

Decision in Cambridge University Press v. Becker (a.k.a. “the Georgia State Copyright case”)

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U.S. District Court Judge Orinda Evans [ruled](#) on May 11 that, in all but five excerpts, the publishers SAGE, Oxford University Press and Cambridge University Press did not show sufficient evidence that Georgia State University violated copyright in making content available for classroom use via e-reserves. When this suit was filed in 2008 and eventually brought to trial last spring, publishers accused GSU of copyright infringement related to excerpts of longer works that Georgia State had made available online for its students as assigned class readings. GSU changed its copyright policy in response to the lawsuit and invoked [fair use](#) in its defense of the infringement claims.

Fair use is a subsection of U.S. copyright law and comprises four factors that must be considered when determining whether one's use of copyrighted works is considered fair use:

1. The purpose and character of the use (commercial vs. non-commercial)
2. The nature of the copyrighted work
3. How much of the work is being copied
4. The effect upon the potential market for, or value of, the copyrighted work

Overall, libraries are viewing this decision as a victory for “fair use,” which allows our institutions to copy and distribute, even in a digital format, portions of copyrighted works for educational purposes (among other purposes, such as commentary and reporting). On his [Scholarly Communications @ Duke](#) blog Kevin Smith cites “bitter disappointments” “[f]or the publishers who brought the suit.” Out of 99 excerpts examined by the court, 94 of the reserve readings posted at GSU were found to fall under fair use, which justifies the University's application of fair use in almost 95% of cases that major publishers saw sufficient opportunity to challenge. This should give libraries involved in e-reserves a great deal of confidence moving forward from this case.

The publishers, [bankrolled by the American Association of Publishers and the Copyright Clearance Center](#), are admittedly disappointed in the ruling. On the other hand, [Georgia State University is celebrating](#). “The judge's ruling is significant not only for Georgia State University, but for all educational fair use in general,” Georgia State University President Mark P. Becker

said. 'While the broader implications of this case will be analyzed for weeks and months to come, Georgia State is very pleased to have been a trailblazer in this increasingly complex digital copyright environment'."

When asserting a fair use defense in copying copyright-protected works, the four factors that a library must consider are taken in tandem and one does not trump the other three factors.

[Meredith Schwartz](#) contextualizes Judge Evans's assigning of a 10% rule to the limit for copying excerpts from books:

"That reasonable limit, Evans decided, is ten percent of a book with fewer than ten chapters, or of a book that is not divided into chapters, or no more than one chapter or its equivalent in a book of more than ten chapters. (For page counting purposes, Evans chose to use GSU's methodology, which includes forward, afterword, index, dedication, etc.) However that doesn't mean that any and all uses of a single chapter are automatically fair, it just means that, in Evans's view, at least one of the four factors that must be considered in a fair use defense will favor the defendant."

One factor Judge Evans applied in evaluating the question of market impact of e-reserves copying revolves around the question of how many people read the citation. Usage statistics came into play in her assessment of the citations she reviewed. In other words, if you copy more than 10% of a book for e-reserves and no one actually clicks on a link to load the excerpt, it's harder now for the owner of the content to argue a copyright violation than if hundreds of people clicked on that link.

What concern there is for libraries in this decision seems to result from Judge Evans's application of the fourth factor, which, again, cannot be taken on its own, but in conjunction with the first three. Evans considered copyright fees in comparison to publishers' overall revenue for the works from which excerpts are copied, as well as whether professors and students would buy the works in question if copying the excerpts and sharing those were not available to them. Still, she does not absolve University's e-reserves staff from considering market share, while simultaneously acknowledging that it is extremely impractical to do so. As [Kevin Smith observes](#), "She criticizes the GSU policy for not providing sufficient guidance for making a determination about this kind of market impact, but immediately acknowledges that the standard she is applying 'would likely be futile for prospective determinations (in advance of litigation)'."

The plaintiffs still have time to appeal and all the implications of this ruling will not sink in immediately. Nonetheless, Judge Evans's ruling should give publishers pause before suing universities for their use of copyrighted works in the day-to-day business of education and research support.

Judge Evans's full decision can be found here: <http://www.tc.umn.edu/~nasims/GSU-opinion.pdf>.

[Stephen M. Brooks's blog](#)