

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BLACKWELL PUBLISHING, INC.,
ELSEVIER, INC.,
OXFORD UNIVERSITY PRESS, INC.,
SAGE PUBLICATIONS, INC., and
JOHN WILEY & SONS, INC.,

Civil Action No. 07-CV-12731

Plaintiffs,

Hon. Avern Cohn

vs.

Mag. Morgan

EXCEL RESEARCH GROUP, LLC d/b/a
EXCEL TEST PREPARATION,
COURSEPACKS, & COPIES and
NORMAN MILLER, individually,

Defendants.

**SECOND DECLARATION OF BARBARA COHEN IN SUPPORT OF
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, Barbara Cohen, General Counsel for Oxford University Press, Inc. ("OUP"),
hereby under oath declare as follows:

1. There are twenty OUP works identified in the Amended Complaint in this action, nineteen of which are included in Plaintiffs' Motion for Partial Summary Judgment. These works are identified in counts 8-24, and 26-28, on Exhibit B to Plaintiffs' Amended Complaint.¹
2. All of the OUP works identified in the Amended Complaint are books.

¹ As noted in my original declaration in this action, (1) one item originally identified as an OUP work – named in count 25 – actually belongs to our co-plaintiff, SAGE Publications, Inc.; and (2) we have decided not to press a claim as to other item – named in count 23 – due to the identity of the teacher of the course concerned.

3. OUP and its UK affiliate have from time to time entered into electronic license agreements with the University of Michigan (“UM”), or consortia or networks of which UM is a member, concerning journals and certain online reference databases such as the *Oxford English Dictionary Online*.

4. However, the OUP books identified in the Amended Complaint have at no time been subject to the OUP-Michigan Library Consortium license agreement that is attached to the summary judgment motion of defendants in this action, or to any other license agreement for OUP material to which University of Michigan is or has been a party.

5. Although OUP has licensed two of the books at issue to e-book vendors such as netLibrary, who may (though we have no specific information on the point) have deals with UM, none of those e-book vendors is permitted to authorize its sublicensees to download and reproduce content of the licensed books. Thus, no such e-book vendor could have authorized UM students, much less defendants, to reproduce excerpts from those two books in coursepacks.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA.

July 29, 2009
Date

Barbara Cohen
Barbara Cohen, Esq.