

**Oxford University Press, Cambridge University Press
& Sage Publications v. Georgia State University**

BACKGROUND

On April 15, 2008, three publishers, two of them non-profits, filed suit against the President, the Provost, the Provost for Information Systems and Technology, and the Dean of Libraries of Georgia State University (GSU), alleging copyright infringement. The complaint, which was filed in the U.S. District Court for the Northern District of Georgia, requests injunctive and declaratory relief and attorneys' fees, but not damages.

THE COMPLAINT

The complaint alleges that GSU has been engaged in “systematic, widespread, and unauthorized copying and distribution of a vast amount of copyrighted works . . . through a variety of online systems and outlets utilized and hosted by the University for the digital distribution of course reading material.” Although the material is now in digital form, it is unclear how much was taken from print sources. The means of distribution include an electronic course reserve system, a Blackboard course management system, departmental web pages, and hyperlinked online course syllabi. The complaint further alleges that GSU made the works available not only to its own students, but to the public at large “until recently.” The course reserve system lists more than 6,700 works for more than 600 courses, and the publishers allege that the defendants’ practices “vastly exceed” the amount and type of copying that might be justified as fair use in an educational setting. The publishers state that they have complained to GSU officials, but to no avail; the University has refused to discuss the publishers’ concerns and has continued to provide the materials.

PUBLISHED COPYRIGHT POLICIES OF THE UNIVERSITY

In addition to the distribution of large amounts of copyrighted material without permission, the publishers charge that the GSU’s policies – published on the University web site in “Regents Guide to Understanding Copyright and Educational Fair Use” – provide guidelines that “plainly exceed legal boundaries.” The Guide is 44 pages long, and Part II gives Q&A-style examples, many of which conclude that a particular use is fair because it is for educational purposes. The complaint alleges that the policy also endorses unlicensed copying of up to 20% of a work.

SECTION 107 OF THE COPYRIGHT ACT

You will recall that Section 107 requires that at least four factors be weighed in ascertaining fair use, and that no one factor is conclusive:

- 1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- 2) the nature of the copyrighted work;
- 3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- 4) the effect of the use upon the potential market for or value of the copyrighted work.

Based on the complaint, and its Exhibit 1, which lists many of the works made available, as well as GSU's stated copyright policies, this does not appear to be a simple case of differing points of view on fair use principles. The publishers claim that they will be unable to continue producing scholarly works if the market for sales is undercut by distribution systems like GSU's.

Georgia State University filed a 23-page answer on June 24, claiming a defense of fair use, and protection from suit due to sovereign and/or Eleventh Amendment immunity. We will continue to follow the case and post updates as necessary to keep you informed.

AALL supports a balanced approach to fair use, one that recognizes both the needs of the educational community and the rights of copyright owners.

Keith Ann Stiverson, Chair
AALL Copyright Committee
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For more information, see these links:

<http://www.publishers.org/main/PressCenter/GeorgiaStateLawsuitRelease.htm>

is a link to the Association of American Publishers web site, which includes a story on the lawsuit in which you'll find a link to the complaint.

<http://www.usg.edu/legal/copyright> is the link to the "Regents Guide to Understanding Copyright and Educational Fair Use" on the Georgia State web site.