the -- the ten staff

1 members work in access and media services. The
2 reserves unit is the three other -- three individual
3 staff members, their supervisor was also there, I was
4 there, the dean of libraries was there, some other
5 interested people were there as well.

6 Q How about the student assistants; were they
7 there?

8 A No.

9 Q When did this training done by Ms. Hall take
10 place, approximately?

11 A If that policy was enacted a month, six weeks
12 ago, maybe two weeks after that.

13 Q So would that be sometime in late February or
14 early March, does that sound about right?

15 A I honestly don't remember when it happened.
16 It's been a busy semester, but sometime during the
17 semester.

18 Q Fair enough. How long did the training last?

19 A I think it was approximately two hours.

20 Q What form did the training take?

21 A Presentation and questions.

22 Q Other than the two-hour training by Ms. Hall,
23 was there any other copyright training given to the
24 staff at GSU, any other copyright training?

25 A I'm not aware of other formal training. I

1 have met with them since to reinforce what we -- what
2 we learned, but not in a formal training setting.

3 Q Okay. So prior to this training by Ms. Hall,
4 was there any formal copyright training for the library
5 staff at GSU?

6 A Not that I'm aware of. Let me edit that.

7 Q Please.

8 A The liaison librarians, the subject
9 librarians have been becoming increasingly familiar
10 with scholarly communications issues, open access
11 repositories and things like that. And I do believe
12 they did have some training over last summer when they
13 were focusing on that, or it might have been two
14 summers ago. I'm not sure who did the training. I
15 believe they were outside individuals.

16 Q Okay. Did anyone from the reserve staff
17 attend that training?

18 A That was specific to the subject librarians.

19 Q So, no; no one from the reserve staff went?

20 A Not that I'm aware of.

21 Q Okay. Did you, yourself, attend that
22 training?

23 A No.

24 Q So other than that training for the -- the
25 subject liaisons last summer, approximately, has there

1 been any other formal training by GSU, any other formal
2 copyright training offered by GSU to the library staff?

3 A Not that I recall.

4 Q Okay. You mentioned that you have followed
5 up since Ms. Hall's training with the reserve staff.
6 On approximately how many occasions have you followed
7 up informally with them?

8 A I don't know. Five, ten. I mean, I meet
9 with them regularly.

10 Q Okay. Can you tell me in general terms what
11 those interactions have been?

12 A Well, we've gone over the policy again.

13 Q Okay.

14 A We have redeveloped our entire Website, as
15 well as our process and our work flow for doing
16 reserves. So we have a lot of discussion about how we
17 interact with faculty, how we make sure we understand
18 the fair use checklist, what might set off alarm bells
19 in -- in their head that might make them contact me or
20 legal if they have questions.

21 There's been a lot of work redoing the work
22 flow and the practice of what we do, so there have been
23 a lot of meetings talking about that; some of it
24 directly related to copyright or specifically fair use,
25 others more work flow, personnel decisions.

1 Q Who's -- who's responsible for designing
2 these new work flow and these new systems?

3 A They're primarily being designed by Denita
4 Hampton, Denise Dimsdale's boss.

5 Q And Denita Hampton reports to you, I think
6 you said?

7 A Correct.

8 Q So ultimately, you would be responsible for
9 those?

10 A Yes.

11 Q How much day-to-day involvement do you have
12 in -- in designing these processes?

13 A I do not have day-to-day involvement.

14 Q Okay. Do you approve the systems before
15 they're put into place?

16 A I think it's fair to say yes at this point,
17 because we're changing things so much, they're coming
18 to me with their suggestions and how they're planning
19 to do things and I'm saying yes or no or asking
20 questions.

21 Q Okay. Do I take it from your answer that,
22 generally, that's not been the case when new systems or
23 processes are designed by the reserve staff?

24 A New systems and processes haven't really been
25 a regular occurrence, so probably the last time they

1 changed, I was not responsible for that unit.

2 Q Okay. You mentioned that some of the
3 discussions you've had would be about what might set
4 off alarm bells in -- in their heads. What -- what
5 would set off alarm bells, or what should set off alarm
6 bells?

7 A I believe the primary thing that they are
8 going to pick up on is -- is excessive amounts of
9 material from a single source.

10 Q And what do you mean by "excessive"?

11 A Well, they're used to one chapter, 20
12 percent, that's what they worked with prior to
13 change -- changing the policy. Well, we're not looking
14 at those numbers now. I think anything much more than
15 that, they're going to ask questions and they're going
16 to refer. It doesn't necessarily mean it's going to be
17 ruled right or wrong, but I think those are the kinds
18 of things that are going to set off alarm bells for
19 them. Things they've always had issues with, you know,
20 somebody tries to put an entire book on reserve,
21 somebody -- those are probably the major ones that come
22 up. They're aware of other things, but those are the
23 ones that come up.

24 Q In your opinion, could an entire book ever be
25 posted on EReserves and qualify as -- as fair use?

1 A Yes.

2 Q And what circumstance would that be?

3 A A book in the public domain.

4 Q Okay. Other than a book in the public
5 domain, can you envision any other circumstances in
6 which it would be, in your opinion, fair use to -- to
7 put an entire copyrighted book on the EReserve system?

8 A I can envision orphan work circumstances
9 where that might be considered fair use generally. I
10 would not do it in the library, though, so I don't --
11 we don't have the staff or personnel to research
12 orphaned copyrights, so we would not do that.

13 Q Okay. How about 90 percent of a copyrighted
14 work?

15 A I can't really answer that question. The
16 faculty member knows what's in the book and would know
17 what's fair use. It seems unlikely, but I -- I can't
18 say yes or no categorically without having subject
19 knowledge of what's in the book and what's in the
20 field, so...

21 Q Okay. So let's say a faculty member fills
22 out a form and they're telling you that it's fair use
23 but it's 80 percent of the book. What would happen?

24 A The reserves unit would question it, they
25 would talk to me. I would probably talk to the faculty

1 member first, and if they insisted that this was fair
2 use, I would refer them to legal. If legal said it was
3 fair use, I would go ahead. But I think that's a -- a
4 legal decision, not a decision the library would make.

5 Q Okay. What about 70 percent; what would
6 happen?

7 A Anything that sets off an alarm, that's the
8 process that's going to happen.

9 Q And you said the alarm is anything above 20
10 percent?

11 A Could be something below 20 percent if it's a
12 very short work or something. It's -- it's a
13 case-by-case basis. I mean, this -- this is not an
14 across the board this is what we do, it's a
15 case-by-case basis, so...

16 Q How many excerpts are there up on EReserves,
17 approximately?

18 A There -- there are approximately, generally
19 between 3,500 and 4,000 listings, they're not all
20 excerpts.

21 Q Okay. Fair enough. Okay. Let's go back to
22 Plaintiffs' Exhibit 37. The third instruction on the
23 first page of P37 is, "Use the Board of Regents fair
24 use checklist to determine" if you use -- "if your use
25 of the item" --

1 A Whoops.

2 Q -- "for the course is considered fair use.
3 Print and save a copy of the completed checklist for
4 your records."

5 And then I take it by the underlining of
6 "fair use checklist," that's a link to the actual
7 checklist on the Website?

8 A The checklist on the Board of Regents'
9 Website.

10 Q On the Board of Regents' Website, okay. Is
11 the -- Plaintiffs' Exhibit 37, the form we're looking
12 at, this looks like a screen shot of the Georgia State
13 University Web page; is that correct?

14 A Georgia State University library course
15 reserves page.

16 Q Okay. And that -- if you know, where is the
17 library course reserves Website hosted?

18 A On the library Web server.

19 Q And the library Web server is where?

20 A In the library.

21 Q Okay. So the library actually controls its
22 Web server --

23 A Yes.

24 Q -- and its -- its pages?

25 A Yes.

1 Q Okay. Where do items that are posted on the
2 EReserve system, what server do those live on?

3 A Those live on the EReserve, the EReserve
4 server, Docutek ERes server.

5 THE WITNESS: Docutek ERes server.

6 Q (BY MS. SINGER) Is the Docutek ERes server
7 part of the GSU library servers?

8 A No.

9 Q Is that part of the Board of Regents'
10 servers?

11 A No. That's Georgia State University servers.

12 Q Okay.

13 A Centrally hosted.

14 Q Centrally hosted by Georgia State --

15 A Centrally managed by the IS&T, the central
16 campus computing.

17 Q So the actual Docutek ERes servers are hosted
18 by Georgia State University?

19 A Correct.

20 Q If you -- if someone from the reserves
21 department changes an entry on a E-Reserves course
22 page, where -- which server are they changing an entry
23 on, do you know who's --

24 A The ERes server.

25 Q The Georgia State University ERes server?

1 A Yes.

2 Q Okay. I apologize for this. That's very
3 complicated.

4 Now, instruction number 3 on the first page
5 of P-37 says, "Print and save a copy of the completed
6 checklist for your records." Do you see that?

7 A Yes.

8 Q Does the library ever see the checklist --
9 the fair use checklist filled out by the faculty
10 members?

11 A No.

12 Q Does the library have any systems or
13 processes in place to in -- inquire whether the faculty
14 member has, indeed, completed the fair use checklist?

15 A By clicking on "I agree" on this page, they
16 are indicating that they have done what they needed to
17 do, including the fair use checklist, if one of the
18 other criteria did not apply.

19 Q Okay. But nobody in the reserves department
20 is going to check up on them other than clicking "I
21 agree"?

22 A No.

23 Q Okay. Do you know whether the faculty
24 members at Georgia State University have received any
25 copyright training?

1 A Some have, and some have not. There's
2 ongoing training. There's regularly open sessions that
3 are announced, as well as individual departments are
4 having training for the entire department.

5 Q And is that copyright training something new
6 since the new policy has been put into place?

7 A Yes, the training specifically is on the new
8 policy and the implications for how they do their work.

9 Q Do you know when that training is scheduled
10 to be complete?

11 A I would assume it's ongoing, but, no, I do
12 not know.

13 Q Do you know whether all of the faculty
14 members who fill out the fair use checklist will have
15 received their copyright training?

16 A No, I wouldn't know that.

17 Q Do you know whether there's any plans to
18 audit whether faculty members have saved copies of
19 their fair use check lists?

20 A No, I don't.

21 Q Would that be something the library would be
22 in charge of?

23 A No. That would be a legal function.

24 Q Okay. Okay. So number 4 on page 1 of P-37
25 says, "If none of the above options apply, obtain

1 permission to use the item from the copyright holder",
2 and then in paren, "(generally the publisher).
3 Evidence of permission must be submitted to the library
4 with your reserves request."

5 How would you expect the faculty member to
6 obtain permission to use the item? How would that
7 work?

8 A They would contact the publisher, if they
9 knew, they would contact the Copyright Clearance
10 Center, and; if it actually included what they wanted,
11 they could go that way. We would advise them if they
12 asked. But I think, in most cases, they would contact
13 the publisher directly, but I don't really know. I've
14 not -- I've never been asked by a faculty member how to
15 do it, so I don't know what they do. They may have
16 other routes.

17 Q Are you aware of whether anyone in the
18 reserve department has ever been asked?

19 A I'm not aware.

20 Q And it says, "Evidence of permission must be
21 submitted to the library with your reserves request."

22 What -- what form would that evidence take?

23 A Whatever form they receive the permission in,
24 probably electronic.

25 Q What would the library do with that evidence

1 of permission?

2 A We would file it with the request.

3 Q And how many items -- how much evidence is in
4 that file?

5 A The request and if there were a permission
6 granted, that permission.

7 Q And on how many occasions has that occurred?

8 A I don't know.

9 Q Who would know that?

10 A Denise Dimsdale.

11 Q Do you know whether a faculty member has ever
12 contacted a publisher to obtain permission?

13 A I wouldn't know that.

14 Q If a licensing fee or some kind of
15 permissions fee had to be paid to use the item, who
16 would be responsible for paying that fee?

17 A A faculty member would be responsible for
18 arranging payment.

19 Q And how would they go about arranging
20 payment?

21 A I don't know.

22 Q Would that come out of the library budget?

23 A No.

24 Q Is there any money in the library budget to
25 pay for permissions for specific works on the EReserve

1 system?

2 A There's not a budget line for that, no.

3 Q Has the library ever paid permissions fees
4 for particular copyrighted excerpts to be placed on
5 EReserves?

6 A I'm not aware that they have. I haven't been
7 in charge of the system the entire time it's been up,
8 so...

9 Q In the period of time from 2005 on for which
10 you've been responsible for the system, has that ever
11 occurred?

12 A Not that I'm aware of.

13 Q And who would -- who would know that?

14 A Probably Denise would have been involved in
15 that, so Denise would probably know.

16 Q Okay. Would it be fair to say that if it's
17 happened, it hasn't happened on very many occasions,
18 that the library has -- has paid for the permissions
19 fee?

20 A Yes, that would be fair to say.

21 Q Okay. Okay. So if we turn to the second
22 page of P-37, you see the University System of Georgia
23 copyright policy page. And where does the screen shot
24 that's the second page of this -- of P37 -- what server
25 does that live on?

1 A That's at the Board of Regents.

2 Q Okay. And that has a link to a -- the
3 fillable fair use checklist?

4 A Yes.

5 Q Okay. And the fillable fair use checklist
6 lives on the Board of Regents' server as well?

7 A Yes.

8 Q Okay. If you turn to the third page of P-37,
9 it's another screen shot, and the top of it says,
10 "Policy on the use of copyrighted works in education
11 and research."

12 This screen shot, again, we're on the -- the
13 Board of Regents' servers here?

14 A Yes.

15 Q Okay. Did you have any involvement in
16 designing or promulgating this policy?

17 A I was not involved in designing it. I have
18 spoken to the Regents Academic Committee on Libraries,
19 which is the library directors for the University
20 System, to inform them and -- and alert them to this
21 policy and its implications for their practices.

22 Q Can you tell me a little bit about the -- I'm
23 sorry, the library --

24 A It's the Regents Academic Committee on
25 Libraries.

1 Q Regents Academic Committee on Libraries. And
2 who is on that committee?

3 A The directors of every academic -- or
4 University System of Georgia libraries, which I believe
5 is 35 University System schools.

6 Q How did you first become aware of this new
7 policy?

8 A My boss, Nancy Seamans, was on the committee
9 that developed this policy.

10 Q Did you have any conversations with her while
11 the committee was in the process of designing the
12 policy?

13 A No. No.

14 Q She didn't come to you for any input --

15 A No.

16 Q -- or anything?

17 A No.

18 Q Were you aware that she was on this committee
19 and they were working on the new policy?

20 A Yes.

21 Q Okay. But you didn't have any conversations
22 with her about it?

23 A No. "How did your meeting go?" "Fine, busy,
24 long." That's pretty much the extent of it.

25 Q Like all meetings involving lawyers, long?

1 A And faculty members.

2 Q So when did Ms. Seamans first tell you about
3 this new policy?

4 A When she received a request from the
5 chancellor to sit on the committee, she told me it was
6 being developed.

7 Q Okay.

8 A And then --

9 Q And when did you first learn that the -- the
10 policy had been finalized?

11 A When the committee had finished their work
12 and it had not yet been approved by the chancellor, she
13 gave me the password to get onto the Website. That was
14 at that point passworded to see it.

15 Q And what did you think of the new policy the
16 first time you saw it?

17 A I thought it was good, it looked familiar.
18 It's very similar to other policies I've seen at other
19 universities.

20 Q How did you come to look at other policies at
21 other universities?

22 A There was a lawsuit filed for copyright
23 infringement, so I spent a lot of time looking at other
24 universities.

25 Q Did you do that at anyone's request?

1 A No.

2 Q Okay. That was just you decided to do that
3 because you were curious?

4 A Yes.

5 Q Okay. What -- what did you conclude about --
6 if anything, about the then current Georgia State
7 University policies as opposed to the policies on the
8 other Websites that you were looking at?

9 MR. ASKEW: I'm going to object to that
10 from a time -- on a time basis. I'm not sure
11 what you're talking about when you said "the
12 then current Georgia State policy."

13 MS. SINGER: Fair enough. I'll clarify.

14 Q (BY MS. SINGER) At the time you were
15 looking -- after the lawsuit was filed, at the time you
16 were looking at the policies on other university
17 Websites, right --

18 A Um-hmm.

19 Q -- the policy we're looking at on P-37 was
20 not in effect --

21 A Correct.

22 Q -- correct.

23 What was your opinion about the policy at
24 Georgia State University that was in effect at that
25 time compared to the policies you were seeing on other

1 university Websites?

2 A Well, we didn't have a policy. We followed
3 the Board of Regents' guidelines that existed prior to
4 this.

5 Q Okay.

6 A So it was -- I -- I noted that we had a
7 percent chapter guideline in place, and I did not see
8 that on other universities, and I noticed they had a
9 fair use checklist on a lot of these, and we did not
10 have a fair use checklist.

11 Q Did you think it was a good idea to have a
12 fair use checklist?

13 A Yes.

14 Q Why is that?

15 A Because faculty members are the ones who can
16 do this, and by having a public checklist that goes
17 through all the different factors and things that weigh
18 for or against something, a faculty member is better
19 able to assess whether a use is fair.

20 Q And you said the other university Websites
21 didn't appear to have chapter percentage guidelines?

22 A Some did, but not -- some did; some didn't.
23 It varied.

24 Q Did you -- do you think it's a good idea to
25 have chapter percentage guidelines?

1 A I do not think it is -- it can't operate
2 exclusively as a proxy for a fair use analysis. When
3 you have staff members dealing with faculty members,
4 it's a quick way for them to see whether or not they
5 have a problem that needs to be pursued with a request.

6 Q Do you think it would be a good idea to have
7 a chapter or a percent guideline in conjunction with a
8 fair use policy?

9 A No, but --

10 MR. ASKEW: I'm going to object to the
11 form of the question as vague. I'm just --
12 I'm not sure what you're inquiring into just
13 as "a good idea." I think it's vague,
14 Ms. Singer.

15 MS. SINGER: Well, she is in charge of
16 implementing the policy, so I'm asking if she
17 thinks it would be useful to have that
18 guideline in addition to it.

19 MR. ASKEW: Is that going to be the
20 question, then, useful as opposed to a good
21 idea?

22 MS. SINGER: Sure, let's ask the
23 question as useful.

24 THE WITNESS: No, because it puts the
25 burden on the library staff as opposed to the

1 faculty, and I don't want that.

2 Q (BY MS. SINGER) Okay. So you believe that
3 the burden should be on the faculty and not on the
4 library staff?

5 A Yes. The faculty know the subject matter of
6 the book they're looking at, so they're the ones that
7 can do the analysis. They know how they're going to
8 use it for teaching, they know what they're objectives
9 are.

10 Q Should the library have any burden at all?

11 A For what?

12 Q For copyright compliance.

13 A I'm not sure I understand your question.

14 Q Should the library have any responsibility
15 for determining whether a particular use is fair use?

16 A I don't think the library is responsible for
17 determining whether a use is fair use. I think the
18 library has a responsibility that if they have a
19 concern, that they contact legal or the faculty member
20 and then legal to -- to make sure that that is done,
21 but I don't think it's the library's responsibility to
22 do the fair use analysis. I don't think the library
23 can do the fair use analysis for an individual course
24 reading.

25 Q Why not?

1 A Because it's not our course. We're not
2 teaching it, we don't know what the objectives are. We
3 most likely don't know the subject in enough depth to
4 know -- to know if a use is fair.

5 Q Okay. Do you know whether faculty members
6 have reviewed the policy on the use of copyrighted
7 works in education and research before they fill out
8 the fair use checklist?

9 A No. I wouldn't know on an individual basis.
10 If they've gone through the training, they have.

11 Q Okay. On -- in the second paragraph of the
12 policy, it says, "The University System of Georgia" --

13 MR. ASKEW: What page are you on?

14 Excuse me.

15 MS. SINGER: I'm sorry. I'm still on
16 page 3 of Plaintiffs' 37.

17 Q (BY MS. SINGER) It says, "The University
18 System of Georgia facilitates compliance with copyright
19 law."

20 Do you know what's meant by that, what the
21 university does to facilitate compliance?

22 A Well, the University System developed the
23 checklist, and the university and the University System
24 both employ legal, lawyers to help people if they have
25 questions about copyright and fair use.

1 Q The policy then goes on to list specific
2 things that the University System does. And the last
3 bullet point says, "Identifies individuals at the
4 University System and member institutions who can
5 counsel faculty and staff regarding application of
6 copyright law."

7 Do you know who that -- who the individual is
8 for GSU?

9 A Yes.

10 Q Who is that?

11 A Cynthia Hall.

12 Q Is there anyone else at GSU?

13 A Anybody in the legal department will work
14 with us on that. She's our normal initial contact.

15 Q Okay. Okay. If we turn to the fourth page
16 of P37, it's an screen shot of an electronic reserves
17 request form?

18 A Yes.

19 Q And whose server does the electronic reserves
20 request form live on?

21 A This is on the library's server.

22 Q Okay. And it says, "What kind of request
23 would you like to make?" One of the choices is "print
24 reserve."

25 A Correct.

1 Q Okay. How do print reserves work?

2 A A faculty member wants to put, for example,
3 an entire book on reserve, so we say, "Well, we can put
4 it on print reserve." There are shelves behind the
5 desk, student gets the call number from the catalog and
6 brings it to the desk and we get it from behind the
7 desk and check it out to the student. The check-out
8 time varies according to the professor's desires. It's
9 on here. I can't remember what it is; two hour, three
10 day, or seven day.

11 Q Okay. Do you know approximately how many
12 books would be on print reserve at any given semester?

13 A It's maybe three or four shelves' worth, so a
14 couple hundred, 150, I'm not -- I'm not sure exactly.

15 Q Okay. You think somewhere in the
16 neighborhood of a hundred, 200?

17 A Yeah, it's certainly not a thousand or
18 anything like that.

19 Q Okay. The next category on page 4 of P-37 is
20 "media reserves." And the choice there are "video and
21 audio" --

22 A Correct.

23 Q -- "for use in the media center"?

24 A Right.

25 Q Do you have any responsibility for the media

1 center?

2 A Yes.

3 Q How do video and audio reserves work?

4 A We put a videotape or a DVD or a CD behind
5 the desk just like we do a book and the rest of it work
6 the same way. Those are in use -- inhouse use only, so
7 they can't be checked out of the building, they have to
8 use them in the building, and there's equipment in the
9 media center for them to view or listen to those.

10 Q Okay. And then the last category on page 4
11 of P-37 is "electronic reserves from a book or journal
12 or class notes." And then there's a series of four
13 bullet points, and there's -- they're underlined. I
14 assume those are links?

15 A Correct.

16 Q And what does -- what does the professor do
17 with these -- with these links, or what do they link
18 to? Let's start with electronic versions of journal
19 articles.

20 A They link to a form for submitting a request
21 for an electronic journal article -- version of a
22 journal article.

23 Q Okay. And what about for parts of books?

24 A Same thing. These are to -- these link to
25 different forms.

1 Q They link to different forms, okay.

2 So let's turn to -- I guess it's page 5 of
3 P-37, and we see a screen shot for electronic reserves
4 request form for print book. Whose server does this
5 live on.

6 A The library server.

7 Q Okay. Is this the form that a professor or
8 faculty member would fill out if they wanted to put a
9 hard copy of a book on print reserves?

10 A Yes.

11 Q Okay.

12 A It says electronic reserves because we do
13 create an entry in ERes that doesn't link to an actual
14 digital file; it just gives you the call number, but
15 that way a student can see everything on reserve in the
16 same place. So a number of the items listed in ERes
17 are just call numbers for print books.

18 Q Okay. Let's turn to page 6 of P-37. This is
19 "electronic reserves request form for video."

20 A Um-hmm.

21 Q Does this --

22 A Yes.

23 Q Does this live on the library server as well?

24 A Yes.

25 Q Okay. And this would be the form that the

1 professor fills out when they want to put -- I'll say a
2 hard copy, for lack of a better word -- of a video
3 actually on the shelf in the media center?

4 A Yes.

5 Q Okay. Page 7 of P-37 is "electronic reserve
6 request form audio hard copy." And that is also living
7 on the G -- the library server, I'm sorry?

8 A Yes.

9 Q Okay. And this is -- what do we mean by
10 "audio hard copy"?

11 A A CD or a --

12 Q Okay.

13 A Mostly a CD.

14 Q So this would be the form that a faculty
15 member would fill out if they want to put a CD on the
16 shelf?

17 A Yes.

18 Q Okay. If you would please turn to page 8 of
19 P-37. It says "electronic reserves request form,
20 electronic article." This page lives on the library
21 server?

22 A Yes.

23 Q Okay. And this is the form that a professor
24 would fill out if they want to put an article in the
25 EReserve system?

1 A Yes.

2 Q Okay. And then we see below the line there,
3 it says, "this item can be placed on electronic reserve
4 because, choose one: The library already licenses the
5 item"?

6 A Yes.

7 Q Under what circumstances would a faculty
8 check that box?

9 A If the item is available in one of the
10 databases or electronic journals that we license.

11 Q Okay. And then, "if it falls under fair use,
12 according to the fair use checklist I completed," under
13 what circumstances would they click that?

14 A If they did an analysis using the fair use
15 checklist and found that it was fair use.

16 Q Okay. And then, "if it is public domain or
17 allowed under a creative commons license," when would
18 they click that?

19 A When it was public domain or allowed under a
20 creative commons license, and we do ask them to read
21 the creative commons license to make sure it'd be a
22 fair use --

23 Q Okay.

24 A -- or not a fair use, but an allowed use.

25 Q Okay. Or the last option is if they

1 specifically obtained permission from the copyright
2 holder?

3 A Yes.

4 Q And then the professor fills out all the
5 information about the journal there?

6 A That is correct.

7 Q Okay.

8 A I want to add a couple of notes. This is not
9 a current form.

10 Q Oh, this is not a current form?

11 A This has been updated.

12 Q It has, okay. When was it updated?

13 A Sometime between when this was printed and
14 now.

15 Q Okay.

16 A Within -- probably a month ago.

17 Q Okay. How -- what has changed on this form?

18 A There is now a line where a faculty member,
19 if they actually have found the link to the licensed
20 item, can include it.

21 Q Okay.

22 A And we have removed the section that says,
23 "if your journal is not part of your collection, you
24 may submit a personal copy to be scanned." No, that's
25 still there, but we have taken off "you can submit an

1 electronic copy." We won't take an electronic copy of
2 something. They have to bring in a print copy that
3 they own.

4 Q Okay. And when you say "they have to bring
5 in a print copy," do you mean of a bound journal, or do
6 you mean a printout of the article, what -- what will
7 the library accept?

8 A It would most likely be a print journal.

9 Q Okay. If a faculty member brought in just a
10 Word copy of a journal article, would the library
11 accept that?

12 A No.

13 Q If the faculty member does not fill out all
14 of the fields on this form, what happens?

15 A They get an error message telling them they
16 have to fill out the bold fields that are required.

17 Q Okay.

18 A It's kind of hard to see on here which ones
19 are bold, but some of them are.

20 Q Do you know which ones? I know it is hard to
21 see on this.

22 A I think the only one that is not is author of
23 article.

24 Q Okay. So it -- it's not possible to
25 electronically submit a request without all of the

1 required fields?

2 A Correct.

3 Q Okay. Why were changes made to this form?

4 A Because I'm not comfortable accepting a Word
5 or PDF file that I can't tell where it came from,
6 because if the library doesn't own it and the
7 instructor doesn't own it, I'm not putting it on
8 reserve.

9 Q Okay. Let's turn to page 9 of P-37. This
10 is -- says "electronic reserves request form,
11 electronic book." And this form lives on the library
12 server?

13 A Yes.

14 Q Is page 9 of P-37 the current form?

15 A I believe so.

16 Q Is this the form that a faculty member would
17 fill out if they wanted to submit a book or an excerpt
18 from a book for the EReserve system?

19 A Yes.

20 Q And would the faculty member need to fill out
21 all of the bold fields again, all the required fields?

22 A Yes.

23 Q Do you know which fields are bold on this
24 form?

25 A It looks like author, title, publisher, year,

1 chapter or page numbers, as well as the -- you have to
2 pick one of the radio boxes at the top.

3 Q Okay. And the four radio boxes are the --
4 these are the same radio boxes that we --

5 A Yes.

6 Q -- looked at before. And the same
7 circumstances -- the -- the faculty member would check
8 these radio boxes under the same circumstances that you
9 testified to a few minutes ago? In other words --

10 A The same thing as the journal article.

11 Q Right.

12 A Correct.

13 Q Okay. And it says at the bottom, "Please
14 note that documents violating copyright and copyrighted
15 items submitted without complete citation will not be
16 posted." What does that mean?

17 A Well, the wording is vague. Violating
18 copyright, I assume would be do not fall under fair use
19 guidelines or do not have a -- evidence that permission
20 has been obtained, and we require a complete citation.

21 Q Okay. How does the library determine whether
22 the document violates copyright?

23 A Again, the gut check, it feels wrong, it's
24 too long, the -- the items that I -- I went over
25 earlier.

1 Q Okay. The items we talked about earlier, it
2 was the -- essentially, it was really just the amount
3 of the work; is that correct?

4 MR. ASKEW: I'll object to the form of
5 that question. It mischaracterizes her
6 previous testimony.

7 MS. SINGER: Okay. Well, the -- the
8 record will say what it says, but let me
9 rephrase the question for here.

10 Q (BY MS. SINGER) What -- specifically, what
11 factors would the library use to determine whether the
12 reserve department believes that an item violates
13 copyright?

14 MR. ASKEW: I'll object to the form of
15 the question as having been asked and
16 answered previously.

17 Q (BY MS. SINGER) You can answer it again.

18 A Well, they will look at the amount used, the
19 type of work, things that just don't feel right, did
20 not follow the norm of what they put on reserve, but
21 generally, it is the amount that is the -- the major
22 alarm that will -- will alert them if there's an issue.

23 Q If the faculty member needs to fill out all
24 of the required fields in order to put the request
25 through, would there ever be a time that the item could

1 be submitted without a complete citation?

2 A No.

3 Q Okay. Turning to page 10 of P-37, the
4 electronic reserves request form for electronic notes?

5 A Yes.

6 Q What -- what constitutes notes?

7 A Many faculty members put copies of their
8 course notes, previous exams, exam keys, answer keys,
9 things like that on reserve.

10 Q Okay. So those would be materials, as a
11 general matter, that were created by the faculty
12 member?

13 A Yes.

14 Q Page 11 of P-37 is the "electronic reserves
15 request form for audio: Streaming." Do you see that?

16 A Yes.

17 Q What is streaming audio in the context of
18 EReserves?

19 A We will post small pieces of audio from --
20 from materials in our collection, mostly CDs, on the
21 university's, not the library's, but the university's
22 streaming media server for students to access. We also
23 will link to streaming media in databases we license
24 that include music.

25 Q Okay. It says -- and then we see the same

1 four radio buttons on page 11 of P-37 that we've seen
2 before. And the second radio button says, "It falls
3 under fair use according to the fair use checklist I
4 completed."

5 Would the fair use checklist for streaming
6 audio be the same fair use checklist that's used for
7 books?

8 A Yes. Yeah.

9 Q Okay. At the bottom of page 11 of P-37,
10 there's a button that says "add to reserves cart"?

11 A Yes.

12 Q What does that mean?

13 A If the professor is putting four or five
14 things on reserve, they can fill out the form for five
15 four or five things and add them to a cart, and then
16 when they're finished, they hit submit and it sends all
17 of them at once.

18 Q Okay. Is there any limit to the number of
19 things a professor can put in their reserves cart?

20 A Currently --

21 Q Currently.

22 A -- there is a limit of 50.

23 Q 50, 5-0?

24 A Yes.

25 Q When did -- when was that limit put into

1 place?

2 A Last week.

3 Q Why did you institute that limit?

4 A Two reasons: First of all, workload. It
5 becomes ridiculous to put a -- too many things on
6 reserve for a course that students won't look at. It's
7 a huge amount of work for our staff for no purpose.

8 And secondly, we thought it very unlikely
9 that someone could actually do a fair use analysis of
10 more than 50 items for a course. So if they want to
11 put more than 50 on, they'll have to go through me or
12 through the dean and we'll mostly -- we'll send them to
13 legal to talk about completing the fair use analysis.

14 Q In the two weeks since the limit has been 50,
15 has -- has there been any instances where someone has
16 wanted to exceed the limit and come to you?

17 A No.

18 Q I -- I should have asked the question in the
19 last -- since the policy has been instituted, have
20 there been any occasions when anyone has wanted to
21 exceed the limit?

22 A No.

23 Q Okay. Prior to the policy being put into
24 place, where -- were there faculty members who
25 requested more than 50 items on their EReserves page?

1 A The 50-item policy or the board -- the
2 copyright policy, the Board of Regents' copyright
3 policy?

4 Q 50-item policy.

5 A Yes.

6 Q On how many occasions?

7 A I don't know. Only select faculty members.
8 It's not an overwhelming issue.

9 Q So less than 10 professors tried to put more
10 than 50 items up, would you say?

11 A I would say that, yes.

12 Q Okay. Of course, your answer leads to the
13 other question: Have there been any instances, that
14 you're aware of, of professors who did not comply with
15 the University of Georgia copyright policy, that you're
16 aware of?

17 MR. ASKEW: I'll object to that question
18 as being asked and answered previously.

19 Q (BY MS. SINGER) You can answer.

20 A I also don't understand the question. Can
21 you rephrase it?

22 Q Sure. I think I -- I asked you before if
23 you're aware, since the policy was put into place, of
24 anybody who tried to do more than 50 items.

25 A No.

1 Q Okay. Since the Georgia -- since the USG
2 copyright policy has been put into place, there have
3 been professors who tried to post more than 50 items to
4 their EReserves page?

5 A No.

6 Q There have not?

7 A No. There have been prior to the policy
8 being put in place.

9 Q Okay. So at this juncture, was there a
10 particular instance or a particular incident that
11 caused you to implement the 50-item limit at this
12 juncture in time?

13 MR. ASKEW: I'll object to the question
14 as vague as to what you mean by "at this
15 juncture."

16 Q (BY MS. SINGER) You said the policy was put
17 into place a week or two ago, I think?

18 A The 50, yeah.

19 Q The 50 item. Why specifically a week or two
20 ago was that policy put into place?

21 MR. ASKEW: I'll object to the form of
22 the question being asked and answered, but
23 you can answer again.

24 THE WITNESS: New semester, reviewing
25 our work flow with this new -- new Board of

1 Regents copyright policy in place seemed a
2 reasonable step.

3 Q (BY MS. SINGER) Okay. Was we sit here
4 today, April, I think, 24th, what semester are we in at
5 GSU?

6 A Spring 2009.

7 Q Okay. So when you say "new semester,"
8 what -- what semester were you referring to?

9 A Summer.

10 Q The summer semester. When does that begin?

11 A May -- there's a Maymester, and then there's
12 a summer semester. The Maymester begins in early May.
13 I don't know the exact date.

14 Q Okay. When does the spring 2009 semester
15 officially end?

16 A I believe it's May 4th is the last day of
17 finals, but I'm not certain, something -- somewhere
18 around there.

19 Q When -- what does the library do with the
20 EReserves course pages at the end of a semester, or
21 what does the library -- strike that.

22 What is the library planning to do with all
23 of the items currently up on the EReserve system on May
24 4th or May 5th, 2009.

25 A They are sent to the dark archive that is

1 part of the EReserve system.

2 Q Can you -- can you tell me more about what --
3 what is the dark archive?

4 A When a -- when a item is no -- when it is no
5 longer the current semester, students can no longer
6 access that page, nor can faculty, nobody can access
7 that page. So it's sent into a dark archive, where the
8 files are not deleted, but they are longer accessible.

9 Q They're not accessible to anybody?

10 A Staff can access them with administrative
11 password, but they're not accessible to any user.

12 Q Okay. Which -- which staff members have an
13 administrative password?

14 A The members of the reserves unit have one.

15 Q Okay.

16 A I have one.

17 Q Have you ever used yours?

18 A Only to look at things as a result of this
19 lawsuit.

20 Q Okay. So in the ordinary course of business,
21 you generally do not access the dark archive?

22 A No. Never.

23 Q On whose server does the dark archive live?

24 A That is on the server in IS&T, central
25 computing.

1 Q And that's GSU?

2 A Yes.

3 Q Okay. Do you know who has supervisory
4 authority over this -- the GSU server that hosts the
5 dark archive?

6 A I believe Keith.

7 Q Okay.

8 A Ultimate boss is Bill Paraska.

9 Q Do you know what Bill Parasko's [sic] title
10 is or what department he's in?

11 A I don't know what the unit is called.
12 They're responsible for the servers and the -- the
13 physical infrastructure of the network on campus, as
14 well as the security of the network.

15 Q Do you know ultimately to whom Bill Parasko
16 [sic] reports?

17 A Paraska.

18 Q Paraska.

19 A He reports to J.L. Albert.

20 Q J.L. Albert. Does the dark archive
21 contain -- strike that.

22 What -- what does the dark archive contain?

23 A At this point, it contains everything that
24 was ever on reserve since 2003, as far as I know.

25 Q Are there any plans that you're aware of to

1 change the -- having the dark archive contain
2 everything since 2003?

3 A When this lawsuit ends and I can delete
4 things again, I intend to delete everything except for
5 the most recent year.

6 Q Okay. To the best of your knowledge, what is
7 the purpose of the dark archive?

8 A It provides a backup copy of a file, so if
9 something in the live archive is corrupted, we can pull
10 it back out. It also allows for renewing a course
11 page. So if a professor teaches a class in fall '08
12 and is teaching the same class in fall '09, previously
13 he could ask to have the page renewed and we would just
14 pull it out of the archive and it would just come back
15 into a live site; it would generate a new password that
16 the professor would give to his students in that -- in
17 that semester and then they would have access to it.

18 Under the new policy, we have informed
19 faculty we will not renew any pages because they must
20 do a fair use analysis of everything that is -- that
21 they're requesting for reserve and that has not been
22 done for anything in the dark archive.

23 Q Okay. So if I'm a professor, and I'm
24 teaching a course in the Maymester that I taught in
25 Maymester of 2008 and I call the library and I say,

1 "Can you please restore my Maymester 2008 course
2 reserves page," what -- what is going to happen?

3 A We will say, "We are not restoring pages
4 because you need to do a fair use analysis of
5 everything that you want to put on; but if you'd like,
6 we will send you a listing of what you had on reserve."

7 Q Okay.

8 MS. SINGER: I'm informed that we need
9 to change the tape, so this is probably a
10 good moment to take a break here.

11 THE WITNESS: Okay.

12 THE VIDEOGRAPHER: Off the record at
13 11:19:37.

14 (Whereupon, there was a brief recess.)

15 THE VIDEOGRAPHER: This is Tape 3. We
16 are back on the record at 11:29:31.

17 Q (BY MS. SINGER) Okay. Ms. Burtle, you have
18 in front of you what was marked yesterday as
19 Plaintiffs' Exhibit 38, which is the policy on the use
20 of copyrighted works in education and research. Do you
21 see that?

22 A Yes.

23 Q Okay. The second page of P-38 is additional
24 guidelines for electronic reserves.

25 A Yes.

1 Q Do you see that? Okay.

2 Is this -- the additional guidelines for
3 electronic reserves, is that part of the University
4 System copyright policy?

5 A Yes.

6 Q Okay. So this page would likely live on -- I
7 know this is not a screen shot, but this page would
8 live on the -- the Board of Regents' server?

9 A Yes.

10 Q Okay. The additional guidelines, the first
11 bullet point says, "Instructors are responsible for
12 evaluating, on a case-by-case basis, whether the use of
13 a copyrighted work on electronic reserves requires
14 permission or qualifies as fair use." And there's a
15 link. Do you know what that fair use -- does that link
16 to the checklist, do you know?

17 A That would be my assumption.

18 Q Okay. "If relying upon the fair use
19 exception, instructors must complete a copy of the fair
20 use checklist before submitting material for electronic
21 reserves." Do you see that?

22 A Um-hmm.

23 Q And I don't want to characterize your
24 testimony, but does the library ever look at the copies
25 of this fair use checklist that the instructors fill

1 out?

2 MR. ASKEW: Object to form.

3 THE WITNESS: The library, who?

4 Q (BY MS. SINGER) Does anybody in the library
5 ever look at the fair use checklist that the
6 instructors fill out?

7 MR. ASKEW: I'll object to the form of
8 the question as being asked and answered.

9 But if you can answer it again, answer
10 again.

11 THE WITNESS: No.

12 Q (BY MS. SINGER) Okay. Are you aware of
13 whether instructors have completed their copyright
14 training before they fill out the fair use checklist?

15 A No.

16 Q Is it possible that instructors would fill
17 out the fair use checklist without having had copyright
18 training?

19 A Presumably.

20 Q The second to last bullet point says,
21 "Library reserve staff should delete materials
22 available on electronic reserves at the conclusion of
23 the semester." Do you see that?

24 A Yes.

25 Q And does the GSU library reserve staff do

1 that?

2 A They move them to the dark archive, which
3 deletes access to them by the students who were in the
4 course during the semester.

5 Q Okay. When -- when is that done, I mean, is
6 it the day after exams or --

7 A I don't know.

8 Q Okay. Do you know how long, approximately,
9 the pages from the prior semester remain on the system
10 before they're -- after the conclusion of the semester?

11 A I think that's the same question, but, no, I
12 don't.

13 Q Okay.

14 A I mean, it's -- it's right after the
15 semester, but I don't know the exact day, if it's one
16 day or two days or three days.

17 Q Do you -- do you think it's within a week?

18 A Yes.

19 Q Okay. In order to move those pages to the --
20 the dark archive, can you do that globally, or do you
21 need to move each page one by one to the dark archive?

22 A I'm going to backtrack a minute on your
23 previous question.

24 Q Okay.

25 A I think, when the page is created, an

1 expiration date is put on it at the creation point and
2 I know -- it's not done manually; they automatically
3 gets sent to the -- to the archive.

4 Q Okay. So the expiration date would
5 presumably be within a couple of days after exams are
6 over?

7 A It's probably the day after exams, but I
8 don't know that for certain.

9 Q Okay.

10 A That's not something I manage directly.

11 Q Okay. Who would imagine that directly?

12 A Denise Dimsdale.

13 Q Okay. Turning to the last page of P-38, it
14 says "introduction to the fair use checklist." This
15 page would live on the Board of Regents' Website?

16 A Yes.

17 Q Board of Regents' server. I'm sorry.

18 A Yes.

19 Q And these instructions -- who are these
20 instructions aimed at?

21 A Faculty.

22 Q Okay. I want to go back to something you
23 mentioned before. You said -- I'm not sure -- were
24 you a -- are you a part of the Regents Academic
25 Committee on Libraries, or were you reporting to them?

1 A My -- by boss is a member, Nancy Seamans is a
2 member.

3 Q Okay.

4 A She was unable to attend the meeting that was
5 held, and asked me to attend in her place. Bill Potter
6 from the University of Georgia, who is also a member,
7 was going to introduce this policy to the membership.
8 He was unable to attend and knew that I was familiar
9 with it and called and asked me to do it instead, as he
10 knew I was going to be there.

11 Q Okay. Do you recall approximately when that
12 meeting was?

13 A I believe it was -- what is this, February --
14 March 27th.

15 Q March 27th?

16 A It was a Friday in late March.

17 Q Okay. What -- what did Bill Potter ask you
18 to do at that meeting?

19 A Just introduce the membership to the -- to
20 the policy, show them where it was, go over what it
21 said.

22 Q And how did you -- what specifically did you
23 do to introduce them to the policy?

24 A I made a whole bunch of copies of it and I
25 handed it out.

1 Q Okay.

2 A And I went through it with them and said you
3 might notice there's a fair use checklist and that
4 instructors need to fill this out and that there are
5 specific guidelines for electronic reserves and that,
6 you know, you need to make adjustments in your own
7 library to make sure that you're accommodating these
8 guidelines.

9 Q Approximately how long did that introduction
10 take?

11 A Probably between 20 minutes and half an hour
12 with questions and conversation following the -- kind
13 of going through the policy.

14 Q What kinds of questions were you asked?

15 A I showed them our Website that had the form
16 where people indicate under what criteria things are
17 available for -- for fair use, it links out to the
18 checklist and such. And they asked me a lot of
19 questions about the form, about our work flow and how
20 our work flow had changed, about whether faculty were
21 upset, all of which, you know, it was too early to
22 tell. It was brand new.

23 There was a suggestion that the University
24 System libraries all develop similar Web pages and
25 follow similar practices to all make sure we're in

1 compliance with the new policy, and I was asked to
2 chair a committee to -- to come up with a standard
3 practice for electronic reserves at University System
4 libraries. That committee is being formed. It has not
5 yet met.

6 Q Who -- who is going to be on that committee,
7 do you know?

8 A Me. I do not know who else at this point.
9 It's being appointed by the chair of the RACL group.

10 Q And who is the -- RACL is the Regents
11 Academic Committee --

12 A Right.

13 Q -- on Libraries?

14 A Right.

15 Q Okay. Who is the chair of that group?

16 A Her name is Carol Bray; she's the director
17 at -- I think she's the director at East Georgia
18 College. I'm not sure. A small college somewhere
19 in -- outside of metro Atlanta.

20 Q Do you have any role in deciding who's going
21 to be on that committee that you're chairing?

22 A No. There was general discussion that we get
23 people from the research libraries and the four years
24 and the two years; but beyond that, not names.

25 Q Does that committee have a name yet?

1 A No.

2 Q No good acronyms yet?

3 A No. The EReserves copyright committee.

4 Q Okay. And it shall be dubbed?

5 A And it shall be dubbed, yes.

6 Q When you went to this RACL meeting in late
7 March and introduced the policy, was that the first
8 time that the other committee members were learning of
9 the policy?

10 A Some of them.

11 Q Have you had any subsequent conversations
12 with any members of the -- the RACL committee or their
13 designees about your work, the work flow at GSU, or how
14 GSU is implementing the policy? Have there been any
15 follow-ups from that meeting?

16 A I've had a couple of brief discussions with
17 representatives from Georgia Tech and the University of
18 Georgia, mostly sharing our Web pages with them.

19 Q Is it or was it your sense that GSU was
20 either the first or among the first to be implementing
21 the new policy?

22 A Yes.

23 Q Okay. Was -- or is -- strike that.

24 When do you consider that GSU first
25 implemented the policy, the new copyright policy?

1 A We were responsible for abiding by the policy
2 as soon as the chancellor approved it and it went up on
3 the Website and was announced through the Board of
4 Regents' communications channels.

5 Soon thereafter, next day, the next two or
6 three days, we revised -- we put up our new Website
7 that had the -- the indications that you must do a fair
8 use analysis, and you must indicate under what
9 circumstance this is eligible for electronic reserves
10 within a couple of days after that.

11 Q Okay. And that was sometime in February of
12 2009?

13 A It might have been mid March. I -- I'm just
14 not sure exactly when it was.

15 Q Okay.

16 A Sometime in the middle of spring semester.

17 Q Was anything done at GSU about things that
18 were already posted on the ERes system for spring 2009
19 that was posted before the new policy went into effect?

20 A Yes.

21 Q What was done?

22 A For spring -- the materials that were on
23 reserve for spring 2009, we went back and looked for
24 electronically -- electronic versions that were already
25 in a licensed database, and where we found those, we

1 took down the PDF and made a link.

2 Q How many -- how many articles did that
3 implicate, approximately?

4 A I couldn't say. A lot.

5 Q More than a hundred?

6 A Yes.

7 Q More than 500?

8 A I -- I don't know.

9 Q Okay. Did you do anything else about the
10 materials that was already posted for spring 2009?

11 A No.

12 Q Did any requests come in for materials to be
13 posted for spring 2009, did any request come in post
14 the new policy?

15 MR. ASKEW: I'll object to the form of
16 the question as vague.

17 THE WITNESS: I don't know. I'm not
18 that hands on with the requests.

19 Q (BY MS. SINGER) When -- what was the
20 deadline for submitting a request for Maymester of
21 2009?

22 A I don't believe we posted a deadline for
23 Maymester. It's a small -- there aren't many requests.
24 I don't think we -- we do -- we do deadlines for the
25 big semesters.

1 Q Okay. What was the deadline, then, for
2 summer 2009?

3 A I -- I don't know. Denise Dimsdale --

4 Q Okay.

5 A -- would know.

6 Q Do you know if it was before the new policy
7 was implemented or after the new policy was
8 implemented?

9 A No. I -- I don't believe it's actually been
10 sent out at this point.

11 Q And by "it," you mean the new policy or the
12 request?

13 A The notice that this is the deadline.

14 Q Okay. So I take it, then, that any material
15 posted for summer 2009 will be in compliance with the
16 new policy; is that --

17 A Yes.

18 Q Okay. You said one of the questions at the
19 RACL meeting was were faculty upset. What was the
20 answer as to that question?

21 A Not yet.

22 Q Since that meeting, has -- have faculty been
23 upset at the new policy?

24 A Actually, I have not heard faculty being
25 upset. I'm not sure I would hear. They may be upset

1 at their training sessions, they may not be. I -- I --
2 I'm not aware.

3 Q Okay. Would Denise maybe be aware of that?

4 A It's possible. If she is, she hasn't -- she
5 hasn't shared that with me.

6 Q Okay. Does the library provide the ERes
7 system for all of the schools on the GSU campus?

8 A I don't think I understand the question.

9 Q Are there -- are there any -- maybe it's grad
10 schools or anything that the library --

11 A There's only one library at Georgia State.

12 Q Okay.

13 A There's not a graduate school. I mean, there
14 are different colleges, but we don't -- it's just all
15 the faculty.

16 Q Okay.

17 A The law school does have their own library
18 and they also use ERes and they do their own ERes. We
19 don't do theirs. But everything else we do from the
20 main library.

21 Q Okay. Do you know where -- which server the
22 law school's ERes system lives on?

23 A The same server.

24 Q And that's the IS&T server for GSU?

25 A Yes.

1 Q Okay. The one that goes up to J.L. Albert?

2 A Yes.

3 Q How would you characterize your role in the
4 ERes system?

5 A I'm ultimately responsible for it, as that
6 unit is in my reporting areas.

7 Q What -- what kind of day-to-day interaction
8 do you have, if at all?

9 A I don't have day-to-day interaction.

10 Q How often -- aside from implementing the new
11 policy, in the ordinary course of business, how often
12 do you have discussions with the reserve department
13 about the ERes system?

14 A Infrequently. Only if there's an issue.

15 Q What -- what type of -- I think you said you
16 had an administrator password?

17 A Yes.

18 Q What -- what does that -- what can you do
19 with an administrator password?

20 A Well, what I do with the administrator
21 password is it lets me run reports to see, you know,
22 what's on reserve, how -- how frequently it's used,
23 those are the two main things I've done.

24 Q Do you run those reports on a regular basis?

25 A No, I've run them out of curiosity as part of

1 this case.

2 Q Does anybody run reports on a regular basis?

3 A I believe Denise does, as she's who showed me
4 how to do it.

5 Q Okay. Do you know how often she runs
6 reports?

7 A No.

8 Q Do you review -- in the ordinary course, do
9 you review reports with any kind of regularity?

10 A No.

11 Q Okay. Would you review them even once a
12 semester?

13 A No.

14 MS. SINGER: This is 75, please.

15 Would you please mark this as

16 Plaintiffs' Exhibit 75.

17 (WHEREUPON, Plaintiffs' Exhibit 75 was marked for
18 identification.)

19 (Whereupon, there was a discussion off the record.)

20 Q (BY MS. SINGER) Ms. Burtle, you have in
21 front of you what's been marked as Plaintiffs' Exhibit
22 75, which is Bates stamped Georgia State 38882.

23 A Yes.

24 Q Do you recognize this document?

25 A Yes.

1 Q Okay. And this is an email from Nancy
2 Seamans to you dated October 10th, 2008?

3 A Yes.

4 Q Okay. Plaintiffs' Exhibit 75 says, "List of
5 possible topics from October 8th meeting with J.L. and
6 October 3rd meeting with Mike." Is J.L., J.L. Albert?

7 A Yes.

8 Q And who is Mike?

9 A Mike Russell.

10 Q And what is Mike Russell's role or title?

11 A He's the director of university academic
12 technology services.

13 Q Is he -- who does he report to?

14 A J.L.

15 Q He reports to J.L., okay. And who is Tammy
16 Sugarman?

17 A She is the associate university librarian for
18 research services, my counterpart over the other areas
19 of the library.

20 Q Okay. So she's also an associate librarian?

21 A Yes.

22 Q And she reports to Nancy Seamans the same way
23 you do?

24 A Yes.

25 Q Okay. The -- do you -- were you at this

1 October 8th meeting with J.L. or the October 3rd
2 meeting with Mike?

3 A No.

4 Q Were you aware of what occurred at those
5 meetings generally?

6 A Only from this email.

7 Q Okay. Under the second set there on
8 Plaintiffs' 75, it says, "Mike's topics per 10/3
9 conversation." The first line is, "ERes, Jim Palmour's
10 role with this. Need to solve it." Do you know what
11 that means?

12 A Mike was unhappy with having a highly paid
13 employee scanning things.

14 Q Do you know whether, in fact, this was,
15 quote/unquote, solved?

16 A Yes.

17 Q And how was it solved?

18 A The library is now scanning things, not Jim
19 Palmour.

20 Q Okay. The next entry on P-75 is, "DSpace,
21 Jim Palmour's role with this. Need to solve it." Are
22 you familiar with what that means?

23 A Jim Palmour used to work with a gentleman
24 named Phil Williams, who was managing our DSpace
25 institutional repository server, Phil Williams retired,

1 leaving Jim Palmour in charge and Jim Palmour did not
2 know what to do. So we were not getting good service
3 there.

4 Q Was this solved, do you know?

5 A Yes.

6 Q How was that solved?

7 A We got rid of DSpace. We went to a hosted
8 system.

9 Q Okay. And when you say "a hosted system,"
10 that's a --

11 A We're paying a company to run it --

12 Q Okay.

13 A -- to run a different system for us, their
14 system.

15 Q So that has been outsourced from the
16 university?

17 A Correct.

18 Q Okay. The next entry on P-75 says,
19 "Coursepacks, Jim Palmour's role with this," in all
20 caps, "we need to get out of it and solve it." Do now
21 what that is referring to?

22 A The Jim Palmour's role, I assume, is, again,
23 scanning things, and I believe that Mike very much
24 wanted us not to -- or wanted him, not us, not the
25 library, but the univer- -- his piece of IS&T in the

1 university to stop doing Coursepacks.

2 Q Do you know whether this was solved?

3 A I do not know.

4 Q Okay. Do you know whether IS&T is still
5 responsible for Coursepacks?

6 A I don't know.

7 Q Does the library have any responsibility for
8 Coursepacks?

9 A No.

10 Q Okay. The next entry on P-75 is "inventory
11 of services to support extended campus users, uLearn,
12 Portal (Luminis), our committee intersecting with
13 Mike's area." Do you know what that's referring to?

14 A Yes.

15 Q What is that referring to?

16 A We had a -- we have -- had, maybe still have
17 a committee looking at how to support users who are not
18 at our downtown campus.

19 Q Okay.

20 A And so, you know, we use it supporting them
21 using uLearn or the university portal, which are in
22 IS&T's area of responsibility, but we also need to
23 provide library services to those users, so something
24 about the committees talking to each other.

25 Q Do you have any role in those conversations?

1 A No.

2 Q The next entry down on P-75 is "ePortfolios."
3 Do you know what that refers to?

4 A Not specifically.

5 Q Do you know generally what an ePortfolio is
6 in this context?

7 A In this context, I'm not sure. Generally,
8 it's something that students use to showcase their
9 work, but Mike is not responsible for student services,
10 so I'm not sure in this context what that means.

11 Q Is the library responsible for ePortfolios?

12 A No.

13 Q The next entry on P-75 says "archiving." Do
14 now what's meant by archiving?

15 A No.

16 Q Okay.

17 A No, I don't know in that context what that
18 means.

19 Q Okay. The next entry on P-75 is "content
20 DM." Do you know what that means?

21 A Yes. Content DM is a -- a system that the
22 library uses to host digital images from our special
23 collections department.

24 Q Okay. And those -- can you tell me what
25 those special images -- can you give me an example of

1 what that might entail?

2 A For example, we held photo collections
3 that -- of historic Atlanta, of labor photos from one
4 of our donors.

5 Q Okay. The next item on P-75 is "future
6 directions, we both need them." Do you know what that
7 refers to?

8 A New directors in both places. Just figuring
9 out where we're going --

10 Q Okay.

11 A -- generally.

12 Q Has -- where does that stand today, to your
13 knowledge?

14 A Everybody is looking at their organizational
15 structures, their future needs.

16 Q Has the library organizational structure
17 changed?

18 A No.

19 Q Do you know if there's plans for the library
20 organizational structure to change?

21 A Yes.

22 Q And what are those plans?

23 A We are looking at the organizational
24 structure of our technical services, which includes
25 cataloging acquisitions and collection development, and

1 we are looking at the organizational structure of our
2 digital library services.

3 Q Are those -- I'm sorry, are those under your
4 umbrella, or are those under Tammy's umbrella?

5 A One is Tammy and one is me. The digital
6 library one is me.

7 Q And when you say you're looking at that area,
8 what do you mean by that?

9 A There are two working groups examining the
10 staffing and services in those areas and providing
11 recommendations.

12 Q Would those -- any decisions made by those
13 working groups have any impact on ERes or uLearn?

14 A No.

15 Q Okay. The next item on P75 says "short
16 term-GIL upgrade." Do you know what that refers to?

17 A Sort of.

18 Q Okay.

19 A GIL is the catalog, the library does not run
20 the -- the library does not run its own catalog. It's
21 run at a system level, University System level.

22 Q Is that Board of Regents?

23 A Board of Regents, right, so this is referring
24 back to the LSS unit being dissolved. They were
25 running GIL.

1 Q Okay.

2 A Okay.

3 Q So you wanted to make sure you would still
4 have --

5 A That's -- that's what GIL is. I'm not sure
6 what "short term" and "upgrade" mean in this context.

7 Q Okay. Are you aware of any upgrades that
8 have happened in GIL?

9 A There -- there is a new version. It may have
10 been referring to that.

11 Q And then the last entry there above Dean
12 Seamans's signature block on P75 says, "Laura as
13 liaison between library digital initiatives and
14 academic technology services." Do you know what that
15 refers to?

16 A That I need to maintain a strong relationship
17 with Mike.

18 Q Okay. Have you done that?

19 A Yes.

20 Q Do you meet with Mike on any kind of regular
21 basis?

22 A We have lunch every few months.

23 Q What -- what do you discuss with Mike at
24 those lunches?

25 A I don't think I can tell you specifically.

1 What we're doing in the library, what he's doing in his
2 units.

3 Q When was your last discussion with Mike
4 about -- about EReserves?

5 A Prior to us taking over the scanning
6 operation from Jim Palmour.

7 Q Okay. Have you had any conversations with
8 him since then?

9 A Not that I recall.

10 Q All right. Let's just do one more
11 housekeeping thing and then we can break for lunch.

12 MS. SINGER: Would you please mark this,
13 Georgia State 3586, as Plaintiffs' Exhibit
14 76.

15 (WHEREUPON, Plaintiffs' Exhibit 76 was marked for
16 identification.)

17 Q (BY MS. SINGER) Ms. Burtle, do you recognize
18 Plaintiffs' Exhibit 76?

19 A I think I know what it is.

20 Q Okay. And what is Plaintiffs' Exhibit 76?

21 A It's a list of staff and accessing media
22 services that's part of the library's annual report.

23 Q Is [sic], to the best of your knowledge,
24 Plaintiffs' 76 reflect the current staffing at Georgia
25 State University?

1 A No.

2 Q Could you tell me how the current staffing is
3 different from what's reflected on Plaintiffs' 76?

4 A A number of these people aren't here and some
5 new people have come in, but the people working in
6 reserves are the same.

7 Q Okay. And when you say "the people working
8 on [sic] reserves," that's Malia Cargile, Marjorie
9 Denise Dimsdale, Denita Hampton?

10 A Denita supervises the unit, but does not work
11 directly on a hands-on basis with it.

12 Q Okay. And Cory Schlotzhauer?

13 A Yes. In looking at this list, I believe
14 Douglas Walker at the bottom there may also do some
15 reserves, but I'm not quite sure what.

16 Q Does Douglas Walker report to Denita Hampton,
17 to the best of your knowledge?

18 A I'm not sure if he reports to Denita or to
19 Denise.

20 Q Okay. But he would be in Denita's reporting
21 line?

22 A Yes. Yes.

23 Q Okay. And in the entries after the names,
24 let's look at Denita Hampton as an example here. It
25 says "access and media services, 1998." What does the

1 date represent?

2 A The year she began working at --

3 Q And then after it, it says "BA." What does
4 that refer to?

5 A Her degree.

6 Q Okay. So for Marjorie Denise Dimsdale, would
7 I be correct that she started working for the library
8 in 1998?

9 A Yes.

10 Q And that she has a BA?

11 A Um-hmm.

12 Q And then a Master's in -- is that music?

13 A Music, yes.

14 Q Okay.

15 MS. SINGER: All right. It's a little
16 after 12, so why don't we break for lunch, I
17 think, at this juncture.

18 MR. ASKEW: Good.

19 THE VIDEOGRAPHER: Off the record at 12
20 o'clock.

21 (Whereupon, there was a lunch recess.)

22 THE VIDEOGRAPHER: This is Tape 4. We
23 are back on the record at 1:06:43.

24 Q (BY MS. SINGER) Okay. Ms. Burtle, I'm
25 handing you what has been marked as Plaintiffs' Exhibit

1 24. It's a copy of the Complaint. And I'm --

2 MS. SINGER: If you would please mark
3 this as Plaintiffs' 77.

4 (WHEREUPON, Plaintiffs' Exhibit 77 was marked for
5 identification.)

6 Q (BY MS. SINGER) Okay. Ms. Burtle, you have
7 the great big, thick thing in front of you that's been
8 marked Plaintiffs' Exhibit 77, bearing the Bates stamp
9 GSU 8247.001 xls-1. Do you see that?

10 A Yes.

11 Q Do you recognize Plaintiffs' Exhibit 77?

12 A I don't know that I've seen it in this form
13 before, but I recognize what it is.

14 Q Okay. And what is Plaintiffs' Exhibit 77?

15 A It's a document hit report from the ERes
16 system from the dates 1/1/09 to 4/2/09.

17 Q Have you seen reports in the same format as
18 P-77 before?

19 A Yes.

20 Q And this is -- strike that.

21 Is this the form of report that generally you
22 look at from the EReserve system?

23 A If I'm looking for hit counts, yes.

24 Q Okay. And we see that the headings at the
25 top of P-77 are document, course reserves page, date

1 range, hit count, and percentage of total?

2 A Yes.

3 Q Do you see that?

4 A Um-hmm.

5 Q Could you walk us through what each of those
6 columns mean?

7 A The document is what the document that's on
8 reserve is.

9 Q Okay.

10 A The page is which course page it's on, so
11 course number and the -- who's teaching it. Date range
12 is number of hits during that date range. Hits is the
13 number of times that document has been accessed. And
14 percent of total is the percent of all the accesses
15 during this time that that accounts for.

16 Q Okay. And the -- the total, then, would be
17 all of the hits for everything on the ERes system for
18 that date count?

19 A Everything on the active ERes system, yes.

20 Q Everything on the active. When you say
21 "active" --

22 A Not in the dark archive.

23 Q Okay. Thank you.

24 Course reserves page, am I correct that each
25 professor -- each course has its own page; is that how

1 ERes is set up?

2 A Yes.

3 Q Okay.

4 A Each section of each course.

5 Q And what do you mean by "section"?

6 A Professor could be teaching three sections of
7 the same course.

8 Q Okay.

9 A Each section will have its own page.

10 Q Okay. If I could direct your attention to
11 page 17 of P-77. So it's the -- the page where the
12 number 17 comes after the dash on P-77.

13 A Oh, I see.

14 Q I'm not going to make you count, so --

15 A I couldn't see where you were looking at a
16 number.

17 Q Okay. The second entry on page 17 of P-77,
18 the document is 15a) Awakening Children's Minds,
19 Chapter 6, pages 181 to 199 from -- the author there is
20 Berk, L.E., and the publication is Awakening Children's
21 Minds, Oxford: Oxford University Press, 2001. Do you
22 see that?

23 A Yes.

24 Q So that excerpt from Awakening Children's
25 Minds, the Oxford University Press book, would have

1 been used in course EPY 7090, the Psychology of
2 Learning of Young Children, in spring 2009 taught by
3 Flexner, Kruger, and Lederberg?

4 MR. ASKEW: I'll object to the form of
5 that question. I don't think there's a
6 foundation for that question with this
7 witness, and I don't know how this witness
8 would know whether that document was used in
9 this class or not. All this witness knows is
10 what is reported on this form.

11 MS. SINGER: Okay.

12 MR. ASKEW: We went through this a lot
13 yesterday, and I felt like at one point that
14 we really needed to stop and see if we
15 couldn't just have some sort of an agreement
16 that the witness is allowed to tell you that
17 these items are on the form. But you can ask
18 her, but I seriously doubt that she's going
19 to know whether that actual document was
20 actually used in that class. It would be
21 beyond what she would know. She can tell you
22 it's on the form. She can probably you tell
23 you that she has no reason to believe that
24 the form is inaccurate, but all she's going
25 to be able to tell you is that this document

1 appears in that report --

2 MS. SINGER: All right. I appreciate --

3 MR. ASKEW: -- and the data's there.

4 MS. SINGER: I appreciate your position.

5 MR. ASKEW: And if you'd like to maybe

6 go through and just identify the various

7 items that you would like to have that

8 acknowledgement made, I think we could do

9 that, maybe it could speed things up; but

10 beyond that, I don't know what else she can

11 tell you.

12 MS. SINGER: I appreciate your position.

13 I'm going to go ahead and ask my questions

14 because it's my deposition.

15 Q (BY MS. SINGER) So on page 7, entry 15a),

16 it's the second entry on page 17 of P-77, we see that

17 this excerpt from the Oxford Unity -- University Press,

18 Awakening Children's Minds, is listed as being used in

19 course EPY 7090, the Psychology of Learning of Young

20 Children, in spring 2009. Do you see that?

21 A Yes.

22 Q Do you have any reason to believe that

23 that -- that excerpt was list -- not listed for that

24 course?

25 A No.

1 Q Okay. And we see that it was -- the hit
2 count is one, do you see that?

3 A Yes.

4 Q Okay. Now, if you would please turn to page
5 85 of P-77.

6 MR. ASKEW: Which page?

7 MS. SINGER: 85.

8 MR. ASKEW: Thank you.

9 Q (BY MS. SINGER) Do you see five -- five
10 lines up from the bottom on page 85 of P-77, we see
11 "Susan Chase, narrative inquiry, Sage Handbook of
12 Qualitative Research." Do you -- do you see that
13 entry?

14 A Um-hmm.

15 Q And that --

16 A Yes.

17 Q That's listed as being used in course EPRS
18 8500, Qualitative Interpretative Research and Education
19 1, spring, 2009. Do you see that?

20 A Yes.

21 Q And that's listed as having been hit 84
22 times?

23 A Yes.

24 Q Do you have any reason to believe that wasn't
25 hit 84 times?

1 A No.

2 Q Okay. Who would have loaded these excerpts
3 up onto the EReserve system for spring 2009?

4 A For spring 2009, I do not know if Jim Palmour
5 was actually loading them onto the server or if that
6 was being done in the reserves unit in the library.

7 Q Okay. If you wanted to check whether an
8 excerpt was actually on the reserve system, how would
9 do you that?

10 A I would log in as an administrator. There
11 are levels of administrator. I have whatever the
12 highest level is that would let me actually access this
13 page, and I would click on that link and see if it's
14 there. Is that what you're asking?

15 Q That's -- yep, thank you.

16 If you would please turn to page 133 of P-77,
17 the bottom two entries, first one says, "Feminist Media
18 Studies, Chapter 2, from Liesbet Feminist Media
19 Studies, Sage Publications." Do you see that?

20 A Yes.

21 Q Listed as being used for course JOU 4780,
22 Women and Media, spring 2009. Do you see that?

23 A Yes.

24 Q And that's listed as being hit 52 times?

25 A Right.

1 Q The entry after that is Chapter 3 from the
2 same book, Liesbet Feminist Media Studies, Sage
3 Publications, 1994. Do you so that?

4 A Yes.

5 Q For the same course, JOU 4780, Women
6 andMedia?

7 A Yes.

8 Q And that has been hit 41 times in the -- the
9 date range of this report?

10 A Yes.

11 Q Is that a problem for -- does that -- strike
12 that.

13 Would you expect it to set off a red flag, as
14 you call it, for -- or an alarm bell, I think you might
15 have said, to have two chapters from the same work.

16 A Without seeing the work and what the
17 professor said about it, I can't answer that. I don't
18 know.

19 Q Okay. If you would turn to page 137 of
20 Plaintiffs' 77. The first line there is, "Focus on the
21 Language Classroom, Chapter 10." Do you see that?

22 A Yes.

23 Q And that is from Focus on the Language
24 Classroom, Cambridge University Press, 1991?

25 A Um-hmm.

1 Q For course AL 8900, The Practicum. Do you
2 see that?

3 A Yes.

4 Q And that was hit 57 times, according to this
5 report?

6 A Yes.

7 Q Do you have any reason to believe that that
8 information is inaccurate?

9 A No.

10 Q And the next entry is "Focus on the Language
11 Classroom, Chapter 9," from the same work?

12 A Yes.

13 MR. ASKEW: I'm not following. What --
14 are we on page 177?

15 MS. SINGER: 137.

16 MR. ASKEW: 137. Okay. Just a second.

17 Q (BY MS. SINGER) And that is listed for the
18 same course, AL 8900, Practicum. Do you see that?

19 A Um-hmm, yes.

20 Q And that was hit 17 times?

21 A Correct.

22 Q If, for some reason, you wanted information
23 about a hit count or about what items were listed on
24 the EReserve system, would you rely on a report like
25 this?

1 A Yes.

2 Q If you would please turn to page 195 of P-77.
3 The third line from the bottom, we see a -- an excerpt
4 from -- called "Rethinking Critical Theory and
5 Qualitative Research" by J.L. Kincheloe and P. McLaren
6 in the Sage Handbook of Qualitative Research. Do you
7 see that?

8 A Yes.

9 Q And that was used for course EPRS 8500,
10 Qualitative/Interpretive Research and Education 1 in
11 spring 2009. Do you see that?

12 A Yes.

13 Q And that is listed as being hit 45 times?

14 A Correct.

15 Q Two more. We're getting there. Page 283 of
16 P-77. Third line down, L. Richardson, "Writing As A
17 Method of Inquiry," in Norman Denzin and Yvonna
18 Lincoln, the Sage Handbook of Qualitative Research.

19 A Right.

20 Q And that is listed as being used in EPRS
21 8510, Qualitative Research and Education 2?

22 A Um-hmm.

23 Q And that is listed as being hit 25 times
24 during this semester?

25 A Right.

1 Q Okay. Last one, page 307 of P-77, lines 4
2 and 5 from the bottom, line 5 up says, "Slave
3 Community, Chapter 4, The Slave Family by John
4 Blassingame." Do you see that?

5 A Yes.

6 Q And below that, Chapter 7 from the same --
7 Chapter 7, also from the Blassingame Slave Community
8 book. Do you see that?

9 A Yes.

10 Q Both listed as being used in AAS 3000, the
11 African -- African-American Family, in spring 2009 --

12 A Yes.

13 Q -- do you see that? And the first chapter
14 was hit once and Chapter 7 was hit five times. Do you
15 see that?

16 A Yes.

17 Q What does, to the best of your knowledge, hit
18 count mean? I think you said it meant it was accessed?

19 A It means that somebody who had access to that
20 course page clicked on it.

21 Q Okay.

22 A If it says zero or one -- they should all say
23 at least one because the staff member who loaded it and
24 created the course page will click on it to make sure
25 it's there.

1 Q Okay.

2 A When it says one, that means no students
3 looked at it.

4 Q Do you have any way -- I'm sorry, strike
5 that.

6 But this report, according to the date at the
7 top, was run through April 2nd, 2009, right?

8 A Yes.

9 Q So there was still time left in the semester?

10 A Right.

11 Q Okay. Do you have any way of knowing what a
12 student did with the work after they accessed it?

13 A Can you clarify your question?

14 Q Sure. Do you have any way of knowing whether
15 they printed it out or saved a copy to their computer
16 or emailed it to 12 of their closest friends? Do you
17 have any way of tracking that?

18 A No.

19 Q Okay. Is it possible for a student to save a
20 copy to their computer?

21 A It's a PDF file, so I don't know of any
22 reason it would not be, but I do not know directly if
23 that's true.

24 Q Okay. Do you know whether students print
25 out --

1 A I have no way of knowing that.

2 Q Do you know if it's possible for them to do
3 so?

4 A I believe it's possible since it is a PDF
5 file.

6 Q Okay. So, to the best of your knowledge, you
7 could do with -- after you access a file from EReserves
8 you can do with it whatever you could ordinarily do
9 with a PDF file?

10 A To the best of my knowledge.

11 Q Okay. Directing your attention to
12 Plaintiffs' Exhibit 24. Do you recognize Plaintiffs'
13 Exhibit 24?

14 A Yes.

15 Q Have you seen this before?

16 A Yes.

17 Q And what is Plaintiffs' Exhibit 24?

18 A It's the Complaint.

19 Q When do you recall first seeing Plaintiffs'
20 Exhibit 24?

21 A Probably the day it was filed and we were
22 notified that it was filed.

23 Q What did you do after reviewing Plaintiffs'
24 24?

25 A I'm sorry?

1 Q What, if anything -- what -- what action, if
2 any, did you take after reading Plaintiffs' 24?

3 A Can you give me an example of what you're
4 looking for? I -- I'm not sure I'm following you.

5 Q Did you talk to anybody, did you research
6 anything?

7 A Certainly, yes.

8 Q Okay.

9 A Yes, I talked to people, asked questions,
10 "What does this mean?"

11 Q Who did you speak to about Plaintiffs' 24
12 after you reviewed it?

13 A Well, I'm sure I spoke to Charlene Hurt, who
14 was named in it and who is my boss. I spoke to legal
15 counsel, obviously. I believe I had somebody look up
16 the various items identified in here, I don't remember
17 who.

18 Q Okay. What was the substance of your
19 conversation with Charlene Hurt about Plaintiffs' 24?

20 A Oh, I don't remember.

21 Q Okay. Do you have any recollection of what
22 she said to you about the complaint or what her general
23 reaction was to having been named in the complaint?

24 A She was unhappy.

25 Q Anything else?

1 A I -- I don't remember the substance of any of
2 our immediate conversations.

3 Q Okay. What -- what kind of research did you
4 ask someone to undertake after reviewing Plaintiffs'
5 24?

6 A Let me look at it for a moment and see if
7 anything comes to mind.

8 Q Sure. Take your time.

9 A Well, I definitely had somebody check to make
10 sure that there was not a hole in our system that let
11 the plaintiffs access this information, because it
12 wasn't clear to me how it was obtained. I did have
13 somebody check to see if the things identified in here
14 were -- the -- the citations were accurate, nobody
15 owned the items, that they were on reserve.

16 THE COURT REPORTER: In the what?

17 THE WITNESS: In the -- in the exhibits,
18 checked to see that we owned the items, that
19 the citations were accurate, that these
20 actually were items and that we had them on
21 reserve.

22 Q (BY MS. SINGER) What did you learn through
23 your investigation about the password or the access to
24 it?

25 A That the hole that had been in the system

1 previously had been repaired and that there was no way
2 to access this without a password.

3 Q Okay. You said you checked the citations to
4 make sure that these items actually were on reserve.
5 What conclusion did you draw from that inquiry?

6 A I don't remember item by item, but most of
7 them were.

8 Q Okay. Just to go back for a moment to
9 Plaintiffs' 77, the report. Sorry. Who -- who would
10 enter the information that appears in each of these
11 columns?

12 A The people in the reserves unit.

13 Q And that would be the --

14 A Denise Dimsdale, Malia Cargile, Cory
15 Schlotzhauer.

16 Q Okay. Will that still be the case for summer
17 2009, that those three individuals or someone in the
18 reserves department will be entering all of the data?

19 A I believe so, yes.

20 Q Okay. Do professors have access to their
21 course reserve pages?

22 A Only when they're live during the semester,
23 not after the semester is over.

24 Q Do professors have the ability to add items
25 to their course reserve pages without going through the

1 library?

2 A No.

3 Q Do professors have the ability to remove
4 items from their course reserve pages without going
5 through the library?

6 A No.

7 Q Do professors have the ability to change any
8 items on their course reserve page, whether it's
9 editing text or anything like that, without going
10 through the library?

11 A No.

12 Q So the only person -- the only people who are
13 able to change a course reserve page would be the
14 library staff?

15 A Correct.

16 Q And the library staff -- library reserve
17 staff, I'm sorry, have the ability to add items to the
18 course reserve page?

19 A Yes.

20 Q Does anybody besides those three individuals
21 have the power to add things to a course reserve page?

22 A Not that I'm aware of.

23 Q Okay. Does anybody other than those three
24 individuals have the power to remove things from a
25 course reserve page?

1 A Not that I'm aware of.

2 Q Does anyone other than those three
3 individuals have the power to alter in any way a course
4 reserve page?

5 A Not that I'm aware of.

6 Q Okay. Just to be clear, my questions were
7 directed to, as we sit here today. Was that your
8 understanding of those?

9 A Yes.

10 Q Okay. Are you aware of any planned changes
11 to that policy with respect to adding, removing, or
12 changing anything from course reserve pages?

13 A No.

14 Q Okay.

15 MS. SINGER: Okay. If you would please
16 mark a document with the Bates number Georgia
17 State 691 as Plaintiffs' 78, please.

18 (WHEREUPON, Plaintiffs' Exhibit 78 was marked for
19 identification.)

20 Q (BY MS. SINGER) Ms. Burtle, you have in
21 front of you Plaintiffs' Exhibit 78. Do you recognize
22 this document?

23 A I don't recall it. I mean, clearly, it was
24 sent to me, but I don't remember what it's about.

25 Q Okay. Plaintiffs' 78 is an email to you from

1 Marjorie Denise Dimsdale dated April 18th, 2008,
2 subject re SP 2008 readings. And as we see on P78, it
3 says -- the second paragraph says, "Kaufman's EPS 8500
4 has been renewed for summer '08." Do you see that?

5 A Yes.

6 Q Might -- does this refresh your recollection
7 at all about the research you --

8 A Well, I see my question down at the bottom of
9 the page, which clearly, this is a follow-up to having
10 received the complaint, as the date is three days after
11 it was filed.

12 Q Okay. And we see in the third paragraph of
13 P78, it says, "The book in question for Kaufman's EPS
14 8500 page is Sage Handbook of Qualitative Research.
15 This book is posted for summer '08. This 2005 edition
16 has 1,210 pages, plus 19 supplementary pages. We
17 scanned 183 pages." Do you see that?

18 A Yes.

19 Q It says, "The 2000 edition has 1,143 pages
20 and we scanned 62 pages." Do you see that?

21 A Yes.

22 Q The next paragraph is, "Lazarus POLS 8170,
23 Chapters 5, 7, and 8 of Legislative Leviathan were
24 posted for" -- I assume that's spring '08?

25 A Right.

1 Q It says, "These three chapters are under 20
2 percent of the book"?

3 A Correct.

4 Q Okay. So am I correct in concluding that
5 that would have been three chapters from a single work
6 that were posted on the EReserve system for the single
7 course?

8 A That what it appears.

9 Q Okay. The next paragraph of P78 says, "Dixon
10 AAS 4030 and AAS 3000, these were posted for both
11 courses for spring '08, Chapter 4 and Chapter 7 from
12 Blassingame's the Slave Community"?

13 A Yes.

14 Q "This is less than 20 percent and the GSU
15 library owns the book"?

16 A Right.

17 Q Okay. And then, "EPY 7090 was archived on
18 12/17/07, was not available for spring." What does
19 that mean?

20 A That the course was not offered in the
21 spring, so the page was sent to the dark archive and it
22 was not available in the spring.

23 Q Okay. Do you recall whether there was any
24 further communications in answer to your question at
25 the bottom of P78?

1 A I -- I don't recall specifically. I believe
2 more items than this were identified in the complaint,
3 so I would assume that similar questions were asked for
4 those items.

5 Q Okay.

6 MS. SINGER: If you would please mark as
7 Plaintiffs' 79 a document bearing the Bates
8 stamp Georgia State 3167.

9 (WHEREUPON, Plaintiffs' Exhibit 79 was marked for
10 identification.)

11 Q (BY MS. SINGER) Ms. Burtle, you have in
12 front of you Plaintiffs' Exhibit 79. Do you recognize
13 this document?

14 A I recognize what it is.

15 Q And what is Plaintiffs' 79?

16 A It's a summary of document hits from 2003 to
17 5/6/08.

18 Q And when you say "document hits," those
19 are --

20 A In EReserves.

21 Q Okay. So those would be the annual hit
22 counts for the EReserve system for those years?

23 A For the active pages in the EReserve system
24 for each of those years.

25 Q Okay. To the best of your knowledge, are

1 these figures accurate?

2 A I have no reason to think they aren't.

3 Q Okay. Do you know who compiled this report?

4 A No.

5 Q Do you know why it would have been compiled?

6 A No. It appears to be looking at trends, but

7 I -- I don't have any recollection of it, so if

8 there's -- yeah, I don't know.

9 Q As part of your responsibilities, do you look
10 at trends in the usage of the EReserve system?

11 A Not on a regular basis, but if I had
12 questions about whether it was still useful, I would
13 take a look.

14 Q Do you believe that EReserves is still
15 useful?

16 A Yes.

17 Q And Plaintiffs' 79 shows that for 2007, there
18 was 259,691 hits for the active pages in EReserves?

19 A Correct.

20 Q And then the figure for 2008 is 95,007, but
21 that is a partial year; is that correct?

22 A Correct.

23 Q So the final number of hit counts for the
24 year 2008, we presume would have been greater than
25 95,000?

1 A Yes.

2 Q Okay.

3 MS. SINGER: I'm -- if you would please
4 mark as Plaintiffs' Exhibit 80 a document
5 bearing the Bates stamp Georgia State 3610.
6 (WHEREUPON, Plaintiffs' Exhibit 80 was marked for
7 identification.)

8 Q (BY MS. SINGER) Ms. Burtle, you have in
9 front of you a -- an exhibit marked Plaintiffs' Exhibit
10 80. It's an email to you from Marjorie Denise Dimsdale
11 dated April 21st, 2008. Do you recognize this
12 document?

13 A I don't recall it, but I see what it is.

14 Q And what is Plaintiffs' 80?

15 A It appears to be a response to a question I
16 asked about features in ERes.

17 Q Do you recall asking -- do you recall why you
18 asked about the ERes features?

19 A No. No, I don't.

20 Q Okay. And Ms. Dimsdale replies in
21 Plaintiffs' 80, "There are an awful lot of features
22 about ERes that we are not using." Do you know what
23 she -- what did you understand that to mean?

24 A That there are features we aren't using.

25 Q Okay. Do you know what those features are?

1 A Well, she says here a lot of them have to do
2 with copyright options. Beyond that, I don't know. I
3 know ERes has options for faculty to fax something in
4 and post it directly, which we don't use. It's the
5 only thing I can think of. I'm sure it has other
6 features that I don't know about.

7 Q Okay. Did you have occasion to look into
8 using these copyright options?

9 A I recently looked at the screens that have
10 these.

11 Q And what did -- what did you see when you
12 looked at those screens?

13 A That they were not integrated with the rest
14 of the system and were not helpful for posting
15 EReserves.

16 Q Did you make a decision about whether to use
17 any of these additional features or not?

18 A At this point, I decided we didn't need to be
19 using those.

20 Q Okay.

21 MS. SINGER: If you would please mark as
22 Plaintiffs' Exhibit 81 a document with the
23 Bates number Georgia State 3160.

24 (WHEREUPON, Plaintiffs' Exhibit 81 was marked for
25 identification.)

1 Q (BY MS. SINGER) Do you recognize Plaintiffs'
2 Exhibit 81?

3 A It's an email I sent.

4 Q And Plaintiffs' 81 is an email from you to
5 Denita Hampton and Denise Dimsdale dated April 17th,
6 2008, asking where the 20 percent came from. What was
7 the 20 percent to which you were referring?

8 A Our guide -- our library guidelines at that
9 point said that we would digitize up to 20 percent of
10 the book.

11 Q Okay. And then you go on to say, "I only see
12 the one chapter stipulation in the Regents' guideline."
13 What did you mean by that?

14 A I had assumed all of our practices were based
15 on the Regents' guidelines that were in existence at
16 that time and I didn't see the 20 percent there, so I
17 wanted to know where it came from.

18 Q And did you get a response to Plaintiffs'
19 Exhibit 81?

20 A Yes, I believe you have that.

21 Q Okay.

22 MS. SINGER: Well, let's do this: If
23 you would please mark as Plaintiffs' Exhibit
24 82 a document bearing the Bates stamp Georgia
25 State 860.

1 (WHEREUPON, Plaintiffs' Exhibit 82 was marked for
2 identification.)

3 Q (BY MS. SINGER) Plaintiffs' Exhibit 82 is an
4 email from Marjorie Denise Dimsdale to you dated April
5 21st, 2008, with the subject "Info tidbit."

6 A Um-hmm.

7 Q And in it, Ms. Dimsdale says to you, "I'm
8 going through school by school to find info for you
9 regarding 20 percent and continued use."

10 A Yes.

11 Q What -- what sorts of information did she
12 find for you regarding 20 percent and the continued
13 use?

14 A There's an email somewhere where she sent me
15 a number of schools that did have the 20 percent. I
16 don't recall about continued use. We had verbal
17 discussions where she indicated that at the time the
18 reserve system was set up, which was before I was
19 involved in it, they had done a scan of the environment
20 and that was kind of a standard that was seen out
21 there, that she didn't have documentation of that.

22 Q Okay. And she also says in Plaintiffs' 82,
23 "I believe that it is probably common practice for
24 other schools to scan this material for ERes," I assume
25 meaning the sentence before, interlibrary loan or --

1 what is GIL Express items?

2 A GIL Express is a book borrowing service
3 between University System of Georgia libraries.

4 Q Okay. She says, "I think that most schools
5 do not consider whether or not they own the original
6 item to affect fair use." Do you know what she meant
7 by that?

8 A I know what she means by "scan ILL or GIL
9 Express," that we -- you know, if we don't own it, we
10 don't scan it and put it on reserve. I don't know
11 where she's making that assumption from, though.

12 Q Do you -- do you have any basis with which to
13 agree or disagree with that assumption?

14 A No. I would find it surprising, but I don't
15 have any factual knowledge of it.

16 Q Okay. You would find it surprising that
17 other libraries do scan it?

18 A Yes.

19 MS. SINGER: And if you would please
20 mark as Plaintiffs' Exhibit 83 a document
21 bearing the Bates stamp Georgia State 932.
22 (WHEREUPON, Plaintiffs' Exhibit 83 was marked for
23 identification.)

24 Q (BY MS. SINGER) Do you --
25 (Whereupon, there is a discussion off the record.)

1 Q (BY MS. SINGER) Ms. Burtle, do you recognize
2 Plaintiffs' Exhibit 83?

3 A Yes.

4 Q And what is Plaintiffs' 83?

5 A It appears to be an email that Denise sent me
6 in response to my question of April 17th on -- on the
7 20 percent rule. It's not exactly an answer. I asked
8 where the 20 percent came from and she responded with
9 the current practice that she found.

10 Q Did you ever get an answer to the question on
11 where the 20 percent came from?

12 A That's the thing I told you she verbally told
13 me.

14 Q Okay. Aside from Plaintiffs' -- the emails
15 of Plaintiffs' Exhibit 82 and eighty -- Plaintiffs' 83,
16 do you recall any other written communications
17 regarding the 20 percent rule?

18 A I don't recall any, no.

19 Q Okay. What is the status of the 20 percent
20 rule today?

21 A We no longer use the 20 percent rule.

22 Q Has the 20 percent rule been replaced by
23 anything?

24 A It's been replaced by the faculty doing an
25 analysis of fair use using the checklist. And if they

1 determine it to be fair use, we accept it, unless it
2 sets them off an alarm and...

3 Q Okay. Is it your testimony, then, that the
4 20 percent is still used as -- as some kind of informal
5 alarm threshold for the library?

6 A Not officially, I wouldn't be surprised if
7 people who are used to the 20 percent are sensitive to
8 that amount and it sets off an alarm for them, but it's
9 certainly not something we instruct.

10 Q Okay. When the 20 percent rule existed prior
11 to the new policy, who was responsible for enforcing
12 the 20 percent rule?

13 A Denise Dimsdale was the first level of
14 responsibility for that and handled most of the issues.

15 Q And what did handling the issues entail?

16 A Telling the faculty no.

17 Q Do you have a sense of how often she had to
18 tell faculty no?

19 A No, I don't.

20 Q Did she ever escalate to you or to anyone
21 instances in which the -- the faculty pressed even
22 after they were told no?

23 A I don't recall any instances.

24 Q Okay. And if we look back at Plaintiffs' 81,
25 it says, "20 percent. I only see the one chapter

1 stipulation." Was there a one chapter stipulation at
2 Georgia State University prior to the new policy?

3 A Yes, one chapter or 20 percent.

4 Q How did that work, what if it was three
5 chapters, but only 18 percent of a work?

6 A Say that again.

7 Q How -- what was the relationship between the
8 20 percent and the one chapter? For instance --

9 A It -- it could be greater than one chapter if
10 it was less than 20 percent.

11 Q Okay. And what if it was one chapter, but it
12 was a short work that only had four chapters, so one
13 chapter was 25 percent of the work?

14 A I don't know. By this guideline, it would
15 have been the one chapter was done, but I don't know if
16 the practice differed from that.

17 Q Okay. Did the -- what did --

18 A I want to amend that.

19 Q Please.

20 A I don't think they ever went over 20 percent.

21 Q Okay. How did the -- the 20 percent or one
22 chapter -- how was that applied? Was that applied to
23 just work by work? So, what I'm trying to ask is, if a
24 professor had 20 different excerpts and they wanted to
25 use them in four classes, did -- would you look at the

1 20 percent of the particular work for each of those
2 classes -- strike that.

3 Did you have any rules about how -- whether a
4 professor could post 20 percent of a work -- if -- if
5 they wanted to post a different 20 percent of a work,
6 they were teaching two classes in a semester, and they
7 wanted to post 20 percent of a work for one class and a
8 different 20 percent of the work for a different class
9 they were teaching in the same semester, how would you
10 have applied the 20 percent rule?

11 A We only looked at an individual course page.
12 So if there were multiple sections of a book on an
13 individual course -- individual course page, we would
14 look at the cumulative effect, but not between course
15 pages.

16 Q Okay. Thank you. I'm sorry, that was a bit
17 of a tortured question.

18 MS. SINGER: If you would please mark as
19 Plaintiffs' Exhibit 84 a document bearing the
20 Bates stamp Georgia State 904.

21 (WHEREUPON, Plaintiffs' Exhibit 84 was marked for
22 identification.)

23 Q (BY MS. SINGER) Do you recognize Plaintiffs'
24 Exhibit 84?

25 A It's an email from me to several people about

1 BOR guidelines.

2 Q And BOR is Board of Regents?

3 A Correct.

4 Q Okay. So the subject of P84 says, "BOR says
5 continued use is okay." And you write, "Yeah, I think
6 the concern here is the Board of Regents' guideline as
7 much as our practice." What -- what concern were you
8 referring to there?

9 A The Complaint.

10 Q Okay. And you say, "A lot of schools pay a
11 royalty after the first semester, but I don't see on
12 what basis. Maybe some sort of case law." What were
13 you referring to there?

14 A The various guidelines about fair use and
15 educational fair use, I didn't see where this practice
16 was based.

17 Q Did you do any research or ask anyone to do
18 any research into where that paying a royalty after the
19 first semester might have come from, the basis?

20 A Yes.

21 Q And what did -- what research did either you
22 do or you ask to have done?

23 A I just looked around different Websites and
24 different pieces of the -- the law, and the only
25 location I identified, that was the CONFU guidelines

1 that were never actually enacted seemed to be where
2 people got that from, but I didn't see any official law
3 or agreement that ever indicated that.

4 Q Okay. As we sit here today, do you have an
5 understanding of the basis for which other schools
6 would pay royalties after the first semester?

7 A Well, I think our following CONFU guidelines
8 didn't -- don't get -- have any issues, but I don't --
9 I still don't see -- a fair use analysis might indicate
10 that you have a problem, you should pay a royalty; and
11 that's certainly one of the factors to consider, but
12 it's not the only factor, so I don't know that that's a
13 black and white question. It's going to vary from case
14 to case.

15 Q Do you believe that should be a factor that
16 Georgia State professors consider when they're doing
17 their fair use analysis?

18 A It's part of the checklist, so certainly.

19 Q Okay. And just to be clear, the Board of
20 Regents' guideline that we're talking about here is
21 what you referred to, I believe, earlier this morning
22 as having been superseded and no longer in effect; is
23 that correct?

24 A Correct.

25 MS. SINGER: If you would please mark as

1 Plaintiffs' Exhibit 85 a document bearing the
2 Bates stamp Georgia State 772.

3 (WHEREUPON, Plaintiffs' Exhibit 85 was marked for
4 identification.)

5 Q (BY MS. SINGER) Ms. Burtle, do you recognize
6 Plaintiffs' Exhibit 85?

7 A It's an email from me to Charlene Hurt.

8 Q And it's -- Plaintiffs' 85 is dated May 5th,
9 2008, the subject is, "Another fair use statement."
10 What were you referring to there?

11 A I don't recall specifically, but given the
12 date, I assume I was looking at what other schools had
13 on their Websites about EReserves --

14 Q Okay.

15 A -- or about fair use.

16 Q And you say in Plaintiffs' 85, "Not specific
17 to EReserves but I like Principal 1, fair use is both
18 technology and medium neutral." What do you like about
19 that statement?

20 A Reserves is reserves, and the fact that it's
21 online doesn't make it not reserves. It's still
22 reserves and it's still fulfilling the same function it
23 always fulfilled.

24 Q Do you believe that print reserves and
25 EReserves should be treated the same way in terms of

1 copyright?

2 A I think primarily, yes, they're both subject
3 to fair use analysis. Print reserves it comes up less
4 because we're not taking pieces and parts, it's a whole
5 book being checked out that falls under regular library
6 practice that's, you know, existed for centuries, but,
7 yeah.

8 MS. SINGER: If you would please mark
9 as Plaintiffs' Exhibit 86 a document bearing
10 the Bates stamp Georgia State 920.
11 (WHEREUPON, Plaintiffs' Exhibit 86 was marked for
12 identification.)

13 Q (BY MS. SINGER) Do you recognize Plaintiffs'
14 86?

15 A It's an email from Terrence Manion to me.

16 Q And this Plaintiffs' 86, this email dated
17 4/30/2008, subject Re: Law Library EReserve statement.
18 And we see at the bottom of Plaintiffs' 86, earlier in
19 the chain, Terrence Manion sending an email to you on
20 April 28th, 2008 attaching a statement concerning the
21 law library EReserve policy and procedures. Do you see
22 that?

23 A Yes.

24 Q Do you know why Terrence Manion came to send
25 you the law library EReserve policy on April 28th?

1 A My assumption is that I asked him for it.

2 Q Okay. And then you, in the return email
3 dated April 30th, 2008, ask him to provide you with the
4 rationale behind paragraphs 2, 3, and 5.

5 MS. SINGER: And in order to make this
6 easier, why don't we mark, if you would,
7 please, as Plaintiffs' Exhibit 87 a document
8 bearing the Bates stamp Georgia State 669.
9 (WHEREUPON, Plaintiffs' Exhibit 87 was marked for
10 identification.)

11 Q (BY MS. SINGER) Do you recognize Plaintiffs'
12 Exhibit 87?

13 A It appears to be the policy referred to in
14 the email in 86.

15 Q Okay. And so you're asking -- in Plaintiffs'
16 86, you're asking him for the rationale behind
17 paragraphs 2, 3, and 5. So paragraph 2 of Plaintiffs'
18 87 talks about presented with article citations or PDF
19 documents, they will search Westlaw, Lexis, or Hein
20 Online for links to the articles and then post the
21 links to the appropriate course page. Do you see
22 that?

23 A Yes.

24 Q Is that the -- is that the library's -- your
25 library's current policy?

1 A Current policy?

2 Q Yes.

3 A Yes.

4 Q Was that your --

5 A Well, not Westlaw, Lexis.

6 Q Well, not Westlaw, Lexis, right. But to --

7 if it -- if the article citation exists in an

8 electronic form. At the time of Plaintiffs' 86 and 87,

9 so that's April 2008, was that your library's policy?

10 A No.

11 Q Okay. Paragraph 3 of Plaintiffs' 87 says,

12 "When presented with pages from a book, we will

13 continue to post them unless they are for multiple

14 chapters of the same book. If multiple chapters from

15 the same book are requested, we will purchase the book,

16 request copyright clearance, and then post the

17 requested pages. Once we have received clearance,

18 pages from multiple chapters of the same book will

19 not" -- all caps -- "be posted in the EReserve system

20 unless copyright clearance is obtained. Instead, the

21 book will be placed on physical reserves located behind

22 the reference desk." Is that your library's current

23 policy?

24 A No.

25 Q Was that your library's policy in April of

1 2008, at the time this document was sent?

2 A No.

3 Q Okay. And by "your library," I'm just trying
4 to distinguish from the law library.

5 A I understand.

6 Q I don't -- I don't mean to imply anything
7 else.

8 Paragraph 5 of Plaintiffs' 87 says, "Finally,
9 all materials will be deleted from the EReserve system
10 one week after the conclusion of the relevant
11 semester's exam period."

12 Was -- is that your library's current policy?

13 A Well, as I told you before, I'm not sure
14 exactly what the timing after the semester is.

15 Q Sure.

16 A But we do delete by putting them in the
17 archive, delete from active use.

18 Q Okay. And was that your library's policy in
19 April or early May 2008?

20 A Yes.

21 Q Okay. In Plaintiffs' 86, in response to your
22 request for clarification, Terrence Manion writes, "We
23 link into Westlaw or LexisNexis rather than post an
24 article or case in EReserves in part because it pushes
25 the copyright issues onto the legal research service,

1 but a larger part of that decision is those research
2 services allow students to print to dedicated printers
3 for free." Do you see that?

4 A Um-hmm.

5 Q Were either of those rationales considered in
6 your library's decision to change its policy?

7 A No.

8 Q Okay. In the third paragraph of Plaintiffs'
9 86, Terrence Manion writes, "As for why we purchase the
10 book if we post a chapter, make a book available on
11 physical reserves rather than EReserves if multiple
12 chapters are requested, and delete materials after the
13 semester, while those decisions are governed by the
14 guidelines, an argument can be made that the
15 guidelines" are -- "are irrelevant because the
16 publishers have never agreed to them, but in the
17 absence of other guidance, we have applied the
18 guidelines here."

19 Do you know what guidelines he was referring
20 to?

21 A I believe he identifies those in the first
22 paragraph. CONFU and AALL.

23 Q Okay. And those would be the same guidelines
24 that you -- that we talked about a little bit earlier?

25 A Not AALL. That's the American Association of

1 Law Libraries, so we don't have anything to do with
2 that.

3 Q That's not your problem, okay. But the CONFU
4 guidelines are the same ones we discussed earlier?

5 A Yes.

6 Q Okay. And then in Plaintiff 86, Terrence
7 Manion writes, "I have always been curious if doing so
8 has led to greater copyright problems, as faculty who
9 are frustrated or are unhappy with our practices post
10 material themselves, completely taking the library out
11 of the loop. We do not actively inspect law classes to
12 see where and what they are posting, but if word gets
13 to us, we will address it."

14 Do you have any concern that faculty -- GSU
15 faculty who are frustrated or unhappy with the
16 library's practices may post materials themselves?

17 A I have no way of knowing if they would do
18 that.

19 Q Do you have any concern that they might?

20 A I would be concerned if faculty aren't
21 following the policy that the Board of Regents has
22 mandated.

23 MS. SINGER: Are we good or do -- okay.

24 Q (BY MS. SINGER) On Plaintiffs' 87, at the
25 bottom there, it says, "my response to you, not to

1 him." Do you know who the -- the "my" of "my response"
2 might be?

3 A No, I don't even know who -- no, I don't.

4 Q Okay. So, that's not you?

5 A Give me a minute to look at all of this.

6 Q Okay.

7 A It would appear to be me, although it's not
8 completely clear. I don't know who this was -- who
9 this was addressed to. And the font is weird, I don't
10 use that font so -- but --

11 Q Okay.

12 A -- it's probably me. But I can't swear to
13 that.

14 Q Do you know who you might have been talking
15 to when you say "to you, not to him"? It says, "my
16 response to you, not to him." Do you know who the "to
17 you" might have been?

18 A If it is, indeed, my response --

19 Q Um-hmm.

20 A -- it was most likely my boss, Charlene Hurt.

21 Q Okay.

22 A But since I don't know if it was my words...

23 Q Fair enough. Where it says the multi -- I'm
24 sorry, Plaintiffs' 87, at the very bottom, it says,
25 "The multiple chapters I would be okay conceding,

1 although I don't like it," emoticon smiley face. Do
2 you know if that -- would you be okay conceding
3 multiple chapters?

4 MR. ASKEW: I'll object to the form of
5 the question, it's vague.

6 THE WITNESS: Conceding multiple
7 chapters to what?

8 Q (BY MS. SINGER) In the context -- would you
9 agree with the statement, "The multiple chapters I
10 would be okay conceding, although I don't like it"?

11 A The multiple chapters is irrelevant under our
12 new policy because it's a fair use analysis that I'm
13 not in the position to concede anything one way or the
14 other.

15 Q Okay. One last question, and then we'll take
16 a break to change the tape, just clean up.

17 Terrence Manion, M-A-N-I-O-N, is the director
18 of IT and instructor of law and a librarian at Georgia
19 State University College of Law?

20 A Correct.

21 MS. SINGER: Okay. Why don't we take a
22 break so we can change the tape.

23 THE VIDEOGRAPHER: Off the record at
24 2:03:51.

25 (Whereupon, there was a brief recess.)

1 THE VIDEOGRAPHER: This is Tape 5. We
2 are back on the record at 2:17:08.

3 MS. SINGER: Okay. If you would please
4 mark as Plaintiffs' Exhibit 88 a document
5 bearing the Bates stamp Georgia State 38881.
6 (WHEREUPON, Plaintiffs' Exhibit 88 was marked for
7 identification.)

8 Q (BY MS. SINGER) Do you recognize Plaintiffs'
9 Exhibit 88?

10 A It's an email from Nancy Seamans to me about
11 a University System of Georgia Webcast.

12 Q Do you recall whether you were able to attend
13 the University System of Georgia Webcast referenced in
14 Plaintiffs' 88?

15 A No, I did not attend this.

16 Q Okay. Do you know whether anyone from your
17 staff attended?

18 A I don't know.

19 Q Okay.

20 MS. SINGER: If you could please mark as
21 Plaintiffs' Exhibit 89 a document bearing the
22 Bates stamp Georgia State 38883.

23 (WHEREUPON, Plaintiffs' Exhibit 89 was marked for
24 identification.)

25 Q (BY MS. SINGER) Do you recognize Plaintiffs'

1 Exhibit 89?

2 A Give me a minute to read this.

3 Q Sure, take your time.

4 A I kind of recall it. I do recognize it.

5 It's an email from Nancy Seamans to me about audio and
6 video materials.

7 Q Okay. Plaintiffs' 89, Nancy Seamans writes
8 to you at the top of the first page, "Laura, to provide
9 a specific example, Jan is interested in using Eyes on
10 the Prize as part of a hybrid class that he will be
11 teaching in the spring. Who supports him in this,
12 permissions, digitizing, server space, et cetera, and
13 probably a conversation would be easier than an email."
14 Do you see that?

15 A Yes.

16 Q Did you subsequently have a conversation with
17 Ms. Seamans?

18 A I don't recall.

19 Q Okay. Who would support Jan for permissionS?

20 A I don't know.

21 Q Who would support him on digitizing?

22 A I believe Mike Russell's unit.

23 Q Okay. And who would support him for server
24 space?

25 A That would be IS&T.

1 Q Okay. I am handing you what's been marked as
2 Plaintiffs' Exhibit 17. And that is a PowerPoint
3 entitled "Copyright in Instruction and the New USG
4 Copyright Policy," dated February 23rd, 2009. Do you
5 recognize Plaintiffs' 17?

6 A Yes.

7 MR. ASKEW: Do you know which deposition
8 this was first used in? Was it Potter or
9 Seamans?

10 MS. SINGER: Nan Seamans, my learned
11 colleague tells me.

12 Q (BY MS. SINGER) Have you seen Plaintiffs' 17
13 before?

14 A Yes.

15 Q When was that?

16 A This is the PowerPoint that accompanied the
17 training on the new copyright policy that I attended.

18 Q Okay. Do you -- I don't recall if we
19 discussed the date. Would February 23rd, 2009 have
20 been the date you attended the training?

21 A It seems reasonable.

22 Q Okay. So this would have been before -- you
23 would have received this training before you went to
24 the RACL meeting and presented the policy to the other
25 librarians?

1 A Yes.

2 Q Okay. Directing your attention to the page
3 bearing the Bates stamp 21128. The second bullet point
4 says, "Tools to assist in copyright and fair use
5 analysis: See fair use checklist."

6 What was your understanding of what tools are
7 available to assist in copyright and fair use analysis?

8 A The fair use checklist.

9 Q Anything else?

10 A Well, legal counsel, when needed.

11 Q Okay. So other than legal counsel and the
12 fair use checklist, are you aware of any other tools
13 that are available to assist in copyright and fair use
14 analysis?

15 A I'm not aware of any.

16 Q Okay. And the copyright and fair use
17 analysis would be performed by the faculty; is that
18 correct?

19 A The faculty or whoever at the university was
20 responsible for that, so it could be their graduate
21 assistant or something like that.

22 Q Okay. Somebody on the instructional side as
23 opposed to the library, though?

24 A Yes.

25 Q Okay. And the fourth bullet point on page

1 21128 says, "Individuals to counsel faculty and staff:
2 Office of legal affairs, others." What's your
3 understanding of who the individuals who will counsel
4 are?

5 A Currently, they are all people in the office
6 of legal affairs.

7 Q Okay. When you say "currently," are you
8 aware of any plans for there to be other people other
9 than the office of legal affairs to counsel
10 individuals?

11 A To counsel individuals?

12 Q Yeah.

13 A Not at this time, no.

14 Q Okay. If you would turn to page 21131, it's
15 a statement of fair use. Do you see that?

16 A Yes.

17 Q Prior to this training, did you have an
18 understanding of what fair use was?

19 A A general understanding, yes.

20 Q And what was your general understanding?

21 A Well, there's four factors that are
22 considered.

23 Q Okay. Do you know what those factors are?

24 A Off the top of my head, I'll have to think a
25 moment. The nature of the work, nature of the use, I

1 believe the amount of the work, and the market effect
2 of the work.

3 Q Okay. Had --

4 A But I would use the checklist if I were going
5 to actually do that.

6 Q Fair enough. Did this training change your
7 understanding of what -- of the concept of fair use at
8 all?

9 A No, not this training.

10 Q Okay. Did there come a time when your
11 understanding of what fair use is changed?

12 A I learned more about fair use when I began
13 doing a lot of research following the filing of the
14 complaint.

15 Q So that would have been April of 2008-ish?

16 A And subsequently.

17 Q And subsequently, okay.

18 Do you know whether this PowerPoint,
19 Plaintiffs' Exhibit 17, is the same PowerPoint that's
20 used for training faculty members?

21 A I don't know.

22 Q Okay. And this training, I believe, is the
23 one you testified took about two hours?

24 A Yes.

25 Q Okay. Okay. Let's look at the -- the fair

1 use checklist we've been talking so much about. I
2 believe it has been previously marked as Plaintiffs'
3 Exhibit 15, but because the version that was marked as
4 Plaintiffs' Exhibit 15 apparently was filled in, we're
5 going to mark it again as Plaintiffs' Exhibit 90.
6 (WHEREUPON, Plaintiffs' Exhibit 90 was marked for
7 identification.)

8 MR. ASKEW: Can you identify for me the
9 source of this copy, is this one you-all
10 made?

11 MS. SINGER: No, I believe -- yes, I
12 will -- I will represent to you that what has
13 now been marked as Plaintiffs' Exhibit 90 is
14 a version that I downloaded from the
15 University System of Georgia Website
16 yesterday afternoon.

17 MR. ASKEW: Are you going to give it a
18 document production number, or has it been
19 given a document production number?

20 MS. SINGER: It's an excellent question.
21 I will look into that for you, but for now,
22 we'll mark it as Plaintiffs' Exhibit 90.

23 Q (BY MS. SINGER) This is somewhat
24 disingenuous having heard my explanation, but do you
25 recognize Plaintiffs' Exhibit 90?

1 A Yes.

2 Q And what is Plaintiffs' Exhibit 90?

3 A This is the fair use checklist provided by
4 the Board of Regents.

5 Q Okay. Have you had occasion to review this
6 checklist prior to today?

7 A Yes.

8 Q And what did that review entail?

9 A Reading it, making sure I knew what the
10 different items, different factors meant.

11 Q You've taught classes at GSU; is that
12 correct?

13 A Yes.

14 Q Are you currently teaching any courses?

15 A No.

16 Q Okay. When was the last time you taught a
17 class at GSU?

18 A I believe 2005. I'm not certain.

19 Q Did you utilize ERes to post course readings
20 for your course?

21 A I don't -- I don't recall that I did. I'm
22 not certain.

23 Q What course did you teach?

24 A Most frequently I taught a course called
25 World Hunger Perspectives 2002. It was team taught.

1 Q Okay. And was perspectives the department
2 that it was offered in or the type of course, what is
3 perspectives?

4 A It's part of the general education
5 curriculum. It's a type of course.

6 Q Okay. And who did you team teach that course
7 with?

8 A Mildred Cody.

9 Q What department is Mildred in?

10 A Nutrition.

11 Q What -- what was the nature of the required
12 reading for that class, by which I mean, did you have a
13 textbook, did you have a Coursepack?

14 A The required reading for this course was all
15 items that were available freely on the Internet.

16 Q And how did you communicate to the students
17 which items available they should read?

18 A The syllabus.

19 Q So the syllabus just listed URLs or something
20 like that?

21 A Correct.

22 Q Do you have any plans to teach that course
23 again in the future?

24 A No.

25 Q Is that course still offered?

1 A I don't know.

2 Q So let's look at Plaintiffs' Exhibit 90. The
3 instructions say, "Where the factors favoring fair use
4 outnumber those against it, reliance on fair use is
5 justified. Where fewer than half the factors favor
6 fair use, instructors should seek permission from the
7 rights holder."

8 So that's fewer than half the factors, so
9 that would be if only one factor is in favor of fair
10 use, one or none?

11 A That would be fewer than half.

12 Q Okay. And then, "Where the factors are
13 evenly split, instructors should consider the total
14 facts weighing in favor of fair use as opposed to the
15 total facts weighing against fair use in deciding
16 whether fair use is justified."

17 What do you understand would be involved in
18 considering the total facts?

19 A For each factor, the facts are the check
20 boxes underneath or -- the facts determine how the
21 check boxes underneath are checked.

22 Q Okay.

23 A Is that your question?

24 Q Yes. So Factor 1, "the purpose and character
25 of the use," in the "weighs in favor of fair use"

1 column, it says, "nonprofit educational." Do you see
2 that?

3 A Yes.

4 Q Can you think of any situation in which a
5 faculty or instructor at Georgia State University would
6 not check the box nonprofit educational?

7 A No.

8 Q Okay. Next to that, in the "weighs against
9 fair use" column of Plaintiffs' Exhibit 90, it says,
10 "commercial activity."

11 Can you think of a -- any case in which a
12 Georgia State University professor or faculty member
13 would ever check commercial activity?

14 A I'm going to say no, but I want to qualify
15 that.

16 Q Sure.

17 A In the context of EReserves.

18 Q Sure, sure.

19 A What they do outside of EReserves could vary.

20 Q Of course. We'll -- we'll -- we can
21 stipulate that all of my questions are meant to be in
22 the context of EReserves.

23 A Okay.

24 Q Can you -- do you think any of the factors in
25 the weighs in favor of fair use category are more

1 important or less important? Do you have a -- do you
2 have an opinion about which of the factors in the
3 weighs in favor of fair use column are most important,
4 or are they all equal?

5 A There's not an indication that anything is
6 more important than anything else in the facts under
7 the factor.

8 Q In your opinion, though, are any of them more
9 important, or are they all equally important?

10 A I think they're all important.

11 Q Okay. So you think you would weigh all of
12 the factors in the weighs in favor of fair use column
13 equally?

14 A Generally speaking. I don't think they're
15 all equally relevant for EReserves.

16 Q Okay. In the context of EReserves, do you
17 believe they're all equally important?

18 A Well, EReserves is not multiple copies for
19 classroom use, so that would not be as important.

20 Q Okay.

21 A Personal study, that would be important, in
22 the context of EReserves, if it's for personal study,
23 it doesn't -- it's not course -- it's not an
24 appropriate use of EReserves, so, no.

25 Q Okay. So you're interpreting personal study

1 as not being -- who's -- strike that.

2 Who is the -- who is the person in personal
3 study?

4 A That's --

5 Q In your opinion?

6 A It's the student --

7 Q Okay.

8 A -- for the purpose and character of the use
9 because the use is a student using this in a course.

10 Q So when the professor is filling out the fair
11 use checklist, who -- who should the professor consider
12 the -- the personal study to be?

13 A I can't make sense of the question in the
14 context of -- of EReserves.

15 Q Okay. Does this fair use checklist give any
16 guidance as to the meaning of any of the factors that
17 are listed? Does it provide -- does it provide any
18 explication of who the person in personal study would
19 be, for example?

20 A No, I don't believe it does. The checklist
21 does not, no.

22 Q Okay. Do you know if there's any tools
23 available to GSU faculty members that they -- if they
24 wanted help in understanding who the person in personal
25 study was, how would they get that information?

1 A Legal.

2 Q Okay. Let's say in filling out this
3 checklist, let's say we're talking about, I don't know,
4 we'll take Blassingame's slave -- the slave -- I don't
5 remember the title -- Slave Community work. Let's say
6 I am a -- I'm teaching African-American family and I
7 want to post six chapters from the Blassingame slave
8 game work, okay? How -- can you run through the
9 checklist, can you help me think through the checklist
10 how to apply that? Would that be not profit
11 educational use? I'm a professor at GSU and I want to
12 use six chapters from Blassingame's slave game.

13 A Yes.

14 Q That would be nonprofit. It would be -- what
15 about the factor teaching, including multiple copies
16 classroom use?

17 A I'm -- I'm not the faculty, so I assume the
18 faculty is teaching, but --

19 Q Okay. How about research or scholarship?

20 A I don't know what the goal of the use of the
21 work is for the learning outcomes for the class, so I
22 don't know if the goal was for research or scholarship
23 or not.

24 Q Okay. Let's take another example, then.
25 You're teaching -- let's say you're teaching

1 Perspectives World Hunger again for spring -- I'm
2 sorry, summer 2009 and you want to post four chapters
3 from an anthology that includes readings on hunger.
4 Would you consider that to be nonprofit educational
5 use?

6 A Yes.

7 Q Okay. Would you consider that to be
8 teaching, including multiple copies for classroom use?

9 A Yes.

10 Q Would you consider that to be research or
11 scholarship?

12 A It would depend on what I wanted the students
13 to do with it, but most likely I would expect them to
14 be doing research and something scholarly with what I
15 was asking them to read.

16 Q That would be the hope and the intention,
17 right?

18 Would you consider it to be criticism,
19 comment, news reporting, or parody?

20 A It would depend on what my outcome was.

21 Q Okay. What about would you consider posting
22 six chapters from the anthology to be transformative?

23 A No.

24 Q Okay. Would you consider it to be personal
25 study?

1 A No. Still not sure what that means.

2 Q Okay. Would you -- let's say you've --
3 you've looked at this and you've decided the use is
4 necessary to achieve your intended educational purpose.
5 How would you -- let me change my question.

6 How would you decide whether the use was
7 necessary to achieve your intended educational purpose?

8 A I would use my knowledge of the discipline
9 and the book and what works are out there to determine
10 whether it was necessary.

11 Q Okay. What if you looked at it and you said,
12 "Gosh, probably I could get away with only using four
13 chapters, I don't need all six chapters," and so that
14 factor weighed against fair use, okay? You would get a
15 check for use exceeds that which is necessary to
16 achieve your intended educational purpose? Are you
17 following me?

18 A Say -- say it again.

19 Q Let's say you checked the first -- one, two,
20 three, four, five -- six factors in favor of fair use.

21 MR. ASKEW: Just a second, two, three,
22 four -- you've just gone through it and she
23 didn't do that.

24 MS. SINGER: Okay.

25 MR. ASKEW: You're asking her to

1 change -- because she didn't check
2 transformative, she didn't check personal
3 study, she's not sure about criticism.

4 MS. SINGER: Okay. Well, let's -- let
5 me change my hypothetical, then.

6 MR. ASKEW: All right.

7 Q (BY MS. SINGER) Let's assume you checked all
8 six factors, okay?

9 A Okay.

10 Q And then --

11 MR. ASKEW: There's seven. I'm -- I --
12 there's seven there, which six did you think
13 she --

14 MS. SINGER: The first six, which is
15 what I meant when I said "the first six."

16 Q (BY MS. SINGER) So let's assume you checked
17 the first six factors under "Purpose and character of
18 use" in Factor 1 on Plaintiffs' Exhibit 90, okay?

19 A Okay.

20 Q But then you look at it and you say, "Six
21 chapters is really too many, I don't need all six
22 chapters to achieve my intended educational purpose."

23 So in the column "weighs against fair use,"
24 you check the last factor, "use exceeds that which is
25 necessary to achieve your intended educational

1 purpose." Do you see that?

2 A Yes.

3 Q How would you then, at the end of the day,
4 weigh Factor 1, if you have the first six boxes checked
5 in "weighs in favor of fair use" column and the last
6 box in the "weighs against fair use column" checked?

7 A It's hard to know that without knowing why I
8 would want someone to read six chapters if it's more
9 than I need to -- to achieve my intended educational
10 purpose, so I would ask myself why I'm doing that.

11 Q Okay. Say you just liked -- you came up with
12 a reason, that, you know, it wasn't absolutely
13 necessary, but they were useful and they provided good
14 information and you decided you were going to offer
15 them anyway, how would Factor 1 come out?

16 A It would weigh in favor of fair use..

17 Q Okay. Can you think of -- before we turn the
18 page, any -- in the context of EReserves, can you think
19 of any -- the situation in which you might check the
20 profiting from use box?

21 A No.

22 Q Can you think of any context in which you
23 might check the entertainment box in the context of
24 EReserves?

25 A Theoretically, yes.

1 Q Okay. How about the nontransformative box;
2 do you think you would check that in the context of
3 EReserves, is there any situation in which you can
4 imagine checking that?

5 A Yes.

6 Q Okay. How about for publication in the
7 context of EReserves?

8 A No.

9 Q How about for public distribution in the
10 context of EReserves; would you ever check that box?

11 A No.

12 Q In your opinion, is it important to have
13 factors that you would never check in the context of
14 EReserves listed?

15 A For the checklist, it's because this is not
16 only for EReserves.

17 Q What else is this checklist designed to be
18 used for, to the best of your knowledge?

19 A Any faculty use of published material.

20 Q Okay.

21 A Or not -- any university use.

22 Q Fair enough.

23 Okay. Let's look at page 2 of Plaintiffs'
24 Exhibit 90. It says, "Factor 2, the nature of the
25 copyrighted work."

1 Are there -- are you aware of any instances
2 in which unpublished works have been posted on
3 EReserves?

4 A Yes.

5 Q Okay. Are you aware of any instances in
6 which consumable works, workbooks or tests, have been
7 posted to EReserves, copyrighted consumable works?

8 A I'm not aware one way or the other.

9 Q Is there a policy one way or the other about
10 posting consumable works?

11 A I don't know that there is, we certainly
12 don't purchase them for the library, so it's unlikely
13 we ever would post them, since we don't purchase them.

14 Q Okay. In -- in my example, you're -- let's
15 say you're posting the four chapters that you think are
16 absolutely necessary of the anthology for your
17 perspectives in world hunger course. How would we
18 apply the checklist then, would that be a published
19 work?

20 A Yes.

21 Q Okay. It would be a factual or a nonfiction
22 work?

23 A In this circumstance, yes.

24 Q Okay. And it would be important to your
25 educational objectives?

1 A Yes.

2 Q Okay. Can you think of any situation in
3 which a faculty member would post something to
4 EReserves that's not important to their educational
5 objective?

6 A I hope not.

7 Q Okay. "Factor 3, the amount and
8 substantiality of the portion used." In the -- the
9 first column in "weighs" in fact -- "in favor of fair
10 use," it says "small portion of work used." Do you see
11 that?

12 A Yes.

13 Q What's your understanding of what a small
14 portion would mean?

15 A Not a substantial bit of the -- of the book
16 or of the work.

17 Q Do you have any understanding of what that
18 means, not a substantial portion?

19 A I think it varies from work to work. It
20 plays into the next one as well.

21 Q And by "next one," you mean "portion used is
22 not central or significant to the entire work as a
23 whole"?

24 A Um-hmm.

25 Q Okay. The last factor in that column,

1 "amount taken is narrowly tailored to educational
2 purpose, such as criticism, comment, research, or
3 subject being taught." Do you see that?

4 A Yes.

5 Q Can you imagine any circumstance in which a
6 professor or faculty member is trying to post something
7 to EReserve that would not be narrowly tailored to the
8 educational purpose?

9 A No.

10 Q Okay. Are all the factors or all of the --
11 all three items listed in Factor 3 in the weighs in
12 favor of fair use column of the checklist, are all
13 those equally important in the context of EReserves?

14 A Yes. I think in that case, I would say yes.

15 Q Okay. How about in Factor 2 in the "weighs
16 in favor of fair use" column, are all three of those
17 factors equally important in the context of EReserves?

18 A I'm not sure I can say that about Factor 2
19 because the published or unpublished is a -- is a
20 question that depends on the work very highly.

21 Q How does it depend on the work?

22 A Faculty members often have unpublished works
23 that they want their students to read.

24 Q So how would that affect whether or not --
25 how you weigh the factor?

1 A The -- the factor is important. No, I think
2 they are equally important. My concern is -- is
3 faculty owned copyright, in which case this isn't
4 necessary anyway.

5 Q Okay. How about Factor 4, "the effect on the
6 market for the original"; do you believe that all of
7 the factors listed to consider for Factor 4 are equally
8 important?

9 A You'll have to give me a moment to go through
10 them.

11 Q Sure, take your time.

12 A So can you repeat your question?

13 Q Do you believe that all of the individual
14 factors listed under Factor 4 are of equal importance?

15 A I think it will depend on the work, they
16 potentially are.

17 Q Okay. The first entry in the column "weighs
18 in favor of fair use" under Factor 4 says "no
19 significant effect on market or potential market for
20 copyrighted work." What do you understand that factor
21 to mean?

22 A That using this work does not affect the
23 overall market for the work.

24 Q So in the hypothetical where you're posting
25 four chapters from the anthology for your world hunger

1 course, how would you evaluate whether there's a
2 significant effect on the market?

3 A Well, is the book available?

4 Q Yes.

5 A Is there licensing? I mean, I think these
6 all play together to determine that. They're not --
7 the questions underneath often -- the factors
8 underneath often determine the factor at the top.

9 Q Okay. So if licensing is available for it?

10 A Is it something that is widely used?

11 Q Yes.

12 A I mean, these are the questions that --

13 Q Sure.

14 A -- I would --

15 Q Sure.

16 A -- ask myself.

17 Q Okay.

18 A I'm not -- I'm not asking you for answers
19 necessarily.

20 Q No, no, no. I'm pretending I'm you and
21 I'm --

22 A Okay.

23 Q -- answering them --

24 A Okay.

25 Q -- for purposes this question.

1 A Without the work in front of me and
2 knowing --

3 Q Right.

4 A -- the context and the discipline, it's hard
5 to know, but --

6 Q Of course.

7 A -- these are the kinds of things that I would
8 consider.

9 Q Of course. So what if you determined that it
10 was still in print, there was licensing available?

11 A Again, it would just depend on how -- is this
12 the kind of work that people would purchase -- purchase
13 widely minus it being available on ERes, minus it being
14 made available in whatever I'm doing with it.

15 Q So are you saying that what you're looking at
16 is would students purchase the work if you hadn't made
17 those four chapters available?

18 A Well, not my particular students, but
19 students in general. Is this something that many
20 people purchase?

21 Q How is the --

22 A Is the market -- is the market rich, are
23 there lots of -- is it widely available and widely
24 used?

25 Q How would you use that information in making

1 your analysis?

2 A Well, if it is, then I do think it would
3 probably have a -- potentially have an impact.

4 Q Am I understanding you to say -- I want to
5 make sure I understand. Are you saying that if it's a
6 rich market, there's a lot of people who purchase the
7 book, posting, say, four chapters that you've
8 determined to be necessary to your educational purpose,
9 would that have an effect on the market or -- a
10 significant effect on the market?

11 A It could, but I think it depends on my use.
12 I mean, the market is a rather broad category.

13 Q How -- how would you define the -- the market
14 as it's used in Factor 4 here on the fair use
15 checklist?

16 A The overall purchasing power or the overall
17 use -- paying for the book, the entire work overall in
18 its -- in its published form.

19 Q And by whom would you include, who would be
20 the potential purchasers?

21 A Library, student, faculty members, people who
22 think this is a fascinating subject.

23 Q Would you include licensing as well as
24 purchasing?

25 A Licensing is a narrow -- narrower issue, if

1 you're not affiliated with a -- I think it's unlikely a
2 random person out there would license access to a piece
3 of a book.

4 THE COURT REPORTER: Say that again for
5 me, please.

6 THE WITNESS: It's unlikely that a
7 person just unaffiliated out there in the
8 market generally would purchase a licensed
9 piece of a book.

10 Q (BY MS. SINGER) Okay. Would you think that
11 a university use -- might a university -- strike that.

12 Are there any circumstances under which you
13 can imagine that a university would take a license for
14 a -- a piece of a published book, would license the
15 use?

16 A A university?

17 Q Um-hmm.

18 A Sure.

19 Q Okay. So would, then, licensing be a
20 potential -- part of the potential market?

21 A Yes.

22 Q Okay. And if you were to decide that it was
23 to put this -- these four chapters on EReserves, do you
24 think that that would have a -- a significant effect on
25 the potential market?

1 A I can't answer yes or no without a work in
2 front of me that I know the market for.

3 Q Okay. What if -- what if every faculty
4 member -- how many -- we've said about a thousand
5 faculty members, is that --

6 A It's an approximation.

7 Q Approximately. If all thousand faculty
8 members at Georgia State University fill out this
9 checklist for every single one of their readings and
10 they all determine that all of their readings are fair
11 use, do you think that would have a significant effect
12 on the market?

13 MR. ASKEW: I'll object to the form of
14 the question as vague. Market for what?

15 MS. SINGER: Market as the term is used
16 in Plaintiffs' Exhibit 90, which is the
17 University System of Georgia's checklist.

18 MR. ASKEW: Are you telling me that all
19 thousand members of the faculty are going to
20 be looking at the same work in their
21 analysis? That's why understand your
22 question.

23 MS. SINGER: Well, I'm not telling you
24 anything.

25 MR. ASKEW: I've made the objection.

1 MS. SINGER: I'm asking her a question.

2 MR. ASKEW: I'm just telling you I think
3 it's vague.

4 THE WITNESS: Can you ask the question
5 again, please?

6 Q (BY MS. SINGER) Sure. Let's say that for
7 all -- all 4,000 works that are currently on EReserves,
8 okay, approximately 4,000 excerpts that are currently
9 on EReserves, okay?

10 A Okay.

11 Q The professors -- we're going to repeat the
12 semester and they're going to do the fair use --
13 they're going to go through the fair use checklist for
14 every single one of those works, which they need to do
15 under the new policy, correct?

16 A Correct, well, for things that they don't own
17 the copyright, but --

18 Q For things -- okay. Let's say there's 4,000
19 works and the professors are all going to do the fair
20 use analysis on them and they're going to determine
21 that every single one of those 4,000 uses qualifies as
22 fair use. Do you think that would have a -- an
23 significant effect on the market or potential market
24 for copyrighted work?

25 A But you have to look at it on the individual

1 item one by one, and it may or may not, depending on
2 how it's used, how many students are in the class,
3 how -- you know, I don't think you can look at it as a
4 whole because this is a case-by-case basis.

5 Q So do I understand you to be saying, then,
6 that as long as each case-by-case use is determined to
7 be fair use, it doesn't matter if nobody ends up buying
8 the textbook ever again because every single individual
9 person has determined it to be fair use?

10 A Well, textbooks aren't generally put on
11 reserve because they're required reading of the whole
12 thing, but if you're speaking of supplemental readings,
13 yes, that's what I'm saying.

14 Q Okay. Would you -- do you have a view on the
15 ability of a faculty member who has not yet received
16 the training or has not studied the literature on fair
17 use very extensively, do you think they're able to
18 perform a meaningful analysis of these factors?

19 A It would depend on the faculty member, some
20 yes, some no. I think most faculty members, if they
21 didn't know what they were doing, would seek advice
22 before they did it.

23 Q Okay.

24 MS. SINGER: If you would mark as
25 Plaintiffs' Exhibit 91 a document bearing the

1 Bates stamp Georgia State 928.

2 (WHEREUPON, Plaintiffs' Exhibit 91 was marked for
3 identification.)

4 Q (BY MS. SINGER) Do you recognize what's been
5 marked as Plaintiffs' Exhibit 91?

6 A Yes, it's information sent to me from Denise
7 Dimsdale.

8 Q Okay. And this is an email dated May 8th,
9 2008, with the subject "some answers." Do you see
10 that?

11 A Yes.

12 Q Okay. And we see the first line of
13 Plaintiffs' 91 is Denise saying she's still looking
14 into how many of the books on EReserve have 20 percent
15 posted versus less than that. Do you see that?

16 A Yes.

17 Q Do you know whether she was ever able to
18 figure out a way to answer that question?

19 A I don't recall ever receiving an answer to
20 that, but I may just not recall.

21 Q Fair enough. Okay. And then it's -- the
22 next paragraph of Plaintiffs' 91 says, "How many items
23 are on reserve the spring semester 2008? The library
24 posted about 367 course pages containing about 4,300
25 items." Do you see that?

1 A Yes.

2 Q Does that number -- has that been consistent,
3 to the best of your knowledge, for the period you've
4 been responsible for EReserves?

5 A I have not looked at the numbers prior to the
6 complaint being filed, but I have no reason to think
7 differently, but I do not know.

8 Q Okay. And then it says, "Of those, how many
9 are not actively for a class, but posted for a
10 professor to look at?" What -- what -- what did you
11 mean by that when you asked the question?

12 A She told me verbally that sometimes they will
13 renew a page so a professor can see what they had on
14 reserve when they're planning their next semester. So
15 I asked her is that something that happens all the
16 time, or is that just an occasional thing, and that was
17 the response.

18 Q Okay. Is it your understanding that under
19 the new policy, will that occur?

20 A No, it will not.

21 Q Okay. One, two, three -- the fifth paragraph
22 down on Plaintiffs' Exhibit 91, towards the end of the
23 paragraph, it says -- they're talking about needing to
24 use an original item and not scanning anything that
25 comes -- "looks like it came from ILL or GIL Express,

1 we will not scan it." And she says in the middle of
2 that paragraph, "I think that part of the idea behind
3 this seem to be that we are not offering anything on
4 ERes that we would not have offered on physical reserve
5 if ERes didn't exist." Do you see that?

6 A Yes.

7 Q Do you agree with that statement?

8 A Yes.

9 Q Okay. "But we are more limiting with ERes."
10 Would you agree with that statement?

11 A Yes.

12 Q Okay. "Also, by owning the original item, we
13 have paid for some copyright use." Do you see that?

14 A Yes.

15 Q What's your understanding of what copyright
16 use has been paid for by owning the original item?

17 A Libraries have a -- a section in copyright
18 law that allows them to buy an item and lend it out to
19 multiple people, buy once and lend multiple times.

20 Q Okay. And then it says in Plaintiffs'
21 Exhibit 91, "We are willing to post material that does
22 not meet our fair use guidelines if the instructor
23 brings a detailed permission letter from the copyright
24 holder or a receipt showing that licensing to make the
25 item available on ERes was paid, but the instructors

1 just say never mind when we ask for this." Do you see
2 that?

3 A Yes.

4 Q Okay. And then she -- the next line is -- I
5 assume it's your question, "Are many of the books on
6 ERes from the reference collection?" Is that your
7 question?

8 A Yes.

9 Q And the answer was, "No, approximately 1
10 percent." What -- where would the other 99 percent of
11 the books on EReserve have come from?

12 A The general collection, the circulating
13 collection.

14 Q Oh. Okay. Am I understanding, then, that
15 there's a difference between the reference collection
16 and the general collection?

17 A Yes.

18 Q And what's -- how would you characterize that
19 difference?

20 A Reference collection is -- is books like
21 encyclopedias, directories, reference books.

22 Q Okay. And those are books that someone can't
23 come into the library and check out if they wanted to?

24 A Correct, they are inhouse use.

25 Q Is that -- is the reference collection

1 different from the print reserves that we talked about
2 before? I think you said there were three shelves of
3 books behind the counter that the professors would put
4 on reserve. Is that different than the reference
5 collection?

6 A Yes.

7 Q Okay. In the last paragraph on the -- on
8 Plaintiffs' 91, it says, "Instructors are not allowed
9 to manage their own EReserves page. We experimented
10 with allowing instructors to manage their pages without
11 about five instructors back when we first started using
12 the system." And that -- that was before your --
13 before you had responsibility for the ERes system,
14 right?

15 A Yes.

16 Q Okay. And then she goes on to say in
17 Plaintiffs' 91, "It wasn't working out very good, as
18 they wanted to just post anything." Do you see that?

19 A Yes.

20 Q And so she says, "We took away the access
21 from all of the experimental professors except for
22 Professor Eilertson. She made a fuss about not being
23 able to manage her own page and Liz Bagley said it
24 would be a good idea to go ahead and let her do it, but
25 keep an eye on her pages." Who is Liz Bagley?

1 A She was my predecessor over that area before
2 I was.

3 Q Is she still at Georgia State University?

4 A No.

5 Q Do you know when she left?

6 A I believe she left probably -- no, I don't
7 know.

8 Q Okay. Have you ever had occasion to look at
9 Professor Eilertson's course reserve pages?

10 A No.

11 Q Do you have any understanding of whether she
12 still has control over her pages?

13 A I instructed Denise to take away her control.

14 Q And why was that?

15 A I did not want any faculty member to have
16 different -- different privileges than any other one.

17 Q Okay. If the library now is not doing any --
18 it's not applying the -- the 20 percent or one chapter
19 rule, if the library -- let me ask you this: Is -- is
20 the library relying entirely on the professor having
21 gone through the fair use analysis and using the fair
22 use checklist to determine what's appropriate to post
23 on their EReserve page?

24 MR. ASKEW: I'll object to the form of
25 the question as vague as to "relying

1 entirely." What do you mean by that?

2 THE WITNESS: No, not entirely.

3 Q (BY MS. SINGER) Okay. What other factors
4 does the library look at before deciding whether to
5 post something to a professor's course reserves page?

6 A As I told you earlier, they do a gut check,
7 you know, this doesn't feel right, this seems like too
8 much, and they will refer it to me or to legal.

9 Q Is there any reason under the new policy not
10 to allow professors just to post whatever they want to
11 the library -- to the -- I'm sorry, to their course
12 reserve page?

13 A Yes.

14 Q And what's that reason?

15 A Because they need to post things that are
16 eligible to be posted under one of the criteria that we
17 have identified, fair use or they've paid...

18 Q But if the professors are making that
19 determination themselves anyway, why can't they then
20 just post it to the course reserves page after they've
21 made that determination?

22 A Well, in many cases, we scan the item for
23 them, would be one reason. We also find the link for
24 them, would be another reason. We like the gut check
25 kind of -- of response. We also organize the pages for

1 them. We do a lot of work to make the material easier
2 to read -- easier to use for the student, that faculty
3 don't do and then we end up with the upset students.

4 Q But if you had a very technically savvy
5 faculty member who was able to organize it very well
6 and -- and was able to do their own scanning or find
7 their own links, is there any reason why they shouldn't
8 be able to post it -- they shouldn't be able to post
9 things to their own course reserves page?

10 A I don't know enough about all the steps
11 involved and all the mechanics to answer that.
12 Theoretically, I suppose not, but I don't see it
13 happening.

14 MS. SINGER: Are we -- how are we doing
15 on tape? Okay. Why don't -- this is
16 actually a good point, why don't we take a
17 break for a few minutes and let me get my
18 notes together, because I think we've
19 probably got another half hour, 45 minutes.

20 THE VIDEOGRAPHER: Off the record at
21 3:08:05.

22 (Whereupon, there was a brief recess.)

23 THE VIDEOGRAPHER: This is Tape 6, we
24 are back on the record at 3:26:34.

25 MS. SINGER: Okay. If you would please

1 mark as Plaintiffs' Exhibit 92 a document
2 bearing the Bates stamp Georgia State 21184
3 through 21196.

4 (WHEREUPON, Plaintiffs' Exhibit 92 was marked for
5 identification.)

6 Q (BY MS. SINGER) Do you recognize Plaintiffs'
7 Exhibit 92?

8 A Yes.

9 Q Okay. Can you -- can you tell me what we're
10 looking at with Plaintiffs' 92?

11 A This is the first run at revising our
12 EReserves or our reserves Web pages.

13 Q Okay. And when you say "first run," were
14 there subsequent -- subsequent -- I don't want to use
15 the word attempts, but subsequent changes made to
16 the --

17 A Yes, this is not the final version.

18 Q Okay. Thank you.

19 So you started -- it looks like the date on
20 the first page of Plaintiffs' 92 is an email from you
21 dated February 11th, 2009. Does that sound about right
22 from when you might have started this?

23 A Probably a few days before then, but yes.

24 Q Okay. Okay. Fair enough. The second page
25 of Plaintiffs' 92 with the Bates stamp 21185, which the

1 title at the top says, "Electronic Reserves Request
2 Form." Which version are we looking at here? Is
3 this --

4 A What do you mean?

5 Q -- the current version, is this an interim
6 version, is this what's on the Website today?

7 A No, this was never on the Website.

8 Q This was never on the Website, okay.

9 So this -- what is the second page of P92?

10 A This is a draft during the process we went
11 through updating our reserves pages.

12 Q Okay. The third page of P92, it says,
13 "Georgia State 21186." In the first number there, it
14 says, "Check to see if the library already has a
15 license for the electronic version by using the
16 electronic journal locator or GIL for a book. If you
17 would like help determining if an item is licensed,
18 please send the citation to <mailto:libreserves>" --
19 L-I-B-R-E-S-E-R-V-E-S -- at landscape --
20 "langate.gsu.edu." Do you see that?

21 A Yes.

22 Q Is that section that I just read currently on
23 the Website?

24 A I don't know if it's word for word identical,
25 but something similar.

1 Q Okay, something like that in concept.

2 My question is, who answers the email address
3 libreserves@langate.gsu.edu?

4 A That goes to the members of the reserves
5 department.

6 Q Okay.

7 A For this particular item, this particular
8 number, if they have difficulty with that, they send it
9 back up to me and I will either try to find it myself
10 or I will send it to the subject liaison that's
11 responsible for the databases and journals in that area
12 and may have a better sense of how to find something.

13 Q Okay. And so that's currently the email
14 address to which questions about whether the library
15 has an electronic version of something are directed at?

16 A If it's an EReserves question.

17 Q EReserves question, sorry. Thank you.

18 If you turn a little bit later in Plaintiffs'
19 92 to the page that has the Bates stamp 21191. It
20 looks to be a redline of some kind?

21 A Yes, it does.

22 Q Do you know what -- what you were redlining
23 against, what was the original that you were creating
24 the redline off of, do you know, do you recall?

25 MR. ASKEW: I'll object, it assumes

1 facts I don't think are in evidence as to
2 whether she was the one that did this
3 redline.

4 THE WITNESS: I'll affirm I did do this
5 redline, I'm almost certain. And I believe
6 it's the old reserves page.

7 Q (BY MS. SINGER) Okay. And the -- the markup
8 here is -- again, is -- is this what's on the Website
9 today, or this was an interim version that never
10 appeared --

11 A This is an interim version, I don't know
12 exactly how it compares to what's on the Website today.

13 Q Okay. Okay. We can put that exhibit aside,
14 then.

15 MS. SINGER: If you would please mark as
16 Plaintiffs' Exhibit 93 a document bearing the
17 Bates stamp Georgia State 21231.

18 (WHEREUPON, Plaintiffs' Exhibit 93 was marked for
19 identification.)

20 Q (BY MS. SINGER) Do you recognize Plaintiffs'
21 93. Take your time to look at it, if you need to.

22 A Yes.

23 Q What is Plaintiffs' 93?

24 A It is Nancy Seamans' response to my request
25 for her edits to the draft version.

1 Q Okay. How can we tell on Plaintiffs' 93
2 which comments are -- are yours and which comments are
3 her response?

4 A I don't know that you can.

5 Q Okay. Who -- you see in the margins of P-93,
6 at the very beginning there, there's a -- it says,
7 "Comment D1, maybe always capitalize reserve or never
8 capitalize reserve." Was that her comment?

9 A Yes.

10 Q Okay. And just to make sure I understand,
11 Plaintiffs' 93 is Nancy Seamans' response to your
12 redline in Plaintiffs' 92?

13 A Yes, 92 and 93 are working versions --

14 Q Okay.

15 A -- not final versions.

16 Q Okay.

17 MS. SINGER: If you would please mark as
18 Plaintiffs' Exhibit 94 a document bearing the
19 Bates stamp Georgia State 21157 through
20 21158.

21 (WHEREUPON, Plaintiffs' Exhibit 94 was marked for
22 identification.)

23 Q (BY MS. SINGER) Do you recognize Plaintiffs'
24 Exhibit 94?

25 A It appears to be a forwarded email exchange

1 that I -- yeah, between directors at Georgia State,
2 Georgia Tech, and University of Georgia, and was sent
3 to me and it was sent to Kristen Swift.

4 Q Okay. Do you see about -- about a third of
5 the way down the page on Plaintiffs' 94, Nancy Seamans,
6 2/17/2009, it looks like it's addressed to you, it
7 says, "Laura, I think that it is Bob Fox that Catherine
8 tapped to work with you on this. Let me know if you
9 want to talk about it. I'm inclined to postpone
10 working on what you've pulled together until after
11 you've run it by Bob and Viki, but would also be glad
12 to explain to both of them what I'm asking for.
13 Thanks."

14 Is that an email that was -- are you the
15 Laura to whom that is addressed?

16 A Yes.

17 Q Okay. What is it that you've been tapped to
18 work on here?

19 A Revising our Web pages. The directors at
20 Georgia Tech, University of Georgia, and Georgia State
21 decided it would be nice for all of us to revise our
22 Web pages together, which later expanded to the entire
23 RACL, so this was the initial phase of that.

24 Q Okay. Is this related to the committee that
25 you are going to be chairing or --

1 A The committee that I'm going to be chairing
2 will probably have these people on it. This predated
3 that.

4 Q Okay. Who is Bob Fox, do you know?

5 A He is the associate director at Georgia Tech,
6 associate library director at Georgia Tech.

7 Q Is he your -- roughly your counterpart at
8 Georgia --

9 A Roughly.

10 Q And who is Catherine?

11 A Catherine is the director at Georgia Tech.

12 Q Is Catherine roughly Nancy Seamans's --

13 A Yes.

14 Q Okay. Have you met with Bob Fox on -- to
15 talk about coordinating the Web pages?

16 A Not physically.

17 Q Have you had any conversations with Bob Fox
18 about coordinating your Web pages?

19 A I believe he forwarded this on to one of his
20 employees, and there's been minimal conversation -- or
21 exchange about their Web pages.

22 Q Okay. Are you -- I'm not sure how the
23 membership works. Are either you or Georgia State
24 University a member of any library trade associations
25 or trade organizations?

1 A Yes.

2 Q Does membership in those trade organizations
3 run to the individual or run to the library, do you
4 know?

5 A It varies from organization to organization.

6 Q Okay. What -- which organizations are you a
7 member of?

8 A Me personally?

9 Q Yes, let's start with that.

10 A The American Library Association, the
11 Association of College and Research Libraries, and the
12 Georgia Library Association.

13 Q Are there any additional library trade
14 association-type organizations that Georgia State is a
15 member of?

16 A The Association of Southeastern Research
17 Libraries.

18 Q Okay.

19 A OCLC.

20 Q What does OCLC stand for?

21 A It's a library organization. It doesn't
22 stand for anything anymore.

23 Q Okay.

24 A It used to stand for Ohio something, but
25 that's not part of its name anymore.

1 Q Okay.

2 A Center for Research Libraries, SOLINET,
3 S-O-L-I-N-E-T.

4 Q What is SOLINET?

5 A SOLINET is also a library cooperative.

6 Q Have you had conversations with the members
7 of any of these organizations about this lawsuit?

8 A Not beyond if members of the -- if
9 representatives from those organizations were at that
10 RACL meeting.

11 Q Okay.

12 MS. SINGER: Let's mark as Plaintiffs'
13 Exhibit 95 a document bearing the Bates stamp
14 Georgia State 773.

15 (WHEREUPON, Plaintiffs' Exhibit 95 was marked for
16 identification.)

17 Q (BY MS. SINGER) Do you recognize Plaintiffs'
18 Exhibit 95?

19 A Yes.

20 Q What is Plaintiffs' Exhibit 95?

21 A It's an email to me -- from me to Mary Ellen
22 Davis at ALA.

23 Q And ALA is the American Library Association?

24 A Correct.

25 Q Okay. And this is an email dated May 21st,

1 2007.

2 A Yes.

3 Q Okay. So that's before the lawsuit was
4 filed, right?

5 A Correct.

6 Q Okay. And the subject of Plaintiffs' 95 is,
7 "APA EReserves complaint." And you write, "Mary Ellen,
8 Prue Adler will be contacting you about this, but in
9 case she hasn't, I wanted to alert you about the APA
10 EReserves complaint." And APA would be the -- the
11 Publishers Association?

12 A Correct.

13 Q "They sent a letter threatening a lawsuit
14 over electronic reserves to six schools. Four of those
15 are ARL libraries." What does ARL stand for?

16 A The Association of Research Libraries.

17 Q Okay. Was that one of the organizations we
18 just talked about?

19 A No, we do not belong to the Association of
20 Research Libraries.

21 Q Okay. Why not?

22 A We are not big, powerful, and rich enough.

23 Q Fair enough.

24 So, "Four of those are ARL libraries, Duke,
25 Syracuse, Texas A&M, and Florida. One is as yet

1 unidentified and the other is Georgia State." Did
2 there come a time when you were able to identify that
3 sixth school?

4 A Yes.

5 Q Do you recall who it was?

6 A I believe it was Marquette, but I'm not
7 certain.

8 Q Okay. "The attorneys from the schools and
9 ARL are in contact with each other, as well as Mary
10 McDonald, who handled the situation at UCSD." What is
11 UCSD?

12 A University of California San Diego.

13 Q And what was the situation at UCSD that you
14 referred to in Plaintiffs' 95?

15 A I believe AAP filed suit against them for
16 copyright infringement.

17 Q Okay. "The belief is that AAP are trying to
18 get a nationwide guideline on EReserves modeled on
19 Cornell's. Of course, we don't want to see that
20 happen." Why don't you want to see that happen?

21 A My understanding of the Cornell model is that
22 it does not take into account the validity of fair use.

23 Q And how did you develop that understanding
24 about the Cornell guideline -- or the Cornell model?
25 I'm sorry.

1 A It's been widely discussed in the library
2 literature.

3 Q And then you say in Plaintiffs' 95, "I'm sure
4 Prue will update you on this at the ARL meeting." Now,
5 who is Prue Adler?

6 A Prue Adler works at the Association of
7 Research Libraries.

8 Q Did you have conversations with Prue Adler
9 about this lawsuit?

10 A Yes.

11 Q How many conversations, approximately, have
12 you had with Prue Adler about this lawsuit?

13 A I don't know.

14 Q More than three?

15 A Probably three -- three to five.

16 Q Over what time period did those conversations
17 with Prue Adler occur?

18 A Well, let me clarify what you mean by "this
19 lawsuit."

20 Q The Complaint -- when you answered the
21 question, what did you understand me to mean by "this
22 lawsuit"?

23 A I was initially contacted by Prue Adler when
24 this threat was made by APA.

25 Q Okay.

1 A I have spoken to her in regards to that --

2 Q Okay.

3 A -- in consultation with the other schools.

4 I've also spoken to her since the current Complaint was
5 filed.

6 Q Okay. I want to be sure I understand you.

7 Prue Adler contacted you in approximately the time
8 frame of Plaintiffs' 95, so that's approximately May
9 2007 --

10 A Yes.

11 Q -- give or take?

12 And what did Prue Adler say when she
13 contacted you that first time in May-ish 2007?

14 A I don't remember exactly. It was a phone
15 call. But generally, that she was aware that we had
16 received a threat of a lawsuit and that other schools
17 had also and we were not alone and that they were all
18 talking together and the lawyers were all talking
19 together.

20 Q Did you have any subsequent conversations
21 with representatives from any of the other schools?

22 A There were a couple of conference calls.

23 Q Okay. Do you recall approximately how many
24 conference calls there were?

25 A A couple is the best I can do.

1 Q Okay. And approximately what time frame were
2 those couple of conference calls?

3 A Around this time.

4 Q Did the conference calls go on for -- how
5 long did the conference calls go on for? I'm looking
6 for months, weeks, what was the time period over which
7 those conference calls took place?

8 A I don't remember exactly, but they were not
9 extensive. Certainly a month or two, maybe.

10 Q Okay. What was -- what was the substance of
11 the discussions on those conference calls?

12 MR. ASKEW: Just a second. Did you say
13 these were conference calls with lawyers
14 about these lawsuits?

15 THE WITNESS: There were lawyers and
16 librarians on the conference calls.

17 MR. ASKEW: I think these parties had a
18 common interest, Ms. Singer, and I'm going to
19 object based on privilege.

20 MS. SINGER: I respectfully disagree
21 with that, but I -- are you going to instruct
22 her not to answer if I --

23 MR. ASKEW: Well, as I understand it,
24 she's on a call with several lawyers
25 representing other schools that have been

1 threatened with a lawsuit. And they're
2 discussing these matters. And it seems to me
3 like those kind of calls would be normally
4 considered privileged, as these parties are
5 all being threatened and they have a common
6 interest among themselves with respect to
7 defending against these lawsuits.

8 MS. SINGER: Are -- are you going to
9 instruct her not to answer questions?

10 MR. ASKEW: Well, are you going to
11 pursue this question? Are you going to ask
12 her what the substance of these -- I'll go to
13 talk to her for a few minutes, if you want me
14 to see if I can find out if there's anything
15 there but -- and then we can discuss it, if
16 you want to.

17 MS. SINGER: Why don't we --

18 Q (BY MS. SINGER) Before we do that, were
19 there any lawyers representing Georgia State University
20 on those calls?

21 A Not the calls that I was on.

22 Q Okay.

23 MS. SINGER: Okay. Why don't we take a
24 break, then, and let's see if we can cut
25 through this. I appreciate that.

1 THE VIDEOGRAPHER: Off the record at
2 3:46:21.

3 (Whereupon, there was a brief recess.)

4 THE VIDEOGRAPHER: Back on the record at
5 3:48:45.

6 MR. ASKEW: I'm not going to instruct
7 her not to answer the question. You can
8 proceed.

9 MS. SINGER: Okay.

10 Q (BY MS. SINGER) What -- what was the
11 substance of the -- the conference calls in the May
12 2007-ish time frame regarding the -- the draft
13 complaints you had received?

14 A Just general discussion about our current
15 practices, what system do you have, what system do you
16 have, you know, have your legal people been involved,
17 what -- you know, what's going on, nothing -- I don't
18 remember any of the specifics.

19 Q Okay.

20 A Supportive phone calls.

21 Q Did you report on those -- those calls to
22 anyone at GSU?

23 A Legal.

24 Q Legal?

25 A (Nods head affirmatively.)

1 Q Okay. Did you discuss or report those calls
2 to anybody else at GSU besides legal?

3 A Not that I recall.

4 Q Okay.

5 A Other librarians.

6 Q At GSU or outside of GSU?

7 A My boss.

8 Q Okay. When was the next time that you spoke
9 to Prue Adler?

10 A Oh, I have no idea.

11 Q Did you speak to Prue Adler after this series
12 of conference calls?

13 A Yes.

14 Q Okay. And what was the substance of those
15 conversations?

16 A I believe there was a conversation where she
17 told me how some of the different schools had responded
18 to the letter.

19 Q Do you remember what she told you about how
20 the other schools had responded to the letter?

21 A Not specifically, no.

22 Q In general, what was the substance?

23 A I recall education campaigns, that's the main
24 thing I remember her telling me about, some schools
25 were doing internal training as we're doing now.

1 Q What steps did GSU take after receiving that
2 letter in the May 2007 time frame?

3 A Legal assessed our situation and responded to
4 the letter.

5 Q Did the library take any steps?

6 A No.

7 Q Did you have any conversations with Prue
8 Adler after she told you how the other schools were
9 responding?

10 A Yes.

11 Q And when was that?

12 A I called her when this complaint was filed to
13 let her know what was going on.

14 Q And what was the substance of that
15 conversation?

16 A "We've been sued."

17 Q And what was her reaction?

18 A She wanted to know the details.

19 Q What did you tell her?

20 A I sent her a link to where the Complaint was
21 posted online.

22 Q Did you have any other conversations with
23 her?

24 A We have had periodic conversations, just
25 what's going on sorts of things, but I can't give you

1 the details of them at all. I don't recall.

2 Q Okay. Have you had any conversations with
3 any of the other five schools that received the same
4 draft letter complaint in 2007?

5 A No.

6 Q Are you aware of any steps taken by any of
7 those schools beyond what Prue Adler communicated to
8 you?

9 A No.

10 Q Without -- well, let me ask this as -- as a
11 first question: Was the -- are you able to tell me
12 anything about the library's decision not to take any
13 action following receiving the draft complaint in 2007?
14 Are you able to tell me anything that wouldn't involve
15 legal advice or consultation with legal?

16 A No.

17 Q Okay. Do you know whether anybody else from
18 GSU talked to Prue Adler?

19 A I know Nan Seamans has spoken with her. I
20 don't know if Charlene Hurt spoke with her or not. I
21 was the primary person she spoke to.

22 Q Is Georgia State University receiving any
23 kind of support from the ARL with respect to this
24 lawsuit?

25 A No.

1 Q Okay.

2 MS. SINGER: Let's mark as Plaintiffs'
3 Exhibit 96 a document bearing the Bates stamp
4 Georgia State 671 through 675.

5 MR. ASKEW: So this is going to be,
6 what, 96?

7 MS. SINGER: 96.

8 (WHEREUPON, Plaintiffs' Exhibit 96 was marked for
9 identification.)

10 (Whereupon, there was a discussion off the record.)

11 Q (BY MS. SINGER) Ms. Burtle, do you recognize
12 what's been marked as Plaintiffs' Exhibit 96?

13 A Yes.

14 Q What is Plaintiffs' 96?

15 A It's a compilation of information that I
16 made.

17 Q Okay. Which -- what information did you
18 compile?

19 A Primarily information about fair use,
20 different library statements, library association
21 statements and library statements on electronic
22 reserves.

23 Q Do you know approximately when you compiled
24 this information?

25 A No, but I compiled a lot of information in

1 the months after the lawsuit was filed, so somewhere in
2 there.

3 Q Okay. So you think this was after the
4 lawsuit was filed?

5 A Yes.

6 Q Okay. What caused you to compile the
7 information in Plaintiffs' Exhibit 96?

8 A Find out what's out there.

9 Q Did anyone ask you to compile this
10 information?

11 A Not that I recall.

12 Q Did anyone help you compile it?

13 A Not that I recall.

14 Q What did you do with the information that
15 you've compiled in Plaintiffs' 96, if anything?

16 A I believe I shared it with my boss.

17 Q Other than sharing it with your boss, do you
18 know if anything was done with the information in
19 Plaintiffs' 96?

20 A I don't believe so.

21 Q Okay. The first line, or the title, really,
22 of Plaintiffs' 96 says, "ARL Statement," and then in
23 parentheses, "(Laura's emphases)".

24 A Yes.

25 Q Are we able to tell from Plaintiffs' 96 what

1 your emphases are, is there font different or --

2 A It looks like the bottom two bullet points
3 are -- are bolded.

4 Q Okay. And you believe that that was your
5 emphasis?

6 A Yes.

7 Q Okay. Why did you choose to emphasize those
8 last two bullet points?

9 A They seemed relevant to the lawsuit.

10 Q Relevant in what way?

11 A Without infringing copyright, the public has
12 the right to expect to have made -- to make or have
13 made for them a first generation copy for personal use
14 of an article or other small part of a publicly
15 marketed, blah-blah-blah, or work in a library's
16 collection. They're relevant to reserves, they're
17 relevant things I found interesting.

18 Q Okay.

19 A And this wasn't used to create anything.
20 Things I found interesting.

21 Q Sure. Sure. Do you believe that posting
22 something on EReserves is the same as making or having
23 made a first generation copy for personal use?

24 A No.

25 Q Okay. On page 2 of Plaintiffs' 96, it says,

1 "Georgia State 672." There's -- two of the four bullet
2 points at the top are also in bold italics. Are those
3 your emphases as well, do you know?

4 A That would be my assumption.

5 Q Okay. And the fourth bullet point at the top
6 of the second page of Plaintiffs' 96 says, "Libraries,
7 on behalf of their clientele, should be able to avoid
8 liability after posting appropriate copyright notices
9 for the unsupervised actions of their users." Do you
10 see that?

11 A Yes.

12 Q Do you -- did you believe that that was
13 relevant to the lawsuit or to EReserves?

14 A Yes.

15 Q How was that relevant?

16 A I believe there was an implication in the
17 complaint that people just made copies and sent them to
18 all their friends.

19 Q And making copies and sending them to their
20 friends, would that constitute unsupervised action of
21 the users?

22 A Yes.

23 Q Does the library, in fact, post appropriate
24 copyright notices as part of EReserves?

25 A Yes.

1 Q How is that -- how are those copyright
2 notices posted?

3 A When a student clicks on an item, they are
4 presented with a copyright notice that they have to
5 read, put in the password for the page, and then click
6 accept.

7 Q And are they presented with that page -- when
8 are they presented with that page, is it every time
9 they access the system?

10 A Yes.

11 Q Is it before each work that they access, for
12 instance, if they go to a course reserves page, and
13 they access the first reading and then they go back to
14 the page and access the second reading, will they be
15 presented with the appropriate copyright notice?

16 A I'm not sure of the flow of that.

17 Q Okay. What is the -- the substance of the
18 copyright notice that EReserves users are presented
19 with?

20 A Oh, I can't quote it to you, but it's the
21 standard copyright notice that's seen everywhere on
22 photocopy machines and -- it's standard language of --
23 I can't tell you what it says off the top of my head.

24 Q Okay. Does it reference that the specific
25 work is copyrighted, or is it about -- that the

1 specific work that the user is about to access is
2 copyrighted, or is it just a general notice about
3 complying with copyright?

4 A I don't know.

5 Q Okay.

6 A I'd have to look at it.

7 Q Okay. At the bottom of the second page of
8 P96, we see the title is "ALA Statement," do you see
9 that?

10 A Yes.

11 Q What is the ALA?

12 A American Library Association.

13 Q Okay. And is this a statement that you took
14 from the American Library Association's Website?

15 A Yes.

16 Q Do you have any -- did you add any emphasis
17 to this section that you --

18 A It doesn't look like it.

19 Q Okay. The third page of Plaintiffs' 96 says,
20 "Fair use analysis from the IUPUI." Do you see that?

21 A Yes.

22 Q What is the IUPUI?

23 A Indiana University, Purdue University,
24 Indiana -- Indianapolis, I think, something like that.

25 Q And they abbreviate that? Is that a --

1 that's a specific university --

2 A Yes.

3 Q -- that you took that from? Okay.

4 And it says, "Laura's comments in blue." Are
5 you able, as you look at this photocopy, to tell
6 which your -- which were your comments?

7 A No, I'm not.

8 Q Okay. Me neither. I was hoping you could
9 help me.

10 Okay. If you look at the fourth page of
11 Plaintiffs' 96, it says, "UW Madison libraries policy
12 for electronic reserve access to copyright-protected
13 materials," again, "Laura's emphases." Do you see
14 that?

15 A Yes.

16 Q Is this the -- again, a -- a single
17 university or a University System policy?

18 A Yes.

19 Q Okay. And are you able to tell what was your
20 emphasis?

21 A There's a bolded paragraph towards the end, I
22 believe that was my emphasis.

23 Q Okay. Okay. You'll be very happy to hear
24 the last exhibit.

25 MS. SINGER: If you would please mark as

1 Plaintiffs' Exhibit 97 a document bearing the
2 Bates stamp Georgia State 7483 to 7485.

3 (WHEREUPON, Plaintiffs' Exhibit 97 was marked for
4 identification.)

5 Q (BY MS. SINGER) Do you recognize Plaintiffs'
6 Exhibit 97?

7 A Yes.

8 Q What is Plaintiffs' 97?

9 A It's a draft memo from Prue Adler to the
10 directors of the ARL libraries.

11 Q Did Prue Adler send you a copy of this draft
12 memo?

13 A Yes.

14 Q Okay. Do you know approximately the date of
15 this memo?

16 A No.

17 Q Okay. You see about a third of the way down
18 the page of -- first page of Plaintiffs' 97, it says,
19 "Wednesday, May 21st, ARL public policy session, fair
20 use working group." Do you see that?

21 A Read it to me again, I'm sorry.

22 Q It's -- it's the heading, "Wednesday" --

23 A Oh, yes.

24 Q -- "May 21st, ARL public policy session, fair
25 use working group"?

1 A Yes.

2 Q Were you present at that public policy
3 session of the fair use working group?

4 A No.

5 Q Okay. Was anyone at GSU invited to be
6 present there?

7 A No.

8 Q Okay. And it says -- on Plaintiffs' 97, it
9 says, "Situation at GSU, glitch in the system meant
10 that reserves were wide open, allowed AAP to see what
11 was being provided. Patched the system, but when
12 contacted about the numbers, pushed back and said they
13 were in compliance. Some question about who from the
14 university and/or library was working with the AAP.
15 Feeling that there was some information that could only
16 have come from someone at the institution. Original
17 letter to GSU included commercial publishers, but not
18 included in the lawsuit."

19 Was that information that you communicated to
20 Prue Adler?

21 A Presumably.

22 Q Would you agree with the statement that there
23 was a feeling that there was information that could
24 only have come from someone at the institution?

25 A There was a suspicion of as much, never any

1 proof.

2 Q Okay. Was any investigation done?

3 A No.

4 Q Okay. Next paragraph of Plaintiffs' 97 says,
5 "Prue has talked with Laura at GSU about how to handle
6 this, Laura Burtle." That's you, right?

7 A Yes.

8 Q Okay. "Apparently there is no one in the GA
9 AG's office who feels qualified to handle the lawsuit,
10 so have talked with Prue about identifying other
11 lawyers who are qualified to represent GSU. Counsel
12 from ARL libraries who have pushed back as a resource.
13 University attorney Kerry.

14 Did Prue ever help you identify other lawyers
15 who might be qualified to represent GSU?

16 A I don't believe that I was involved in those
17 conversations.

18 Q Okay. So you -- okay.

19 A couple more lines down on Plaintiffs' 97,
20 it says, "More discussion of AAP long-term looking for
21 an opportunity to attack the Regents copyright policy.
22 Saw it as pushing the boundaries." Do you see that?

23 A Yes.

24 Q Was that your general sense of what AAP was
25 looking to do? Was --

1 A I believe it was the sense of legal.

2 Q Okay. Was that a conversation that -- did
3 you discuss what AAP was long-term looking to do when
4 you spoke to Prue Adler?

5 A No.

6 Q Okay. The next line on Plaintiffs' 97, it
7 says, "AAP's deliberate use of Coursepacks terminology,
8 equating Coursepacks with EReserves even though they
9 are not." Do you believe that Coursepacks and
10 EReserves should be equated?

11 A No.

12 Q Why not?

13 A They're not the same.

14 Q Why not, how are they different?

15 (Whereupon, there was an outside interruption.)

16 THE WITNESS: One is a commercial
17 enterprise; one is a university providing
18 information it purchased to its own
19 students.

20 THE COURT REPORTER: What, I'm sorry?

21 THE WITNESS: Sorry, where -- where did
22 you miss from?

23 MR. ASKEW: Would you reask that
24 question. I heard her shout something from
25 down there, and I don't know that I heard the

1 answer.

2 MS. SINGER: Yeah, and you can't read it
3 back, can you? Are you able to read back
4 that question?

5 THE VIDEOGRAPHER: Off the record at
6 4:08:07.

7 (Whereupon, there was a discussion off the record.)

8 THE VIDEOGRAPHER: Back on the record at
9 4:09:14.

10 MS. SINGER: If you would, could you
11 read back the last question and the last
12 answer.

13 (Whereupon, the record was read by the court reporter
14 as follows:

15 "QUESTION: Why not, how are they
16 different?

17 "ANSWER: One is a commercial
18 enterprise; one is a university providing
19 information it purchased to its own
20 students.")

21 Q (BY MS. SINGER) Are there any other
22 differences between Coursepacks and EReserves?

23 A Yes.

24 Q What else?

25 A Well, fair use is rarely going to come into

1 play in a commercial Coursepack situation, it is
2 something to be considered in almost all course --
3 EReserve situations.

4 Q Okay. Anything else?

5 A Anybody can purchase a Coursepack, if they so
6 desired. EReserves are limited to students enrolled in
7 a course.

8 Q Okay. Does the university -- I'm sorry, does
9 Georgia State University provide any Coursepacks
10 itself, or are they all through commercial copy shops?

11 A I believe we covered that earlier, where I
12 indicated I think Jim Palmour's shop might still
13 provide a few Coursepacks, but I am not in a position
14 to know that for sure.

15 Q Okay. If, indeed, Jim Palmour's shop still
16 provides Coursepacks, would you consider those to be
17 commercial?

18 A Yes.

19 Q Why is that?

20 A They're sold.

21 Q Okay. Back to Plaintiffs' Exhibit 97, it
22 says -- about three-quarters of the way down the first
23 page of Plaintiffs' 97, it says, "UCSD pushed back
24 successfully. Who is the UC lawyer? Prue indicated GA
25 GSU should be talking with her."

1 Did Prue indicate that to you, or do you --
2 was she indicating that --

3 A I think these are her notes to herself, these
4 are not my notes, so...

5 Q Okay. So you didn't have any discussions
6 with her about who the UC lawyer was?

7 A Not that I recall.

8 Q Okay. And on Plaintiffs' 97, the next line,
9 where she says, "Strategy should be to address how AAP
10 is defining fair use," did you have a conversation with
11 her about that?

12 A No, these are her notes.

13 Q Okay. The next page of Plaintiffs' 97 has
14 the Bates stamp Georgia State 7484. The fourth
15 paragraph down says, "Let faculty get in trouble. They
16 have clout that libraries do not have. They'll be the
17 ones who connect the dots between NIH, provosts' open
18 access letter, CMSs course reserves. Move to a
19 negotiation between faculty, authors, and publishers
20 and get libraries out of the middle."

21 Did you have any conversations with Prue
22 Adler regarding the concept of letting the faculty
23 getting -- get in trouble?

24 A No.

25 Q Do you believe that faculty have clout that

1 libraries do not have?

2 A Yes.

3 Q And what's the basis for that belief?

4 A They get the money, and we don't.

5 Q What is NIH, if you know?

6 A National Institutes of Health.

7 Q Okay. And what is provost open access
8 letter?

9 A I don't recall which provosts, but some
10 provosts have issued statements that they expect their
11 faculty to publish materials in open access sources.

12 Q And in that context, what would open access
13 mean?

14 A Things that are available usually online,
15 without charge to the user, to the viewer.

16 Q Okay.

17 A The reader.

18 Q So, in other words, the reader, the user
19 would not have to pay licensing fees?

20 A Right, or purchase the journal.

21 Q Or purchase the journal. Okay. Do you know
22 what CMS's refers to?

23 A Well, it could be content management system
24 or course management system.

25 Q Okay. Was there any sense at Georgia State

1 University that pushing the fair use analysis to the
2 faculty instead of the library would -- would somehow
3 protect the library?

4 A I don't think I can answer that for the
5 university as a whole.

6 Q Okay. Did you have any sense, personally?

7 A I was never involved in that kind of
8 conversation --

9 Q Okay.

10 A -- personally.

11 Q Okay. Fair enough.

12 MS. SINGER: I think if we can take a
13 short break, I can put my notes in order and
14 see if I have any last questions.

15 THE VIDEOGRAPHER: Off the record at
16 4:14:22.

17 (Whereupon, there was a brief recess.)

18 THE VIDEOGRAPHER: Back on the record at
19 4:22:31.

20 Q (BY MS. SINGER) Okay. Ms. Burtle, just
21 directing your attention back for a moment to
22 Plaintiffs' Exhibit 97. You see about halfway down the
23 page, it says, "Madeleine, legal counsel at UVA,
24 participating via phone, and I don't know her." The
25 last sentence of that paragraph is, "Hard to defend

1 some of what GSU is doing, extremely liberal policy."

2 Do you see that?

3 A Yes.

4 Q Do you agree with that statement? I know
5 it's not your statement.

6 A No. I -- I don't have any idea what it's
7 referring to specifically. I can't speak to
8 Madeleine's thoughts.

9 Q But do you agree that some of what GSU is
10 doing is -- is an extremely liberal policy?

11 A Is now or was when this was written that was
12 applying to the Regents copyright guidelines?

13 Q When was this was written applying to the
14 Regents copy -- copyright guidelines?

15 A No, I don't think I would characterize it as
16 extremely liberal, but that's a relative term. That
17 means different things to different people.

18 Q Would you have characterized it as liberal?

19 A I don't know how to apply a word like that to
20 this situation.

21 Q Okay.

22 MS. SINGER: Okay. I have no further
23 questions, subject, of course, to any --
24 anything that may come up if Tony asks you
25 questions.

EXAMINATION

By MR. ASKEW:

Q Would you find Exhibit 82 in your stack there, Ms. Burtle. It's a one-page exhibit.

A It's a one-page, I've got a bunch of one pages together. There were go, got it.

Q All right. This exhibit was shown to you by Ms. Singer several hours ago. The last sentence in this email reads, "I think that most schools do not consider whether or not" --

A It's not Exhibit 81.

Q Okay. Excuse me.

A Sorry.

Q It should be the next one in sequence. 82. No, it's only about three lines.

A 82, I'm sorry, my pages -- oh, that's eighty -- okay. Yes. All right.

Q Direct your attention to the last sentence of this exhibit --

A Yes.

Q -- Ms. Burtle, it reads, "I think that most schools do not consider whether or not they own the original item to affect fair use."

With respect to that sentence, I believe Ms. Singer asked you a question at the conclusion of

1 her discussion about this exhibit to the effect that
2 did you consider it surprising that other schools would
3 scan it. And my recollection is your answer was yes.
4 And I wanted you to -- if you would explain what you
5 meant by that answer of yes to that question about
6 whether you would find it surprising that other schools
7 would scan it.

8 A I would find it surprising if other schools
9 would scan materials they don't own, materials they got
10 through interlibrary loan or GIL Express. Does that
11 answer your question?

12 Q Yes. And you don't have to find this
13 exhibit, but just to give you a frame of reference,
14 with respect to Exhibit number 85, Ms. Singer asked you
15 if print reserves and EReserves should be treated the
16 same for copyright purposes. I believe your answer was
17 yes, and I wondered if you could explain that answer
18 for me further.

19 A Well, they both -- there are parts of
20 copyright that affect both print reserves and EReserves
21 so print reserves are treated like books that circulate
22 in the library. And there's a part of copyright that
23 allows for book to circulate out of the library to
24 multiple students and then there are parts of copyright
25 that apply to electronic reserves, particularly the

1 fair use guidelines, that would apply there. So
2 copyright applies -- it's not the same piece of the
3 copyright law, but copyright does apply to lending
4 books on print reserve or lending books from the
5 library, as well as electronic reserves.

6 Q With respect to the fair use checklist,
7 Ms. Burtle, are -- are there other sources of
8 information that might aid a professor or user of the
9 checklist for the purpose of understanding the
10 checklist and what is being asked in the checklist?

11 A Other sources beyond the checklist, I mean,
12 the policy itself explains the context of the questions
13 that are asked in the fair use checklist, so the policy
14 itself includes information that would be useful, in
15 addition to legal. So if someone reads the policy,
16 which they're expected to read the policy before they
17 use the checklist, that's part of what they've been
18 told to do as members of the university, they should
19 have that context before they use the checklist.

20 Q Is it your understanding that it -- that it
21 is a part of the policy that the University System
22 expects the professor to review the entire policy and
23 its guidelines and information as a part of reviewing
24 and completing the checklist?

25 A Yes, the university sent out an email to

1 every member of the university telling them that.

2 MR. ASKEW: I have no further questions
3 for the witness.

4 MS. SINGER: I have just one question.

5 FURTHER EXAMINATION

6 BY MS. SINGER:

7 Q When Mr. Askew asked you if it was the policy
8 to expect -- I think it was faculty or professors to
9 review the entire policy, what do you understand the
10 entire policy to comprise?

11 A The Board of Regents' copyright policy, which
12 is on the Website, it has a number of different
13 sections.

14 Q Okay.

15 A Introduction, it has a section on copyright
16 generally, a section on fair use, it has a section on
17 EReserves, so the entirety of what's on that policy.

18 Q Okay. Just so that we're -- just so that
19 we're all clear -- you're not going to have in your
20 stack Plaintiffs' Exhibit 38. Let me show you my copy
21 of Plaintiffs' Exhibit 38.

22 MR. ASKEW: You go ahead and look at it,
23 though.

24 (Whereupon, there was a discussion off the record.)

25 Q (BY MS. SINGER) Let's do this, let me give

1 you a copy of Plaintiffs' Exhibit 21, which is a little
2 bit harder to read, but it's screen shots. Would --
3 how much of -- if at all, of Plaintiffs' Exhibit 21
4 would you say constitutes -- what -- strike that. Let
5 me start again.

6 What, if any, of Plaintiffs' Exhibit 21 would
7 you consider to be the entire copyright policy?

8 A Oh, it's not the entire copyright policy by
9 any means. It references back to the entire copyright
10 policy.

11 Q Okay. Where -- where is the entire copyright
12 policy found?

13 A On the Board of Regents' Website.

14 Q Okay. There is a section on policy on the
15 use of copyrighted works in education and research?

16 A Yes.

17 Q There is a section on additional guidelines
18 for electronic reserves?

19 A Yes.

20 Q There's a fair use checklist?

21 A Yes.

22 Q And there's an introduction to the fair use
23 checklist?

24 A Yes.

25 Q Is there more to the entire copyright policy?

1 A I believe there is. I can't tell you off the
2 top of my head what's missing, but I feel like that's
3 not all of it. But I -- I'm not positive.

4 Q Okay.

5 A I know there's an introduction you don't
6 have.

7 Q Is that the introduction that's actually on
8 the -- the checklist itself?

9 A No.

10 Q Besides possibly an introduction, are there
11 any other parts to the copyright policy, that you're
12 aware of?

13 A I haven't memorized the copyright policy. I
14 know where to go to look for it when I need it. So I
15 feel like it's longer than that, because I handed out
16 copies to a lot of people, and there were more pages
17 than that, but I can't tell you specifically what's
18 missing.

19 MS. SINGER: Okay. I have no further
20 questions.

21 MR. ASKEW: Okay. That will conclude
22 the deposition.

23 THE VIDEOGRAPHER: Off the record at
24 4:32:15.

25 (Deposition concluded at 4:32 p.m.)

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E R R A T A P A G E

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Laura G. Burtle

Sworn to and subscribed before me
this _____ day of _____ 2009.

Notary Public.
My commission expires _____

C E R T I F I C A T E

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WINNETT 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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This, the 30th day of April, 2009

SHARON A. GABRIELLI, CCR-B-2002

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3 COUNTY OF DEKALB:

4
5 Deposition of Laura G. Burtle

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