



## A2P2 ISSUE BRIEF: *CAMBRIDGE UNIVERSITY PRESS V. BECKER*

MARCH 2020

### ABOUT *CAMBRIDGE UNIVERSITY PRESS V. BECKER*

This month, a district court in Georgia issued a decision in the *Cambridge University Press v. Becker* case, concluding that 37 of the 48 infringement claims at issue in the case are fair use. This is the latest decision in a case that began in 2008 when Cambridge University Press, Oxford University Press, and Sage Publications sued Georgia State University (“GSU”), alleging that faculty at GSU infringed the publishers’ copyrights by making chapters from scholarly books available to their students via secure course websites without a license.

**Read More:** [Cambridge University Press v. Becker](#), U.S. District Court for the Northern District of Georgia

### LITIGATION HISTORY

The case has bounced back and forth between the district court and the Eleventh Circuit, with the Eleventh Circuit reversing and remanding the case to the district court twice. In 2014, the Eleventh Circuit directed the district court not to take an arithmetic approach to evaluating the four fair use factors (rejecting the notion that if three of the factors favor fair use, but one disfavors fair use, then fair use will always apply). The Eleventh Circuit also provided guidance on how to evaluate the factors:

- *Factor One:* While GSU’s use was non-transformative, the nonprofit educational purpose of the e-reserves favors fair use.
- *Factor Two:* Factual works may include original expressive content and relay more than bare facts, but this factor is of relatively little importance to the fair use analysis.
- *Factor Three:* The blanket rule that the third factor favors fair use where GSU copied no more than ten percent or one chapter was inappropriate. Bright line rules about what amount used weighs in favor of fair use should be avoided.
- *Factor Four:* The adverse impact of primary concern is market substitution. If the publisher did not make a license available the fourth factor should generally weigh in favor of fair use.

On remand, the district court re-evaluated the four factors and found that 44 of the 48 uses were fair. In 2018, the Eleventh Circuit again rejected the mathematical formula that the district court used for its fair use analysis, and provided further guidance on how to evaluate the factors.

The March 2020 decision from the district court finding 37 of 48 infringement claims to be fair use is the latest in this saga.

**Read More:** [\*In Georgia State University E-Reserves Case, Eleventh Circuit Endorses Flexible Approach to Fair Use\*](#), Krista L. Cox  
[\*Eleventh Circuit Reverses and Remands Georgia State E-Reserves Case \(Again\)\*](#), Krista L. Cox

## WHAT HAVE AUTHORS OF WORKS AT ISSUE IN THE CASE SAID?

In preparing an *amicus* brief in support of GSU's position that limited use of copyrighted material for nonprofit educational purposes falls within fair use, Authors Alliance was in touch with several authors of chapters at issue in the case. These authors expressed support for GSU's fair use defense. For example, Lyle Bachman, Professor Emeritus of Applied Linguistics at UCLA, wrote "I think it's perfectly fair for educational institutions to use book chapters for use by students in their courses."

Some authors with works at issue in this case referenced the benefit of fair use to their goal of reaching readers and contributing to academic discourse. For example, Norma Mertz, Professor of Higher Education Administration at University of Tennessee, Knoxville, wrote "I have no objection to the fair use of chapters from my books. Indeed, I find the suit to prevent use of such chapters a serious hindrance to the advancement of knowledge." Sara T. Cushing, Professor of Applied Linguistics, Georgia State University, wrote "I am happy when someone uses a book chapter of mine in a course.... As academics our goal is to spread knowledge, not accumulate wealth (ha ha) from our writing." Carolyn Ellis, Professor of Communication at University of South Florida and an Authors Alliance member, wrote "I want my work to be read as widely as possible. I have no trouble with articles or individual chapters of my book being copied for use in the classroom. In fact, I welcome it."

Another author of a work at issue in this case pointed out the benefits of publishing academic works. Douglas Harper, Professor Emeritus of Sociology at Duquesne University, wrote "There is reputational benefit...to doing this work. ... The point of this work is to share it! ... I don't think that the authors of the chapters being shared expect or even deserve remuneration; it's just not the point."

**Read More:** [\*Brief of Amicus Curiae Authors Alliance\*](#) in *Cambridge University Press v. Albert*