

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 CAMBRIDGE UNIVERSITY PRESS,)
5 ET AL.,) DOCKET NO. 1:08-CV-1425-ODE
6 PLAINTIFFS,) ATLANTA, GEORGIA
7 V.) MAY 20, 2011
8 MARK P. BECKER, IN HIS)
9 OFFICIAL CAPACITY AS GEORGIA)
10 STATE UNIVERSITY PRESIDENT,)
11 ET AL.,)
12 DEFENDANTS.)

13 VOLUME 4
14 TRANSCRIPT OF BENCH TRIAL
15 BEFORE THE HONORABLE ORINDA D. EVANS
16 SENIOR UNITED STATES DISTRICT JUDGE

17 APPEARANCES OF COUNSEL:

18 FOR THE PLAINTIFFS:

JONATHAN BLOOM
EDWARD B. KRUGMAN
TODD D. LARSON
JOHN H. RAINS.
R. BRUCE RICH
RANDI W. SINGER

19 FOR THE DEFENDANTS:

ANTHONY B. ASKEW
JOHN W. HARBIN
RICHARD MILLER
NATASHA H. MOFFIT
KATRINA M. QUICKER
STEPHEN M. SCHAEITZEL

20 COURT REPORTER:

ANDY ASHLEY
1949 U. S. COURTHOUSE
ATLANTA, GEORGIA 30303-3361
(404) 215-1478

21
22
23
24
25
ANDRE G. ASHLEY, O.C.R.

1 P R O C E E D I N G S

2 (ATLANTA, FULTON COUNTY, GEORGIA; MAY 20, 2011
3 IN OPEN COURT.)

4 THE COURT: I'LL BE PREPARED AT THE END OF THE DAY TO
5 TALK TO YOU ALL ABOUT THE SCHEDULE FOR NEXT WEEK. WE WILL BE
6 GOING LONGER HOURS. ANYWAY, WE'LL TALK ABOUT IT THEN.

7 NOW WHERE ARE WE?

8 MR. RICH: BEFORE I CALL MS. ARMSTRONG AS OUR NEXT
9 WITNESSES, IF I MAY ADDRESS ONE EVIDENTIARY ISSUE?

10 THE COURT: YES.

11 MR. RICH: YOUR HONOR WILL RECALL DURING MR. PFUND'S
12 EXAMINATION THAT WHEN WE PROFFERED PLAINTIFFS' EXHIBIT 378
13 WHICH WAS A LISTING OF FIRST PUBLICATION DATES U.K., U.S., YOUR
14 HONOR HAD INDICATED THAT WE HAD NOT YET LAID A PROPER
15 FOUNDATION.

16 OVER NIGHT OUR CLIENT AT OUR REQUEST ASKED A
17 GENTLEMAN NAMED ALEX RICH AND HIS STAFF -- HE IS THE PERSONAL
18 ASSISTANT BOTH TO THE GENERAL COUNSEL MS. COHEN WHO'S HERE IN
19 THE COURTROOM AND MR. PFUND TO GO INTO THAT DATABASE. HE
20 PRODUCED A SERIES OF SCREENSHOTS WHICH WE HAVE COLLATED INTO A
21 PROPOSED PLAINTIFFS' TRIAL EXHIBIT 993 WHICH SET FORTH FOR EACH
22 OF THE FOUR WORKS THAT THIS PERTAINS TO THAT ARE OTHERWISE IN
23 CONTROVERSY BETWEEN THE PARTIES. THE FIRST SCREENSHOT FOR EACH
24 IS THE DATA PUBLICATION IN THE U.K., THE SECOND IN THE U.S.

25 I SHARED WITH MR. HARBIN BEFORE WE STARTED THIS

ANDRE G. ASHLEY, O.C.R.

1 MORNING, AND HE HAS GRACIOUSLY INDICATED THAT THE DEFENDANTS
2 WOULD NOT CONTEST THIS AS AN ADEQUATE BUSINESS RECORD SUBJECT
3 TO THEIR SIMPLY AS I UNDERSTAND IT CHECKING THE ACCURACY OF THE
4 DATES AS AGAINST PLAINTIFFS' 378.

5 MR. HARBIN: WE ACCEPT THE REPRESENTATION THIS IS A
6 BUSINESS RECORD, YOUR HONOR. WE'RE NOT GOING TO MAKE THEM FLY
7 A WITNESS DOWN, AND THE DATE ISSUE IS DIFFERENT. IT'S STILL A
8 BUSINESS RECORD BASED ON THAT. WHETHER THE DATES MATCH UP TO
9 THAT SUMMARY IS DIFFERENT, BUT IT'S STILL IS A BUSINESS
10 RECORD. SO WE ACCEPT THAT REPRESENTATION.

11 THE COURT: ARE YOU READY FOR ME TO GO AHEAD AND
12 ADMIT IT?

13 MR. HARBIN: YES. IT WASN'T IN THE PRETRIAL ORDER,
14 BUT GIVEN YOUR HONOR'S COMMENTS, WE DON'T OBJECT.

15 THE COURT: I'M DELIGHTED TO HEAR THAT. IT'S
16 ADMITTED.

17 MR. RICH: THANK YOU VERY MUCH. AT THIS POINT, YOUR
18 HONOR, WE WOULD CALL MS. TRACEY ARMSTRONG AS A WITNESS.

19 THE CLERK: PLEASE RAISE YOUR RIGHT HAND TO TAKE THE
20 OATH.

21 TRACEY ARMSTRONG,
22 HAVING BEEN DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

23 THE CLERK: IF YOU WILL HAVE A SEAT, PLEASE, AND
24 STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST NAME
25 ALSO.

1 THE WITNESS: MY FULL NAME IS TRACEY LYNN ARMSTRONG.

2 DIRECT EXAMINATION

3 BY MR. RICH:

4 Q. GOOD MORNING, MS. ARMSTRONG.

5 A. GOOD MORNING.

6 Q. WHERE ARE YOU CURRENTLY EMPLOYED?

7 A. I'M CURRENTLY EMPLOYED AT COPYRIGHT CLEARANCE CENTER.

8 Q. AND SOMETIMES THE PARTIES AND I BELIEVE COPYRIGHT
9 CLEARANCE CENTER REFER TO THEMSELVES IN THE SHORTHAND AS CCC;
10 IS THAT RIGHT?

11 A. YES, THAT'S CORRECT.

12 Q. SO IF I REFER TO THE ORGANIZATION AS CCC THAT WILL BE
13 FAMILIAR TO YOU?

14 A. YES, IT WILL.

15 Q. HOW LONG HAVE YOU BEEN EMPLOYED BY CCC?

16 A. APPROXIMATELY 22 YEARS.

17 Q. AND AT THE TIME YOU STARTED, ABOUT HOW BIG WAS CCC IN
18 TERMS OF BUSINESS AND EMPLOYEES?

19 A. IT WAS APPROXIMATELY 30 EMPLOYEES WHEN I STARTED IN 1989.
20 IN TERMS OF REVENUE EXTREMELY MODEST. I WOULD SAY MAYBE A
21 MILLION.

22 Q. A MILLION DOLLARS IN REVENUE?

23 A. A MILLION DOLLARS IN REVENUE, YES.

24 Q. WHAT IS YOUR CURRENT POSITION AT COPYRIGHT CLEARANCE
25 CENTER?

ANDRE G. ASHLEY, O.C.R.

1 A. I'M CURRENTLY THE PRESIDENT AND CEO.

2 Q. AND HOW LONG HAVE YOU BEEN IN THAT POSITION?

3 A. THAT POSITION STARTED IN JULY OF 2007.

4 Q. AND WHAT ARE YOUR PRIMARY RESPONSIBILITIES AS PRESIDENT
5 AND CEO?

6 A. TYPICAL TO A CEO, I'M RESPONSIBLE FOR THE ENTIRE
7 ORGANIZATION, THE STAFF, ALL OF THE PROGRAMS THAT ARE
8 DEVELOPED, THE GOVERNANCE, REPORTING TO THE BOARD.

9 Q. AND PRIOR TO JULY OF 2007 WHEN YOU ASSUMED YOUR CURRENT
10 POSITION, WHAT WERE THE MAJOR TRANSITIONS AND RESPONSIBILITIES
11 THAT YOU TOOK ON IN YOUR TENURE AT CCC?

12 A. WELL, WHEN I STARTED I WAS A CLERK REPORTING TO A
13 SECRETARY, AND SO I DID EVERYTHING. I'VE DONE PRETTY MUCH
14 EVERYTHING FROM POST THE MAIL TO NOW WHAT I DO.

15 I WAS IN THE CUSTOMER SERVICE GROUP, AND EVENTUALLY
16 FROM THE CUSTOMER SERVICE GROUP, I WENT INTO THE TRANSACTIONAL
17 OR PAY PER USE LICENSING GROUP AND EVENTUALLY TOOK
18 RESPONSIBILITY FOR THAT, AND THAT THEN LED TO SEVERAL EXECUTIVE
19 POSITIONS. EVENTUALLY I BECAME THE VICE-PRESIDENT IN THAT.

20 THIS IS REALLY ALL COMING OUT OF THE OPERATIONS PART
21 OF THE BUSINESS, AND EVENTUALLY I BECAME THE -- FROM THE
22 VICE-PRESIDENT, THE EXECUTIVE VICE-PRESIDENT AND EVENTUALLY THE
23 COO AND THEN IN 2007 THE CEO.

24 Q. IN YOUR TENURE AT CCC, HOW MUCH CONTACT HAVE YOU HAD WITH
25 ACADEMIC INSTITUTIONS?

ANDRE G. ASHLEY, O.C.R.

1 A. WELL, WHEN I WAS IN CUSTOMER SERVICE WHICH WAS QUITE
2 SOMETIME AGO, IT WAS A LOT OF CONTACT, AND THEN WHEN I WAS IN
3 THE PAY PER USE AREA, THE TRANSACTIONAL SERVICES, I WAS
4 RESPONSIBLE FOR THE ACADEMIC PRODUCTS, AND NOW AS CEO, I'M
5 STILL INVOLVED IN POLICY DECISIONS AND INTERACTIONS WITH THAT
6 MARKET.

7 Q. HOW MUCH KNOWLEDGE HAVE YOU ACQUIRED IN RELATION TO
8 LICENSING OF COPYRIGHTED MATERIALS IN THE ACADEMIC ENVIRONMENT?

9 A. CAN YOU ASK THAT AGAIN, I'M SORRY?

10 Q. SURE. IN THE COURSE OF YOUR EXPERIENCE AT CCC, HOW MUCH
11 KNOWLEDGE HAVE YOU GAINED ABOUT THE NATURE OF THE LICENSING OF
12 COPYRIGHTED MATERIALS IN THAT ENVIRONMENT?

13 A. A SIGNIFICANT AMOUNT. I MEAN I'VE HAD NOW TWO DECADES OF
14 EXPERIENCE WITH THIS.

15 Q. CAN YOU DESCRIBE FOR THE COURT YOUR EDUCATIONAL BACKGROUND
16 BEGINNING WITH COLLEGE?

17 A. YES, I WENT TO BRIDGEWATER STATE COLLEGE WHERE I GOT A
18 BACHELOR'S DEGREE. THAT'S IN MASSACHUSETTS, AND THEN
19 EVENTUALLY IN THE EARLY 2000'S I WENT TO NORTHEASTERN
20 UNIVERSITY WHERE I GOT MY MBA.

21 Q. WHAT IS CCC AND WHAT IS THE BUSINESS THAT CCC CONDUCTS?

22 A. CCC IS BEST -- I THINK IT'S BEST DESCRIBED AS A LICENSING
23 AGENT. WE ARE A NOT-FOR-PROFIT ORGANIZATION, AND WE ARE REALLY
24 A MARKETPLACE FOR THE EXCHANGE OF RIGHTS BETWEEN RIGHTSHOLDERS
25 AND RIGHTSUSERS.

ANDRE G. ASHLEY, O.C.R.

1 SO WE'RE REALLY -- IN THAT WAY WE'RE REALLY A
2 SOLUTIONS PROVIDER. WE HAVE TO KIND OF FIND THAT MIDDLE GROUND
3 BETWEEN RIGHTS OWNERS AND RIGHTSUSERS.

4 Q. WHAT IS THE FUNDAMENTAL BODY OF CONTENT OR NATURE OF THE
5 BODY OF CONTENT THAT CCC ACTS AS A SOLUTIONS PROVIDER IN
6 RESPECT OF?

7 A. IT'S A WIDE RANGE OF CONTENT. ALL DIFFERENT TYPES OF TEXT
8 FROM BLOGS AND NEWSPAPERS, MAGAZINES, JOURNALS, ALL DIFFERENT
9 TYPE OF BOOKS, E-BOOKS, TRADITIONAL PRINT BOOKS, IN-PRINT
10 BOOKS, OUT-OF-PRINT BOOKS, JUST A WIDE RANGE OF TEXTS. IN
11 ADDITION WE ALSO LICENSE PHOTOGRAPHS AND VIDEO.

12 Q. ABOUT HOW MANY DIFFERENT RIGHTSHOLDERS TODAY LICENSE WORKS
13 THROUGH CCC?

14 A. TENS OF THOUSANDS.

15 Q. AND HOW MANY WORKS ARE REPRESENTED IN THE VARIOUS LICENSES
16 OFFERED BY CCC?

17 A. ACROSS ALL OF THE PRODUCTS, TENS OF MILLIONS OF WORKS ARE
18 OFFERED.

19 Q. WHEN WAS CCC FOUNDED?

20 A. IT WAS FOUNDED IN 1977, AND IT OPENED FOR BUSINESS ON
21 JANUARY 1ST OF 1978.

22 Q. IS THERE ANY SPECIAL SIGNIFICANCE TO THE DATE ON WHICH IT
23 OPENED FOR BUSINESS?

24 A. YES, THERE IS.

25 Q. WHAT IS THAT?

ANDRE G. ASHLEY, O.C.R.

1 A. THE COPYRIGHT ACT OF 1976 WHICH WAS SIGNED INTO LAW BY
2 PRESIDENT FORD TOOK EFFECT ON JANUARY 1ST OF 1978, AND THE
3 ORGANIZERS OF THE COMPANY AT THAT TIME WANTED THE COMPANY TO
4 OPEN ON THE DAY THAT LAW TOOK EFFECT FOR THE -- IT WAS VERY
5 INTENTIONAL THAT THAT DATE COINCIDED.

6 Q. HOW DID CCC COME TO BE FORMED?

7 A. WELL AT THE TIME THAT THE COPYRIGHT ACT OF 1976 WAS BEING
8 DEVELOPED, THERE WERE A VARIETY OF DIFFERENT PARTIES INVOLVED,
9 DIFFERENT STAKEHOLDERS, PUBLISHERS, AUTHORS AND USERS AND
10 MEMBERS, AND MEMBERS OF CONGRESS SUGGESTED TO THE MARKET THAT
11 THEY SHOULD CONSIDER GETTING TOGETHER AND TRYING TO FORM A
12 MARKETPLACE LETTING THE MARKET SOLVE THESE ISSUES.

13 Q. AND THESE ISSUES WERE SPECIFICALLY RELATING TO WHAT?

14 A. WELL AT THAT TIME THE NEW TECHNOLOGY WAS PHOTOCOPYING, AND
15 PHOTOCOPYING MADE IT EASIER FOR INFORMATION TO BE SHARED. SO
16 THAT WAS SEEN AS BOTH -- IT WAS WONDERFULLY RECEIVED BECAUSE
17 YOU COULD SHARE INFORMATION SO MUCH FASTER. I'M TRYING TO
18 REMEMBER A TIME BEFORE PHOTOCOPYING, AND IT WAS ALSO SEEN AS
19 REALLY A NECESSITY ON THE PART OF THE RIGHTSHOLDERS TO FIND A
20 WAY TO FACILITATE THE EASY SHARING FOR THE USERS BUT ALSO TO
21 MAINTAIN THEIR COPYRIGHT RIGHTS.

22 Q. SO WAS CCC A RESPONSE TO THIS URGING BY CONGRESS THAT THE
23 APPROPRIATE CONSTITUENCIES COME TOGETHER TO TRY TO DEAL WITH
24 THIS ISSUE?

25 A. YES, CCC IS REALLY THE RESULT OF THAT. SO THOSE GROUPS

1 WHICH INCLUDED TRADE ASSOCIATIONS, AUTHORS TRADE ASSOCIATIONS
 2 AND PUBLISHERS TRADE ASSOCIATIONS, INCLUDING ACTUALLY THE
 3 ASSOCIATION OF AMERICAN PUBLISHERS AT THAT TIME, THEY CAME
 4 TOGETHER, AND THE RESULT REALLY I WOULD DESCRIBE IT AT THE TIME
 5 AS A REAL INNOVATION IN THE MARKET. THERE REALLY WASN'T
 6 ANYTHING ELSE LIKE IT AT THAT TIME.

7 MR. RICH: YOUR HONOR, FOR THE COURT'S INFORMATION I
 8 JUST WANT TO READ INTO THE RECORD THE SENATE REPORT WHICH MAKES
 9 THE ACTUAL REFERENCE TO THE TESTIMONY THAT MS. ARMSTRONG
 10 REFERRED TO. IT'S ACTUALLY IN SEVERAL PLACES, BUT ONE OF THEM
 11 IS THE 1975 SENATE REPORT 473, THAT'S THE 94TH CONGRESS FIRST
 12 SESSION, AND THE URGING OF THE CONGRESS APPEARS AT PAGE 85 OF
 13 THAT DOCUMENT.

14 BY MR. RICH:

15 Q. WHAT IS THE COMPOSITION OF CCC'S BOARD OF DIRECTORS?

16 A. SINCE THE ORGANIZATION WAS OPENED, THE BOARD HAS CONSISTED
 17 OF AUTHORS, PUBLISHERS AND USERS.

18 Q. AND THAT CONTINUES TO THIS DAY?

19 A. YES, THE WHOLE TIME.

20 Q. HOW DOES THAT BOARD COMPOSITION AND HOW DOES THAT HISTORY
 21 YOU BRIEFLY DESCRIBED AFFECT CCC'S APPROACH TO LICENSING?

22 A. WELL, THE FIRST WORD THAT COMES TO MIND IN THAT RESPECT IS
 23 BALANCE. AS I SAID WE REALLY NEED TO FIND THAT MIDDLE GROUND
 24 SO WE ARE CONSTANTLY -- AND THAT'S A VERY DIFFICULT THING, AND
 25 SO WE'RE CONSTANTLY CONSIDERING THE NEEDS OF THE USERS OF THE

1 COPYRIGHT -- THAT ARE USING THE COPYRIGHTED MATERIALS AS WELL
2 AS THE RIGHTSHOLDERS, AND THE GOVERNANCE REALLY, YOU KNOW,
3 BECAUSE OF THAT BALANCE BETWEEN AUTHORS, PUBLISHERS AND USERS
4 ON THE BOARD REALLY FORCES US TO KEEP THAT IN MIND.

5 Q. IS REVENUE MAXIMIZATION CCC'S PRIMARY OBJECTIVE?

6 A. NO, ABSOLUTELY NOT.

7 Q. WHY NOT?

8 A. WELL, FIRST OF ALL, YOU CAN'T DO THAT WHEN YOU'RE
9 BALANCING, AND WE'RE REALLY TRYING TO FIND WAYS TO MAKE IT EASY
10 FOR USERS TO GET THEIR JOB DONE. EVEN OUR VISION STATEMENT
11 GOES TO THAT.

12 SO WE'RE TRYING TO MAKE THE PROCESS SEAMLESS SO THAT
13 ALL OF OUR USERS CAN GO ABOUT THEIR BUSINESS, YOU KNOW, THEY'RE
14 NOT COPYRIGHT EXPERTS.

15 Q. AS A TECHNICAL MATTER, WHAT IS CCC'S RELATIONSHIP TO THE
16 RIGHTSHOLDERS IT REPRESENTS?

17 A. WE HAVE CONTRACTUAL RELATIONSHIPS WITH THE RIGHTSHOLDERS
18 THAT WE REPRESENT AND WE ACT AS THEIR AGENT.

19 Q. IS THAT EXCLUSIVE OR NONEXCLUSIVE IN THE SENSE OF ARE
20 THOSE RIGHTSHOLDERS REQUIRED TO LICENSE THE WORKS THEY REMIT TO
21 CCC EXCLUSIVELY THROUGH CCC OR IS IT A NONEXCLUSIVE
22 RELATIONSHIP?

23 A. NO, IT IS NONEXCLUSIVE.

24 Q. AND FAST FORWARDING TO TODAY FROM 22 YEARS AGO, ABOUT HOW
25 MANY EMPLOYEES DOES CCC HAVE TODAY?

ANDRE G. ASHLEY, O.C.R.

1 A. APPROXIMATELY 240.

2 Q. AND IN CCC'S LAST FISCAL YEAR ABOUT HOW MUCH IN GROSS
3 REVENUE DID CCC BRING IN?

4 A. APPROXIMATELY 215 MILLION.

5 Q. TWO ONE FIVE?

6 A. TWO ONE FIVE, TWO HUNDRED FIFTEEN.

7 Q. WHAT WERE THE SOURCES OF THAT REVENUE?

8 A. PRIMARILY ROYALTY FEES -- PREDOMINANTLY ROYALTY FEES AND
9 ALSO USER FEES.

10 Q. WHAT ARE USER FEES?

11 A. CCC DOES CHARGE USER FEES FOR VARIOUS LICENSES BASICALLY
12 TO FUND THE OPERATIONS OF THE COMPANY, AND THEN ALSO THE
13 DEVELOPMENT OF NEW LICENSING PROGRAMS.

14 Q. WE'LL COME BACK TO DISCUSS SOME OF THOSE IN A LITTLE MORE
15 DETAIL IN RELATION TO SPECIFIC PROGRAMS, BUT WHAT HAPPENS TO
16 THE REVENUE ONCE IT COMES INTO CCC; WHERE DOES IT GO?

17 A. THE REVENUE ROYALTIES ARE THEN SUBSEQUENTLY PAID OUT TO
18 THE VARIOUS RIGHTSHOLDERS THROUGH ROYALTY PAYMENTS.

19 Q. AND WHO ARE THE RANGE OF USERS WHO ACTUALLY COME TO CCC TO
20 OBTAIN AND DO OBTAIN LICENSES?

21 A. WELL, IT'S A WIDE RANGE. I MEAN WE HAVE CORPORATE
22 EMPLOYEES FROM THE MARKETING DEPARTMENT, YOU KNOW, SCIENTISTS,
23 ALL DIFFERENT RANGE OF CORPORATE EMPLOYEES. WE HAVE FROM THE
24 ACADEMIC MARKET -- THESE ARE OUR TWO BIG MARKETS CORPORATE AND
25 ACADEMIC.

ANDRE G. ASHLEY, O.C.R.

1 FROM THE ACADEMIC MARKET WE HAVE FACULTY MEMBERS,
2 TEACHING ASSISTANTS, DEPARTMENT HEADS. WE HAVE ALL KINDS OF
3 INDIVIDUALS WHO ARE USING OUR MANY SERVICES.

4 Q. AND SIMILARLY ON THE RIGHTSHOLDER SIDE, CAN YOU DESCRIBE
5 THE BREADTH OF PARTICIPATION BY THE TYPES OF RIGHTSHOLDERS WHO
6 PARTICIPATE IN CCC?

7 A. YES, WE HAVE THE TYPICAL LARGE COMMERCIAL PUBLISHER THAT
8 YOU WOULD EXPECT. WE ALSO HAVE MANY SCHOLARLY PUBLISHERS,
9 NONPROFIT PUBLISHERS, UNIVERSITY PRESSES, VERY LARGE MULTI-
10 NATIONAL PUBLISHERS. WE DO WORK WITH PUBLISHERS FROM AROUND
11 THE WORLD.

12 IN ADDITION IN OUR RIGHTSHOLDER COLLECTION WE HAVE
13 INDIVIDUAL AUTHORS AND CREATORS OF A VARIETY OF WORKS AND THEIR
14 ESTATES AND SOMETIMES LITERALLY AGENTS WHO ARE REPRESENTING THE
15 RIGHTS FOR THEIR CLIENTS.

16 Q. IF A PARTICULAR AUTHOR SAY OF A CONTRIBUTION TO A
17 COLLECTIVE WORK MAINTAINS HIS OR HER OWN COPYRIGHT IN THAT
18 WORK, CCC WILL SOMETIMES AND DOES IN FACT REPRESENT THOSE
19 INDIVIDUALS AS WELL IN LICENSING?

20 A. YES, WE ABSOLUTELY DO.

21 Q. OKAY. AND YOU MENTIONED A WORLDWIDE OR INTERNATIONAL
22 FOCUS. CAN YOU DESCRIBE HOW THAT FITS INTO CCC'S LICENSING
23 PROGRAMS?

24 A. YES. WELL, OUR USERS NEED ACCESS TO A VERY WIDE RANGE OF
25 CONTENT. THAT'S ACTUALLY PARTICULARLY TRUE IN THE ACADEMIC

1 MARKET, AND SO WE HAVE AGREEMENTS WITH A WIDE RANGE OF
2 RIGHTSHOLDERS, BOTH DIRECTLY AND INDIRECTLY THROUGH OTHER
3 LICENSING ORGANIZATIONS LIKE CCC LOCATED IN OTHER COUNTRIES SO
4 THAT THOSE RIGHTS CAN BE BROUGHT INTO THE UNITED STATES AND
5 SUBSEQUENTLY LICENSED TO OUR CLIENTS.

6 Q. SO IF A USER COMES TO CCC -- AND WE'RE GOING TO TALK ABOUT
7 SOME OF THESE PROGRAMS IN MORE DETAIL -- AND SAYS I WANT TO
8 SUBSCRIBE TO PROGRAM X, DO I UNDERSTAND WHAT YOUR ANSWER TO BE
9 THAT IN THAT SITUATION THE SCOPE OF WORKS AVAILABLE FOR
10 LICENSING INCLUDE NOT ONLY U.S. BASED WORKS BUT WORKS FROM A
11 VARIETY OF FOREIGN COUNTRIES AS WELL?

12 A. YES, A SIGNIFICANT AMOUNT.

13 Q. NOW DO THE THREE PLAINTIFFS IN THIS CASE ALL PARTICIPATE
14 IN VARIOUS CCC LICENSING PROGRAMS?

15 A. YES, THEY DO.

16 Q. TO YOUR KNOWLEDGE IS THERE A SINGLE ACADEMIC PUBLISHER OF
17 ANY CONSEQUENCE WHO DOES NOT PARTICIPATE IN CCC'S LICENSING
18 PROGRAMS?

19 A. NO, I CAN'T THINK OF ONE.

20 Q. NOW YOU MENTIONED THAT CCC I THINK YOUR WORD WAS A
21 SOLUTIONS PROVIDER?

22 A. YES.

23 Q. EXPLAIN A LITTLE MORE WHAT YOU MEAN BY THAT?

24 A. WELL, WE'RE DEVELOPING NEW SOLUTIONS TO MEET THE NEEDS OF
25 THE MARKET. I GUESS I WOULD SAY THIS. THE BOUNDARIES OF --

1 WHAT CCC IS DOING TODAY I WOULD SAY ARE NOT WHAT WE'LL BE DOING
2 IN THE FUTURE. I DON'T SEE THEM AS BOUNDARIES.

3 WE'RE CONSTANTLY DEVELOPING NEW SOLUTIONS, AND THE
4 PRIMARY DRIVER IS THE FACT THAT THE WAY CONTENT IS BEING
5 CONSUMED IS CHANGING. SO THINK ABOUT THE TECHNOLOGY AND
6 DIFFERENT THINGS, YOU KNOW, THE HANDHELDS AND THINGS LIKE
7 THAT. SO AS CONTENT CONSUMPTION IS CHANGING, WE ARE NEEDING TO
8 DEVELOP LICENSING PRODUCTS TO BE WHERE THAT -- FOLLOW THAT
9 CONTENT AND BE WHERE THE USER OF THAT CONTENT IS.

10 ALSO PUBLISHING PROCESSES ARE CHANGING, AND AS THE
11 PROCESS OF DIGITAL PUBLISHING CONTINUES TO RAPIDLY EVOLVE, WE
12 ARE BUILDING LICENSING SOLUTIONS FOR OUR RIGHTSHOLDER AS WELL.
13 SO IT'S NEW PRODUCTS BOTH FOR THE RIGHTSHOLDERS AND FOR THE
14 USERS.

15 Q. DOES THAT SET OF INTERESTS ON CCC'S PART APPLY TO THINKING
16 ABOUT HOW TO MEET THE NEEDS OF THE ACADEMIC ENVIRONMENT AS WELL
17 AS OTHER MARKETS YOU SERVE?

18 A. YES.

19 Q. AND LET'S BRIEFLY TOUCH ON WHAT CCC'S VERY INITIAL
20 LICENSING FOCUS WAS BACK IN 1978 WHEN IT FIRST OPENED ITS DOORS
21 FOR BUSINESS?

22 A. WELL, WHEN WE OPENED THE DOORS WE HAD ONE SERVICE AT THAT
23 TIME. IT WAS A TRANSACTIONAL OR PAY PER USE SERVICE, AND IT
24 WAS PRIMARILY SERVING INDIVIDUAL CORPORATE EMPLOYEES WHO WOULD
25 COME AND ASK FOR PERMISSION ON A CASE-BY-CASE BASIS, AND

ANDRE G. ASHLEY, O.C.R.

1 MEMBERS OF ACADEMIC LIBRARIES WHO WOULD COME AND ASK FOR
2 PERMISSION ON A CASE-BY-CASE BASIS.

3 Q. JUST BECAUSE WE'LL BE USING THE TERM TRANSACTIONAL A FAIR
4 AMOUNT DURING OUR DIALOGUE, COULD YOU JUST SAY A FEW MORE WORDS
5 ABOUT WHAT CCC MEANS WHEN IT TALKS ABOUT A TRANSACTIONAL
6 LICENSING SERVICE?

7 A. WELL, IT'S KIND OF AN A LA CARTE SERVICE, SO YOU'RE COMING
8 AND ASKING FOR PERMISSION WHEN YOU NEED IT. SO IT'S, YOU KNOW,
9 IT'S AN OPEN SERVICE WHERE YOU REQUEST PERMISSION ON A
10 CASE-BY-CASE BASIS, AND YOU CAN RECEIVE THOSE PERMISSIONS AT --
11 THE RIGHTSHOLDERS SET THE PRICES. SO THE RIGHTSHOLDER HAS FULL
12 CONTROL OVER THE PRICES SET ON THOSE SERVICES.

13 Q. THANK YOU. AND THEREAFTER AFTER THIS A LA CARTE AS YOU
14 TERMED IT PER USE TRANSACTIONAL SERVICE, DID CCC EVOLVE INTO
15 OTHER OFFERINGS?

16 A. YES.

17 Q. WHAT WAS THE NEXT EVOLUTIONARY STEP?

18 A. IN THE EARLY 1980'S CCC DEVELOPED SOMETHING THAT WE CALL A
19 REPERTORY LICENSE. THIS IS REALLY A SUBSCRIPTION STYLE
20 LICENSE, AND IT WAS REALLY A BREAKTHROUGH FOR THE SEAMLESS
21 USING OF CONTENT.

22 Q. WHAT'S THE DIFFERENCE BETWEEN A REPERTORY STYLE LICENSE
23 AND A TRANSACTIONAL STYLE LICENSE?

24 A. THE BIG DIFFERENCE THAT REALLY MAKES IT EASIER IS IT'S --
25 AS A SUBSCRIPTION MODEL YOU PAY ONCE AS A USER, AND THEN YOU'RE

1 ABLE TO USE ANY OF THE MATERIALS IN THE COLLECTION FOR THAT
2 PERIOD WHICH IS A YEAR. THE LICENSE IS GRANTED ON A ONE-YEAR
3 BASIS, AND SO YOU'RE NOT CONSTANTLY HAVING TO COME AND ASK
4 EVERY TIME, AND THAT WAS REALLY AT THE SUGGESTION OF THE USER
5 COMMUNITY THAT WE INVESTIGATE THAT.

6 THAT WAS INTRODUCED IN THE EARLY 1980'S FOR THE
7 CORPORATE MARKETS AND THE PRICES FOR THAT -- THIS IS A BIG
8 DIFFERENTIATOR SO I'LL JUST NOTE, THE PRICES FOR THAT ARE SET
9 BY A COMMITTEE OF CCC'S BOARD OF DIRECTORS CALLED THE
10 RIGHTSHOLDER COMMITTEE.

11 Q. SO FROM THE STANDPOINT OF THE OUTSIDE WORLD, DO YOU EVER
12 REFER TO THOSE REPERTORY LICENSES AS A BLANKET LICENSE?

13 A. YES.

14 Q. SO FROM THE STANDPOINT OF THE OUTSIDE WORLD, THOSE BLANKET
15 PRICES HAVE PRICES SET BY CCC; WHEREAS, THE TRANSACTIONAL
16 LICENSES REFLECT PRICING OF THE INDIVIDUAL CCC RIGHTSHOLDERS;
17 IS THAT ACCURATE?

18 A. YES, BUT THE PERCEPTION IS THAT THE PRICES ARE SET BY CCC.
19 AGAIN, IT'S THE BOARD COMMITTEE.

20 Q. I UNDERSTAND. AND HOW SUCCESSFUL HAS THAT CORPORATE
21 BLANKET LICENSING PROGRAM BEEN?

22 A. HUGELY SUCCESSFUL.

23 Q. NOW HAVE THERE ALSO BEEN INSTANCES WHERE CCC HAS STEPPED
24 IN TO PROVIDE NEW FORMS OF LICENSES IN RESPONSE TO LEGAL
25 DEVELOPMENTS?

1 A. YES.

2 Q. HAS ANY OF THOSE SITUATIONS INVOLVED COPYING ACTIVITIES ON
3 COLLEGE AND UNIVERSITY CAMPUSES?

4 A. YES.

5 Q. CAN YOU DESCRIBE WHAT YOU HAVE IN MIND?

6 A. WELL, IN MY EARLY TIME AT COPYRIGHT CLEARANCE CENTER, I
7 JOINED IN 89, I BELIEVE IT WAS 1991 WHEN THE KINKO'S DECISION
8 CAME, AND IT WAS -- I THINK IT WAS THE SPRING OF THAT YEAR, IF
9 I REMEMBER CORRECTLY, AND PRIOR TO THAT WE DID NOT HAVE A
10 MEANINGFUL COURSEPACK LICENSING SERVICE.

11 AND THROUGHOUT -- FROM THAT SPRING THROUGHOUT THAT
12 SUMMER -- I REMEMBER THIS WELL BECAUSE I WORKED ON IT -- WE
13 DEVELOPED A LICENSING SERVICE REALLY FROM NOTHING TO HANDLE THE
14 REQUESTS FOR COURSEPACKS FOLLOWING THAT DECISION.

15 Q. WHERE WAS THAT DEMAND COMING FROM FOLLOWING THAT DECISION
16 THAT YOU DEVELOPED THIS PROGRAM?

17 A. THE DEMAND WAS COMING FROM THE MARKET.

18 Q. THE MARKET MEANING?

19 A. THE ACADEMIC INSTITUTIONS, DIFFERENT BOOK STORES, FACULTY
20 MEMBERS. WE WERE REALLY INUNDATED.

21 Q. SO WHAT WAS THE PROGRAM THAT CCC DEVELOPED, AND YOU WERE
22 INVOLVED IN THIS, I TAKE IT?

23 A. YES, I WAS.

24 Q. WHAT WAS THE PROGRAM THAT CCC DEVELOPED?

25 A. THE PROGRAM IS STILL IN EXISTENCE TODAY. IT'S CALLED THE

1 ACADEMIC PERMISSIONS SERVICE.

2 Q. OKAY. CAN YOU DESCRIBE FOR THE COURT THE ESSENTIAL
3 ATTRIBUTES OF THAT SERVICE?

4 A. IT IS A TRANSACTIONAL SERVICE. SO IT'S THE VERSION WHERE
5 YOU COME ON A CASE-BY-CASE BASIS TO ASK FOR PERMISSION. IT IS
6 A SERVICE THAT ENABLES THE USER TO CREATE COURSEPACKS. SO IT
7 GIVES THE USER PERMISSION TO CREATE COURSEPACKS FOR
8 REQUIRED READINGS. IT ALSO ALLOWS CASE-BY-CASE PERMISSIONS
9 FOR DIFFERENT CLASSROOM READINGS POSSIBLY BEYOND THE
10 COURSEPACKS.

11 Q. TO BE CLEAR IS COURSEPACKS IN PAPER FORM ONLY OR ALSO
12 ELECTRONIC FORM?

13 A. NO, ONLY PAPER.

14 Q. ONLY PAPER. AND TO YOUR UNDERSTANDING -- I KNOW YOU'RE
15 NOT A LAWYER, BUT TO YOUR UNDERSTANDING THIS WOULD HAVE
16 ADDRESSED AND DOES ADDRESS THE TYPE OF COPYING SITUATIONS THAT
17 THE KINKO'S LAWSUIT WAS FOCUSING ON; IS THAT YOUR
18 UNDERSTANDING?

19 A. THAT'S MY UNDERSTANDING, YES.

20 Q. AND UNDER THE ACADEMIC PERMISSIONS SERVICE, ARE THERE ANY
21 LIMITS PLACED EITHER BY THE COPYRIGHT CLEARANCE CENTER OR BY
22 INDIVIDUAL RIGHTSHOLDERS ON THE EXTENSIVENESS OF THE EXCERPTS
23 THAT CAN BE LICENSED THROUGH CCC?

24 A. YES.

25 Q. CAN YOU DESCRIBE THAT PLEASE?

1 A. YES. WELL BACK TO THE BALANCE THING, WHEN WE CREATED THE
2 ACADEMIC PERMISSIONS SERVICE THERE WAS A DEFAULT SET OF LIMITS
3 PUT INTO THE CONTRACT FOR RIGHTSHOLDERS, AND THAT DEFAULT IS 25
4 PERCENT OF THE WORK OR TWO CHAPTERS WHICHEVER IS GREATER.

5 Q. WHAT DOES THAT MEAN IN PRACTICE; HOW DOES THAT WORK?

6 A. WELL, IF YOU'RE PLACING AN ORDER IN EXCESS OF THAT, YOU
7 WOULD NEED TO REORGANIZE THAT ORDER --

8 Q. SOMETHING WILL HAPPEN THAT WILL REJECT THAT ORDER?

9 A. YES, YOU WOULDN'T GET THAT ORDER PLACED. SO YOU WOULD
10 HAVE TO REORGANIZE THAT TO PLACE THE ORDER.

11 Q. IS THAT A HARD AND FAST RULE AS IT WERE THAT APPLIES
12 ACROSS ALL RIGHTSHOLDERS OFFERINGS OR CAN RIGHTSHOLDERS MODIFY
13 DEFAULT FUNCTION?

14 A. NO, RIGHTSHOLDERS CAN MODIFY THAT.

15 Q. AND HAVE THEY IN FACT DONE THAT?

16 A. ABSOLUTELY, YES.

17 Q. IN EITHER DIRECTION?

18 A. YES.

19 Q. THAT IS, HAVE THEY BOTH BEEN MORE RESTRICTIVE AND MORE
20 LIBERAL?

21 A. YES, WE ACTUALLY HAVE RIGHTSHOLDERS DEFINITELY WHO LIMIT
22 AND CONSTRAIN IT MORE, AND THEN WE ALSO HAVE RIGHTSHOLDERS WHO
23 ALLOW UP TO AN ENTIRE WORK TO BE COPIED.

24 Q. NOW WHAT ARE A USER'S OPTIONS IF IT GETS A BOUNCE BACK,
25 THAT'S MY PHRASEOLOGY, IF IT HAS A REQUEST THAT EXCEEDS THE

1 AUTHORIZED LIMIT FOR A WORK, WHAT CAN THE USER DO AT THAT
2 POINT?

3 A. WELL, THAT'S MY COMMENT ON REORGANIZING. THEY CAN REQUEST
4 LESS OF THE MATERIAL, AND THEY CAN REASSESS THEIR SITUATION AND
5 SAY WELL, I'LL USE LESS THAN I ORIGINALLY INTENDED. THEY COULD
6 PURCHASE THE WORK. THEY COULD SUPPLEMENT WITH ANOTHER READING,
7 ANOTHER ALTERNATIVE SOURCE. THEY COULD ASK US AT COPYRIGHT
8 CLEARANCE CENTER TO CONTACT THE RIGHTSHOLDER ON THEIR BEHALF,
9 AND WE DO THIS ALL THE TIME, OR THEY COULD CONTACT THE
10 RIGHTSHOLDER DIRECTLY, AND IF THEY DON'T HAVE THAT CONTACT
11 INFORMATION, WE PROVIDE IT TO THEM.

12 Q. IN OTHER WORDS TAKING THOSE LAST TWO OPTIONS, THEY CAN IN
13 ESSENCE SAY WE REALIZE THERE'S A DEFAULT BUT WE WOULD REQUEST
14 EITHER YOU CCC ON OUR BEHALF OR GO DIRECTLY TO THE RIGHTSHOLDER
15 AND SAY WOULD YOU MAKE AN EXCEPTION TO ACCOMMODATE OUR REQUEST;
16 IS WHAT HAPPENS?

17 A. THAT'S WHAT THEY WOULD DO IS ASK US TO DO THAT OR DO IT
18 THEMSELVES.

19 Q. AND THAT PROCESS GOES FORWARD YOU INDICATED WITH SOME
20 FREQUENCY?

21 A. YES, IT DOES.

22 THE COURT: DID YOU SAY THE DEFAULT SETTING WAS 25
23 PERCENT OF THE WORK OF TWO CHAPTERS WHICHEVER IS GREATER?

24 THE WITNESS: YES, I DID.

25 THE COURT: THANK YOU.

ANDRE G. ASHLEY, O.C.R.

1 BY MR. RICH:

2 Q. NOW, HOW MECHANICALLY DO USERS INITIATE LICENSE REQUESTS
3 UNDER THIS ACADEMIC PERMISSIONS SERVICE?

4 A. TODAY THEY CAN GO TO COPYRIGHT DOT COM WHICH IS YOUR
5 WEBSITE AND REQUEST PERMISSION. ALTERNATIVELY, WE HAVE BUILT
6 DIFFERENT OPTIONS, LICENSING OPTIONS INTO OTHER SOFTWARE TO
7 MAKE IT EASY FOR THEM, SOFTWARE THEY REGULARLY USE AS AN
8 ALTERNATIVE TO COPYRIGHT DOT COM.

9 Q. LET'S BREAK THOSE INTO SEPARATE PARTS. STAY WITH THE
10 COPYRIGHT DOT COM INTERFACE, ESSENTIALLY HOW DOES THAT WORK?

11 A. COPYRIGHT DOT COM YOU GO TO THE URL, AS I MENTIONED, AND
12 YOU NEED TO ENTER A FEW BITS OF INFORMATION IN ORDER TO GET
13 PERMISSION SO --

14 Q. IS THAT A LONG LIST OF ITEMS, A SHORT LIST OF ITEMS?

15 A. YOU HAVE TO ENTER TITLE, WHAT TITLE YOU'RE ASKING FOR, THE
16 CLASS YOU WANT TO USE IT IN, HOW MANY STUDENTS AND HOW MANY
17 PAGES YOU WANT TO USE, THOSE ARE REALLY THE ESSENTIAL ITEMS.

18 Q. AND WHAT HAPPENS AT THAT POINT, SO THE USER THEN ENTERS
19 THAT, PUSHES ENTER AND THEN WHAT HAPPENS?

20 A. THE DATABASE RETURNS A RESULT AND LET'S THEM KNOW IF
21 PERMISSION IS GRANTED OR NOT AND GIVES -- IF THERE ARE ANY
22 RIGHTSHOLDER SET TERMS, THOSE ARE GIVEN TO THE USER AT
23 THAT POINT, AND THEN THERE'S KIND OF A SHOPPING CART PROCESS
24 THEY CAN GO THROUGH TYPICAL TO ANY WEBSITE THAT YOU WOULD HAVE
25 USED.

ANDRE G. ASHLEY, O.C.R.

1 Q. WHAT PERCENTAGE OF TRANSACTIONS INVOLVED THE PROCESS YOU
2 JUST DESCRIBED WHICH IS THIS AUTOMATED RESPONSE AND CHECK OUT
3 AND USE?

4 A. WE CALL THEM KIND OF PERAUTHORIZATIONS OR INSTANTLY
5 GRANTED, AND THAT'S THE MAJORITY OF THE PERMISSIONS. SO IT
6 WOULD BE SOMEWHERE IN THE HIGH 80'S, 90 PERCENT IN THAT RANGE.

7 Q. ARE VIRTUALLY INSTANTANEOUSLY FULFILLED?

8 A. YES.

9 THE COURT: COULD AN INDIVIDUAL STUDENT USE THIS
10 SERVICE?

11 THE WITNESS: YES.

12 THE COURT: AND GIVE A CREDIT CARD?

13 THE WITNESS: YES, WE TAKE CREDIT CARD PAYMENTS,
14 AND WE ALSO DO INVOICING BECAUSE SOME INSTITUTIONS PREFER TO BE
15 INVOICED, SO WE OFFER A VARIETY OF DIFFERENT PAYMENT METHODS.

16 THE COURT: AND IF AN INDIVIDUAL STUDENT AS OPPOSED
17 TO ALL MEMBERS OF A CLASS THROUGH THE PROFESSOR USED THAT
18 SERVICE, WOULD IT COST MORE PER PAGE FOR THAT INDIVIDUAL
19 STUDENT?

20 THE WITNESS: NO, IT WOULD NOT.

21 THE COURT: OKAY. IT DOESN'T MATTER HOW MANY COPIES
22 YOU'RE ORDERING?

23 THE WITNESS: RIGHT. SO, FOR EXAMPLE, IF IT WAS 10
24 CENTS A PAGE AND THEY WERE JUST ORDERING A COPY FOR THEMSELVES,
25 THEN IT WOULD JUST BE THE 10 CENTS PER PAGE.

1 THE COURT: OKAY.

2 BY MR. RICH:

3 Q. NOW THERE'S SOME BODY OF MATERIAL THAT FALLS OUTSIDE OF
4 THAT VAST MAJORITY OF INSTANTANEOUS AUTHORIZATIONS, I TAKE IT,
5 YES?

6 A. YES.

7 Q. I'D LIKE TO BREAK THAT INTO TWO PARTS ANALYTICALLY TO
8 UNDERSTAND HOW THE PROCESS WORKS. ARE THERE CERTAIN
9 PARTICIPANTS ON THE RIGHTSHOLDER SIDE IN THE ACADEMIC
10 PERMISSIONS SERVICE WHO AT LEAST FOR SOME OF THEIR WORK SAY
11 WE'RE HAPPY TO HAVE YOU AS OUR LICENSING AGENT BUT WE'RE NOT
12 QUITE PREPARED AS THESE WORKS TO PREAUTHORIZE THEM, TO USE YOUR
13 TERM, WE'D LIKE YOU TO COME BACK CASE-BY-CASE; DOES THAT
14 SOMETIMES HAPPEN?

15 A. YES, THAT DOES HAPPEN.

16 Q. SO WHAT IS THE PROCESS THERE IF A REQUEST FOR SUCH A TITLE
17 IS MADE BY A USER?

18 A. WELL, WE HAVE AUTOMATED THE PROCESS FOR THAT TO MAKE IT AS
19 EASY AS WE CAN ON THE RIGHTSHOLDER TO GRANT PERMISSION VERY
20 EASILY. SO WE'VE BUILT AN ELECTRONIC SYSTEM THROUGH AN ONLINE
21 PORTAL SO THAT RIGHTSHOLDER CAN CHECK THIS. IT'S INSTANT.
22 THEY CAN SEE EXACTLY WHAT THE USER IS ASKING FOR, AND THEN THEY
23 CAN GRANT THE PERMISSION INSTANTLY THROUGH AN ONLINE PORTAL
24 EXCLUSIVELY FOR THAT RIGHTSHOLDER. IN OTHER WORDS, NO OTHER
25 RIGHTSHOLDERS ARE ABLE TO SEE THAT AND ACCESS THEIR

ANDRE G. ASHLEY, O.C.R.

1 INFORMATION, AND THEN IT FLOWS INSTANTLY BACK TO THE USER.

2 SO WITH ANY KIND OF RIGHTSHOLDER SET PRICE OR TERM,
3 IT'S ALL ELECTRONIC. THE REASON THAT WE DID THAT IS WE WANTED
4 TO SPEED THE PROCESS UP TO GET THE COMMISSIONS TO THE USERS AS
5 FAST AS POSSIBLE, AND ALSO AGAIN NOT MAKE THIS HUGE
6 ADMINISTRATIVE BURDEN ON OUR RIGHTSHOLDERS.

7 Q. WHAT'S YOUR TRACK RECORD IN GETTING CLEARANCES ON THIS
8 TYPE OF TRANSACTION WHERE IT'S SORT OF THE CASE-BY-CASE
9 AUTHORIZED?

10 A. IT'S MORE THAN 80 PERCENT.

11 Q. ARE AUTHORIZED?

12 A. ARE GRANTED, YES, ARE GRANTED.

13 Q. AND THEN IS THERE ALSO A SITUATION WHERE A USER IS LOOKING
14 FOR MATERIAL BUT CAN'T FIND IT WITHIN YOUR REPERTORY OF
15 LICENSED WORKS AT ALL, DO THEY EVER CONTACT CCC AND ASK CCC IF
16 YOU CAN FIND THE RIGHTSHOLDER AND TRY TO MAKE A TRANSACTION
17 HAPPEN?

18 A. YES.

19 Q. CAN YOU DISCUSS THAT CIRCUMSTANCE?

20 A. YES, THEY CAN REQUEST -- OUR SERVICES ARE NOT LIMITED TO
21 THE RIGHTS THAT WE HAVE IN THE COLLECTION TODAY, WHETHER THEY
22 ARE PREAUTHORIZED OR NOT. SO IF THERE'S JUST A WORK, ANY WORK,
23 I MEAN IT COULD BE A WORK THAT WAS JUST CREATED YESTERDAY, A
24 NEWSPAPER ARTICLE THAT WAS PUBLISHED THIS MORNING, IF IT'S NOT
25 IN OUR COLLECTION WE WILL GO AND SEEK IT ON THEIR BEHALF.

1 AND WE DO HAVE AUTOMATED METHODS, BUT IT DOESN'T
2 NECESSARILY HAVE TO FLOW THROUGH THAT PORTAL IF IT'S NOT A
3 RIGHTSHOLDER WHO'S WORKING WITH US TODAY. WE WOULD CONTACT
4 THAT RIGHTSHOLDER AND THEN FLOW THE PERMISSION RIGHTS BACK
5 THROUGH THE SAME WEB INTERFACE. SO WE HAVE A METHOD OF
6 ELECTRONICALLY CONTACTING THE USER THERE.

7 THE COURT: YOU SAID THAT MORE THAN 80 PERCENT OF
8 SOMETHING WAS GRANTED; COULD YOU GO BACK AND FILL IN THAT BLANK
9 FOR ME AGAIN?

10 THE WITNESS: YES. FOR THE PORTION OF THE REQUESTS
11 THAT ARE NOT INSTANTLY AUTHORIZED, SO THE MAJORITY ARE
12 INSTANTLY AUTHORIZED, THAT'S THE CLOSE TO 90 PERCENT, BUT FOR
13 THE MINORITY THAT WE HAVE TO SEEK PERMISSIONS ON A KIND OF
14 SPECIAL ORDER BASIS, WE CALL IT AT CCC, HERE WHEN WE DO SEEK
15 PERMISSION ON A SPECIAL ORDER BASIS OVER 80 PERCENT ARE GRANTED
16 WHEN WE ACTUALLY GO OUT AND ASK RIGHTSHOLDERS.

17 GENERALLY RIGHTSHOLDERS ARE PRETTY RECEPTIVE TO THESE
18 REQUESTS. SO THEY'RE PRETTY RECEPTIVE, BUT THEY MIGHT HAVE
19 REASONS THAT THEY CAN'T INSTANTLY AUTHORIZE THAT ARE PECULIAR
20 TO THEIR BUSINESS SO JUST CALL AND ASK THEM OR ELECTRONICALLY
21 ASK THEM.

22 BY MR. RICH:

23 Q. ABOUT HOW MANY U.S. TITLES ARE AVAILABLE THROUGH CCC'S
24 ACADEMIC PERMISSIONS SERVICE?

25 A. ABOUT TWO AND A HALF MILLION TITLES.

ANDRE G. ASHLEY, O.C.R.

1 Q. AND WHEN YOU USE THE WORD TITLES IN THAT ANSWER, WHAT DOES
2 A TITLE CONSTITUTE?
3 A. WELL, I WOULD DESCRIBE IT AS A MAIN TITLE.
4 Q. GIVE ME AN EXAMPLE?
5 A. WELL, THE NEW YORK TIMES IS A MAIN TITLE. SO ALL OF THE
6 ARTICLES PUBLISHED IN THE NEW YORK TIMES ARE EACH INDIVIDUAL
7 THINGS THAT COULD BE LICENSED, BUT WITHIN THE COLLECTION OF THE
8 2.5 MILLION NUMBER THAT I JUST GAVE YOU, THE NEW YORK TIMES
9 EQUALS ONE.
10 Q. NOW FOLLOWING THE DEVELOPMENT OF THE ACADEMIC PERMISSIONS
11 SERVICE, DID CCC DEVELOP ANY ADDITIONAL LICENSES WITH
12 APPLICATION TO THE ACADEMIC ENVIRONMENT?
13 A. YES.
14 Q. WHAT CAME NEXT?
15 A. AFTER THE ACADEMIC PERMISSIONS SERVICE CAME -- WE HAVE A
16 LOT OF BIG NAMES -- CAME SOMETHING CALLED THE ELECTRONIC COURSE
17 CONTENT SERVICE.
18 Q. IS THAT SOMETIMES USED IN THE ACRONYM ECCS?
19 A. WE SPECIALIZE IN ACRONYMS.
20 Q. I THINK THE COURT SAW ONE OF MORE EXHIBITS WHICH LISTED
21 MAYBE A FURTHER ABBREVIATION OF ECC, IT'S THE SAME?
22 A. YEAH.
23 Q. OKAY. CAN YOU DESCRIBE WHAT IS THE ELECTRONIC COURSE
24 CONTENT SERVICE AND WHAT USES OF MATERIALS DOES IT COVER?
25 A. YES, SO THE ELECTRONIC COURSE CONTENT SERVICE CAME IN THE

1 LATE 1990'S, AND BASICALLY IT'S THE DIGITAL EQUIVALENT OF THE
2 ACADEMIC PERMISSIONS SERVICE.

3 Q. AND WHAT TYPES OF USES IN ACADEME DOES THIS LICENSE COVER?

4 A. IT COVERS ELECTRONIC -- IT'S ALL OF THE ELECTRONIC
5 VERSIONS OF THE APS. SO IT'S THE ELECTRONIC COURSEPACK, AND
6 THEN IT'S THE ELECTRONIC READINGS THAT MAY BE BEYOND A
7 COURSEPACK. SO IT'S ALL ELECTRONIC USE FOR THE CLASSROOM
8 PURPOSE.

9 Q. ARE YOU GENERALLY FAMILIAR WITH THE ERES AND ULEARN
10 SYSTEMS THAT HAVE BEEN IN OPERATION AT GEORGIA STATE
11 UNIVERSITY?

12 A. GENERALLY, YES, I AM.

13 Q. AND DOES THE ELECTRONIC COURSE CONTENT SERVICE ENCOMPASS
14 USES OF CCC AUTHORIZED MATERIAL ON SYSTEMS SUCH AS ERES AND
15 ULEARN?

16 A. YES.

17 Q. NOW, WHAT WAS THE BACKGROUND TO THE CREATION OF THE ECCS;
18 WHAT CAUSED IT TO BE DEVELOPED BY CCC?

19 A. WELL, WE WERE GETTING A LOT OF CALLS FROM OUR ACADEMIC
20 CUSTOMERS AT THE TIME WHO WERE REALLY FRUSTRATED. THEY NEEDED
21 PERMISSIONS FOR THE ELECTRONIC EQUIVALENTS. THEY HAD AN
22 INCREASING DEMAND FROM THEIR FACULTY MEMBERS FOR THESE
23 MATERIALS TO BE POSTED DIGITALLY.

24 AT THAT TIME A LOT OF PEOPLE WERE DOING BOTH THE
25 PAPER COURSEPACK AND THE DIGITAL VERSION, YOU KNOW, THEY WERE

ANDRE G. ASHLEY, O.C.R.

1 BOTH BEING USED, AND THEY NEEDED THOSE RIGHTS, AND SO THEY
2 ASKED US TO DO THIS. SO THE DEMAND FOR THAT REALLY CAME FROM
3 THE USER SIDE.

4 Q. WHAT DID IT REQUIRE CCC TO DO ON THE RIGHTSHOLDER'S SIDE
5 IN ORDER TO BE AUTHORIZED TO EXPAND THE SCOPE OF ITS LICENSE
6 AUTHORITY?

7 A. A LOT OF WORK. WE HAD TO GO TO RIGHTSHOLDERS AND
8 BASICALLY LAY THIS OUT AND SAY THIS IS WHAT'S HAPPENING, THIS
9 IS WHAT THE USERS' NEEDS ARE, AND WE NEED TO DO SOMETHING ABOUT
10 THIS.

11 SO WE PUT KIND OF A PROJECT TEAM, A TASK FORCE
12 TOGETHER TO WORK ON THIS AND GO AND MEET WITH DIFFERENT
13 RIGHTSHOLDERS AND DIFFERENT ASSOCIATIONS AND SAY, YOU KNOW, HOW
14 CAN WE MOVE THIS FORWARD AND THAT EVENTUALLY LED TO WHAT WAS TO
15 BECOME THE ELECTRONIC COURSE CONTENT SERVICE.

16 Q. IS THE ELECTRONIC COURSE CONTENT SERVICE ALSO A
17 TRANSACTIONAL SYSTEM?

18 A. YES, IT IS.

19 Q. AND SO I TAKE IT THAT THE PRICES REQUESTED AND OFFERED AND
20 AVAILABLE THROUGH THIS SERVICE LIKE IN THE ACADEMIC PERMISSIONS
21 SERVICE ARE SET BY THE INDIVIDUAL RIGHTSHOLDER?

22 A. YES, THEY ARE.

23 Q. AND ARE THE SAME SORTS OF LIMITS ON PREAUTHORIZED COPYING
24 THAT ARE IMPOSED EITHER BY CCC OR BY THE RIGHTSHOLDERS UNDER
25 THE ACADEMIC PERMISSIONS SERVICE, ARE THOSE APPLICABLE ALSO

1 UNDER THE ELECTRONIC COURSE CONTENT SERVICE?

2 A. YES, THEY ARE THE SAME.

3 Q. AND WHAT ABOUT THE USER INTERFACE WITH CCC, IS THAT THE

4 SAME OR IS THAT DIFFERENT?

5 A. IT'S THE SAME. YOU USE THE COPYRIGHT DOT COM OR THE

6 DIFFERENT CHANNELS AS I MENTIONED.

7 Q. AND IS THERE A LARGE BODY OF PREAUTHORIZED WORKS AVAILABLE

8 AS YOU TESTIFIED TO WITH RESPECT TO THE ACADEMIC PERMISSIONS

9 SERVICE?

10 A. IT'S APPROXIMATELY TWO MILLION.

11 Q. AND HOW DO RIGHTSHOLDERS STRUCTURE THEIR PRICING IN

12 OFFERING LICENSES AND PERMISSIONS UNDER THE ECC?

13 A. WELL, THEY CAN STRUCTURE IT BY ARTICLE OR BY CHAPTER.

14 THEY CAN STRUCTURE IT ON A PER PAGE BASIS. WE GIVE THEM

15 DIFFERENT OPTIONS, AND THEY CAN ALSO USE COMBINATIONS OF THE

16 OPTIONS.

17 Q. IS THERE ONE APPROACH WHICH IS THE MOST COMMON?

18 A. THE MOST COMMONLY USED IS THE PER PAGE.

19 Q. AND WHAT IS THE USUAL RANGE OF PRICING ON A PER PAGE BASIS

20 IN CCC'S EXPERIENCE?

21 A. I WOULD SAY THE RANGE IS ABOUT 10 TO 25 CENTS.

22 Q. PER PAGE?

23 A. PER PAGE, YEAH.

24 Q. AND DO THE THREE PLAINTIFFS IN THIS CASE SPECIFICALLY

25 PARTICIPATE IN THE ELECTRONIC COURSE CONTENT SERVICE?

ANDRE G. ASHLEY, O.C.R.

1 A. YES.

2 Q. I DIDN'T ASK YOU, BUT DO THEY ALSO PARTICIPATE IN THE
3 ACADEMIC PERMISSIONS SERVICE?

4 A. YES.

5 MR. RICH: YOUR HONOR, MAY I APPROACH?

6 THE COURT: YOU MAY.

7 BY MR. RICH:

8 Q. MS. ARMSTRONG, IF YOU WOULD TAKE A LOOK AT THE FIRST
9 TABBED MATERIAL IN YOUR BINDERS, YOU'LL SEE DOCUMENTS MARKED
10 PLAINTIFFS' TRIAL EXHIBITS 3, 4, AND 5 UNDER THE CCC ROYALTIES
11 TO CAMBRIDGE TAB?

12 A. YES, I SEE THEM.

13 Q. ARE YOU ABLE TO IDENTIFY WHAT WE'VE MARKED AS TRIAL
14 EXHIBITS 3, 4 AND 5?

15 A. YES.

16 Q. COULD YOU DESCRIBE WHAT THAT IS PLEASE?

17 A. THESE ARE ROYALTY STATEMENTS FROM COPYRIGHT CLEARANCE
18 CENTER TO CAMBRIDGE UNIVERSITY PRESS.

19 MR. RICH: YOUR HONOR, WE'D LIKE TO OFFER THOSE INTO
20 EVIDENCE AT THIS TIME.

21 MR. SCHAETZEL: YOUR HONOR, SUBJECT TO A CHANCE TO
22 CHECK FOR OBJECTIONS, I NOTICE THEY ARE OUTSIDE THE TIME
23 PERIOD. I DON'T KNOW THAT WE'VE HAD A CHANCE TO TALK ABOUT
24 THEM WITH OPPOSING COUNSEL.

25 THE COURT: WHAT'S THE STATUS OF THE PRETRIAL ORDER?

1 ARE THERE OBJECTIONS THAT ARE IN THE PRETRIAL ORDER?

2 MS. SINGER: YOUR HONOR, IF I MAY, IT WAS A RELEVANCE
3 OBJECTION THAT WAS WITHDRAWN FOR THE REST OF THE CAMBRIDGE
4 EXHIBITS. IT'S OUTSIDE THE TIME PERIOD, BUT IT ALSO INCLUDES
5 THE TIME PERIOD.

6 THE COURT: YOU MEAN EACH OF THESE EXHIBITS INCLUDES
7 BOTH?

8 MR. RICH: YOUR HONOR, TO BE SPECIFIC PLAINTIFFS'
9 EXHIBIT 3, IF THE WITNESS WILL CORRECT ME IF I'M WRONG, COVERS
10 CCC'S 2009 FISCAL YEAR. FOUR COVERS THE JULY 2010 FISCAL YEAR,
11 AND FIVE COVERS THE JULY 1 - JUNE 30 FY11 FISCAL YEAR, AND THEN
12 WE WERE PROPOSING TO OFFER THE COMPARABLE EXHIBITS WITH RESPECT
13 TO OXFORD UNIVERSITY PRESS WHICH ARE 346, 347 AND 348.

14 MR. SCHAEZEL: I HAVE NOT HAD A CHANCE TO LOOK AT
15 THOSE, BUT GENERICALLY, YOUR HONOR, WHAT I NOTICE ABOUT
16 PLAINTIFFS' EXHIBIT 3 IS THAT THERE IS NO OBJECTION BECAUSE AS
17 EXPLAINED EARLIER IT'S FOR FISCAL YEAR 09, BUT THE NEXT TWO
18 DOCUMENTS, HOWEVER, WHICH IS 4 AND 5, WE DID MAKE AN OBJECTION
19 ON THE TIME PERIOD, AND I DO NOT BELIEVE THAT THOSE INCLUDE 09
20 BUT RATHER --

21 THE COURT: I'M SORRY, YOU SAY YOU DID NOT MAKE AN
22 OBJECTION ON 4 AND 5?

23 MR. SCHAEZEL: YES, WE DID MAKE AN OBJECTION ON 4
24 AND 5, AND I BELIEVE THAT THESE DO NOT INCLUDE THE 09 TIMEFRAME
25 BUT RATHER ARE FOR FISCAL YEAR 2010 AND FISCAL YEAR 2011,

1 RESPECTFULLY, IF I'M READING THE DOCUMENT CORRECTLY.

2 SO WE HAVE NO OBJECTION TO WHAT'S AT TRIAL EXHIBIT 3,
3 BUT WE MAINTAIN OUR OBJECTION TO THE TIME FACTOR OF 4 AND 5.

4 MR. RICH: YOUR HONOR, MAY WE ELICIT FROM THE WITNESS
5 WHAT THE FISCAL YEARS ENCOMPASS?

6 THE COURT: YES.

7 BY MR. RICH:

8 Q. COULD YOU EXPLAIN WHAT FY 2010 ENCOMPASSES?

9 A. CCC IS NOT ON A CALENDAR YEAR FOR OUR FISCAL YEAR. OUR
10 FISCAL YEAR BEGINS JULY 1 AND END JULY 30. SO I BELIEVE ON
11 THIS EXHIBIT 4 WHICH SAYS STARTING IN JULY OF FY10 THAT
12 ACTUALLY WOULD BE JULY OF 2009 CALENDAR YEAR BECAUSE THE FISCAL
13 YEAR IS, YOU KNOW, THE WAY WE ARTICULATE OUR FISCAL YEARS IS IN
14 THE YEARS THAT IT ENDS. SO FY10 WOULD HAVE ENDED ON JULY 30 OF
15 2010 AND BEGUN ON JULY 1 OF 2009.

16 MR. RICH: SO IF I UNDERSTAND THAT CORRECTLY, YOUR
17 HONOR, IT WOULD ENCOMPASS THE MAYMESTER THROUGH THE FALL OF 09
18 AND WOULD ENCOMPASS AT LEAST PORTIONS OF BOTH PROPOSED EXHIBITS
19 3 AND 4.

20 THE COURT: I WILL ADMIT 3 AND 4. WHAT ELSE HAVE YOU
21 GOT ON FIVE?

22 MR. RICH: FIVE IS FY11 WHICH WOULD BE BEGINNING IN
23 JULY 1 OF 2010 GOING FORWARD.

24 THE COURT: WHAT'S THE PURPOSE OF THE EXHIBIT?

25 MR. RICH: IT WAS SIMPLY TO ROUND OUT THAT

1 PERMISSIONS INCOME IS IMPORTANT TO THESE PLAINTIFFS, YES, YOUR
2 HONOR.

3 THE COURT: I WAS ASSUMING THAT YOU WANTED THEM IN TO
4 SHOW SOME KIND OF TREND IN THE REVENUES. HOW WOULD IT SHOW
5 THAT PERMISSIONS INCOME IS IMPORTANT?

6 MR. RICH: SIMPLY BY THE MAGNITUDE OF IT, YOUR HONOR,
7 AND THERE ARE STIPULATED FACTS IN THE RECORD AS TO A NUMBER OF
8 THESE DATA ALREADY.

9 I WAS NOT SPECIFICALLY PROPOSING TO SHOW IT FOR ANY
10 TRENDING DATA AND WAS NOT GOING TO ASK THE WITNESS ABOUT THAT.

11 THE COURT: WELL, THERE MAY BE SOME INSTANCES WHERE
12 INFORMATION OUTSIDE THE PERIOD THAT I DESIGNATED IS RELEVANT.
13 MY IDEA ON PUTTING PARAMETERS ON THE PERIOD WITHIN WHICH WE
14 COULD DISCUSS THE RELATIVE MERITS OR DEMERITS OF THE COPYRIGHT
15 CLAIMS WAS SIMPLY TO GIVE US A KNOWN AND FAIR FIELD OF ALLEGED
16 INFRINGEMENTS TO WORK WITH.

17 MR. RICH: YOUR HONOR, WE ARE PREPARED TO WITHDRAW
18 PLAINTIFF'S EXHIBIT 5.

19 THE COURT: OKAY. ALL RIGHT. THAT MAKES IT EASY.
20 BY MR. RICH:

21 Q. AND, MS. ARMSTRONG, IF YOU WOULD TURN TO THE NEXT TAB
22 PLEASE WHICH IS COMPARABLE DATA I TAKE IT FROM OXFORD
23 UNIVERSITY PRESS FOR THOSE THREE FISCAL PERIODS; IS THAT
24 ACCURATE?

25 A. THAT'S ACCURATE.

1 MR. RICH: YOUR HONOR, WE WOULD OFFER PLAINTIFFS' 346
2 AND 347 AND WITHDRAW PROPOSING TO OFFER PLAINTIFFS' EXHIBIT 348
3 WHICH DEALS WITH THE FY 2011 PERIOD.

4 MR. SCHAEZEL: NO OBJECTION, YOUR HONOR.

5 THE COURT: I'LL ADMIT 346 AND 347, AND 348 HAS BEEN
6 WITHDRAWN.

7 MR. RICH: THANK YOU, YOUR HONOR.

8 BY MR. RICH:

9 Q. NOW YOU EARLIER MADE A REFERENCE TO THE FACT THAT CCC
10 CHARGES CERTAIN USER FEES; DO YOU RECALL THAT?

11 A. YES.

12 Q. SPECIFICALLY IN CONNECTION WITH THE ACADEMIC PERMISSIONS
13 SERVICE AND THE ELECTRONIC COURSE CONSENT SERVICE ARE THERE ANY
14 SUCH FEES IMPOSED?

15 A. USER FEES, YES, THERE ARE.

16 Q. COULD YOU DESCRIBE THAT TO THE COURT PLEASE?

17 A. THE USER FEES ARE CURRENTLY 3.50 PER -- JUST TO BE CLEAR,
18 IT'S A PAY PER USE. SO WHEN YOU'RE COMING IN AND PLACING THAT
19 ORDER FOR PERMISSIONS, IT WOULD BE \$3.50 ON THAT ORDER THAT
20 YOU'RE PLACING.

21 Q. COULD I GIVE A COUPE OF HYPOTHETICALS TO SEE IF WE
22 UNDERSTAND WHAT THAT MEANS? IF I AM A PROFESSOR AND I PLACE AN
23 ORDER TO ALLOW MY CLASS OF 20 STUDENTS TO USE A PARTICULAR
24 EXCERPT --

25 A. YES.

1 Q. -- HOW DOES THE SERVICE FEE GET COMPUTED ON THAT ORDER?

2 A. IT'S A FLAT FEE OF \$3.50.

3 Q. JUST ONE FEE OF \$3.50?

4 A. YES.

5 Q. OKAY. AND AS OF 2009 WHAT WAS THE LEVEL OF THE SERVICE

6 FEE CHARGED?

7 A. THREE DOLLARS.

8 THE COURT: ARE WE STILL TALKING ABOUT THE ELECTRONIC

9 COURSE CONTENT SERVICE?

10 MR. RICH: I BELIEVE BOTH.

11 THE WITNESS: THAT IS CORRECT, IT'S APPLIED TO BOTH

12 OF THOSE SERVICES.

13 BY MR. RICH:

14 Q. AND YOU INDICATED THE NUMBERS OF U.S. TITLES AVAILABLE FOR

15 LICENSING UNDER THE ACADEMIC PERMISSIONS SERVICE, SAME

16 QUESTION, APPROXIMATELY HOW MANY U.S. TITLES ARE AVAILABLE FOR

17 LICENSING THROUGH THE ELECTRONIC COURSE CONTENT SERVICE?

18 A. APPROXIMATELY TWO MILLION.

19 Q. OKAY. IN THE PAST FIVE YEARS HOW MANY PERMISSIONS

20 REQUESTS FOR ACADEMIC USES OF CCC LICENSED MATERIALS HAS CCC

21 PROCESSED IN THE LAST FIVE YEARS?

22 A. MILLIONS.

23 Q. AND FROM THE INCEPTION OF THE ACADEMIC PERMISSIONS SERVICE

24 AND THE ELECTRONIC COURSE CONTENT SERVICE PROGRAMS, HOW MUCH IN

25 ROYALTY DISTRIBUTIONS IN COMBINATION HAS CCC PAID OUT TO ITS

1 RIGHTSHOLDERS?

2 A. SINCE INCEPTION, IT'S APPROXIMATELY 230 MILLION.

3 Q. ABOUT HOW MANY COLLEGES AND UNIVERSITIES CURRENTLY UTILIZE
4 THE ACADEMIC PERMISSIONS SERVICE AND ECCS SERVICES FOR
5 LICENSING COURSE READING MATERIALS?

6 A. APPROXIMATELY A THOUSAND U.S. INSTITUTIONS, COLLEGES AND
7 UNIVERSITIES.

8 Q. AND CAN YOU PROVIDE A FEW EXAMPLES THAT ELICIT THE RANGE
9 OF THOSE INSTITUTIONS?

10 A. SURE, IT'S KIND OF THE TYPICAL STATE COLLEGE, THE
11 COMMUNITY COLLEGE, PUBLIC AND PRIVATE. WE HAVE COLLEGES, LARGE
12 IVY LEAGUE SCHOOLS. IT'S JUST A REALLY, REALLY WIDE RANGE OF
13 INSTITUTIONS THAT ARE USING THIS SERVICE TODAY.

14 Q. NOW YOU'VE DISCUSSED THE EARLIEST TRANSACTIONAL PROGRAM
15 WHICH INCLUDED I THINK YOU MENTIONED ACADEMIC LIBRARY USERS.
16 YOU'VE DISCUSSED THE APS, AND YOU'VE DISCUSSED THE ECCS.

17 IS THERE STILL ANOTHER PROGRAM THAT CCC HAS DEVELOPED
18 IN ITS INTERFACE WITH THE ACADEMIC COMMUNITY?

19 A. YES. CAN I EXPLAIN IT?

20 Q. PLEASE.

21 A. THAT IS THE EQUIVALENT TO THE CORPORATE REPERTORY THAT WE
22 HAD DONE IN THE EARLY 1980'S WE DID THEN IN THE ACADEMIC
23 SERVICE. SO THIS IS THE REPERTORY MODEL, THE SUBSCRIPTION
24 MODEL WHERE YOU PAY ONCE AND YOU CAN USE MATERIALS FROM THAT
25 COLLECTION FOR THE PERIOD OF THE ONE YEAR OF THE LICENSE.

ANDRE G. ASHLEY, O.C.R.

1 Q. AND IF YOU WOULD TURN TO THE TAB MARKED DEFENDANTS'
2 EXHIBIT 68 IN YOUR BINDER, CAN YOU IDENTIFY WHAT THAT DOCUMENT
3 IS?

4 A. THIS IS OUR -- WHAT WE CALL OUR USER AGREEMENT OR THE
5 LICENSE FOR THE ANNUAL ACADEMIC COPYRIGHT LICENSE THAT I WAS
6 JUST DESCRIBING. THIS IS FOR THE ACADEMIC INSTITUTIONS TO
7 SIGN.

8 MR. RICH: THANK YOU AND, YOUR HONOR, WE WOULD OFFER
9 THAT DOCUMENT I ASSUME WITHOUT OBJECTION INTO EVIDENCE.

10 MR. SCHAETZEL: NO OBJECTION.

11 THE COURT: IT'S ADMITTED.

12 MR. RICH: THAT'S DEFENDANTS' EXHIBIT 68.

13 BY MR. RICH:

14 Q. NOW WHOSE COPYING ACTIVITIES INSIDE OF THE USER, WHOSE
15 COPYING ACTIVITIES ARE COVERED BY THIS REPERTORY ANNUAL
16 COPYRIGHT LICENSE?

17 A. LITERALLY EVERYONE ON THE CAMPUS, THE STUDENTS, THE
18 FACULTY MEMBERS, THE PRESIDENT OF THE COLLEGE, ANYBODY REALLY.
19 THAT'S WHAT THEY LIKE ABOUT IT. IT JUST ENABLES ANYBODY TO USE
20 THE MATERIALS THAT ARE COVERED.

21 Q. DOES A STUDENT NEED TO BE SITTING IN HIS DORM ROOM SITTING
22 AT HIS COMPUTER LET'S SAY OR IN THE LIBRARY TO ACCESS AND BE
23 AUTHORIZED TO USE THE MATERIALS?

24 A. THE STUDENT COULD BE A DISTANCE LEARNER. THE STUDENT
25 COULD BE IN ANOTHER COUNTRY. IF THEY ARE A STUDENT OF THAT

1 ORGANIZATION, NO MATTER WHERE THEY ARE IN THE WORLD THEY ARE
2 COVERED BY THIS LICENSE.

3 Q. WHAT DEVICES FOR ACCESSING THE MATERIAL ARE COVERED BY THE
4 LICENSE?

5 A. IT IS A DEVICE NEUTRAL LICENSE. THEY CAN LITERALLY USE
6 ANY DEVICE. SO WE HAVE KIDS THAT CONSUME ON THE TABLET
7 DEVICES, PHONE, THE LAPTOP. ANY TECHNOLOGY CAN BE USED TO
8 CONSUME THE CONTENT UNDER THE LICENSE.

9 Q. NOW THE KINKO'S CASE TO WHICH YOU REFERRED DEALT WITH COPY
10 SHOP CREATION OF COURSEPACKS; IS THAT YOUR UNDERSTANDING?

11 A. YES.

12 Q. HOW DOES THIS LICENSE DEAL WITH THAT OR DOES IT?

13 A. THIS LICENSE INCLUDES ANY TYPE OF REUSE. SO IT IS THE
14 PHYSICAL COURSEPACKS ARE COVERED BY THIS LICENSE. THE DIGITAL
15 USES ARE COVERED BY THIS LICENSE AND ANY TYPE OF -- ANY MEDIUM
16 OF SHARING CONTENT IS COVERED HERE.

17 Q. BUT WHAT ABOUT LITERALLY DOES IT COVER THAT CAMPUS COPY
18 SHOP, TOO, AS WELL AS MEMBERS OF THE UNIVERSITY ITSELF?

19 A. OH, I MISUNDERSTOOD. YES, IT DOES. BECAUSE THERE ARE
20 DIFFERENT VENDORS THAT SERVICE THE CAMPUS, WE CREATED THE
21 LICENSE SO THAT THE ACADEMIC INSTITUTION IS ABLE TO ADD
22 DIFFERENT -- LET'S SAY A BOOKSTORE OR COPY SHOP THAT MIGHT BE
23 EVEN DOWNTOWN TYPE OF A THING, THEY'RE ABLE TO ADD THAT INTO
24 THE LICENSE. THEY HAVE TO DO THAT, THEY HAVE TO ADD IT IN, BUT
25 IF THEY'RE ADDED IT IN, THEN ANY OF THE MATERIALS THAT ARE

1 PRODUCED AT LET'S SAY A COPY SHOP DOWNTOWN SO LITERALLY OFF
2 CAMPUS, THAT COULD BE COVERED UNDER THIS LICENSE.

3 Q. AND, AGAIN, WOULD YOU ADVISE THE COURT HOW THE PRICE
4 WORKS? THIS IS A REPERTORY LICENSE, CORRECT?

5 A. RIGHT, SO IT'S A COLLECTION OF WORKS.

6 Q. AND DOES THAT MEAN CONSISTENT WITH WHAT YOU DESCRIBED
7 BEFORE, IT MEANS A PRICE IS DETERMINED FOR AN ANNUAL LICENSE
8 AND THAT IS THE FEE?

9 A. YES, AND THAT PRICE, JUST TO CLARIFY AGAIN, IS SET BY THE
10 RIGHTSHOLDER COMMITTEE OF CCC'S BOARD, BUT, YES, IT'S ONE PRICE
11 FOR EVERYTHING IN THE COLLECTION, EVERY TITLE.

12 Q. DOES THAT PRICE DURING THE TERM OF THE LICENSE GO UP OR
13 DOWN OR CAN IT BASED ON HOW MUCH USE IS ACTUALLY MADE OF THE
14 LICENSED MATERIAL?

15 A. NO, IT COULDN'T BECAUSE USERS WOULDN'T TOLERATE IT. NO,
16 IT ABSOLUTELY STAYS THE SAME.

17 Q. AND LET'S GO TO THE QUESTION OF HOW THE PRICES THEMSELVES
18 ARE ACTUALLY ESTABLISHED FOR AN INDIVIDUAL LICENSE. WHAT ARE
19 THE DETERMINANTS OF THE ACTUAL PRICING OF THAT LICENSE?

20 A. OKAY. THERE ARE SEVERAL FACTORS THAT GO INTO PRICING THE
21 LICENSE. ONE IS THE NUMBER OF STUDENTS ON THE CAMPUS, AND
22 THAT'S TAKEN ON A FULL TIME EQUIVALENT BASIS.

23 AND THEN THE OTHER MAJOR FACTOR IS THE ACADEMIC
24 INSTITUTION -- WE TOOK A CLASSIFICATION SYSTEM THAT WAS ALREADY
25 EXISTING IN THE MARKET CALLED THE CARNEGIE CLASSIFICATION

1 SYSTEM. WE DID NOT DEVELOP THIS IN OTHER WORDS, AND WE USED
2 THAT SYSTEM, THAT CLASSIFICATION SYSTEM AND DEPENDING ON WHERE
3 THE ACADEMIC INSTITUTION FALLS IN THAT CLASSIFICATION SYSTEM
4 THAT ALSO IMPACTS THE PRICE, AND THAT IS -- A LARGE FACTOR IN
5 THAT CLASSIFICATION SYSTEM THAT I'M REFERRING TO IS THE
6 PROPORTION OF GRADUATE TO UNDERGRADUATE STUDENTS ON CAMPUS, AND
7 THAT ALSO TIES DIRECTLY TO THE AMOUNT OF CONTENT USE ON CAMPUS
8 BASED ON EXTENSIVE, EXTENSIVE STUDIES THAT WE DID ON THIS
9 TOPIC.

10 Q. NOW I MEANT TO ASK YOU WHAT WAS THE IMPETUS FOR DEVELOPING
11 THIS PARTICULAR LICENSE OFFERING TO THE ACADEMIC COMMUNITY?

12 A. WELL, THIS HAS BEEN GOING ON FOR A LONG TIME. THE
13 DEVELOPMENT OF THIS WAS YEARS, MANY YEARS, AND IT INVOLVED
14 RIGHTSHOLDERS AND USERS.

15 BUT THE REAL DEMAND CAME FROM THE USER COMMUNITY
16 BECAUSE, AS I JUST SAID, THIS OFFERS A LOT OF SEAMLESSNESS
17 REALLY TO THE USERS. THEY NEEDED TO BE ABLE TO COVER THE
18 STUDENTS NO MATTER WHERE THEY WERE, THE DIFFERENT TYPES OF
19 TECHNOLOGY THAT THE STUDENTS CONSUME THE CONTENT, SO THAT IS
20 REALLY HOW IT WAS DERIVED.

21 AND WE WORKED WITH OVER A HUNDRED ACADEMIC
22 INSTITUTIONS IN DEVELOPING THIS, AND ABOUT SOMEWHERE AROUND A
23 DOZEN, A LITTLE BEST LESS ON THE RIGHTSHOLDER SIDE. WE WORKED
24 ACTUALLY WITH PUBLISHERS IN DEVELOPING THIS.

25 WE ACTUALLY REALLY HAD A WORKING GROUP AND AN INITIAL

ANDRE G. ASHLEY, O.C.R.

1 LICENSEE WHO HELPED TO REALLY ARTICULATE WHAT THE LICENSE
2 NEEDED TO BE, AND OVER A PERIOD OF ABOUT ROUGHLY TWO YEARS WE
3 WERE ABLE TO COME UP WITH -- THIS IS LIKE THE FINAL PHASE --
4 COME UP WITH THIS LICENSE.

5 Q. APPROXIMATELY HOW MANY TITLES ARE AVAILABLE TO SOMEONE WHO
6 SIGNS FOR USE AS YOU'VE DESCRIBED WHO SIGNS ONE OF THESE ANNUAL
7 ACADEMIC COPYRIGHT LICENSES?

8 A. WELL, WE'RE ADDING TITLES TO THIS LICENSE AT A PRETTY
9 RAPID PACE. WE'RE CURRENTLY AT APPROXIMATELY TWO MILLION.

10 THE COURT: YOU SAID THAT ONE OF THE FACTORS, I THINK
11 YOU SAID THAT GOES INTO THIS CARNEGIE CLASSIFICATION SYSTEM IS
12 THE PROPORTION OF GRADUATE STUDENTS TO UNDERGRADUATES; DID YOU
13 SAY THAT?

14 THE WITNESS: YES, I DID SAY THAT. THAT'S MY
15 UNDERSTANDING. AS I SAID, I'M COMMENTING ON SOMEONE ELSE'S
16 CLASSIFICATION SYSTEM, BUT THAT'S MY UNDERSTANDING OF IT, YES.

17 THE COURT: SO I'M WONDERING WHETHER THE GRADUATE --
18 WHETHER THERE WOULD BE A BUILT-IN ASSUMPTION THAT THERE WOULD
19 BE GREATER USE OF THE SYSTEM BY GRADUATE STUDENTS; DO YOU
20 KNOW?

21 THE WITNESS: WELL, I'M NOT SURE IF I CAN ANSWER YOU
22 SPECIFICALLY, BUT LET ME SAY THAT WE DID STUDIES AT SCHOOLS
23 THAT GRANTED GRADUATE DEGREES AND SCHOOLS THAT DID NOT GRANT
24 GRADUATE DEGREES, AND AT SCHOOLS WHERE GRADUATE DEGREES ARE
25 GRANTED, GENERALLY THERE WAS MORE CONSUMPTION OF COPYRIGHTED

1 CONTENT ACROSS THE ENTIRE CAMPUS.

2 AND I WOULD SAY TO YOU JUST BASED ON MY EXPERIENCE
3 ONE OF THE REASONS THERE IS IS THAT THE CONTENT IS MORE READILY
4 AVAILABLE. THEY ARE PURCHASING AND SUBSCRIBING TO MORE
5 CONTENT, AND THAT IS AVAILABLE THEN FOR ALL OF THE STUDENTS TO
6 CONSUME, NOT JUST THE GRADUATE STUDENTS.

7 THE COURT: GO AHEAD.

8 BY MR. RICH:

9 Q. HOW MANY ACADEMIC INSTITUTIONS CURRENTLY SUBSCRIBE TO THIS
10 ANNUAL ACADEMIC COPYRIGHT LICENSE?

11 A. ABOUT 110.

12 Q. AND CAN YOU SUPPLY THE COURT WITH A FEW EXAMPLES THAT
13 ILLUSTRATE AGAIN THE RANGE OF SUBSCRIBERS?

14 A. I CAN GIVE YOU A COUPLE OF EXAMPLES. THE UNIVERSITY OF
15 MASSACHUSETTS MEDICAL SCHOOL IS A CUSTOMER OF THAT PRODUCT, THE
16 UNIVERSITY OF TEXAS, MIDDLEBURY COLLEGE. THOSE ARE JUST A FEW
17 EXAMPLES. IT'S A RANGE.

18 Q. HAVE YOU ASKED YOUR STAFF TO CALCULATE THE COST TO GEORGIA
19 STATE UNIVERSITY WERE IT TO ENTER INTO AN ANNUAL ACADEMIC
20 COPYRIGHT LICENSE TODAY?

21 A. I DID.

22 Q. WHAT WOULD THAT COST BE?

23 A. APPROXIMATELY 114,000 DOLLARS PER YEAR FOR ROYALTY FEES.

24 Q. AND WHAT STUDENT POPULATION BASE WAS THAT CALCULATION MADE
25 OFF OF?

ANDRE G. ASHLEY, O.C.R.

1 A. AS I RECALL IT WAS APPROXIMATELY 30,400 STUDENTS.

2 Q. AND HAVE YOU DONE THE MATH TO FIGURE OUT ON A PER STUDENT
3 BASIS WHAT THAT WOULD COME TO?

4 A. I BELIEVE IT'S ABOUT \$3.75 PER STUDENT FOR THE YEAR.

5 Q. THAT WOULD COVER BOTH PAPER AND ELECTRONIC USES ACROSS THE
6 RANGE OF ACTIVITIES THAT YOU DESCRIBED; IS THAT CORRECT?

7 A. YES, THAT'S CORRECT.

8 Q. NOW, WOULD THERE BE ANY ADDITIONAL COST INCURRED BY
9 GEORGIA STATE UNIVERSITY IN TAKING SUCH A LICENSE?

10 A. YES, THERE WOULD.

11 Q. CAN YOU DESCRIBE THAT?

12 A. THAT WOULD BE THE USER FEE, AND THAT WOULD BE 20 PERCENT
13 OF THE ROYALTY FEE, AND IT'S CHARGED IN THE FIRST YEAR ONLY.

14 CAN I EXPLAIN WHAT THAT FEE IS?

15 Q. OF COURSE.

16 A. THE USER FEE IS A CCC FEE. SO IT'S NOT ROYALTY FEES, AND
17 THE REASON THAT WE HAVE THAT FEE IS BASICALLY TO COVER CCC'S
18 COST IN OPERATING THE LICENSING PROGRAM.

19 Q. TO BE CLEAR THAT WOULD BE A FIRST YEAR CHARGE ONLY?

20 A. THAT'S CORRECT, IT'S ONLY CHARGED ONE TIME.

21 THE COURT: AND THEN YOU'RE SAYING AFTER THAT THERE
22 WOULD BE A PER USE FEE OR NOT?

23 THE WITNESS: AFTER THAT ONE TIME USER FEE CHARGE OF
24 THE 20 PERCENT, THEY WOULD PAY THE CALCULATION THAT WE DID
25 BASED ON THAT NUMBER OF STUDENTS, THE 114,000 DOLLARS IN

1 ROYALTY FEES, AND LET'S JUST ASSUME THAT THE STUDENT POPULATION
2 DIDN'T CHANGE, THAT'S ALL THEY WOULD PAY IN THE SECOND YEAR
3 WOULD BE THE 114.

4 THE COURT: I THINK I LOST YOU THERE. WHAT WAS THE
5 20 PERCENT ABOUT?

6 THE WITNESS: THE PRICE THAT THE -- LET'S JUST SAY
7 HYPOTHETICALLY THEY WERE TO BUY A LICENSE. THEY WOULD PAY
8 114,000 DOLLARS IN ROYALTY FEES, AND IN ADDITION TO THAT, THEY
9 WOULD PAY A 20 PERCENT CHARGE IN THE FIRST YEAR WHICH WE CALL A
10 USER FEE WHICH WOULD BE TO CCC FOR BASICALLY ADMINISTRATIVE
11 COST OF OPERATING THE LICENSE. THAT WOULD BE THE YEAR ONE
12 COST, THE COMBINATION OF THOSE TWO THINGS, AND IN YEAR TWO, THE
13 TOTAL COST WOULD BE 114,000 DOLLARS ASSUMING THAT THE STUDENT
14 BODY POPULATION WOULDN'T CHANGE.

15 THE COURT: AND THAT WOULD BE 20 PERCENT OF WHAT?

16 THE WITNESS: THE 114,000, SO LET'S SAY 22,000
17 DOLLARS ROUGHLY.

18 BY MR. RICH:

19 Q. SO THE RECORD IS CLEAR IF I'M UNDERSTANDING IT, LET'S
20 ASSUME THAT THERE WAS A THREE-YEAR LICENSE ENTERED INTO ON AN
21 ASSUMED STEADY STUDENT POPULATION BASE FOR GSU. IN YEAR ONE
22 GSU WOULD PAY WOULD 114,000 DOLLARS PLUS AN ADDITIONAL 20
23 PERCENT OF THAT 114,000 DOLLARS?

24 A. THAT'S CORRECT.

25 Q. AND YEAR TWO IT WOULD SIMPLY PAY THE 114,000 DOLLARS --

1 A. THAT'S CORRECT.

2 Q. -- FOR THE YEAR, AND IN YEAR THREE IT WOULD SIMPLY PAY THE
3 114,000 DOLLARS; IS THAT WHAT YOU'RE SAYING?

4 A. THAT IS WHAT I'M SAYING IN EVERY SUBSEQUENT YEAR. THERE
5 NOT BE ANOTHER 20 PERCENT CHARGE.

6 THE COURT: AND FOR WHAT PERIODS OF TIME DO YOU ALL
7 ISSUE THESE ANNUAL LICENSES?

8 THE WITNESS: IT'S ON A ROLLING BASIS. IN OTHER
9 WORDS, WE'RE SELLING THEM -- YOU CAN BUY ONE AT ANY TIME.
10 THERE IS NO ENTRY DATE. SO IF YOU BOUGHT ONE TODAY, IT WOULD
11 LAST ONE YEAR FROM TODAY. THAT SORT OF A RENEWAL BASIS. SO IT
12 LASTS FOR ONE FULL YEAR FROM THE DATE THAT YOU PURCHASE IT.

13 THE COURT: YEAH, BUT WHAT I'M GETTING AT IS YOU SAID
14 IN THE SECOND YEAR IT WOULD BE JUST THE 114,000?

15 THE WITNESS: YES.

16 THE COURT: WHAT ABOUT THE THIRD, FOURTH AND FIFTH
17 YEARS, WHAT IS THE PERMISSIBLE EXTENT OF THE LICENSING
18 ARRANGEMENT?

19 THE WITNESS: I SEE. I THINK I SEE. YOU'RE ASKING
20 CAN THEY SIGN A MULTIYEAR LICENSE?

21 THE COURT: YES.

22 THE WITNESS: YES, THEY CAN SIGN A MULTIYEAR
23 LICENSE. WE DO THAT ON A CASE-BY-CASE BASIS. HOWEVER, IT'S AN
24 ANNUAL LICENSE. SO THEY ACTUALLY RENEW EVERY YEAR. THAT'S THE
25 GENERAL PREFERENCE OF THE MARKETPLACE, BUT IT IS SOMETHING THAT

1 WE DO SELL IS A MULTIYEAR LICENSE. WE ARE ABLE TO DO THAT.
2 IT'S NOT COMMONLY -- THEY DON'T COMMONLY WANT TO DO THAT. THEY
3 COMMONLY WANT TO RENEW ON AN ANNUAL BASIS.

4 THE COURT: RIGHT BUT LET'S SAY SOMEBODY WANTED A
5 FIVE YEAR --

6 THE WITNESS: THEN THERE WOULD BE NO LIMIT. I'M
7 STILL NOT ANSWERING YOUR QUESTION.

8 THE COURT: THEN WOULD THEY GET THE SAME PRICE EVERY
9 YEAR; WOULD THEY HAVE THAT 114,000 LOCKED IN?

10 THE WITNESS: IF THEY SIGNED A MULTIYEAR LICENSE,
11 THERE WOULD BE A LOCK ON THE ROYALTY FEE, AND WE HAVE NO --
12 THERE'S NO CONTRACTUAL CONSTRAINT TO US ON HOW FAR OUT WE CAN
13 DO A MULTIYEAR LICENSE, BUT IN GENERAL WE'VE DONE MULTIYEAR
14 LICENSES IN THE THREE YEAR RANGE.

15 THE COURT: THANK YOU.

16 BY MR. RICH:

17 Q. YOU MENTIONED A LITTLE WHILE AGO THAT USERS WANTING TO
18 COME IN -- LET'S COME BACK FOR A FEW MINUTES TO THE
19 TRANSACTIONAL INTERFACES WITH THE ACADEMIC COMMUNITY WHICH IS
20 YOUR ACADEMIC PERMISSIONS SERVICE AND YOUR ELECTRONIC COURSE
21 CONTENT SERVICE, OKAY?

22 A. YES.

23 Q. I BELIEVE YOU TESTIFIED THAT THERE WERE A NUMBER OF WAYS
24 THAT USERS COULD INTERFACE WITH THOSE TO SECURE THE RIGHTS, AND
25 WE TALKED A LITTLE BIT ABOUT THE COPYRIGHT DOT COM INTERFACE,

1 YES?

2 A. YES.

3 Q. YOU ALSO MENTIONED THERE WAS ANOTHER TECHNIQUE THAT IS
4 AVAILABLE WHICH WOULD PROVIDE TOOLS COMING THROUGH CERTAIN, TO
5 USE A JARGON, APPLICATIONS, COMPUTER APPLICATIONS; IS THAT
6 RIGHT?

7 A. YES.

8 Q. COULD YOU ADDRESS THAT AND DESCRIBE FOR THE COURT THAT
9 ADDITIONAL AVENUE FOR SECURING PERMISSIONS?

10 A. YES. SO COPYRIGHT DOT COM IS AVAILABLE TO ANYONE WHO
11 WANTS TO COME TO THE SITE AND USE IT, AND WHAT WE'VE LEARNED
12 OVER TIME FROM OUR USERS IS THERE ARE MANY OTHER APPLICATIONS,
13 LIBRARY TECHNOLOGIES, ET CETERA, THAT THEY USE IN THEIR DAILY
14 WORK FLOW, AND THEY WANTED US TO BUILD THE LICENSING TOOLS INTO
15 THESE SO THEY DIDN'T HAVE TO GO TO ANOTHER SITE ON TOP OF THE
16 DIFFERENT APPLICATIONS AND WEBSITES THAT THEY ARE REQUIRED TO
17 ACCESS TO GET THEIR JOB DONE EVERY DAY OR GET THEIR RESEARCH
18 DONE EVERY DAY.

19 SO WE HAVE AGREEMENTS WITH SOME NUMBER 21 I BELIEVE
20 IS THE ACCURATE NUMBER AT THIS POINT OF DIFFERENT VENDORS THAT
21 WE'VE BUILT THESE KIND OF TECHNOLOGY LINKS TO, AND WE HAVE
22 AGREEMENTS WITH TO PUT THE LICENSING TECHNOLOGY INTO THESE
23 VARIOUS LIBRARY APPLICATIONS.

24 I DON'T KNOW IF I'M EXPLAINING THIS WELL, BUT YOU
25 WOULD BASICALLY GO TO A LIBRARY APPLICATION THAT YOU USE EVERY

ANDRE G. ASHLEY, O.C.R.

1 DAY TO, YOU KNOW, ACCESS CONTENT OR DO SOME RESEARCH, AND YOU
2 WOULD SEE A MODULE THERE FOR LICENSING, DIFFERENT FIELDS OR
3 SOMETHING YOU COULD CLICK FOR THE LICENSING BUILT RIGHT IN.

4 Q. HAVE YOU DONE ANY INVESTIGATION ABOUT THE POTENTIAL OF
5 THAT INTERFACE IN RESPECT TO THE EXISTING GEORGIA STATE
6 UNIVERSITY ERES SYSTEM?

7 A. HAVE I DONE ANY RESEARCH ON THAT? ARE YOU ASKING ME IS IT
8 AVAILABLE IN THE ERES SYSTEM?

9 Q. YES.

10 A. IT IS AVAILABLE IN THE ERES SYSTEM. SO ONE OF OUR
11 PARTNERS IN THE GROUP I WAS JUST REFERENCING IN GENERAL IS --
12 THE PRODUCT IS CALLED ERES, AND THE COMPANY IS CALLED DOCUTECH.

13 Q. SO HOW WOULD THAT WORK IN APPLICATION TO A USER ACCESSING
14 THE ERES SYSTEM WOULD YOU UNDERSTAND JUST IN VERY GENERAL
15 TERMS?

16 A. AT A GENERAL LEVEL IF YOU CAME INTO THE SYSTEM AND YOU
17 WANTED TO POST MATERIALS, WE HAVE BUILT THE TOOLS INTO THE
18 APPLICATION ACTUALLY WORKING REALLY CLOSELY WITH DOCUTECH IN
19 THIS CASE TO ALLOW THE DIFFERENT INFORMATION PROFESSIONALS,
20 LIBRARIANS, WHOEVER IS THE USER OF THE DOCUTECH TOOL, ERES TO
21 PUT THEIR -- HAVE THE INFORMATION THAT THEY'RE PUTTING IN ABOUT
22 HOW MANY PAGES THEY'RE POSTING, ET CETERA, TO CHECK AGAINST THE
23 COPYRIGHT CLEARANCE CENTER DATABASE, AND THEN ACTUALLY RETURN
24 INFORMATION TO LET THEM KNOW THAT THE MATERIAL IS LICENSED.

25 SO IT'S LITERALLY SEAMLESS LICENSING. IT ELIMINATES

1 DOUBLE DATA ENTRY REALLY IS WHAT I'M GETTING AT HERE. YOU'RE
2 ONLY ENTERING IT ONCE IN THE ERES SYSTEM. YOU DON'T HAVE TO
3 THEN AGAIN ENTER IT IN THE COPYRIGHT DOT COM LOCATION.

4 Q. AND YOUR TESTIMONY IS THAT THAT FUNCTIONALITY IS BUILT
5 INTO AND ALREADY EXISTS IN THE ERES SYSTEM?

6 A. YES, IT DOES.

7 Q. AS A CONDITION OF PARTICIPATING IN CCC'S LICENSING
8 PROGRAMS IS AN ACADEMIC USER REQUIRED TO WAIVE ITS FAIR USE
9 RIGHTS?

10 A. NO.

11 Q. HOW DOES CCC ACCOMMODATE FAIR USE CONSIDERATIONS IN ITS
12 LICENSING PROGRAMS STARTING WITH THE TRANSACTIONAL PROGRAMS
13 SUCH AS THE APS AND ECCS?

14 A. WELL, IN THE CASE OF THE TRANSACTIONAL PROGRAMS AS I
15 MENTIONED YOU COME WHEN YOU NEED TO. SO THAT'S PRETTY SIMPLE.
16 I MEAN IN THAT CASE WHEN THE USER IS COMING TO COPYRIGHT
17 CLEARANCE CENTER FOR PERMISSION, THEY'VE DETERMINED THAT THEY
18 NEED TO DO SO.

19 Q. STATED IT DIFFERENTLY IF I UNDERSTAND IT, YOU'RE SAYING
20 THAT THEY WILL MAKE A PRELIMINARY FAIR USE DETERMINATION AND
21 ONLY AFTER MAKING THAT WILL THEY COME TO CCC FOR LICENSING?

22 A. RIGHT, WE'RE NOT INVOLVED IN THAT PROCESS.

23 MR. SCHAETZEL: I OBJECT, YOUR HONOR. I APPRECIATE
24 THAT WE'RE AT A BENCH TRIAL, BUT I DON'T THINK WE NEED TO LEAD
25 THE WITNESS TO THAT EXTENT, AND I WOULD OBJECT TO LAST QUESTION

1 AS LACK OF FOUNDATION --

2 THE COURT: I THINK IT'S CLEAR FROM THE RECORD THAT
3 THE WITNESS DOESN'T REALLY KNOW WHAT'S HAPPENED BEFORE THE
4 CONTACT IS MADE. SO LET'S MOVE ON.

5 BY MR. RICH:

6 Q. AND WHAT ABOUT WITH RESPECT TO THE REPERTORY LICENSES SUCH
7 AS THE ANNUAL ACADEMIC COPYRIGHT LICENSE, HOW ARE FAIR USE
8 CONSIDERATIONS TAKEN INTO ACCOUNT?

9 A. WELL, WHEN WE DEVELOPED THAT LICENSE -- THIS WAS ACTUALLY
10 A REALLY BIG TOPIC OF DISCUSSION WITH THE GROUPS, AND THE
11 LICENSE IS -- THE WAY I WOULD ARTICULATE IT HERE IS THAT THE
12 LICENSE IS NET OF FAIR USE, AND WE ACTUALLY REFLECT THAT AS
13 WELL IN THE CONTRACT.

14 Q. CAN YOU POINT THE COURT TO WHERE IN THE CONTRACT IN YOUR
15 BINDER AT DEFENDANTS' EXHIBIT 68 THAT PROVISION IS FOUND?

16 A. HOLD ON JUST A MINUTE.

17 IT'S ON PAGE 4 IN SECTION D NUMBER 3.

18 Q. CAN YOU JUST READ THAT INTO THE RECORD?

19 A. BECAUSE THEY ARE BASED ON ACCESS TO THE CCC REPERTORY FOR
20 ITS ANNUAL COPYRIGHT LICENSE FOR ACADEMIC INSTITUTIONS, THE
21 LICENSE FEES SET FORTH HEREIN ARE NET OF ALL FACTORS THAT MIGHT
22 OTHERWISE BE CONSIDERED DEDUCTIONS THEREFROM, INCLUDING FAIR
23 USE AND THE USE OF ACADEMIC INSTITUTIONS OWN WORKS THAT MAY BE
24 INCLUDED IN SUCH REPERTORY.

25 Q. THANK YOU. MORE GENERALLY DOES CCC PROVIDE LEGAL ADVICE

1 AS TO THE WORKINGS OF THE FAIR USE DOCTRINE WHETHER IN THE
2 ACADEMIC SETTING OR ANYWHERE ELSE?

3 A. NO, WE DO NOT.

4 Q. WHAT ROLE DOES CCC PERCEIVE ITSELF AS PLAYING IN THE
5 MARKETPLACE WITH RESPECT TO UNDERSTANDING COPYRIGHT LAW AND
6 COPYRIGHT LAW CONCEPTS?

7 A. WHAT ROLE DO WE SEE OURSELVES PLAYING?

8 Q. YES.

9 A. WELL, WE DO HAVE A VERY LARGE AND GROWING, ACTUALLY,
10 EDUCATIONAL SERVICE, SO WE TRY TO HELP CONNECT BOTH OUR
11 RIGHTSHOLDER CLIENTS -- WE HAVE EDUCATION FOR BOTH
12 RIGHTSHOLDERS AND USERS, AND WE TRY TO CONNECT OUR CLIENTS WITH
13 INFORMATION THAT'S HELPFUL TO THEM, AND WE HAVE A WIDE RANGE OF
14 PREEXISTING COPYRIGHT CURRICULA THAT WE EDUCATE ON. SO WE SEE
15 OURSELVES AS AN IMPORTANT PLAYER IN THAT SPACE.

16 Q. IF YOU CAN TURN IN YOUR BINDER --

17 THE COURT: BUT YOU ALL DON'T ACTUALLY MAKE -- YOU
18 KNOW, IF SOMEBODY WANTS SOMETHING AND SAYS LOOK, THIS IS A FAIR
19 USE, YOU KNOW, YOU DON'T REALLY GET INVOLVED IN THAT, DO YOU?

20 THE WITNESS: NO, WE DO NOT, NO.

21 BY MR. RICH:

22 Q. IF YOU WOULD TURN IN YOUR BINDER TO WHAT'S MARKED AS
23 DEFENDANTS' EXHIBIT 14 PLEASE. DO YOU RECOGNIZE THAT DOCUMENT?

24 A. YES, I DO.

25 Q. WHAT IS IT?

ANDRE G. ASHLEY, O.C.R.

- 1 A. IT'S BASICALLY REFERRED TO AS A FAIR USE CHECKLIST.
- 2 Q. HOW IF AT ALL HAS THIS DOCUMENT BEEN USED IN THE PAST BY
- 3 CCC?
- 4 A. THIS DOCUMENT WAS INCLUDED IN A COLLECTION OF VARIOUS
- 5 MATERIALS BOTH CREATED BY CCC AND NOT CREATED BY CCC. THIS ONE
- 6 BEING IN THE CATEGORY OF NOT BEING CREATED BY CCC.
- 7 WE HAD A COLLECTION OF MATERIALS THAT WE INCLUDED IN
- 8 A WEB KIND OF MICROSITE WEB RESOURCE, A PORTFOLIO, A PORTAL OF
- 9 DIFFERENT RESOURCES FOR OUR CLIENTS, AND THIS WAS INCLUDED IN
- 10 IT.
- 11 Q. TO WHAT EXTENT DID CCC'S DECISION TO USE THIS DOCUMENT AS
- 12 PART OF THIS SUITE OF OTHER MATERIALS IN THE FASHION YOU
- 13 DESCRIBED REFLECT CCC'S VIEW THAT THE DOCUMENT IN AND OF ITSELF
- 14 FORMED THE BASIS FOR ACADEMIC USERS TO MAKE FAIR USE
- 15 DETERMINATIONS?
- 16 A. ABSOLUTELY NONE.
- 17 Q. TO WHAT EXTENT DID CCC ENVISION IN PUTTING THIS TOOL OUT
- 18 THERE THAT THE DOCUMENT WOULD OR SHOULD BE USED AS THE
- 19 EXCLUSIVE TOOL FOR MAKING SUCH DETERMINATIONS?
- 20 A. WE DO NOT THINK IT WAS THE EXCLUSIVE TOOL.
- 21 Q. IS THIS DOCUMENT STILL OFFERED AS PART OF CCC'S SUITE OF
- 22 TOOLS TO EDUCATE USERS CONCERNING FAIR USE?
- 23 A. IT'S NO LONGER ABLE TO BE ACCESSED AS PART OF THAT PORTAL I
- 24 JUST REFERENCED.
- 25 Q. WHEN WAS IT REMOVED FROM THIS SUITE OF TOOLS?

ANDRE G. ASHLEY, O.C.R.

1 A. I BELIEVE IT WAS REMOVED IN EARLY CALENDAR YEAR 2008.

2 Q. WERE YOU INVOLVED IN THE DECISION TO DO SO?

3 A. I WAS INDIRECTLY INVOLVED IN THE DECISION TO DO SO.

4 Q. YOU HAVE KNOWLEDGE AS TO THE CIRCUMSTANCES UNDER WHICH IT
5 WAS REMOVED?

6 A. YES, I DO HAVE KNOWLEDGE OF THE CIRCUMSTANCES.

7 Q. WHAT IS YOUR UNDERSTANDING OF THE RATIONALE FOR ITS
8 REMOVAL?

9 A. MY UNDERSTANDING OF THE RATIONALE WAS -- I GUESS THE WAY I
10 WOULD EXPLAIN IS THAT WHEN THIS -- THIS WAS PART OF THE FIRST
11 PORTAL OR COLLECTION OF MATERIALS THAT WE REALLY PUT TOGETHER,
12 AND WE WERE JUST BUILDING AN EDUCATION PROGRAM AT THAT POINT.
13 NOW WE HAVE AN EDUCATION DIVISION. THEN WE DID NOT AT THE
14 COMPANY.

15 WE WERE GATHERING A WIDE VARIETY OF INFORMATION, AND
16 THIS WAS A PROMINENT DOCUMENT THAT WAS IN THE MARKET. WE
17 GATHERED IT INTO THE PORTAL.

18 AS TIME WENT ON IT BECAME CLEAR THAT THIS DOCUMENT
19 WAS BEING PERCEIVED BY MANY AS THE BEGINNING AND THE END OF
20 WHAT WAS NEEDED TO BE REFERENCED IN TERMS OF PERMISSIONING AND
21 THAT WAS NOT CONSISTENT WITH COPYRIGHT CLEARANCE CENTER'S VIEWS
22 AND FOR THAT REASON IT WAS TAKEN DOWN. IT WAS CAUSING
23 CONFUSION AMONG OUR CLIENTS.

24 Q. IF PLAINTIFFS ARE SUCCESSFUL IN THIS LITIGATION, DOES CCC
25 BELIEVE IT WILL BE IN A POSITION TO OFFER ITS LICENSE SERVICES

1 TO THE DEFENDANTS AND TO GEORGIA STATE UNIVERSITY?

2 A. YES, THEY WOULD.

3 MR. RICH: THAT CONCLUDES MY EXAMINATION, YOUR HONOR.

4 THE COURT: LET'S TAKE A 20 MINUTE BREAK.

5 (RECESS)

6 THE COURT: ALL RIGHT. LET'S PROCEED.

7 CROSS-EXAMINATION

8 BY MR. SCHAETZEL:

9 Q. MY NAME IS STEVE SCHAETZEL. WE REPRESENT GEORGIA STATE.

10 A. GOOD MORNING.

11 MR. SCHAETZEL: YOUR HONOR, I WOULD LIKE TO LET THE
12 COURT KNOW THAT AS AN ACCOMMODATION TO THE WITNESS AND ALSO TO
13 US, THE PARTIES HAVE AGREED THAT OUR EXAMINATION COULD GO
14 BEYOND THE SCOPE OF DIRECT SO WE WOULD ONLY HAVE TO CALL THIS
15 WITNESS ONE TIME.

16 MR. RICH: YOUR HONOR, THAT'S INCORRECT, WE INDICATED
17 THAT AS TO THOSE WITNESSES WHO APPEARED ON THE DEFENDANTS' MAY
18 CALL LIST AND MS. ARMSTRONG WAS NOT AMONG THAT GROUP.

19 MR. SCHAETZEL: SHE IS A MAY CALL WITNESS ON OUR
20 WITNESS LIST.

21 MR. RICH: I DON'T BELIEVE SO.

22 MR. SCHAETZEL: I APOLOGIZE, YOUR HONOR. I THOUGHT
23 WE DID HAVE AN AGREEMENT. WE WILL PROCEED.

24 THE COURT: LET'S CHECK IT OUT. YOU CAN OBVIOUSLY
25 CALL HER BACK LATER IF SHE'S ON YOUR LIST.

ANDRE G. ASHLEY, O.C.R.

1 MR. SCHAETZEL: SHE IS ON OUR LIST. WE WOULD LIKE TO
2 AVOID THAT, YOUR HONOR, IF POSSIBLE.

3 THE COURT: SHE WOULD PROBABLY LIKE THAT, TOO, BUT
4 LET'S FIRST FIND OUT ABOUT THE PRETRIAL ORDER.

5 MR. RICH: WE DON'T SEE HER NAME, YOUR HONOR, AMONG
6 80 SOME NAMES.

7 MR. SCHAETZEL: I COULD HAVE SWORN -- THE LAST LINE,
8 YOUR HONOR, IT DOES SAY ALL THE PLAINTIFFS' WITNESSES. I JUST
9 ROUTINELY PUT THAT IN THE PRETRIAL ORDER.

10 THE COURT: I THINK I DO REMEMBER SEEING THAT.
11 RIGHT, I SEE IT. OKAY. SO GIVEN THAT SHE IS IN THAT
12 REFERENCE, DO YOU INSIST ON SAVING HER FOR WHATEVER'S OUTSIDE
13 THE SCOPE FOR LATER OR COULD WE DO IT NOW?

14 MR. RICH: I WOULD CERTAINLY NOT WANT TO SUBJECT MS.
15 ARMSTRONG TO DUAL APPEARANCES ON THE STAND, YOUR HONOR.

16 THE COURT: OKAY. YOU MAY PROCEED.

17 MR. SCHAETZEL: THANK YOU.

18 BY MR. SCHAETZEL:

19 Q. MS. ARMSTRONG, IF WE COULD, I'D LIKE TO GO BACK INTO THE
20 ANNUAL ACADEMIC LICENSE THAT YOU DESCRIBED.

21 A. YES.

22 Q. HOW DOES THE ANNUAL ACADEMIC LICENSE WORK WITH, FOR
23 EXAMPLE, THE ECCS LICENSE? IS IT POSSIBLE THAT IF I AM A
24 SUBSCRIBER AT THE UNIVERSITY OF TEXAS THAT YOU MENTIONED THAT I
25 MIGHT NEED TO USE BOTH LICENSES IN ORDER TO GET PERMISSION TO

1 USE WORK?

2 A. THE LICENSES CAN COMPLIMENT EACH OTHER. SO IF YOU WERE AT
 3 THE UNIVERSITY OF TEXAS I BELIEVE IS YOUR EXAMPLE AND YOU'RE
 4 SEEKING PERMISSION FOR SOMETHING THAT WAS NOT COVERED BY THE
 5 ANNUAL COPYRIGHT LICENSE, YOU COULD USE THE ELECTRONIC COURSE
 6 CONTENT SERVICE TO SEEK THAT PERMISSION ON A CASE-BY-CASE OR A
 7 TRANSACTIONAL BASIS.

8 Q. AND I COULD ALSO USE THE APS LICENSE, COULD I NOT?

9 A. IN THE SAME WAY, YES, YOU COULD.

10 Q. HOW WOULD I KNOW WHAT IS AVAILABLE ON THE ANNUAL LICENSE?

11 A. WE HAVE A PORTAL. I BELIEVE WE CALL IT CHECK AND GO
 12 PERMISSIONS. SO IT'S SOMETHING THAT YOU CAN LOOK UP TO SEE
 13 WHAT TITLES ARE COVERED.

14 Q. AND IT'S TRUE, IS IT NOT, THAT NOT ALL OF THE WORKS OF THE
 15 PUBLISHERS IN THIS CASE IN 2009 WERE AVAILABLE THROUGH THE
 16 ANNUAL LICENSES, ISN'T IT?

17 A. THAT'S CORRECT.

18 Q. IN FACT, CAMBRIDGE IN 2009 WAS NOT PARTICIPATING IN THE
 19 ANNUAL LICENSE PROGRAM, WAS IT?

20 A. THAT IS CORRECT.

21 Q. AND OXFORD BOOKS WERE NOT AVAILABLE IN THE ANNUAL LICENSE
 22 IN 2009; ISN'T THAT CORRECT?

23 A. THEY DID SIGN AT -- I COULDN'T TELL YOU THE POINT IN TIME
 24 AT WHICH OXFORD DID SIGN, BUT IT'S REASONABLE WHAT YOU'RE
 25 SAYING. I COULDN'T GIVE YOU AN EXACT DATE.

ANDRE G. ASHLEY, O.C.R.

1 Q. DO YOU KNOW MR. NIKO PFUND?

2 A. YES, I KNOW HIM.

3 Q. MR. PFUND TESTIFIED THAT THERE WERE APPROXIMATELY 4,300

4 ACADEMIC INSTITUTIONS IN THE UNITED STATES. WOULD YOU HAVE

5 INFORMATION TO THE CONTRARY; DOES THAT SEEM A REASONABLE NUMBER

6 TO YOU?

7 A. YEAH, IT'S A REASONABLE NUMBER. I COULDN'T GIVE YOU THE

8 EXACT NUMBER.

9 Q. AND SO WHEN YOU SAID THAT IN YOUR ACADEMIC PROGRAM, I

10 BELIEVE YOU TESTIFIED THAT YOU HAD ROUGHLY A THOUSAND -- I

11 DON'T KNOW IF YOU CALLED THEM SUBSCRIBERS OR WHAT'S THE CORRECT

12 TERM WHEN YOU SAID A THOUSAND?

13 A. I GENERALLY REFER TO THEM AS CLIENTS, BUT, YES, I DID

14 TESTIFY 1,000.

15 Q. OKAY. AND SO WHEN WE GET TO THE ANNUAL LICENSE, DO I

16 UNDERSTAND CORRECTLY THAT THE NUMBER OF CLIENTS OR SUBSCRIBERS

17 IS AT 110 NOW?

18 A. IT'S APPROXIMATELY 110, THAT'S CORRECT. THIS IS A GROWING

19 SERVICE; IT'S A NEWER SERVICE.

20 Q. WHEN WAS IT FIRST OFFERED?

21 A. THAT'S A GOOD QUESTION. I THINK IT'S ROUGHLY 2007 THAT

22 THAT WAS OFFICIALLY LAUNCHED.

23 Q. BUT YOU HAD TIED TO ROLL OUT A SIMILAR PROGRAM BEFORE

24 THAT; HAD YOU NOT?

25 A. YES.

1 Q. IN FACT AS EARLY AS 1991; IS THAT CORRECT?

2 A. YES, 1990 ACTUALLY I BELIEVE. WE TRIED TO ROLL A SERVICE
3 OUT PRIOR TO THE KINKO'S DECISION BECAUSE THERE WAS A LOT OF
4 ACTIVITY IN THE DEVELOPMENT OF THESE MATERIALS, AND SO THERE
5 WAS A DESIRE ON BOTH SIDES TO TRY TO FIND A LICENSE. SO I
6 BELIEVE IT WAS 1990.

7 Q. OKAY. AND THEN AGAIN IN THE MID TO LATE 90'S YOU TRIED
8 YET AGAIN TO ROLL IT OUT; DID YOU NOT?

9 A. YES, WE DID.

10 Q. AND THEN 2007; IS THAT CORRECT?

11 A. THAT'S MY RECOLLECTION.

12 Q. THAT WOULD HAVE BEEN ABOUT THE THIRD TIME AT LEAST, RIGHT,
13 FOR TRYING THIS PROGRAM?

14 A. IT WAS THE THIRD TIME, YEP. BALANCE TAKES TIME.

15 Q. AND SPEAKING OF TIME, IN THE LAST FIVE YEARS YOU'VE BEEN
16 INVOLVED IN SEVERAL PIECES OF LITIGATION; HASN'T THE CCC BEEN
17 INVOLVED OVER THE LAST FIVE YEARS IN AT LEAST TEN DIFFERENT
18 PIECES OF COPYRIGHT LITIGATION?

19 A. NOT LITIGATION TO MY KNOWLEDGE, BUT WE'VE BEEN INVOLVED
20 IN ACTIVITIES. I DON'T THINK THEY ALL BECAME LITIGATION.
21 I'M NOT TRYING TO BE SEMANTIC ON YOU, BUT OF THE GENERAL
22 NATURE.

23 MR. SCHAETZEL: IF I MAY APPROACH THE WITNESS, YOUR
24 HONOR?

25 THE COURT: YOU MAY.

ANDRE G. ASHLEY, O.C.R.

1 BY MR. SCHAEZEL:
2 Q. THE URL FOR THE WEBSITE AT CCC IS COPYRIGHT DOT COM; IS
3 THAT CORRECT?
4 A. YES.
5 Q. IF YOU WOULD PLEASE TURN IN THE BOOK THAT I HAVE HANDED
6 YOU TO WHAT HAS BEEN MARKED AS DEFENDANTS' EXHIBIT 66?
7 A. YES, I'M LOOKING AT IT.
8 Q. THANK YOU. DO YOU RECOGNIZE THIS AS A --
9 A. I DO RECOGNIZE THIS, YES.
10 Q. WHAT IS IT?
11 A. IT'S FROM OUR WEBSITE. IT LOOKS LIKE IT'S FAQ'S,
12 FREQUENTLY ASKED QUESTIONS, FOR RIGHTSHOLDERS.
13 Q. IF YOU WOULD PLEASE TURN TO WHAT'S BEEN MARKED AT THE
14 BOTTOM AS PAGE CCC 234?
15 A. OKAY.
16 Q. AND IN PARTICULAR QUESTION NUMBER 9?
17 A. YES, I'M LOOKING AT IT.
18 Q. DOES CCC HAVE A COPYRIGHT ENFORCEMENT PROGRAM, AND THE
19 ANSWER IS YES. IF WE GO DOWN TO THE SECOND PARAGRAPH THE LAST
20 SENTENCE, IT READS OVER THE LAST FEW YEARS WE HAVE HELPED
21 COORDINATE MORE THAN A DOZEN CASES OF CONTENT INFRINGEMENT
22 ACROSS THE UNITED STATES; DO YOU SEE THAT LINE?
23 A. YES, I'M LOOKING AT THAT LINE.
24 Q. WHAT HAS THE CCC DONE TO COORDINATE CONTENT INFRINGEMENT
25 ACROSS THE UNITED STATES IN MORE THAN A DOZEN CASES?

ANDRE G. ASHLEY, O.C.R.

1 MR. RICH: OBJECTION, RELEVANCE.

2 THE COURT: OVERRULED.

3 THE WITNESS: A COUPLE OF THINGS I WOULD SAY ON
4 THIS. ONE IS IN THE CONTRACTS THAT WE HAVE WITH OUR
5 RIGHTSHOLDERS, WE ARE CONTRACTUALLY OBLIGATED TO COORDINATE --
6 NOT TO COORDINATE BUT WE ARE CONTRACTUALLY OBLIGATED, AND
7 THERE'S LANGUAGE IN OUR CONTRACTS WHICH ANYBODY CAN LOOK AT,
8 THAT BASICALLY OBLIGATES US AS THEIR AGENT TO DEAL WITH ALLEGED
9 CASES OF INFRINGEMENT.

10 THE TYPES -- TO YOUR QUESTION THE TYPES OF THINGS
11 THAT WE WOULD DO THERE, WE RECEIVE REPORTS FROM A VARIETY OF
12 DIFFERENT SOURCES, AND WE DO CONDUCT SOME RESEARCH ON THAT. WE
13 DO CONVEY THOSE REPORTS TO RIGHTSHOLDERS. SO THOSE ARE
14 EXAMPLES OF WAYS IN WHICH WE WOULD SUPPORT.

15 BY MR. SCHAEZEL:

16 Q. IS YOUR TESTIMONY HERE TODAY PURSUANT TO THAT CONTRACTUAL
17 OBLIGATION?

18 A. WELL, WE HAVE CONTRACTS WITH ALL THREE OF THE PLAINTIFF
19 PUBLISHERS, AND THOSE, YOU KNOW, IN THOSE CONTRACTS IS THIS
20 LANGUAGE THAT I'M REFERRING TO.

21 Q. SO THE ANSWER TO MY QUESTION THEN WOULD BE YES, YOU ARE
22 FULFILLING PART OF THAT CONTRACTUAL OBLIGATION BY TESTIFYING
23 TODAY; ARE YOU NOT?

24 A. I GUESS I WOULD SAY YES TO THAT.

25 Q. THANK YOU. THAT'S ALL I HAVE FOR THAT EXHIBIT.

1 A. OKAY.

2 Q. YOU MENTIONED COURSEPACKS IN YOUR TESTIMONY. IT'S TRUE,
3 IS IT NOT, LET'S SAY THAT THERE IS, YOU KNOW, THE UNIVERSITY OF
4 MICHIGAN BOOK STORE WANTS TO USE A COURSEPACK. HOW WOULD THE
5 UNIVERSITY OF MICHIGAN BOOKSTORE WORK WITH THE CCC TO GET THAT
6 COURSEPACK BUILT?

7 A. WELL, THE FACULTY MEMBER WOULD DETERMINE WHAT READINGS
8 THAT THEY WANTED TO, YOU KNOW, HAVE IN THE COURSEPACK, AND THEY
9 COULD GO TO -- YOU'RE ACTUALLY ASKING ME THE TECHNICALITIES?

10 Q. JUST GENERALLY SPEAKING.

11 A. OKAY. THEY WOULD GO TO COPYRIGHT DOT COM JUST FOR
12 EXAMPLE, THERE ARE OTHER CHANNELS, AND THEY WOULD PUT IN THE
13 VARIOUS DATA ELEMENTS NEEDED. I THINK I DISCUSSED THAT EARLIER
14 --

15 Q. YOU DID.

16 A. -- AND THEN THEY WOULD RECEIVE PERMISSION, OR IN THE CASE
17 WHERE THEY COULDN'T RECEIVE PERMISSION, WE WOULD SEEK IT ON
18 THEIR BEHALF, AND THEN THEY WOULD HAVE WHAT THEY NEEDED FROM A
19 RIGHT'S PERSPECTIVE IN ORDER TO GO FORWARD AND MAKE THE
20 COURSEPACK.

21 Q. AND ONCE THE COURSEPACK IS MADE, THEN STUDENTS AT THE
22 UNIVERSITY OF MICHIGAN COULD GO TO THE BOOKSTORE AND FOR THEIR
23 CLASS THERE WOULD BE SOME AREA IN THE BOOKSTORE, AND THAT
24 COURSEPACK WOULD BE AVAILABLE FOR SALE; ISN'T THAT CORRECT?

25 A. WELL, IN THE CASE WHERE THE COURSEPACK WAS BEING PRODUCED

1 BY SOMEBODY COMMERCIALY THAT WOULD BE TRUE, BUT COURSEPACKS
 2 ARE ALSO PRODUCED ON CAMPUS LIKE IN DIFFERENT DEPARTMENTS BY
 3 TEACHING ASSISTANTS, SOMETIMES BY FACULTY MEMBERS. SO IT
 4 WOULDN'T BE FOR SALE THEN.

5 Q. OKAY. WELL THEN LET'S STICK WITH THE MICHIGAN BOOKSTORE
 6 THEN IN THE INSTANCE WHERE IT IS FOR SALE.

7 A. OKAY.

8 Q. LET'S PRESUME THAT THE PROFESSOR ANTICIPATED HAVING 50
 9 STUDENTS IN THE CLASS?

10 A. YES.

11 Q. BUT THEY ONLY SOLD 15 COURSEPACKS IN THE BOOKSTORE?

12 A. YES.

13 Q. OKAY. IT'S TRUE, IS IT NOT, THAT IT'S CCC POLICY THAT THE
 14 MICHIGAN BOOKSTORE CAN DESTROY THOSE 35 EXTRA COURSEPACKS AND
 15 PAY YOU ONLY FOR THE 15, ISN'T IT?

16 A. I'M GOING FROM MY BEST RECOLLECTION IN THAT, YOU KNOW,
 17 I'VE BEEN OUT OF THE DIRECT PRODUCT LINE FOR SEVERAL YEARS NOW,
 18 BUT MY BEST RECOLLECTION IS THAT THEY DO PAY ON BASICALLY SELL
 19 THROUGH WHICH IS VERY SIMILAR -- SOMETHING COMMON IN THE
 20 PUBLISHING INDUSTRY.

21 THESE ARE ESSENTIALLY CUSTOM PUBLISHED BOOKS THAT ARE
 22 CREATED, THAT'S WHAT A COURSEPACK IS, AND IT'S MY BEST
 23 RECOLLECTION THEY DO PAY BASED ON THE NUMBER OF COURSEPACKS
 24 THAT ARE SOLD.

25 Q. SO THEN THEY DO NOT PAY FOR THE ONES THAT WERE NOT SOLD

1 AND DESTROYED, THAT'S CORRECT; IS IT NOT?

2 A. TO THE BEST OF MY RECOLLECTION FOR THE COMMERCIAL EXAMPLE
3 THAT YOU'RE GIVING ME, YES.

4 Q. IF, HOWEVER, YOU'RE GOING TO PROVIDE MATERIAL THROUGH THE
5 ECCS PROGRAM AND THAT SAME PROFESSOR SAYS I HAVE 50 STUDENTS IN
6 MY CLASS AND ONLY 15 STUDENTS ACCESS SOMETHING ELECTRONICALLY
7 ON AN ERES SYSTEM, YOU DON'T GIVE ANY SORT OF A REFUND FOR
8 THOSE 35 STUDENTS, DO YOU?

9 A. THAT IS CORRECT.

10 Q. INSTEAD, THE CCC WOULD REQUIRE PAYMENT TO BE FOR ALL 50
11 STUDENTS THAT SIGNED UP FOR THE CLASS; ISN'T THAT CORRECT?

12 A. THAT'S CORRECT. ALTHOUGH IN THIS EXAMPLE I JUST WANT TO
13 POINT OUT THAT THAT'S GENERALLY NOT A COMMERCIAL ACTIVITY. SO
14 RIGHT NOW YOU'RE CONFLATING A COMMERCIAL ACTIVITY WITH A
15 NONCOMMERCIAL ACTIVITY BECAUSE THE ELECTRONIC COURSE CONTENT
16 SERVICE IS PREDOMINANTLY USED BY LIBRARIES AND OTHER ON-CAMPUS
17 NONCOMMERCIAL ENTITIES. SO IT'S NOT SOLD TO STUDENTS. IT'S
18 JUST MADE AVAILABLE.

19 Q. BUT CERTAINLY THE PROFESSOR COULD USE THE ECCS SERVICE;
20 COULD THEY NOT?

21 A. A PROFESSOR COULD USE ECCS?

22 Q. YES.

23 A. ANY PROFESSOR COULD USE ECCS, YES.

24 Q. SO WHILE IT MAY LIBRARIES THAT TRADITIONALLY USE IT, A
25 PROFESSOR COULD STILL SAY I WANT 50 EXCERPTS TO BE PUT INTO

1 SOMETHING AND POST THAT ON ERES FOR EXAMPLE?

2 A. YES, THEY COULD.

3 Q. AND IF THE LIBRARY BUYS ONE OF THOSE COURSEPACKS FROM THE
4 UNIVERSITY OF MICHIGAN -- IF THE UNIVERSITY OF MICHIGAN'S
5 LIBRARY, LET'S PRESUME THE LIBRARIAN AT THE PROFESSOR'S REQUEST
6 PURCHASES ONE OF THOSE COURSEPACKS AND PUTS IT ON TRADITIONAL
7 RESERVE AT THE UNIVERSITY OF MICHIGAN LIBRARY; DO YOU
8 UNDERSTAND MY SITUATION?

9 A. YEAH, I MEAN HYPOTHETICALLY.

10 Q. HYPOTHETICALLY, FINE. STUDENTS COME IN AND READ MATERIAL
11 IN THAT COURSEPACK, THERE'S NO PAYMENT TO CCC FOR THAT USE OF
12 THAT MATERIAL, IS THERE, BY THE STUDENT?

13 A. IF THEY'RE TAKING -- YOU'RE KIND OF GIVING ME AN EXAMPLE
14 THAT ISN'T REALLY WHAT'S HAPPENING IN THE MARKET, BUT I'M
15 TRYING TO WORK WITH YOU HERE.

16 SO IF YOU'RE ASKING IF THE LIBRARY PUT THAT ON
17 PHYSICAL RESERVE AND THEN PHYSICALLY THE STUDENT TOOK IT OUT
18 AND PHYSICALLY CONSUMED IT WITHOUT MAKING ANY COPIES OF IT AND
19 THEN PHYSICALLY RETURNED IT TO THE LIBRARIAN, THEN THE ONLY
20 PAYMENT WOULD BE THROUGH THE PURCHASE AT THE ORIGINAL POINT.

21 MR. SCHAETZEL: RIGHT.

22 YOUR HONOR, AT THIS TIME WE WOULD MOVE THE ADMISSION
23 OF DEFENDANTS' EXHIBIT 66.

24 MR. RICH: NO OBJECTION.

25 THE COURT: IT'S ADMITTED.

1 BY MR. SCHAEZEL:

2 Q. IF YOU WOULD, MS. ARMSTRONG, PLEASE TURN TO WHAT'S BEEN
3 MARKED IN YOUR BOOK AS DEFENDANTS' EXHIBIT 67, THE NEXT ONE?

4 A. OKAY.

5 Q. DO YOU RECOGNIZE THIS DOCUMENT TO BE A LIST OF I BELIEVE
6 YOU CALLED THEM CLIENTS OR SUBSCRIBERS OF THE ANNUAL COPYRIGHT
7 LICENSE AS OF MARCH 2ND OF 2009; DO YOU SEE THE DATE ON THE
8 VERY LAST LINE?

9 A. YES, THERE'S A DATE. YES, I DO RECOGNIZE IT.

10 Q. AND I BELIEVE BY MY COUNT AT LEAST IN MARCH OF 2009 THERE
11 WERE LESS THAN 50 CLIENTS AS YOU'VE CALLED THEM FOR THE ANNUAL
12 ACADEMIC LICENSE; IS THAT CORRECT?

13 A. I'LL ASSUME IT'S CORRECT.

14 Q. SO IN THE LAST TWO YEARS THE PROGRAM HAS ROUGHLY DOUBLED
15 IN SIZE?

16 A. IT HAS BEEN GROWING AT A FAIRLY RAPID RATE, SO, YES,
17 RELATIVE.

18 Q. NOW YOU MENTIONED IN THE CONTRACT --

19 MR. SCHAEZEL: I'M SORRY, WE'D MOVE THE ADMISSION OF
20 DEFENDANTS' EXHIBIT 67.

21 MR. RICH: NO OBJECTION.

22 THE COURT: IT'S ADMITTED.

23 BY MR. SCHAEZEL:

24 Q. YOU MENTIONED THAT THE CONTRACT, THE ANNUAL SUBSCRIPTION
25 LICENSE WAS NET FAIR USE?

1 A. YES.

2 Q. IF I AM A PROFESSOR AT THE UNIVERSITY OF TEXAS AND THE
3 UNIVERSITY OF TEXAS HAS AN ANNUAL LICENSE, WOULD I HAVE TO PAY
4 CCC FOR ANY SORT OF FAIR USE?

5 A. PAY FOR FAIR USE?

6 THE COURT: I DON'T UNDERSTAND YOUR QUESTION.

7 THE WITNESS: I DON'T EITHER.

8 BY MR. SCHAETZEL:

9 Q. WOULD ANY PROFESSOR --

10 THE COURT: I DON'T UNDERSTAND WHAT NET FAIR USE
11 MEANS IN THIS CONTEXT.

12 MR. SCHAETZEL: WHY DON'T WE ASK THAT QUESTION FIRST,
13 YOUR HONOR.

14 BY MR. SCHAETZEL:

15 Q. WOULD YOU PLEASE EXPLAIN TO THE COURT WHAT'S MEANT BY NET
16 FAIR USE IN THIS CONTEXT?

17 A. YES, I'LL DO MY BEST TO DO THAT. SO IN THE DEVELOPMENT OF
18 THE LICENSE, AS I WAS DISCUSSING EARLIER, WORKING WITH THE
19 ACADEMIC INSTITUTIONS, THE OVER 100 ACADEMIC INSTITUTIONS AND
20 THE ROUGHLY DOZEN OR SO RIGHTSHOLDERS, PUBLISHERS AT THAT TIME
21 IN DEVELOPING THE LICENSE, WE ABSOLUTELY HEARD LOUD AND CLEAR
22 AND WE ALSO BELIEVED THAT FAIR USE EXISTS AND IT IS -- WE
23 NEEDED TO RESPECT THAT AND THE LICENSE NEEDED TO RESPECT THAT,
24 BUT AT THE SAME TIME THE LICENSE NEEDED TO MAKE IT EASY AND
25 KIND OF TAKE THE BURDEN OUT OF THE PROCESS OF DETERMINING HOW

1 THESE MATERIALS COULD BE USED. IT WAS REALLY TO FACILITATE THE
2 SEAMLESS SHARING.

3 SO WHAT WE'RE REALLY DOING THERE IS SAYING THERE ARE
4 CASES IN WHICH THERE NEEDS TO BE A LICENSE, THERE IS STILL FAIR
5 USE, AND WHEN WE ESTABLISHED THE PRICING AND THE TERMS FOR THE
6 LICENSE, I THINK I READ THAT LANGUAGE IN THE TERMS EARLIER, IT
7 WAS REALLY RESPECTING THAT THERE WERE OTHER USES THAT WOULD BE
8 FAIR.

9 I HOPE THAT HELPS IN THE EXPLANATION.

10 Q. LET ME SEE IF I CAN COME AT IT THIS WAY. PLEASE PRESUME
11 THAT I'M A PROFESSOR AT THE UNIVERSITY OF TEXAS AND I'M TRYING
12 TO DECIDE IF I SHOULD ASSIGN CERTAIN PAGES FOR READING TO MY
13 CLASS AND I'M TRYING TO DETERMINE IS THAT GOING TO BE A FAIR
14 USE.

15 FIRST OF ALL, IT'S TRUE, IS IT NOT, THAT IF I CALL
16 CCC AND SAY I'D LIKE SOME HELP WITH THIS DETERMINATION, THAT'S
17 NOT YOUR BUSINESS, YOU DON'T HELP ME WITH THAT; ISN'T THAT
18 CORRECT?

19 A. THAT'S RIGHT, WE DO NOT GIVE SPECIFIC ADVICE ON FAIR USE
20 IN THAT WAY.

21 Q. AND YOU TESTIFIED THERE ARE SOME THINGS ON THE WEBSITE I
22 CAN GO LOOK AT, I UNDERSTAND.

23 A. YES.

24 Q. SO I'M ON MY OWN TO MAKE THAT DETERMINATION AS THE
25 PROFESSOR NOW. IF THE UNIVERSITY HAS THE ANNUAL LICENSE THAT

1 YOU TESTIFIED TO AT THE UNIVERSITY OF TEXAS AND THE WORK THAT
 2 I'M LOOKING AT, I'M TRYING TO DECIDE SHOULD I ASSIGN THIS
 3 EXCERPT FROM THAT WORK, IF THE WORK IS LICENSED UNDER YOUR
 4 ANNUAL LICENSE DOESN'T MATTER, DOES IT, I CAN MAKE ANY USE I
 5 WANT ACCORDING TO THE CONTRACT?

6 A. WELL, I JUST WANT TO BACK UP FOR A SECOND BECAUSE YOU SAID
 7 YOU'RE THE PROFESSOR AT THE UNIVERSITY OF THE TEXAS AND YOU'RE
 8 ON YOUR OWN IN DETERMINING WHETHER OR NOT IT'S FAIR USE.

9 IF YOU WERE REALLY AT THE UNIVERSITY OF TEXAS AND THE
 10 UNIVERSITY OF TEXAS HAD PURCHASED OUR LICENSE, YOU WOULDN'T BE
 11 ON YOUR OWN IN DETERMINING WHETHER OR NOT IT WAS FAIR USE.
 12 BECAUSE WHEN WE SELL THE LICENSE TO AN ACADEMIC INSTITUTION, WE
 13 DO A RADICAL AMOUNT OF -- AN EXTREME AMOUNT OF TRAINING. WE GO
 14 ON SITE. THE CAMPUS DEVELOPS A COPYRIGHT POLICY. THERE'S ALL
 15 KINDS OF TRAINING FOR THE PROFESSORS.

16 YOU WOULDN'T BE ON YOUR OWN, AND THAT ACTUALLY IS WHY
 17 WHEN TALKING SPECIFICALLY ABOUT THE UNIVERSITY OF TEXAS IN THIS
 18 EXAMPLE, THEY PURCHASED THIS LICENSE BECAUSE THEY SPEND A
 19 CONSIDERABLE AMOUNT OF MONEY ON CONTENT ASSETS, A WIDE VARIETY
 20 FROM THE TRADITIONAL ACADEMIC TYPE PUBLISHED MATERIALS TO OTHER
 21 MATERIALS THAT ARE NOT KIND OF THE TYPICAL WHAT YOU THINK OF AS
 22 ACADEMIC, AND THEY WANTED THE PROFESSORS TO BE ABLE TO GET
 23 ACCESS TO THOSE AND USE THEM IN THE TEACHING PROCESS AND MAKE
 24 IT EASIER FOR THEM TO DO THAT AND ACTUALLY REALLY ACCELERATE
 25 THE VALUE OF THE CONTENT THEY BOUGHT. SO YOU WOULDN'T BE ON

1 YOUR OWN IN MAKING THAT DETERMINATION.

2 THE FURTHER QUESTION YOU ASKED ME WAS WOULD YOU AS
3 THE UNIVERSITY OF TEXAS PROFESSOR BE ABLE TO USE ANY CONTENT
4 COVERED BY THE ACADEMIC LICENSE THAT WE WOULD HAVE SOLD YOU ON
5 AN ANNUAL BASIS IN YOUR TEACHING, YES. WHETHER IT WAS PHYSICAL
6 PRINT OR DIGITAL, YOU WOULD BE ABLE TO USE THAT TO GET TO ANY
7 OF YOUR STUDENTS WHETHER THEY WERE ON CAMPUS AT TEXAS OR A
8 DISTANCE LEARNING STUDENT AGAIN ON ANY DEVICE.

9 Q. AND IT WOULD BE COVERED UNDER YOUR LICENSE I WOULD HAVE
10 PAID FOR OR MY UNIVERSITY WOULD HAVE PAID FOR EVEN IF IT WAS A
11 FAIR USE; ISN'T THAT CORRECT?

12 A. I CAN'T ANSWER THAT BECAUSE I COULD NOT DETERMINE WHETHER
13 OR NOT THE USE WAS FAIR. YOU'RE ASKING ME SOMETHING IN THE
14 ABSTRACT. THAT NEEDS TO BE DECIDED IN THE CONTEXT OF THE USE.

15 THE COURT: LET ME ASK A QUESTION. WITH RESPECT TO
16 THE ANNUAL ACADEMIC COPYRIGHT LICENSE, YOU SAID THAT PEOPLE WHO
17 GET THIS LICENSE HAVE ACCESS TO EVERYTHING IN THE COLLECTION;
18 IS THAT CORRECT?

19 THE WITNESS: THE COLLECTION OF THE LICENSE, THAT'S
20 CORRECT.

21 THE COURT: RIGHT. SO DOES THAT MEAN THAT PEOPLE --
22 A TEACHER AT A SCHOOL THAT HAS THIS LICENSE CAN DOWNLOAD FOR
23 HIS STUDENTS ANYTHING HE WANTS THAT'S WITHIN THE COLLECTION
24 AND, YOU KNOW, POTENTIALLY COPY A WHOLE BOOK?

25 THE WITNESS: THE PROFESSOR -- THERE ARE LIMITS ON

1 THE LICENSE IN TERMS OF WHAT THEY CAN USE, BUT LET ME BE CLEAR,
2 YES, IF IT'S A TITLE THAT'S COVERED WITHIN THE ACADEMIC
3 REPERTORY LICENSE, THEY CAN USE IT -- I REALLY WANT TO MAKE
4 THIS -- I'M SOUNDING A LITTLE DISCOMBOBULATED HERE.

5 THEY CAN USE IT IN THEIR TEACHING, AND IF IT'S
6 DIGITALLY AVAILABLE, THEY NEED TO HAVE LEGALLY OBTAINED A
7 COPY. SO THE LICENSE CANNOT REPLACE A SUBSCRIPTION TO CONTENT.

8 SO FOR EXAMPLE WHAT I MENTIONED AT THE UNIVERSITY OF
9 TEXAS, TEXAS HAS PURCHASED, LEGALLY PURCHASED THESE SUBSCRIBED
10 TO OR PURCHASED THESE BOOKS AND OTHER JOURNALS AND OTHER
11 MATERIALS, AND NOW BECAUSE THEY HAVE BEEN LEGALLY PURCHASED
12 THEY CAN BE USED UNDER THE LICENSE.

13 ONE POINT I WANT TO MAKE AND I HAVEN'T MENTIONED THIS
14 TODAY, IF THE MATERIAL IS NOT AVAILABLE DIGITALLY IN THE WORLD
15 TODAY, THERE IS NO WAY TO GET THE MATERIAL DIGITALLY, THEY CAN
16 UNDER OUR LICENSE MAKE A LEGAL DIGITAL COPY AND SHARE THAT
17 DIGITALLY.

18 SO LET'S TAKE AN OUT-OF-PRINT WORK THAT'S QUITE,
19 QUITE OLD, THEY WANTED TO USE SOMETHING FROM 1950 OR SOMETHING
20 THAT THEY COULDN'T GET TODAY DIGITALLY, THEY CAN ALSO MAKE A
21 DIGITAL COPY OF THAT UNDER OUR LICENSE.

22 THE COURT: I DON'T THINK YOUR ANSWER REALLY
23 ADDRESSES WHAT I WAS GETTING AT.

24 THE WITNESS: I APOLOGIZE.

25 THE COURT: THAT'S ALL RIGHT. NO PROBLEM. ONE OF

1 THE ISSUES IN THIS CASE CONCERNS USE OF MORE EXTENSIVE EXCERPTS
2 THAN THE PLAINTIFFS WANT TO HAVE USED.

3 YOU WERE SAYING, I THOUGHT, THAT WITH RESPECT TO THE
4 ANNUAL ACADEMIC COPYRIGHT LICENSES THAT YOU HAD DIGITALLY
5 AVAILABLE A HUGE NUMBER OF TITLES.

6 THE WITNESS: APPROXIMATELY TWO MILLION.

7 THE COURT: RIGHT, AND SO I THOUGHT YOU WERE SAYING
8 THAT IF A SCHOOL HAD SUBSCRIBED TO THIS SERVICE, A PROFESSOR
9 WOULD BE ABLE TO ACCESS ENTIRE BOOKS AND POTENTIALLY DOWNLOAD
10 THE WHOLE BOOK?

11 THE WITNESS: NO, I WASN'T SAYING THAT, AND I
12 APOLOGIZE IF I IN ANY WAY IMPLIED THAT. THAT WAS NOT WHAT I
13 WAS SAYING.

14 NO, IT WOULD BE -- WITHIN THIS SERVICE THERE ARE
15 DEFAULT TERMS AS IN THE OTHER SERVICES THAT I MENTIONED
16 EARLIER, AND IN ADDITION IF THERE IS A RIGHTSHOLDER WHO WANTS
17 TO SET A RIGHTSHOLDER SPECIFIC TERM ON THEIR WORK, THEY CAN DO
18 THAT AND --

19 THE COURT: SO IT WOULD BE LIKE NO MORE THAN 20
20 PAGES?

21 THE WITNESS: CORRECT, THAT IS DEFINITELY POSSIBLE,
22 AND IN THAT -- MR. SCHAEZEL HAD ASKED ME EARLIER ABOUT WHETHER
23 OR NOT WE HAD -- HOW DO YOU FIND OUT IF THE TITLE IS COVERED IN
24 THE LICENSE AND THERE'S A PORTAL THE CHECK AND GO PERMISSIONS,
25 AND THAT'S WHERE YOU WOULD SEE ANY OF THESE SPECIFIC LIMITS

1 THAT YOU'RE ASKING ME ABOUT RIGHT NOW, AND THAT'S PROVIDED TO
2 THE LICENSED INSTITUTION.

3 THE COURT: ALL RIGHT. AND I DID WANT TO ASK YOU
4 ALSO TO GO BACK AND JUST STATE AGAIN -- YOU MAY HAVE COVERED
5 ALL THIS BEFORE, BUT WITH RESPECT TO THE EXTENT OF
6 PARTICIPATION IN THIS SERVICE OF OUR THREE PLAINTIFFS --

7 THE WITNESS: YES, SAGE IS PARTICIPATING IN THIS
8 SERVICE, AND OXFORD UNIVERSITY PRESS IS PARTICIPATING IN THIS
9 SERVICE, AND AT THIS TIME CAMBRIDGE UNIVERSITY PRESS IS NOT
10 PARTICIPATING IN THIS SERVICE.

11 THE COURT: AND WHEN YOU SAY OXFORD PARTICIPATES,
12 YOU'RE NOT SAYING THAT OXFORD HAS AGREED THAT ANY OF ITS
13 COPYRIGHTED WORKS CAN BE USED WITHIN THIS PARTICULAR SERVICE,
14 THE ELECTRONIC WHATEVER?

15 THE WITNESS: I BELIEVE RIGHT NOW WE'RE TALKING ABOUT
16 THE ANNUAL COPYRIGHT LICENSE --

17 THE COURT: WE ARE, SURE.

18 THE WITNESS: CAN YOU ASK ME THAT QUESTION AGAIN?

19 THE COURT: WITH RESPECT TO OXFORD UNIVERSITY PRESS,
20 YOU SAID THEY ARE PARTICIPATING?

21 THE WITNESS: YES, THEY ARE.

22 THE COURT: DOES THAT MEAN THAT THEY HAVE AGREED THAT
23 ALL OF THEIR WORKS CAN BE PLACED IN THIS SERVICE CAN BE IN IT?

24 THE WITNESS: THIS SERVICE IS A COLLECTION OF
25 RIGHTS. IT'S ACTUALLY NOT A COLLECTION OF CONTENT. SO IT'S

1 JUST THE RIGHTS TO REUSE THE CONTENT.

2 SO WHAT IT MEANS IS THAT OXFORD HAS WITHIN THE
3 BOUNDARIES OF THE SERVICE, THE TERMS AND LIMITS THAT ARE IN THE
4 SERVICE WHICH THAT AGREEMENT THAT WAS IN THIS OTHER BINDER,
5 WITHIN THAT DOCUMENT, THE TERMS OF THAT DOCUMENT OXFORD IS
6 ALLOWING ANY ACADEMIC INSTITUTION WHO SIGNS UP, SO ALL 110 WHO
7 ALREADY HAVE OR ANYONE IN THE FUTURE, TO USE THEIR MATERIALS
8 DIGITALLY AND IN PRINT FOR COURSEPACKS, E-COURSEPACKS, PHYSICAL
9 COURSEPACKS, ANYTHING OF THAT NATURE.

10 THE COURT: OKAY. BUT MY QUESTION WAS HAS OXFORD
11 SAID OKAY, YOU CAN PUT ALL OF OUR COPYRIGHTED PUBLICATIONS IN
12 THIS ACADEMIC WHATEVER IT IS?

13 THE WITNESS: TO THE BEST OF MY KNOWLEDGE THEY HAVE
14 PUT ALL OF THEIR MATERIALS IN. THERE MAY BE A SMALL SECTION OF
15 MATERIALS THAT ARE NOT IN, BUT TO MY KNOWLEDGE THE VAST
16 MAJORITY OF OXFORD UNIVERSITY PRESS PUBLISHED MATERIALS ARE
17 LICENSED BY COPYRIGHT CLEARANCE CENTER IN THIS REGARD.

18 THE COURT: THE VAST MAJORITY IS DIFFERENT FROM ALL.
19 WHAT DO YOU THINK IS CORRECT?

20 THE WITNESS: I THINK IT'S ALL OF THEIR WORKS, BUT
21 THE REASON I SAID VAST MAJORITY IS IT'S POSSIBLE -- THIS IS A
22 VERY LARGE PUBLISHER WITH MANY BOOKS AND MANY JOURNALS, MANY
23 DIFFERENT TYPES OF WORKS, AND I'M NOT A PUBLISHER. I'M NOT AN
24 EXPERT ON THEIR SPECIFIC BUSINESS. IT'S POSSIBLE, YOUR HONOR,
25 THAT THERE COULD BE, YOU KNOW, SOME WORKS, A SMALL NUMBER, I'M

1 THINKING, YOU KNOW, MAYBE A HUNDRED WORKS OR A COUPLE HUNDRED
2 WORKS OR MAYBE A THOUSAND WORKS OUT OF THEIR -- I BELIEVE --
3 I'M REALLY NOT AN EXPERT ON OXFORD THAT THEY PUBLISH SOMETHING
4 LIKE A HUNDRED THOUSAND DIFFERENT WORKS. IN ORDER OF MAGNITUDE
5 I BELIEVE I'M CORRECT.

6 SO I COULDN'T SPEAK TO THE LAST DETAIL IN EVERY
7 SINGLE ONE OF THEIR WORKS BEING INCLUDED, BUT IT'S MY
8 UNDERSTANDING THAT ALMOST ALL OF THEIR WORKS ARE INCLUDED IN
9 OUR LICENSE.

10 THE COURT: AND WHAT YOU'RE SAYING IS WITH RESPECT TO
11 PARTICULAR WORKS THEY WOULD AUTHORIZE YOU ONLY TO ALLOW CERTAIN
12 PERCENTAGES TO BE COPIED OR SOMETHING LIKE THAT?

13 THE WITNESS: RIGHT, SIMILAR TO WHAT I WAS TALKING
14 ABOUT EARLIER 25 PERCENT OF THE ENTIRE WORK OR TWO CHAPTERS
15 WHICHEVER IS GREATER. IT'S SIMILAR IN THAT SAME VEIN.

16 THE COURT: WOULD THAT BE DIFFERENT FROM WORK TO WORK
17 OR IS IT AN ACROSS THE BOARD POLICY?

18 THE WITNESS: IT'S AN ACROSS THE BOARD POLICY ON THE
19 LICENSE UNLESS THE RIGHTSHOLDER PUTS IN A SPECIAL TERM, AND I
20 HAVE TO SAY FROM COPYRIGHT CLEARANCE CENTER'S PERSPECTIVE WE
21 CREATE THE ENABLING TECHNOLOGY FOR THEM TO DO THAT PUT THE
22 RIGHTSHOLDER'S TERMS IN, BUT WE REALLY ENCOURAGE RIGHTSHOLDERS
23 TO ALLOW THE DEFAULT TO TAKE AFFECT BECAUSE IT REALLY HELPS THE
24 USER TO HAVE A UNIFORM SET OF RIGHTS. IT'S EXTREMELY HELPFUL.

25 THE COURT: DO YOU HAPPEN TO KNOW WHAT OXFORD'S

1 PRACTICE IN FACT HAS BEEN? I MEAN DO THEY GO WITH THE DEFAULT
2 SETTING?

3 THE WITNESS: I APOLOGIZE OFF THE TOP OF MY HEAD THAT
4 I DON'T KNOW THAT. IT'S KNOWABLE.

5 THE COURT: AND YOU SAID CAMBRIDGE IS JUST NOT
6 PARTICIPATING IN THIS ACADEMIC PERMISSIONS SERVICE?

7 THE WITNESS: THAT'S RIGHT, WE'RE IN DISCUSSIONS WITH
8 THEM AND WE HAVE BEEN IN DISCUSSIONS WITH THEM ABOUT
9 PARTICIPATING IN THE LICENSE.

10 WE HAVE ADDED A SUBSTANTIAL AMOUNT OF WORKS TO THE
11 COLLECTION, SEVERAL HUNDRED THOUSAND. SO IT'S SOMETHING WE ARE
12 ADDING ALL THE TIME NEW WORKS.

13 THE COURT: OKAY.

14 MR. RICH: YOUR HONOR, JUST FOR THE RECORD, YOU SAID
15 IN THIS ACADEMIC PERMISSIONS SERVICE, DID YOU MEAN THE BLANKET
16 SERVICE FOR CLARITY WHEN DEALING WITH ANY OF THE ACADEMIC
17 PROGRAMS?

18 THE COURT: I MEANT -- SORRY, I WAS REFERRING TO THE
19 ANNUAL ACADEMIC COPYRIGHT LICENSE AGREEMENT.

20 MR. RICH: THANK YOU. THAT'S WHAT I THOUGHT.

21 THE COURT: GO AHEAD.

22 BY MR. SCHAEZEL:

23 Q. SINCE CAMBRIDGE IS NOT PARTICIPATING, IT'S TRUE, IS IT
24 NOT, THAT THE PROFESSORS AT GEORGIA STATE -- WELL, LET'S GO
25 BACK. YOU GAVE CERTAIN NUMBERS, FOR EXAMPLE, I THINK 114,000

1 DOLLARS AS AN ANNUAL ACADEMIC LICENSE FEE IF GEORGIA STATE WERE
2 TO SIGN ON; IS THAT CORRECT?
3 A. FOR THE ROYALTIES, YES.
4 Q. AND IF GEORGIA STATE DID THAT AND A PROFESSOR WANTED TO
5 USE A CAMBRIDGE WORK, THEY WOULD NOT BE ABLE TO DO THAT THROUGH
6 THE 114,000 ACADEMIC ANNUAL LICENSE?
7 A. THAT'S RIGHT, THEY COULD USE THE ELECTRONIC COURSE CONTENT
8 SERVICE AND SEEK PERMISSION THERE.
9 Q. BUT IN DOING YOUR CALCULATIONS, YOU'VE DONE NO STUDY OF
10 HOW MANY TIMES PROFESSORS AT GEORGIA STATE WOULD HAVE TO GO
11 OUTSIDE OF THE ANNUAL ACADEMIC LICENSE IN ORDER TO GET
12 PERMISSION TO USE SOMETHING, HAVE YOU?
13 A. I CAN'T SAY I HAVE DONE A STUDY ON THAT. I HAVEN'T. WE
14 HAVE NOT.
15 Q. YOU WERE SHOWN IN YOUR EXAMINATION DEFENDANTS' EXHIBIT
16 14 --
17 A. YES.
18 Q. -- WHICH THIS IS A PART? THIS WAS FIRST WORKED ON -- I
19 BELIEVE YOU SAID IT WAS A COLLECTION OF MATERIALS. WHAT WAS
20 THE COLLECTION OF MATERIALS, THE NAME OF IT; DO YOU RECALL?
21 A. I THINK IT'S CURRENTLY CALLED THE CAMPUS COPYRIGHT GUIDE
22 OR THE GUIDE TO COPYRIGHT AND THAT WAS PROBABLY THE ORIGINAL
23 NAME.
24 Q. AND THE CAMPUS GUIDELINE OR THE CAMPUS COPYRIGHT GUIDELINE
25 THAT WAS FIRST WORKED ON IN APPROXIMATELY 2000; WAS IT NOT?

ANDRE G. ASHLEY, O.C.R.

- 1 A. YEAH, ROUGHLY IN THAT TIMEFRAME.
- 2 Q. SO THIS DOCUMENT WAS PRESENT ON THE CCC WEBSITE AS PART OF
- 3 THOSE CAMPUS COLLECTION DOCUMENTS FOR MANY YEARS; WAS IT NOT?
- 4 A. YES, IT WAS.
- 5 Q. AND ARE YOU AWARE THAT IT'S STILL POSSIBLE TO SIMPLY TYPE
- 6 INTO GOOGLE CCC FAIR USE CHECKLIST AND CALL THIS DOCUMENT UP?
- 7 A. YES, I AM.
- 8 Q. AND IT'S TRUE THAT THE TEAM OF PEOPLE THAT WORKED ON THOSE
- 9 CAMPUS GUIDELINES INCLUDING DEFENDANTS' EXHIBIT 14 INCLUDED
- 10 INSIDE COUNSEL AT CCC, DIDN'T IT?
- 11 A. YES, IT DID.
- 12 Q. AND THAT WOULD BE MR. HABER?
- 13 A. YES.
- 14 Q. IS IT YOUR TESTIMONY THAT THIS DOCUMENT AS POSTED ON THE
- 15 WEBSITE WAS NOT IN ANY WAY MODIFIED BASED ON WHAT PROFESSOR
- 16 CREWS HAD ORIGINALLY PREPARED?
- 17 A. I DON'T THINK I TESTIFIED TO THAT; IS THAT WHAT YOU'RE
- 18 ASKING ME?
- 19 Q. I COULDN'T QUITE FRANKLY UNDERSTAND. I WANT TO BE
- 20 CERTAIN. ISN'T IT TRUE THAT THE CCC TEAM THAT WORKED ON THE
- 21 CAMPUS GUIDELINES MADE MODIFICATIONS TO THE FAIR USE CHECKLIST
- 22 AND THAT'S WHAT'S POSTED AND SHOWN IN DEFENDANTS' EXHIBIT 14?
- 23 A. I'M GENERALLY AWARE THAT THERE WAS A MODIFICATION TO THIS
- 24 DOCUMENT, BUT I COULD NOT TELL YOU WHAT IT WAS OR IS.
- 25 Q. AND THAT MODIFICATION WAS MADE BY THESE FOLKS THAT WERE

1 WORKING ON IT BACK IN 2000; IS THAT CORRECT?

2 A. THAT IS MY UNDERSTANDING.

3 Q. YOU MENTIONED THAT PART OF YOUR MISSION IS TO EDUCATE
4 USERS. THAT INCLUDES THE PREPARATION OF WHITE PAPERS; DOES IT
5 NOT?

6 A. YES, WE DO DO SOME WHITE PAPERS.

7 Q. AND YOU POST THOSE WHITE PAPERS ON YOUR WEBSITE?

8 A. YES.

9 Q. AND ONE OF THE WHITE PAPERS THAT YOU POSTED ON YOUR
10 WEBSITE SPECIFICALLY ADDRESSES THE ISSUE IN THIS CASE
11 ERESERVES; DOES IT NOT?

12 A. YEAH, I'M SURE, YES.

13 Q. DO YOU RECALL IT FROM MEMORY?

14 A. NO.

15 MR. SCHAETZEL: IF I MAY APPROACH, YOUR HONOR?

16 THE COURT: YOU MAY.

17 MR. SCHAETZEL: I'M SORRY, I'D LIKE TO FIRST GET THIS
18 MARKED, YOUR HONOR. IT'S NOT ON THE EXHIBIT LIST. IF I MAY?
19 BY MR. SCHAETZEL:

20 Q. I'D LIKE TO HAND YOU WHAT'S BEEN MARKED AS EXHIBIT 906 FOR
21 IDENTIFICATION.

22 MS. ARMSTRONG, HAVE YOU HAD A CHANCE TO LOOK AT THE
23 DOCUMENT THAT'S BEEN MARKED AS EXHIBIT 906?

24 A. I JUST BRIEFLY LOOKED IT OVER, YES.

25 Q. DOES THIS REFRESH YOUR RECOLLECTION AS TO WHETHER OR NOT

1 THE CCC HAS PUBLISHED WHITE PAGES ON ITS WEBSITE RELATING TO
2 ELECTRONIC RESERVE?
3 A. THIS IS ABSOLUTELY FROM OUR WEBSITE.
4 Q. AND IT'S TRUE, IS IT NOT, THAT IT'S THE CCC'S POSITION
5 THAT A BEST PRACTICE FOR AN ERESERVE SYSTEM WOULD INCLUDE
6 PASSWORDS AS A GOOD START?
7 A. ARE YOU CITING FROM THIS DOCUMENT?
8 Q. LET ME FIRST ASK IF YOU RECALL THAT FROM THE DOCUMENT?
9 A. I DON'T. I'M SORRY THAT I DON'T RECALL THIS IN SPECIFIC
10 DETAIL.
11 Q. IF YOU'D TURN TO THE PAGE THAT IS MARKED 02?
12 A. YES.
13 Q. IT HELPS I GUESS IF YOU START AT PAGE 01?
14 A. OKAY.
15 Q. AND IT SAYS BEST PRACTICES AND GUIDELINES FOR USING
16 ERESERVES?
17 A. YES, I SEE THAT.
18 Q. OKAY. AND IF WE MOVE TO THE NEXT PAGE 02, IN THE MIDDLE
19 OF THE PAGE, PASSWORDS ARE A GOOD START?
20 A. YES, I SEE EXACTLY THAT.
21 Q. WHAT IS MEANT BY PASSWORDS ARE A GOOD START FROM THE
22 POSITION OF CCC?
23 A. I WOULD SAY -- I WILL JUST COMMENT GENERALLY ON THIS. I
24 HAVEN'T REFRESHED ON THIS PARTICULAR DOCUMENT, BUT IN GENERAL
25 THAT IT WOULD BE A POSITIVE MOVE TO CONSTRAIN THE AMOUNT OF

ANDRE G. ASHLEY, O.C.R.

1 PEOPLE WHO CAN ACCESS THE CONTENT WHEN IT'S POSTED TO LIMIT
2 THAT.
3 Q. AND THE GSU ERESERVE SYSTEM INCLUDES PASSWORD PROTECTION;
4 DOES IT NOT?
5 A. I BELIEVE IT DOES. I'M NOT ACTUALLY A HUNDRED PERCENT
6 SURE, BUT I BELIEVE IT DOES.
7 Q. AND ANOTHER BEST PRACTICE OF CCC'S IS TO TAKE DOWN
8 WHATEVER MATERIALS ARE ON ERES OR DENY ACCESS TO THEM AT THE
9 CONCLUSION OF EACH SEMESTER; ISN'T THAT TRUE?
10 A. CAN YOU ASK ME THAT AGAIN?
11 Q. SURE. IT'S THE CCC POSITION THAT A BEST PRACTICE FOR
12 ERESERVES IS TO TAKE DOWN THE MATERIAL POSTED ON ERESERVE OR
13 DENY ACCESS TO IT AT THE END OF EACH SEMESTER; ISN'T THAT
14 CORRECT?
15 A. I BET THIS DOCUMENT SAYS THAT PROBABLY. I WOULD SAY
16 GENERALLY YES, THAT'S RIGHT.
17 Q. AND IN FACT, IT DOES. IF YOU GO BACK TO PAGE 2, DO YOU
18 SEE THE NEXT TO THE LAST ITEM?
19 A. YES, I SEE IT.
20 Q. REMOVE EXPIRED ERESERVES PROMPTLY. THE GEORGIA STATE
21 SYSTEM DOES THAT, DOESN'T IT?
22 A. I'M SORRY THAT I'M NOT THAT IN DETAIL KNOWLEDGEABLE ABOUT
23 THE GEORGIA STATE SYSTEM, BUT I'LL ASSUME THAT IT DOES.
24 Q. ASSUMING THAT IT DOES, THAT WOULD BE A BEST PRACTICE?
25 A. THAT WOULD COMPORT WITH THIS, YES, IT WOULD.

ANDRE G. ASHLEY, O.C.R.

1 Q. IF YOU'D LOOK AT THE NEXT ONE UP FROM ERESERVES, WORK FROM
2 AUTHORIZED ORIGINALS; DO YOU SEE THAT AS A BEST PRACTICE?
3 A. YES.
4 Q. ARE YOU AWARE THAT GEORGIA STATE'S ERESERVE SYSTEM
5 REQUIRES PROFESSORS OR ANYONE POSTING ON THAT SYSTEM TO HAVE AN
6 AUTHORIZED ORIGINAL?
7 A. I'M NOT AWARE OF THAT.
8 Q. ASSUMING THAT THEY DO THAT WOULD COMPORT WITH YOUR BEST
9 PRACTICE?
10 A. YES, IT WOULD.
11 Q. IF YOU LOOK AT THE LAST ITEM, IT INCLUDES COPYRIGHT
12 NOTICES, MATERIALS ON ERESERVE SHOULD CONTAIN BOTH COPYRIGHT
13 NOTICE FROM AND COMPLETE CITATION TO THE ORIGINAL MATERIAL AS
14 WELL AS A CLEAR CAUTION AGAINST FURTHER ELECTRONIC
15 DISTRIBUTION; THAT'S ONE OF YOUR BEST PRACTICES?
16 A. YES, IT IS.
17 Q. ARE YOU AWARE THAT THE GEORGIA STATE ERESERVE SYSTEM
18 REQUIRES COPYRIGHT NOTICE.
19 A. I'M NOT, BUT IF THEY DID, IT WOULD COMPORT WITH THIS.
20 Q. TURN OVER TO THE FIRST PAGE OF THIS, PAGE 01, THE LAST
21 ITEM ON THAT PAGE, ERESERVES REQUIRE THE SAME PERMISSIONS AS
22 COURSEPACKS.
23 IT'S CCC'S POSITION, IS IT NOT, THAT AN ERESERVE
24 POSTING IS TO BE TREATED IDENTICALLY AS TO HOW YOU WOULD PUT
25 THAT EXCERPT IN A COURSEPACK AS WE SPOKE ABOUT FOR EXAMPLE IN

1 THE UNIVERSITY OF MICHIGAN?

2 A. THAT IS THE CCC POSITION BECAUSE THE ERESERVES, THE NAME
3 ERESERVES WAS -- I ACTUALLY DON'T KNOW HOW IT DERIVED, BUT
4 WHAT'S HAPPENED IS COURSEPACKS HAVE MIGRATED INTO THESE DIGITAL
5 POSTINGS. SO THEY ARE ESSENTIALLY A COLLECTION OF READINGS.

6 SO, YES, THAT'S THE BASIS FOR THE CCC POSITION, AND
7 IN THAT, I AM QUITE FAMILIAR AT A POLICY LEVEL QUITE FAMILIAR
8 WITH THAT.

9 Q. AND THAT'S THE POSITION DESPITE THE CCC'S KNOWLEDGE THAT
10 MOST EXPERTS ADVISE USING A SINGLE ARTICLE OR A CHAPTER OR LESS
11 FOR POSTING ON ERESERVE?

12 A. I DON'T KNOW --

13 MR. RICH: OBJECTION, HE'S TESTIFYING THROUGH THIS
14 WITNESS ABOUT UNSTATED EXPERTS.

15 THE COURT: I'LL SUSTAIN THE OBJECTION. ASK A
16 DIFFERENT QUESTION.

17 BY MR. SCHAETZEL:

18 Q. IT'S TRUE, IS IT NOT, THAT THE CCC IS AWARE THAT MOST
19 EXPERTS ADVISE USING A SINGLE ARTICLE OR CHAPTER OF COPYRIGHTED
20 WORKS IN AN ERESERVE CONTEXT?

21 A. WELL, I WAS JUST GOING TO SAY THE FIRST TIME I DON'T KNOW
22 WHO THE EXPERTS ARE THAT YOU'RE REFERRING TO. SO I CAN'T
23 COMMENT ON WHAT MOST EXPERTS ARE ADVISING.

24 Q. THEN IF YOU WOULD LOOK WITH ME ON PAGE 01, THE SECOND
25 ITEM?

1 A. TO LIMIT RESERVE TO SMALL EXCERPTS.

2 Q. SO YOUR DOCUMENT DOES IT NOT READ MOST EXPERTS ADVISE

3 USING A SINGLE ARTICLE OR CHAPTER OR LESS OF A COPYRIGHTED WORK

4 BUT EVEN BRIEF EXCERPTS MUST BE VIEWED IN THE OVERALL CONTEXT

5 OF OTHER READINGS OFFERED FOR A COURSE?

6 A. THAT IS WHAT IT SAYS.

7 Q. THAT'S THE POSITION OF THE CCC; IS IT NOT?

8 MR. RICH: OBJECTION. MIGHT WE HAVE THE FULL CONTEXT

9 READ INTO THE RECORD, YOUR HONOR?

10 THE COURT: YOU MEAN THAT PARTICULAR SENTENCE?

11 MR. SCHAETZEL: THAT IS THE FULL CONTEXT.

12 MR. RICH: THE BALANCE OF THAT PARAGRAPH.

13 THE COURT: GO AHEAD AND READ IT OUT.

14 MR. RICH: IF THE TOTAL EFFECT IS TO CREATE A

15 COMPILATION OR DIGITAL COURSEPACK OF UNLICENSED MATERIALS, THE

16 CASE FOR TREATING INDIVIDUAL EXCERPTS AS FAIR USE IS

17 SIGNIFICANTLY WEAKENED AND PERMISSION SHOULD BE SOUGHT.

18 BY MR. SCHAETZEL:

19 Q. THAT'S THE POSITION OF THE CCC; IS IT NOT?

20 A. YES.

21 Q. IT'S TRUE, IS IT NOT, YOU'VE NEVER RECEIVED A PERMISSION

22 REQUEST FROM A STUDENT?

23 A. IT'S DEFINITELY EXTREMELY RARE.

24 Q. AND, IN FACT, STUDENTS ARE NOT YOUR TARGET MARKET FOR

25 PERMISSIONS, ARE THEY?

1 A. IN TERMS OF WHO PURCHASES THE LICENSE, IT'S VERY RARELY
2 THE STUDENTS.

3 Q. AND YOU ARE NOT TRYING TO SELL ECCS OR APS TO STUDENTS
4 EITHER, ARE YOU?

5 A. IT'S CERTAINLY AVAILABLE TO ANYBODY, BUT AS FAR AS OUR
6 SALES EFFORTS THEY ARE NOT TARGETED AT STUDENTS, THAT IS
7 CORRECT.

8 MR. SCHAEZEL: WE HAVE NO FURTHER QUESTIONS, YOUR
9 HONOR.

10 MR. RICH: JUST A COUPLE, YOUR HONOR.

11 REDIRECT EXAMINATION

12 BY MR. RICH:

13 Q. MS. ARMSTRONG, JUST TO ROUND OUT THE RECORD, MR. SCHAEZEL
14 ASKED YOU SOME QUESTIONS ON WHAT'S BEEN MARKED AS DX-906, THIS
15 USING ELECTRONIC RESERVES DOCUMENT?

16 A. YES.

17 Q. WOULD YOU TURN TO PAGE 1, THE PAGE MARKED 01 OF THIS
18 DOCUMENT, PLEASE?

19 A. YES.

20 Q. IS IT ALSO PART OF COPYRIGHT CLEARANCE CENTER'S BEST
21 PRACTICES TO ADVISE AT THE FIRST INDENTED BOLD THAT ONLINE
22 DOESN'T MEAN FREE?

23 A. YES.

24 Q. AND THAT THE SAME COPYRIGHT RULES APPLY WHETHER CONTENT IS
25 ONLINE OR WHETHER IT IS USED IN PHYSICAL CONTENT?

ANDRE G. ASHLEY, O.C.R.

- 1 A. YES.
- 2 Q. AND DOWN TO THE NEXT, IS IT ALSO PART OF CCC'S BEST
3 PRACTICES TO ADVISE THAT USERS SHOULD LIMIT ERESERVE MATERIALS
4 TO SMALL EXCERPTS?
- 5 A. YES.
- 6 Q. AND IS IT ALSO CCC'S POLICY IN THE NEXT BOLD THAT
7 ERESERVES REQUIRE THE SAME PERMISSIONS AS COURSEPACKS?
- 8 A. YES.
- 9 Q. AND OVER TO THE NEXT PAGE IS IT ALSO CCC'S BEST PRACTICES
10 TO ADVISE USERS THAT ERESERVES ARE NOT A SUBSTITUTE FOR THE
11 PURCHASE OF TEXTBOOKS OR COURSEPACKS?
- 12 A. YES.
- 13 Q. AND DOWN TWO MORE IS IT ALSO CCC'S POLICY TO ADVISE GET
14 PERMISSION BEFORE POSTING?
- 15 A. YES.
- 16 Q. UNLIKE INTERLIBRARY LOANS, YOU NEED TO SECURE COPYRIGHT
17 PERMISSIONS PRIOR TO POSTING CONTENT?
- 18 A. YES.
- 19 Q. AND WITH RESPECT TO PASSWORDS, IS IT ALSO THE CASE DOWN TO
20 THE LAST PART OF THAT THAT BY ITSELF THE USE OF AUTHENTICATION
21 MEASURES SUCH AS PASSWORDS IS NOT ENOUGH TO SATISFY THE FAIR
22 USE STANDARD AND PERMISSION IS STILL REQUIRED PRIOR TO USE OF
23 THE CONTENT?
- 24 A. YES.
- 25 Q. NOW FINAL QUESTION, DO YOU KNOW -- YOU GAVE SOME TESTIMONY

1 ABOUT THESE APPLICATIONS WHERE THROUGH DOCUTECH AND ERES THERE
2 WOULD BE AN ABILITY TO ACCESS THE ECCS IF IT WERE ACTIVATED AT
3 GEORGIA STATE; DO YOU RECALL THAT?

4 A. YES, I DO.

5 Q. DO YOU KNOW WHETHER THROUGH THOSE TOOLS IF A PROFESSOR
6 WERE TO SUBMIT A REQUEST TO CCC FOR ALLOWING X NUMBER OF
7 STUDENTS IN HIS CLASS TO HAVE PERMISSION TO USE THE MATERIALS
8 AND, IN FACT, X MINUS SAY 10 STUDENTS ACTUALLY ENROLLED IN THE
9 COURSE, DO YOU KNOW WHETHER IT IS CCC'S PRACTICE TO BILL THAT
10 INSTITUTION FOR THE X OR FOR THE X MINUS 10?

11 A. IT IS -- I WISH I HAD THE DETAIL OF THE PRODUCTION, BUT MY
12 RECOLLECTION, MY BEST RECOLLECTION OF THIS IS PRIOR TO BILLING
13 THEY CAN ADJUST THE NUMBER OF STUDENTS ENROLLED IN THE CLASS.

14 SO IF THEY REQUESTED 50 AND 30 ULTIMATELY ENDED UP ON
15 THE ENROLLMENT, WHAT WE DO IS WE DELAY THE BILLING CYCLE, AND
16 THIS, OF COURSE, IS A FACT. I MEAN WE CAN VERIFY IT, BUT MY
17 BEST RECOLLECTION, AND I WORKED ON DEVELOPING THE SERVICE,
18 THAT'S HOW WE DO IT, WE DELAYED THE BILLING CYCLE TO ALLOW FOR
19 THE ADJUSTMENT OF THE NUMBER OF STUDENTS SO THAT WHEN THEY KNEW
20 WHAT THE NUMBER OF STUDENTS WAS WE WOULD THEN BILL ON THAT.

21 Q. AND THAT'S IRRESPECTIVE OF WHETHER IT'S A REQUEST FOR
22 PHYSICAL COURSEPACKS UNDER THE APS OR ELECTRONIC COURSEPACKS
23 UNDER THE ECCS?

24 A. IT'S UNDER THE PHYSICAL ABSOLUTELY, YES, AND THEN ALSO
25 UNDER THE ECCS, IT IS ABLE TO BE ADJUSTED PRIOR TO THE BILLING

1 CYCLE.

2 MR. RICH: THANK YOU. I HAVE NO FURTHER QUESTIONS.

3 THE COURT: YOU MAY HAVE TESTIFIED TO THIS BEFORE,
4 BUT WHO OWNS CCC?

5 THE WITNESS: IT IS A PRIVATE NONPROFIT. IT DOES
6 HAVE AN INDEPENDENT BOARD OF DIRECTORS, BUT IT'S NOT OWNED.
7 IT'S ORGANIZED IN THE STATE OF NEW YORK AS A NOT-FOR-PROFIT
8 ORGANIZATION. IT'S NOT OWNED BY ANY PARTICULAR STAKEHOLDERS.
9 IT DOESN'T HAVE SHAREHOLDERS OR ANYTHING LIKE THAT. IT'S A
10 LITTLE BIT UNIQUE IN THAT WAY.

11 MR. RICH: YOUR HONOR, I CAN BE VERY TECHNICAL. IT'S
12 A TYPE B NOT-FOR-PROFIT CORPORATION UNDER NEW YORK STATE LAW
13 WHICH HAS NEITHER SHAREHOLDERS NOR MEMBERS.

14 THE COURT: OKAY. AND HERE'S MY OTHER QUESTION. DO
15 YOU ALL HAVE ANY COMPETITORS?

16 THE WITNESS: WELL, WE HAVE -- MY GENERIC ANSWER FOR
17 THIS IS -- I DO GET ASKED THIS QUITE A BIT. THERE'S NO
18 ORGANIZATION JUST LIKE CCC DOING THE COMPREHENSIVE SORTS OF
19 LICENSING THAT WE'RE DOING, BUT THE TYPES OF COMPETITION WOULD
20 COME IN THE FORM, FIRST INFRINGEMENT, SECOND PUBLISHERS
21 THEMSELVES BUILDING LICENSES INTO THEIR OWN -- BUILDING RIGHTS
22 AND LICENSES INTO THEIR OWN SUBSCRIPTION AND OTHER PRIMARY SALE
23 PRODUCTS, AND THEN THERE ARE SOME VERY PARTICULAR PRODUCTS AND
24 SERVICES THAT ACTUALLY WE HAVEN'T DISCUSSED THAT AREN'T
25 RELEVANT TO THIS CONVERSATION TODAY WHERE WE DO HAVE -- WHERE

ANDRE G. ASHLEY, O.C.R.

1 THERE ARE ALTERNATIVE VENDORS FOR THE TYPES OF ACTIVITIES THAT
2 WE CONDUCT IN THOSE VERY SPECIFIC AREAS.

3 THE COURT: BUT ADDRESSING THE TYPES OF THINGS WE
4 HAVE TALKED ABOUT, MY IMPRESSION IS THAT YOU ALL DON'T HAVE ANY
5 REAL COMPETITORS.

6 THE WITNESS: ON A GENERAL LEVEL I WOULD AGREE WITH
7 THAT, YES.

8 THE COURT: THANK YOU. ANYTHING ELSE FOR THIS
9 WITNESS?

10 MR. RICH: NOT FROM HERE.

11 MR. SCHAETZEL: NO, YOUR HONOR.

12 THE COURT: YOU ARE EXCUSED. THANK YOU.

13 MR. SCHAETZEL: WE WOULD MOVE IN VIEW OF THE I GUESS
14 CROSS TO OUR DIRECT, WE WOULD MOVE THE ADMISSION OF WHAT HAS
15 BEEN MARKED AS EXHIBIT 906.

16 TO BE CLEAR IT IS NOT ON OUR EXHIBIT LIST. I BELIEVE
17 THE RULE IS THAT SOMETHING THAT IS USED FOR IMPEACHMENT DOES
18 NOT NECESSARILY HAVE TO BE ON THE EXHIBIT LIST, AND FOR THOSE
19 REASONS AND IN VIEW OF THE QUESTIONS ASKED WE'D ASK THAT IT BE
20 ADMITTED.

21 MR. RICH: IN THE CIRCUMSTANCES, YOUR HONOR, ALTHOUGH
22 WITHOUT NECESSARILY SUBSCRIBING TO ANY GENERAL RULE, WE HAVE NO
23 OBJECTION TO ITS ADMISSION.

24 THE COURT: IT'S ADMITTED. WHO'S NEXT?

25 MS. SINGER: YOUR HONOR, AT THIS TIME WE'D LIKE TO

1 PLAY ABOUT -- IN THE INTEREST OF MOVING THINGS ALONG, WE'D LIKE
2 TO PLAY A SMALL SELECTION OF DEPOSITION DESIGNATIONS FROM THE
3 DEPOSITION NANCY SEAMANS WHO IS A PARTY TO THIS LITIGATION.

4 THE COURT: ALL RIGHT.

5 MS. SINGER: THESE ARE ALL -- THE EXCERPTS INVOLVE
6 THREE EXHIBITS TO WHICH THERE IS NO OBJECTION. SO WE'D LIKE TO
7 MOVE INTO EVIDENCE PLAINTIFFS' EXHIBIT 748, 749 AND 752, AND
8 THERE WAS NO OBJECTION ON THE JOINT PRETRIAL ORDER TO THOSE.

9 MR. SCHAETZEL: SUBJECT TO THE REPRESENTATION, WE'LL
10 CHECK BUT NO OBJECTION.

11 THE COURT: THEY ARE ADMITTED.

12 MS. SINGER: WE HAVE -- WE'RE GOING TO PLAY ABOUT TEN
13 MINUTES. THESE ARE ALL FROM OUR DESIGNATIONS IN THE PRETRIAL
14 ORDER AND THERE WAS NO OBJECTIONS OR COUNTERDESIGNATIONS TO
15 THESE EXHIBITS.

16 WOULD YOU LIKE ME TO READ THE PAGE AND LINES
17 NUMBERS?

18 THE COURT: I DON'T HAVE ANY PARTICULAR PREFERENCE
19 ABOUT IT. WHAT YOU'RE GOING TO DO IS PUBLISH UP ON THE SCREEN
20 EXACTLY WHAT IS COVERED BY THE PRETRIAL ORDER; IS THAT CORRECT?

21 MS. SINGER: IT'S A SMALL SELECTION OF WHAT'S COVERED
22 BY THE PRETRIAL ORDER. WE THOUGHT WE'D SAVE YOU THE FULL
23 DEPOSITION AND THE FULL FLAVOR OF WHAT'S THERE. THIS IS JUST
24 ABOUT 10 MINUTES AND 22 SECONDS OF WHAT'S IN THE PRETRIAL
25 ORDER.

1 THE COURT: I GUESS SOMEHOW IT DOES NEED TO BE MADE
2 PART OF THE RECORD WHAT YOU ARE PLAYING.

3 MS. SINGER: OKAY.

4 THE COURT: ARE THERE GOING TO BE ANY OBJECTIONS FOR
5 ME TO RULE ON?

6 MS. SINGER: THE ONLY OBJECTIONS ARE FORM
7 OBJECTIONS. THERE IS NO OBJECTIONS MADE TO ANY OF THESE IN THE
8 PRETRIAL ORDER, AND YOU MAY SEE A COUPLE OF ROUGH CUTS. THOSE
9 ARE FORM OBJECTIONS.

10 THE COURT: ALL RIGHT.

11 (VIDEOTAPED DEPOSITION WAS PLAYED IN OPEN COURT.)

12 MS. SINGER: AT THIS TIME WE'D LIKE TO MOVE INTO
13 EVIDENCE ALL OF THE DESIGNATIONS FROM THE DEPOSITION OF NANCY
14 SEAMANS THAT WERE IN THE PRETRIAL ORDER.

15 THE COURT: AND DID YOU ACTUALLY PLAY ALL OF THOSE
16 DESIGNATIONS?

17 MS. SINGER: WE DID NOT PLAY ALL OF THE DESIGNATIONS.

18 THE COURT: I THINK WHAT WE NEED TO DO TO TECHNICALLY
19 GET THE RECORD RIGHT IS FOR YOU TO EITHER STATE OR FILE
20 SOMETHING THAT NARROWS THOSE DESIGNATIONS.

21 MS. SINGER: I COULD READ THEM, OR IT'S PROBABLY
22 EASIER IF WE FILE SOMETHING.

23 THE COURT: I THINK IT WOULD BE, TOO.

24 MS. SINGER: JUST TO BE CLEAR, WE'LL FILE SOMETHING
25 THAT TELLS WHAT WE PLAYED, BUT WE'D ALSO LIKE TO MOVE THE

1 REMAINDER INTO EVIDENCE, AS WELL.

2 THE COURT: I DID NOT UNDERSTAND THAT YOU WANTED TO
3 DO THAT.

4 MS. SINGER: WE JUST THOUGHT IT WOULD BE BETTER THAN
5 PLAYING A REALLY LONG --

6 THE COURT: ACTUALLY MY PREFERENCE -- AND I'M SURE
7 THERE WILL BE SOME EXCEPTION TO THIS ALONG THE WAY, BUT MY
8 PREFERENCE IS FOR US TO PLAY OR READ OR, YOU KNOW, COVER IN THE
9 COURTROOM EVERYTHING THAT YOU WANT IN EVIDENCE.

10 NOW OBVIOUSLY I'M NOT GOING TO BE ABLE TO LOOK AT
11 EACH EXHIBIT AS WE GO ALONG, BUT IT'S MORE HELPFUL TO ME TO
12 ACTUALLY FOCUS IN THE COURTROOM WHAT YOU WANT IN EVIDENCE.

13 MS. SINGER: CERTAINLY, YOUR HONOR, I'D LIKE TO FILE
14 THIS, AND IF I MIGHT RESERVE THE RIGHT TO SEE IF THERE'S ANY
15 OTHER DESIGNATIONS FROM MS. SEAMANS' DEPOSITION THAT WE'D LIKE
16 TO PLAY IN ADDITION.

17 THE COURT: OKAY. I'M NOT SURE WHAT YOU'RE SAYING
18 HERE.

19 MS. SINGER: I'M JUST SAYING THAT THERE'S OTHER
20 DESIGNATIONS --

21 THE COURT: RIGHT.

22 MS. SINGER: WE HAD PREPARED SOME HIGHLIGHTS WITH THE
23 UNDERSTANDING, CLEARLY INCORRECT, THAT YOU DIDN'T WANT TO SEE
24 ALL OF IT. THERE MAY BE A FEW ADDITIONAL ONES IF WE MIGHT PLAY
25 THOSE AT SOME LATER DATE?

1 THE COURT: OKAY. SO WHAT YOU'RE SAYING IS IF YOU
2 WANT IT IN EVIDENCE, YOU'LL PLAY IT?

3 MS. SINGER: UNDERSTANDING THAT THAT'S YOUR
4 PREFERENCE --

5 THE COURT: RIGHT. WHY DON'T YOU GO BACK TO THE
6 DRAWING BACK ON THAT AND FILE SOMETHING THAT STRAIGHTENS THIS
7 OUT, AND LET ME KNOW IF THERE IS MORE THAT NEEDS TO BE PLAYED
8 IN THE COURTROOM.

9 MS. SINGER: WILL DO, YOUR HONOR.

10 AT THIS TIME OUR NEXT WITNESS IS -- WE'RE GOING TO
11 DENISE DIMSDALE. I DON'T KNOW IF YOU PREFER TO HAVE LUNCH OR
12 PREFER ME TO CALL THE WITNESS.

13 THE COURT: IT DOESN'T MATTER TOO MUCH. HOW LONG IS
14 SHE GOING TO BE?

15 MR. LARSON: YOUR HONOR, I WILL BE CONDUCTING THE
16 EXAMINATION. I WOULD IMAGINE 30 TO 45 MINUTES.

17 THE COURT: WELL LET'S GO AHEAD AND DO SOME OF IT.
18 WE'LL PROBABLY BREAK IN JUST A FEW MINUTES.

19 MS. SINGER: YOUR HONOR, MY COLLEAGUE TODD LARSON.

20 THE COURT: THANK YOU.

21 MR. SCHAETZEL: BEFORE WE LEAVE THAT, I WANT TO BE
22 CERTAIN I'M CLEAR. I WANT TO BE CERTAIN THAT I GET A RECORD OF
23 WHAT'S ALREADY IN THE RECORD. I DON'T KNOW IF A TRANSCRIPTION
24 WAS MADE OF THAT OR --

25 THE COURT: WE NORMALLY DON'T MAKE A TRANSCRIPTION.

1 THE WITNESS: MARJORIE DENISE DIMSDALE.

2 DIRECT EXAMINATION

3 BY MR. LARSON:

4 Q. GOOD AFTERNOON.

5 A. GOOD AFTERNOON.

6 Q. MY NAME IS TODD LARSON. I DON'T BELIEVE WE'VE MET
7 BEFORE.

8 TO START COULD YOU TELL US YOUR TITLE PLEASE?

9 A. I'M THE LIBRARY MEDIA AND RESERVES UNIT COORDINATOR,
10 LIBRARY ASSISTANT 1.

11 Q. AND YOU'VE BEEN WORKING AT GSU SINCE AROUND 1999; IS THAT
12 RIGHT?

13 A. AS A STAFF MEMBER, YES.

14 Q. AND YOUR WORK AT THE LIBRARY INVOLVES THE LIBRARY RESERVES
15 UNIT?

16 A. CORRECT.

17 Q. AND IN THAT CAPACITY YOU HAVE MANAGED THE SO-CALLED ERES
18 SYSTEM AT GSU; IS THAT RIGHT?

19 A. YES.

20 Q. AND THAT'S BEEN SINCE AROUND 2004?

21 A. YES.

22 Q. AND YOU'VE DEALT WITH THOUSANDS OF ERESERVES ITEMS IN THAT
23 TIME, CORRECT?

24 A. CORRECT.

25 Q. I'D LIKE TO ASK A FEW QUESTIONS ABOUT THE ERES SYSTEM THAT

ANDRE G. ASHLEY, O.C.R.

1 WE HAVE HEARD SO MUCH ABOUT IN THE FIRST FOUR DAYS OF TRIAL.
2 WHEN WE TALK ABOUT ERESERVES, WHAT WE'RE TALKING ABOUT
3 ESSENTIALLY IS DIGITAL FILES OF COURSE READING MATERIAL THAT
4 ARE STORED ON A COMPUTER SERVER; IS THAT RIGHT?
5 A. YES.
6 Q. AND PROFESSORS WITH THE HELP OF LIBRARY STAFF PLACE COPIES
7 OF THE READINGS ON THE SERVER AND THEN STUDENTS IN THEIR
8 COURSES RETRIEVE THOSE READINGS; IS THAT RIGHT?
9 A. YES.
10 Q. AND STUDENTS OBTAIN COPIES OF THOSE DIGITAL COURSE
11 READINGS THROUGH A SOFTWARE PROGRAM CALLED ERES; IS THAT RIGHT?
12 A. YES, WE CALL IT ERES.
13 Q. AND THAT'S ACTUALLY SOFTWARE THAT'S CREATED BY A THIRD-
14 PARTY VENDOR KNOWN AS DOCUTECH; IS THAT RIGHT?
15 A. YES.
16 Q. AND DOCUTECH ACTUALLY OFFERS THAT SOFTWARE TO UNIVERSITIES
17 AROUND THE COUNTRY; IS THAT RIGHT?
18 A. YES.
19 Q. AND AT GSU YOU AND SOME OF YOUR COLLEAGUES IN THE LIBRARY
20 HELP ADMINISTER THE ERES SYSTEM; IS THAT RIGHT?
21 A. YES.
22 Q. SO LET'S START BY DISCUSSING, IF WE CAN, HOW A GSU
23 PROFESSOR SUBMITS READING MATERIALS TO BE USED ON ERES.
24 A. OKAY.
25 Q. AND JUST TO BE CLEAR FOR THE PURPOSES OF MY QUESTIONS

ANDRE G. ASHLEY, O.C.R.

1 TODAY, I'M INTERESTED IN HOW THE SYSTEM WORKED IN 2009 WHICH IS
2 THE PERIOD AT ISSUE IN THE CASE HERE, AND SO IF THE PROCESS HAS
3 CHANGED SINCE THAT TIME WHEN I ASK YOU THE QUESTIONS IF YOU CAN
4 FOCUS ON 2009 FOR ME, OKAY?

5 A. OKAY.

6 Q. SO TO START, A PROFESSOR SUBMITS A REQUEST ONLINE OVER THE
7 INTERNET; IS THAT RIGHT?

8 A. YES.

9 Q. AND MORE SPECIFICALLY THAT'S DONE THROUGH THE LIBRARY
10 WEBSITE, CORRECT?

11 A. YES.

12 Q. I'D LIKE TO SHOW YOU WHAT'S BEEN MARKED AS DEFENDANTS'
13 EXHIBIT 160?

14 MR. LARSON: MAY I APPROACH, YOUR HONOR?

15 THE COURT: YES.

16 BY MR. LARSON:

17 Q. MS. DIMSDALE, DO YOU RECOGNIZE DX-160 AS THE RESERVE
18 REQUEST FORM THAT WAS DEVELOPED AROUND THE TIME THAT THE NEW
19 GSU COPYRIGHT POLICY WAS PUT IN PLACE?

20 A. YES.

21 Q. AND THIS IS ACCESSED THROUGH THE LIBRARY WEBSITE; IS THAT
22 CORRECT?

23 A. YES.

24 Q. AND THIS IS THE SCREEN OR THE FORM THAT PROFESSORS
25 ENCOUNTER WHEN THEY SUBMIT AN ERES REQUEST; IS THAT RIGHT?

- 1 A. YES, IT'S NOT THE FIRST THING THEY SEE BUT YES.
- 2 Q. THEY NAVIGATE THROUGH A SERIES OF PAGES AND END UP AT THIS
- 3 PAGE?
- 4 A. YES.
- 5 Q. AND THIS INDICATES THAT ONE OF FOUR CONDITIONS MUST APPLY
- 6 IN ORDER FOR THE PROFESSOR TO MAKE AN ELECTRONIC RESERVES
- 7 POSTING; IS THAT RIGHT?
- 8 A. YES.
- 9 Q. AND JUST SO WE'RE CLEAR, THOSE FOUR CONDITIONS ARE EITHER
- 10 THAT MATERIAL IS FROM A JOURNAL TO WHICH THE UNIVERSITY HAS A
- 11 LICENSE, OR IT'S IN THE PUBLIC DOMAIN UNDER NUMBER 2, OR THE
- 12 PROFESSOR HAS USED THE FAIR USE CHECKLIST TO DETERMINE IF USE
- 13 OF THE ITEM IS CONSIDERED FAIR USE, OR UNDER NUMBER 4 THAT THE
- 14 PROFESSOR HAS OBTAINED PERMISSION TO USE THE ITEM; IS THAT
- 15 RIGHT?
- 16 A. YES.
- 17 Q. AND THE INSTRUCTOR MUST AGREE BY CLICKING I AGREE THAT ONE
- 18 OF THOSE FOUR APPLIES?
- 19 A. YES.
- 20 Q. IN THE CASE OF NUMBER 3, THE CHECKLIST, THE FORM THAT WE
- 21 SEE HERE THAT EXPLICITLY INSTRUCTS THAT THE PROFESSOR PRINT AND
- 22 SAVE A COPY OF THE COMPLETED CHECKLIST FOR THE THEIR RECORDS,
- 23 CORRECT?
- 24 A. YES.
- 25 Q. AND IF THE PROFESSOR UNDER NUMBER 4 HAS OBTAINED

1 PERMISSION TO USE THE MATERIAL, THE PROFESSOR MUST ACTUALLY
2 SUBMIT EVIDENCE OF THAT PERMISSION WITH THE REQUEST; IS THAT
3 RIGHT?
4 A. YES.
5 Q. BUT WITH THE FAIR USE CHECKLIST THERE'S NO SUCH
6 REQUIREMENT, RIGHT?
7 A. CORRECT.
8 Q. YOU DON'T COLLECT THE CHECKLISTS OR CHECK THAT THE
9 PROFESSOR HAS ACTUALLY DONE THEM; IS THAT RIGHT?
10 A. CORRECT, WE DO NOT.
11 Q. SO A PROFESSOR COULD JUST SAY THEY'VE DONE IT WHETHER THEY
12 HAVE OR NOT; ISN'T THAT RIGHT?
13 A. YOU COULD SAY ANYTHING, YES.
14 Q. AND THE WAY THE FORM WORKS, IT DOESN'T ACTUALLY REQUIRE
15 THE PROFESSOR TO CLICK ON THE CHECKLIST AND FILL IT OUT IN
16 ORDER TO PROCEED, CORRECT?
17 A. I THINK THAT'S CORRECT.
18 Q. IN OTHER WORDS, THERE'S A LINK WHERE THEY COULD GO TO IT
19 AND LOOK AT IT IF THEY WANTED TO BUT THEY DON'T NEED TO DO
20 THAT, CORRECT?
21 A. I DON'T KNOW. ACTUALLY I DON'T KNOW.
22 Q. NOW THIS ALSO NOTES THAT THE PROFESSOR MUST SUBMIT
23 COMPLETE BIBLIOGRAPHIC INFORMATION; IS THAT CORRECT?
24 A. YES, THE BOLD FIELDS ARE WHAT ON THE FORM ARE THE REQUIRED
25 FIELDS THAT ARE CONSIDERED COMPLETE BIBLIOGRAPHIC INFORMATION.

ANDRE G. ASHLEY, O.C.R.

- 1 Q. AND, FINALLY, JUST BEFORE MOVING PAST THIS SCREEN AND
2 CLICKING AGREE, THE PROFESSOR ESSENTIALLY MUST AGREE TO FOLLOW
3 THE COPYRIGHT GUIDELINES ESTABLISHED BY THE BOARD OF REGENTS;
4 IS THAT CORRECT?
- 5 A. YES.
- 6 Q. LET'S TURN TO PAGE 4 OF THIS DOCUMENT, IF WE COULD? NOW,
7 THIS IS THE SCREEN, TELL ME IF I'M WRONG, WHERE THE PROFESSOR
8 ACTUALLY INDICATES THE TYPE OF RESERVED MATERIAL THAT THEY ARE
9 ASKING THE LIBRARY TO POST; IS THAT RIGHT?
- 10 A. YES.
- 11 Q. AND ONE CHOICE THERE WE SEE IS PRINT RESERVES; IS THAT
12 RIGHT?
- 13 A. YES.
- 14 Q. AND THAT'S WHERE A COPY OF THE BOOK IS PLACED ON A SHELF
15 IN THE LIBRARY?
- 16 A. YES.
- 17 Q. AND ON THIS FORM THE INSTRUCTOR CAN INDICATE WHETHER
18 STUDENTS ARE ALLOWED TO CHECK THAT COPY OUT FOR TWO HOURS,
19 THREE DAYS OR SEVEN DAYS; IS THAT RIGHT?
- 20 A. YES.
- 21 Q. SO A STUDENT IN THE CLASS NEEDS TO COME TO THE LIBRARY IN
22 PERSON AND WHEN THE RESERVE DESK IS OPEN TO READ A COPY OF THE
23 BOOK THAT'S PLACED ON PRINT RESERVES; IS THAT RIGHT?
- 24 A. YES.
- 25 Q. WHAT ARE THE HOURS OF THE RESERVE DESK?

- 1 A. IT'S THE SAME AS THE LIBRARY.
- 2 Q. AND ROUGHLY WHAT ARE THOSE HOURS?
- 3 A. MONDAY THROUGH THURSDAY LIKE 7:30 A.M. TO MIDNIGHT.
- 4 Q. NOT 24-7?
- 5 A. NO.
- 6 Q. AND WHEN ONE STUDENT HAS A BOOK CHECKED OUT FROM PRINT
- 7 RESERVES, THE OTHER STUDENTS ARE UNABLE TO READ THAT BOOK,
- 8 CORRECT?
- 9 A. CORRECT.
- 10 Q. THEY CAN ONLY ACCESS THE PRINT RESERVE COPY ONE AT A TIME;
- 11 IS THAT RIGHT?
- 12 A. YES. WELL, I GUESS THEY COULD SHARE.
- 13 Q. AND IF A STUDENT GOES TO THE LIBRARY TO GET THE BOOK FROM
- 14 HARDCOPY RESERVES AND SOMEONE ELSE IN THE CLASS ALREADY HAD THE
- 15 BOOK CHECKED OUT THEN THAT PERSON HAS TO WAIT UNTIL THAT PERSON
- 16 IS DONE WITH IT TO READ IT, CORRECT?
- 17 A. YES.
- 18 Q. LET'S GO BACK TO THE FORM HERE. ANOTHER CHOICE THAT WE
- 19 SEE HERE ON THE FORM IS TO SUBMIT A REQUEST FOR ELECTRONIC
- 20 RESERVES; IS THAT RIGHT? YOU SEE IT SAYS PARTS OF BOOKS?
- 21 A. YES.
- 22 Q. AND THAT CORRESPONDS TO SOMEONE REQUESTING AN ELECTRONIC
- 23 VERSION -- TO PROVIDE THEIR CLASS WITH AN ELECTRONIC EXCERPT OF
- 24 A BOOK; IS THAT RIGHT?
- 25 A. YES.

1 Q. LET'S MOVE AHEAD TO PAGE 8 -- ACTUALLY, I'M SORRY, IT'S
2 PAGE 9. YES. IS THIS THE PAGE THAT THE PROFESSOR OR
3 INSTRUCTOR WOULD COME TO IF HE OR SHE WERE TO CLICK PARTS OF
4 BOOKS ON THAT PREVIOUS PAGE WE WERE LOOKING AT?
5 A. YES.
6 Q. OKAY. AND THIS IS THE PAGE FOR SUBMITTING INFORMATION
7 ABOUT AN ELECTRONIC EXCERPT OF A BOOK THAT ONE WANTS TO PUT ON
8 RESERVES?
9 A. YES.
10 Q. AND IT HAS A SERIES OF FIELDS THAT THE INSTRUCTOR CAN
11 ENTER TO PROVIDE INFORMATION ABOUT WHAT THE EXCERPT IS; IS THAT
12 RIGHT?
13 A. YES.
14 Q. OKAY. AND AGAIN IT'S SIMILAR TO A PAGE WE LOOKED AT
15 EARLIER, THERE ARE FOUR CHOICES OR BUTTONS IN THE MIDDLE THERE
16 THAT WE SEE, AND THAT'S WHERE THE PROFESSOR INDICATES WHY HE OR
17 SHE BELIEVES THAT THEY HAVE THE RIGHT TO POST THE EXCERPT; IS
18 THAT CORRECT?
19 A. YES.
20 Q. AND THOSE ARE BASICALLY THE SAME FOUR CHOICES THAT WE SAW
21 EARLIER, CORRECT?
22 A. YES. I THINK.
23 Q. AND THEY MUST CHECK ONE OF THOSE TO BE ABLE TO PROCEED
24 THROUGH THE FORM; IS THAT RIGHT?
25 A. THAT'S CORRECT.

ANDRE G. ASHLEY, O.C.R.

1 Q. AND THEN BELOW THAT IN THOSE EMPTY FIELDS, WE SEE THAT'S
 2 WHERE THE INSTRUCTOR INSERTS BIBLIOGRAPHIC INFORMATION ABOUT
 3 THE READING; IS THAT RIGHT?

4 A. YES.

5 Q. AND ONE THING THEY INCLUDE THERE IS THE CHAPTER NUMBER AND
 6 THE PAGE RANGE OF THE EXCERPT THAT THEY WANT TO PUT ON ERES; IS
 7 THAT CORRECT?

8 A. YES.

9 Q. I DON'T SEE ANY ENTRY HERE. IS THERE A PLACE WHERE THEY
 10 CAN INDICATE THE TOTAL NUMBER OF PAGES FOR THE BOOK?

11 A. THEY COULD DO IT IF THEY WANTED TO, BUT THERE IS NOT A
 12 SPECIFIC FIELD FOR THAT.

13 Q. GENERALLY PROFESSORS DO THAT?

14 A. NO.

15 Q. SO WHEN YOU'RE PROCESSING THESE LATER, YOU DON'T KNOW
 16 NECESSARILY THE TOTAL NUMBER OF PAGES IN THE BOOK FROM WHAT THE
 17 PROFESSOR SUBMITTED; IS THAT RIGHT?

18 A. THAT'S RIGHT. I COULD BUT NOT NECESSARILY.

19 Q. AND THE PROFESSOR HAS TO FILL OUT ALL OF THESE FIELDS IN
 20 ORDER TO CONTINUE THROUGH THE FORM?

21 A. THE ONES THAT ARE BOLDED.

22 Q. OKAY. AND WHEN THEY'RE DONE, THEY CLICK TO SUBMIT
 23 THE REQUEST DOWN AT THE BOTTOM THAT SAYS ADD TO RESERVE
 24 CART?

25 A. YES, THEY CLICK THAT TO MOVE ON.

- 1 Q. AND THEN YOU SUBSEQUENTLY RECEIVE THAT REQUEST IN THE
2 LIBRARY; IS THAT RIGHT?
- 3 A. I RECEIVE IT VIA E-MAIL.
- 4 Q. THIS FORM SORT OF TRANSFERS THE INFORMATION ENTERED BY THE
5 PROFESSOR INTO AN E-MAIL THAT IS SENT TO YOU?
- 6 A. IT'S SENT TO THE ERESERVES E-MAIL ACCOUNT.
- 7 Q. AND THAT'S SOMETHING THAT YOU HAVE ACCESS TO ALONG WITH
8 CERTAIN OF YOUR COLLEAGUES?
- 9 A. YES.
- 10 Q. I THINK YOU SAID BEFORE YOU DON'T COLLECT CHECKLISTS FROM
11 THE PROFESSORS; IS THAT RIGHT?
- 12 A. THAT'S RIGHT.
- 13 Q. AND WHEN YOU RECEIVE THESE REQUESTS IN FROM A COMPLETED
14 FORM, AGAIN FOCUSING ON 2009, YOU DON'T CONDUCT A FAIR USE
15 ANALYSIS YOURSELF OF THE SUBMITTED EXCERPTS; IS THAT RIGHT?
- 16 A. NO, I DO NOT.
- 17 Q. AND, IN FACT, AS YOU INDICATED WHEN YOU WERE DEPOSED IN
18 THE CASE, YOU DON'T DETERMINE COPYRIGHT COMPLIANCE AT ALL; IS
19 THAT RIGHT?
- 20 A. I DON'T DETERMINE COPYRIGHT COMPLIANCE. IF SOMEONE NEEDS
21 COPYRIGHT HELP, I SEND THEM TO LEGAL.
- 22 Q. BUT AS TO A PARTICULAR EXCERPT, YOU DON'T ATTEMPT TO
23 DETERMINE WHETHER OR NOT THE USE IS A FAIR USE, RIGHT?
- 24 A. RIGHT, I DON'T DETERMINE FAIR USE.
- 25 Q. AND YOU'RE NOT A LAWYER, CORRECT?

ANDRE G. ASHLEY, O.C.R.

1 A. CORRECT.

2 Q. AND APART FROM A TRAINING SESSION THAT LASTED A COUPLE OF
3 HOURS REGARDING THE NEW GSU COPYRIGHT POLICY, YOU DON'T HAVE
4 ANY PARTICULAR TRAINING IN COPYRIGHT LAW, CORRECT?

5 A. I HAVEN'T TAKEN A CLASS IN COPYRIGHT. YEAH, JUST A COUPLE
6 OF TRAINING WITH GWEN AND CYNTHIA.

7 Q. AND THOSE ARE FROM PEOPLE IN THE LEGAL AFFAIRS DEPARTMENT
8 AT GSU?

9 A. YES.

10 Q. I TAKE IT NONE OF YOUR RESERVE DESK COLLEAGUES ARE
11 LAWYERS, CORRECT?

12 A. CORRECT.

13 Q. AND THAT WOULD INCLUDE MS. CARGILE WHO YOU WORK WITH?

14 A. YES.

15 Q. NOW WHEN YOU RECEIVE THE REQUEST FORM IN THE E-MAIL WITH
16 THE REQUEST FOR A BOOK EXCERPT, THE NEXT STEP YOU TAKE IS TO
17 ATTEMPT TO FIND THE BOOK IN THE LIBRARY COLLECTION; IS THAT
18 RIGHT?

19 A. YES, IF WE OWN THE BOOK, THEN WE CAN PULL IT FROM THE
20 SHELVES FOR THEM IF THEY LIKE.

21 Q. AND THE PURPOSE OF THAT IS BECAUSE YOU NEED TO SCAN THE
22 PAGES THAT HAVE BEEN REQUESTED, RIGHT?

23 A. YES.

24 Q. AND WHEN YOU DO THAT SCANNING BASICALLY WHAT YOU DO IS
25 CREATE A DIGITAL PDF FILE; IS THAT RIGHT?

1 A. YES, WE USE PDF FILES.

2 Q. AND JUST SO IT'S CLEAR FOR THE RECORD, A PDF FILE IS A

3 FORMAT OF A DIGITAL FILE THAT ALLOWS USERS TO VIEW THE COPIED

4 PAGES ON THEIR COMPUTER; IS THAT RIGHT?

5 A. YES.

6 Q. AND WHEN YOU DO THE SCANNING, THAT'S DONE BY YOU OR ONE OF

7 YOUR STAFF MEMBERS?

8 A. YES, IT'S EITHER ME OR MELIA TYPICALLY.

9 Q. AND MELIA IS MS. CARGILE?

10 A. YES.

11 Q. AND THAT SCAN WHEN YOU FIRST DO IT IS SAVED TO THE HARD

12 DRIVE OF A LOCAL COMPUTER THERE IN THE LIBRARY; IS THAT RIGHT?

13 A. YES.

14 Q. AND THEN YOU TAKE THAT SCAN ON THAT LOCAL COMPUTER AND YOU

15 SAVE IT TO THE ERES COMPUTER SERVER; IS THAT RIGHT?

16 A. WE PUT IT ON THE J-DRIVE WHICH I THINK IS THE SERVER FOR

17 ERES. THE SERVER KIND OF CONFUSES ME, BUT, YES, WE TRANSFER

18 THE FILE TO THE J-DRIVE.

19 Q. AND ESSENTIALLY THE WAY IT WORKS IS THERE IS SORT OF A

20 DEDICATED SERVER OR STORAGE AREA FOR THE ERES READING

21 MATERIALS, CORRECT?

22 A. YES.

23 Q. AND IN THAT PROCESS YOU ALSO TAKE THE BIBLIOGRAPHIC

24 INFORMATION FROM THE FORM THAT THE INSTRUCTOR FILLED OUT AND

25 YOU ENTER THAT INTO THE ERES SYSTEM; IS THAT RIGHT?

1 A. WE DO LOOK AT THE BIBLIOGRAPHIC INFORMATION AND MAKE SURE
 2 THAT WHAT WE POST MATCHES IT.

3 Q. SO, IN OTHER WORDS, WHAT THE PROFESSOR PUTS IN TERMS OF
 4 THE PAGE RANGE AND NAME OF THE BOOK AND THE PUBLISHER, YOU MAKE
 5 SURE THAT MATCHES THE EXCERPTS THAT YOU SCAN?

6 A. CORRECT.

7 Q. AND THAT ALL GETS PUT INTO THE TITLE INFORMATION FIELD IN
 8 ERES?

9 A. YES.

10 Q. NOW ONCE THE FILES ARE ON SITTING ON THE SERVER, THE
 11 DIGITAL FILES OF THE READING MATERIAL, IN ORDER TO MAKE THOSE
 12 EXCERPTS AVAILABLE TO STUDENTS IN THE CLASS, YOU CREATE
 13 SOMETHING CALLED A COURSE RESERVES PAGE; IS THAT RIGHT?

14 A. YES.

15 Q. OKAY. AND A COURSE RESERVES PAGE IS A WEBPAGE THAT'S
 16 SPECIFICALLY DEVOTED TO A PARTICULAR CLASS; IS THAT RIGHT?

17 A. YES.

18 Q. I'D LIKE TO SHOW YOU ACTUALLY THE COMPLAINT IN THE CASE.

19 MR. LARSON: MAY I APPROACH, YOUR HONOR?

20 THE COURT: YES.

21 BY MR. LARSON:

22 Q. AND I'LL DIRECT YOUR ATTENTION TO EXHIBIT 3 IN THE
 23 COMPLAINT WHICH IS NEAR THE BACK ON PAGE 3 OF THAT EXHIBIT --
 24 OR THE FIRST PAGE ACTUALLY.

25 MS. QUICKER: OBJECTION, YOUR HONOR, THIS IS THE OLD

1 POLICY, AND THE INFORMATION ON EXHIBIT 3 DEALS WITH THE OLD
2 ERES REPORTS THAT ARE NO LONGER AT ISSUE IN THIS CASE.

3 MR. LARSON: YOUR HONOR, I'M SHOWING THE COMPLAINT
4 NOT FOR THE CONTENT OF ANY OF THE PARTICULAR FILES THAT ARE
5 LISTED HERE BUT JUST TO ESTABLISH FUNCTIONALITY OF THE SYSTEM
6 WHICH I BELIEVE IS SIMILAR TODAY TO WHEN IT WAS WHEN WE FILED
7 THE COMPLAINT. SO THAT'S THE ONLY PURPOSE OF THIS IS TO
8 ESTABLISH THE FUNCTIONALITY IN THE 2009 SEMESTERS THAT WE'RE
9 DEALING WITH.

10 MS. QUICKER: YOUR HONOR, IF I MAY, THERE IS THREE
11 OTHER ERES REPORTS THAT ARE ON THE JOINT EXHIBIT LIST THAT CAN
12 DO THE SAME FUNCTION.

13 MR. LARSON: THIS IS NOT AN ERES REPORT. THIS IS A
14 SCREENSHOT TAKEN FROM THE ERES SYSTEM IN THE COMPLAINT TO
15 DEMONSTRATE THE FUNCTIONALITY OF THE SYSTEM.

16 THE COURT: I CAN'T QUITE FRANKLY SEE WHAT'S ON THE
17 SCREEN FROM THIS DISTANCE. I'M JUST NOT EXACTLY SURE WHAT YOU
18 MEAN WHEN YOU SAY ESTABLISH THE FUNCTIONALITY.

19 MR. LARSON: WHAT I'M ASKING THE WITNESS TO DO IS
20 EXPLAIN HOW THE SYSTEM WORKS. WHAT WE SEE HERE IS A SCREENSHOT
21 THAT WAS TAKEN FROM THE COMPUTER SCREEN FROM THE SYSTEM THAT I
22 WANT TO USE JUST TO HAVE HER EXPLAIN TO US HOW IT WORKS AND HOW
23 STUDENTS ACCESS THE FILES.

24 THE COURT: WHY WOULD SHE NEED THE DOCUMENT TO DO
25 THAT?

1 MR. LARSON: THIS WAS ONLY SO THAT WE WOULD HAVE A
2 PLACE HOLDER OR A REFERENCE TO SEE HOW IT WORKS. I WASN'T
3 PLANNING TO OFFER IT INTO EVIDENCE, BUT ONLY THAT THE COURT
4 COULD ACTUALLY SEE WHAT ONE OF THESE PAGES ACTUALLY LOOKS
5 LIKE. AGAIN IT'S INDEPENDENT OF THE PARTICULAR EXCERPTS --

6 THE COURT: IF YOU THINK THAT WILL WORK, I'LL GIVE IT
7 A TRY. SO I'LL OVERRULE THE OBJECTION.

8 WHY DON'T WE STOP FOR LUNCH AT THIS POINT. WE'LL
9 TAKE A LUNCH BREAK UNTIL 1:30.

10 MR. RICH: YOUR HONOR, JUST A CLARIFICATION WHEN OUR
11 WITNESSES WERE ON CROSS, WE OBSERVED THE NORMAL FORMALITY OF
12 NOT COMMUNICATING WITH THEM. CAN WE HAVE A SIMILAR
13 UNDERSTANDING FROM THE OTHER SIDE?

14 MR. HARBIN: ABSOLUTELY, YOUR HONOR.

15 THE COURT: ALL RIGHT. SO STIPULATED.

16 (NOON RECESS)

17 THE COURT: YOU MAY PROCEED.

18 BY MR. LARSON:

19 Q. MS. DIMSDALE, WHEN WE LEFT OFF WE WERE LOOKING AT AN
20 EXAMPLE OF A COURSE RESERVE PAGE; DO YOU RECALL THAT?

21 A. YES.

22 Q. AND AGAIN JUST TO RECAP --

23 THE COURT: WHAT'S THE EXHIBIT NUMBER AGAIN?

24 MR. LARSON: THIS IS FROM THE COMPLAINT.

25 THE COURT: OKAY.

1 MR. LARSON: EXHIBIT 3 TO THE COMPLAINT.

2 BY MR. LARSON:

3 Q. TO RECAP HERE, A COURSE RESERVES PAGE IS AN INTERNET
4 WEBPAGE; IS THAT RIGHT?

5 A. YES.

6 Q. THIS IS THE PAGE WHERE IT SORT OF ORGANIZES THE ERES
7 POSTINGS FOR A GIVEN CLASS; IS THAT RIGHT?

8 THE COURT: YOU KNOW, THINKING ABOUT THIS MATTER
9 FURTHER, I THINK I AGREE WITH THE DEFENDANTS' OBJECTION AFTER
10 ALL. LET'S USE SOMETHING THAT'S MORE CURRENT.

11 MR. LARSON: UNFORTUNATELY, YOUR HONOR, WE WERE ONLY
12 PROVIDED DISCOVERY ON THIS AND WERE ABLE TO ACCESS THIS PRIOR
13 TO THE 2009 SEMESTER. SO FOR THE SEMESTERS AT ISSUE, WE DON'T
14 HAVE A SCREENSHOT COMPARABLE TO THIS THAT WE WERE PROVIDED.

15 MS. QUICKER: YOUR HONOR, THEY WERE PROVIDED ACCESS
16 TO THE ERES SYSTEM THROUGHOUT THE LITIGATION. THAT'S HOW THEY
17 WERE GIVEN ACCESS TO THE 2009 INFORMATION.

18 THE COURT: THE MORE I THINK ABOUT THIS, I'M GOING TO
19 SUSTAIN THE OBJECTION. YOU CAN ASK QUESTIONS ABOUT THE
20 FUNCTIONALITY THOUGH.

21 MR. LARSON: YES.

22 BY MR. LARSON:

23 Q. MS. DIMSDALE, THE COURSE RESERVE PAGES THOSE IDENTIFY THE
24 COURSE TITLE, CORRECT?

25 A. YES.

- 1 Q. AND THE SEMESTER OF THE COURSE?
- 2 A. YES.
- 3 Q. AND THE PROFESSOR'S NAME?
- 4 A. YES.
- 5 Q. AND AT THE END OF THE SEMESTER, THE COURSE RESERVE PAGES
- 6 ARE ARCHIVED; IS THAT RIGHT?
- 7 A. IT HAS AN END VISIBILITY DATE. I THINK THAT COULD BE
- 8 DESCRIBED AS ARCHIVED.
- 9 Q. AND WHAT THAT MEAN IS THAT IT'S SET SO THAT STUDENTS CAN
- 10 ACCESS IT UP UNTIL THE END OF THE SEMESTER BASICALLY?
- 11 A. YES.
- 12 Q. AND THEN WHEN THE END OF THE SEMESTER COMES THEY CAN NO
- 13 LONGER ACCESS IT?
- 14 A. YES.
- 15 Q. BUT THE PAGE ITSELF IS SAVED OR STORED ON A SERVER?
- 16 A. IT IS RIGHT NOW, YES.
- 17 Q. AND THEN ACTUALLY IF THE INSTRUCTOR SAY A YEAR LATER
- 18 TEACHES THE SAME COURSE AGAIN, YOU'RE ABLE TO REACTIVATE THAT
- 19 COURSE RESERVE PAGE FOR THE NEXT INSTANCE OF THE CLASS; IS THAT
- 20 RIGHT?
- 21 A. WE CAN DO THAT.
- 22 Q. AND IN THAT SITUATION, YOU JUST UPDATE THE SEMESTER AND
- 23 THE YEAR ON THE COURSE RESERVE PAGE TO REFLECT THE NEW
- 24 SEMESTER?
- 25 A. IT DEPENDS ON THE REQUEST.

ANDRE G. ASHLEY, O.C.R.

1 Q. OKAY. BUT IF IT'S THE EXACT SAME COURSE THAT THE
 2 PROFESSOR IS TEACHING JUST A YEAR LATER, YOU COULD USE THE SAME
 3 COURSE RESERVE PAGE BUT JUST CHANGE THE DATE FROM 2009 TO 2010
 4 OR WHATEVER IT MIGHT BE?

5 A. IT DEPENDS ON THE REQUEST.

6 Q. AND THAT REQUEST WOULD COME FROM THE PROFESSOR?

7 A. YES.

8 Q. AND GENERALLY THOSE REQUESTS INCLUDE IDENTIFYING THE
 9 COURSE NUMBER AND SEMESTER FOR THE COURSE; IS THAT RIGHT?

10 A. YES.

11 Q. NOW IN THE PROCESS WE'VE BEEN DISCUSSING WHEREBY A
 12 PROFESSOR SUBMITS A REQUEST AND YOU SCAN IT, CREATE THE COURSE
 13 RESERVE PAGE, AT NO TIME DURING THIS PROCESS DO YOU OR ANYONE
 14 ELSE IN THE LIBRARY SEEK PERMISSION FROM THE PUBLISHER OR CCC
 15 TO ADD THESE DIGITAL EXCERPTS TO THE ERES SYSTEM, CORRECT?

16 A. IF WE'RE SCANNING THE MATERIAL IF PERMISSION NEEDS TO BE
 17 REQUESTED, TYPICALLY THAT WOULD BE THE RESPONSIBILITY OF THE
 18 FACULTY MEMBER. THERE MAY BE OTHER OPTIONS. I DON'T KNOW WHAT
 19 THEY ARE THOUGH.

20 Q. BUT THE LIBRARY DOESN'T GO TO CCC AND SAY CAN WE HAVE
 21 PERMISSION TO POST THIS EXCERPT, RIGHT?

22 A. IT'S NOT PART OF ANYTHING I DO.

23 Q. OKAY. AND AS FAR AS YOU'RE AWARE NO PAYMENT IS MADE TO
 24 CCC OR THE PUBLISHER FOR THESE BOOK EXCERPTS THAT ARE SCANNED
 25 AND POSTED?

1 A. I DON'T KNOW OF ANY PAYMENTS.

2 Q. LET'S DISCUSS HOW STUDENTS ACCESS THESE DIGITAL COURSE
3 READING MATERIALS. THE STUDENTS ALSO ACCESS THESE MATERIALS
4 THROUGH THE INTERNET, CORRECT?

5 A. IT'S THROUGH THE -- IT'S INTERNET ACCESS, YES, IT'S A
6 SPECIFIC COURSE PAGE.

7 Q. SO THE STUDENT WILL FIRST GO TO THE LIBRARY WEBSITE; IS
8 THAT RIGHT?

9 A. THEY CAN GO TO THE ERESERVES OR THE LIBRARY WEBSITE.

10 Q. AND WHEN YOU SAY GO TO THE ERESERVES, YOU MEAN A WEBPAGE
11 THAT'S WITHIN THE SUITE OF LIBRARY WEBPAGES?

12 A. IT'S RESERVE@GSU.EDU.

13 Q. IT'S AN INTERNET WEBPAGE THAT'S MAINTAINED AND PROVIDED BY
14 THE LIBRARY?

15 A. YES.

16 Q. AND STUDENTS CAN GET TO THAT PAGE FROM ANY PLACE WITH
17 INTERNET ACCESS, CORRECT?

18 A. YES.

19 Q. ANY TIME OF DAY OR NIGHT?

20 A. YES.

21 Q. AND AS YOU ACKNOWLEDGED IN YOUR DEPOSITION, SUCH ONLINE
22 ACCESS ALLOWS AN UNLIMITED NUMBER OF STUDENTS TO ACCESS THE
23 STUDENTS 24-7 FROM ANYWHERE IN THE WORLD; IS THAT RIGHT?

24 A. IT'S LIMITED TO THOSE THAT HAVE THE PASSWORD, BUT IF YOUR
25 IN THE CLASS, YOU HAVE THE PASSWORD AND ALL THE CRITERIA ARE

1 MET THEN, YES.

2 Q. NOW, THE COURSE RESERVE PAGE THAT THE STUDENT ACCESSES FOR
 3 THEIR PARTICULAR COURSE, THAT ESSENTIALLY PROVIDES A LIST OF
 4 THE READING EXCERPTS ON THE WEBPAGE; IS THAT RIGHT?

5 A. WHAT'S YOUR QUESTION?

6 Q. WHEN THE STUDENT VIEWS THE COURSE RESERVES PAGE FOR THEIR
 7 PARTICULAR CLASS ON THE WEBSITE, THEY CAN SEE A LIST OF THE
 8 DIFFERENT ERESERVES POSTINGS; IS THAT RIGHT?

9 A. YES.

10 Q. AND EACH ONE OF THOSE CORRESPONDS TO A DIGITAL READING
 11 EXCERPT, RIGHT?

12 A. WELL, WE HAVE A LOT OF THINGS LISTED IN ERES AND NOT ALL
 13 OF THEM ARE DIGITAL READING EXCERPTS.

14 Q. SOME MIGHT BE A LINK FOR EXAMPLE TO A JOURNAL?

15 A. YES.

16 Q. BUT INCLUDED WITHIN THAT LIST IF THE PROFESSOR HAS PUT
 17 EXCERPTS OF BOOKS ON ERESERVES, THERE WILL BE A LIST OF THOSE
 18 EXCERPTS; IS THAT RIGHT?

19 A. YES.

20 Q. AND THEN THE WAY IT WORKS, TELL ME IF I'M WRONG, THE
 21 STUDENT CAN ACTUALLY CLICK ON ONE OF THE ENTRIES IN THAT LIST
 22 AND THAT WILL ALLOW THEM TO VIEW THE FILE ASSOCIATED WITH THAT
 23 ENTRY, CORRECT?

24 A. YES.

25 Q. OKAY. AND WHEN THEY DO THAT BASICALLY THE SYSTEM SENDS

1 OVER A COPY OF THE READING MATERIAL FROM THE ERES SERVER OVER
2 TO THE STUDENT'S COMPUTER; IS THAT RIGHT?

3 A. I DON'T KNOW HOW THAT WORKS.

4 Q. BUT IN ANY EVENT WHEN THEY CLICK THAT LINK, THE PDF IS
5 DISPLAYED ON THEIR COMPUTER SCREEN?

6 A. IT IS VIEWABLE, YES.

7 Q. AND THEY CAN SAVE THAT FILE TO THE HARD DRIVE OF THEIR
8 COMPUTER; IS THAT RIGHT?

9 A. YES.

10 Q. AND THEY CAN PRINT IT IF THEY WANT TO?

11 A. YES.

12 Q. I TAKE IT WHEN THIS PROCESS HAPPENS THERE'S NO NEED FOR
13 THE STUDENT TO, QUOTE, UNQUOTE, RETURN THE FILE IN TWO HOURS;
14 IS THAT RIGHT?

15 A. CORRECT.

16 Q. IT'S THEIR OWN COPY THAT THEY CAN SORT OF DO WITH AS THEY
17 PLEASE; IS THAT RIGHT?

18 A. NO.

19 Q. AND WHY NOT?

20 A. WELL, THEY HAVE TO AGREE TO COPYRIGHT AS WELL.

21 Q. BUT THEY ARE ABLE TO PRINT IT, RIGHT?

22 A. YES.

23 Q. THEY ARE ABLE TO SAVE IT TO THEIR COMPUTER?

24 A. YES.

25 Q. DOWNLOAD IT TO THEIR HARD DRIVE?

- 1 A. YES.
- 2 Q. THEY COULD E-MAIL IT TO THEIR FRIENDS?
- 3 A. YOU WOULD HAVE TO ASK GWEN ABOUT THAT.
- 4 Q. OKAY. THERE'S NO TECHNICAL RESTRICTIONS PLACED ON THAT
- 5 FILE BY THE LIBRARY?
- 6 A. RIGHT.
- 7 Q. AND THEY COULD KEEP IT THEN PAST THE END OF THE SEMESTER;
- 8 IS THAT RIGHT?
- 9 A. IT'S TECHNOLOGICALLY POSSIBLE TO KEEP IT.
- 10 Q. AND JUST AGAIN SO THE RECORD IS CLEAR, THERE IS NO
- 11 OBLIGATION IN THIS SITUATION IF THE STUDENT HAS MADE, YOU KNOW,
- 12 PRINTED A COPY FOR THEMSELVES, THERE'S NO OBLIGATION THAT THEY
- 13 RETURN THAT COPY TO THE LIBRARY, CORRECT?
- 14 A. WE DON'T COLLECT COPIES.
- 15 Q. JUST SO WE'RE CLEAR ON HOW THIS ALL WORKS, LET'S SAY THAT
- 16 ONE STUDENT FROM A CLASS IS IN HER DORM ROOM AND LOGS ONTO HER
- 17 COMPUTER, NAVIGATES TO THE COURSE RESERVES PAGE, CLICKS ON A
- 18 LINK FOR A READING AND THEN SAVES THAT COPY TO HER HARD DRIVE
- 19 AND IS READING THE FILE; ARE YOU WITH ME?
- 20 A. YES.
- 21 Q. AND THEN LET'S SAY ANOTHER STUDENT IN THE CLASS A MINUTE
- 22 OR TWO LATER LOGS ON FROM HER DORM ROOM, CLICKS ON THE SAME
- 23 LINK A COUPLE OF MINUTES LATER, IN THAT SITUATION THE SECOND
- 24 PERSON WILL ALSO RECEIVE A COPY OF THE READING FROM THE ERES
- 25 SERVER; IS THAT RIGHT?

1 A. THE SECOND PERSON CAN VIEW IT. I DON'T KNOW WHETHER OR
 2 NOT IT'S A COPY.

3 Q. YEAH BUT THE SECOND PERSON CAN VIEW IT EVEN THOUGH THE
 4 FIRST PERSON HAS DOWNLOADED IT AND IS VIEWING IT ON THE FIRST
 5 PERSON'S COMPUTER, RIGHT?

6 A. YES.

7 Q. THE SECOND PERSON DOESN'T HAVE TO WAIT FOR THE FIRST
 8 PERSON TO RETURN IT OR GIVE HER COPY BACK BEFORE THE SECOND
 9 PERSON CAN SEE IT, RIGHT?

10 A. RIGHT.

11 Q. AND IF A THIRD PERSON IN THE CLASS A COUPLE OF MINUTES
 12 LATER ALSO GOT ON THEIR COMPUTER, LOGGED ONTO THE SAME SYSTEM
 13 AND CLICKED THE LINK, THAT THIRD PERSON COULD ALSO VIEW THE
 14 FILE WHEN CLICKING ON THE LINK, CORRECT?

15 A. YES.

16 Q. AND THAT PROCESS COULD WORK ALL THE WAY OUT TO THE TOTAL
 17 NUMBER OF STUDENTS IN THE CLASS, RIGHT?

18 A. YES.

19 Q. NONE OF THEM WOULD HAVE TO WAIT TWO HOURS FOR THE FIRST
 20 PERSON OR THE SECOND PERSON TO RETURN THEIR COPY; IS THAT
 21 RIGHT?

22 A. THAT'S RIGHT.

23 Q. OKAY. SO ULTIMATELY EVERYONE IN THE CLASS IN THIS PROCESS
 24 CAN BASICALLY GET THE READING AND HAVE A COPY OF IT IN THEIR
 25 DORM ROOM OR WHEREVER THEY'RE LOGGING ON AS SOON AS IT'S POSTED

1 TO THE SYSTEM; IS THAT RIGHT?

2 A. THEY CAN ALL VIEW IT AT THE SAME TIME, YES.

3 Q. STUDENTS AT GSU ARE CHARGED TO PRINT ON PRINTERS IN THE

4 LIBRARY; IS THAT CORRECT?

5 A. YES.

6 Q. AND SO IF A STUDENT PRINTS A COURSE READING FROM ERES ON A

7 UNIVERSITY PRINTER, THEY HAVE TO PAY FOR THAT PRINTING, RIGHT?

8 A. THEY GET 3 DOLLARS AT THE BEGINNING OF EVERY SEMESTER. I

9 DON'T KNOW WHERE THAT COMES FROM.

10 Q. THREE DOLLARS OF CREDIT?

11 A. YES, AND THEN AFTER THAT THEY PAY -- I CAN'T REMEMBER HOW

12 MUCH IT IS.

13 Q. A NICKEL A PAGE MAYBE?

14 A. SOMETHING.

15 Q. AND THEY DO THAT BY SWIPING THEIR PANTHER CARD, AND IT

16 GETS CHARGED BACK TO THEIR ACCOUNT?

17 A. YES.

18 MR. LARSON: I HAVE NO MORE QUESTIONS FOR YOU. THANK

19 YOU.

20 MS. QUICKER: YOUR HONOR, THE PARTIES HAVE AGREED

21 BECAUSE SHE'S CALLED IN THEIR CASE IN CHIEF THAT WE CAN GO

22 FORWARD WITH OUR DIRECT IF THAT'S ACCEPTABLE?

23 THE COURT: THAT'S FINE.

24 CROSS-EXAMINATION

25 BY MS. QUICKER:

1 Q. MS. DIMSDALE, CAN YOU PLEASE DESCRIBE YOUR EDUCATIONAL
 2 BACKGROUND?
 3 A. I HAVE A BACHELORS WHICH I GOT FROM GEORGIA STATE. IT'S
 4 IN MUSIC. IT'S IN 96. I GOT A MASTERS IN MUSIC IN 2002, AND I
 5 JUST GOT A MASTERS IN LIBRARY SCIENCE IN 2010 FROM VALDOSTA
 6 STATE.
 7 Q. AND YOU SAID YOU WORKED AT THE LIBRARY FROM 1999 UNTIL
 8 TODAY, BUT DID YOU ALSO WORK FOR THE LIBRARY AS A STUDENT WHILE
 9 YOU WERE AN UNDERGRAD?
 10 A. YES.
 11 Q. AND WHAT WAS YOUR ROLE AT THE UNIVERSITY LIBRARY?
 12 A. AS A STUDENT, I WAS A STUDENT ASSISTANT. I WORKED IN THE
 13 MEDIA CENTER AT THAT TIME.
 14 Q. AND WHILE YOU'VE BEEN EMPLOYED AT GSU HAVE YOU HAD ANY
 15 TRAINING IN COPYRIGHT?
 16 A. I WENT TO A COPYRIGHT SESSION WITH CYNTHIA SHORTLY AFTER
 17 THE NEW POLICY WENT INTO EFFECT.
 18 Q. CAN YOU TELL US WHO CYNTHIA IS?
 19 A. CYNTHIA HALL WAS THE -- SHE WORKED IN LEGAL AFFAIRS AS AN
 20 ATTORNEY. SHE'S THE COPYRIGHT PERSON.
 21 Q. AND YOU SAID SHORTLY AFTER THE COPYRIGHT POLICY WAS
 22 ADOPTED THAT YOU ATTENDED THIS TRAINING BY CYNTHIA --
 23 A. YES.
 24 Q. -- FROM LEGAL AFFAIRS?
 25 A. YES.

ANDRE G. ASHLEY, O.C.R.

1 Q. AND DO YOU KNOW WHERE THAT TRAINING WAS HELD?

2 A. IN THE LIBRARY.

3 Q. DO YOU KNOW APPROXIMATELY HOW LONG IT LASTED?

4 A. I DON'T REMEMBER. IT'S BEEN A WHILE.

5 Q. DID YOU FIND THE TRAINING HELPFUL?

6 A. YES, AT THAT TIME SHE JUST DID KIND OF AN OVERALL
7 TRAINING. AT THE TIME I FELT IT WAS HELPFUL. IT'S BEEN A
8 WHILE SINCE WE DID IT, THOUGH.

9 Q. AND THEN YOU SAID YOU ATTENDED YET ANOTHER SEMINAR, WHO
10 DID YOU -- WHAT OTHER TRAINING DID YOU HAVE; WHAT WAS THE
11 SECOND ONE YOU MENTIONED?

12 A. GWEN SPRATT.

13 Q. WHO IS GWEN SPRATT?

14 MR. LARSON: YOUR HONOR, I'D OBJECT ONLY IF THIS IS
15 TRAINING THAT HAPPENED AFTER THE 2009 SEMESTER. I THINK IT'S
16 SUBJECT TO THE SAME OBJECTION THE DEFENDANTS HAVE BEEN MAKING.
17 I ASK THAT WE CLARIFY WHEN THIS TRAINING HAPPENED.

18 THE COURT: OVERRULED.

19 THE WITNESS: THE TRAINING WITH GWEN, I CAN'T
20 REMEMBER WHEN IT WAS. IT WAS MORE RECENT. PROBABLY -- I DON'T
21 KNOW. IT WAS MORE RECENT THOUGH.

22 BY MS. QUICKER:

23 Q. AND WHO IS GWEN SPRATT?

24 A. SHE WORKS IN LEGAL AFFAIRS, AND SHE'S OUR COPYRIGHT -- THE
25 PERSON THAT WE ASK COPYRIGHT QUESTIONS.

1 Q. AND WHERE WAS THAT TRAINING HELD?

2 A. IN THE LIBRARY.

3 Q. AND DID YOU ATTEND THAT TRAINING WITH ANYBODY FROM YOUR

4 STAFF?

5 A. YES, MELIA CARGILE WAS ALSO THERE.

6 Q. AND WHAT'S MELIA'S ROLE IN YOUR STAFF?

7 A. SHE PROCESSES DIGITAL RESERVES.

8 Q. OTHER THAN YOU AND MELIA, DOES ANYONE ELSE WITHIN YOUR

9 DEPARTMENT PROCESS ERESERVES?

10 A. IT'S NOT PART OF ANYONE ELSE'S JOB RESPONSIBILITY TO DO

11 THAT.

12 Q. SO THE TWO OF YOU ATTENDED A TRAINING ON COPYRIGHT --

13 A. YES.

14 Q. -- PROVIDED BY THE LEGAL DEPARTMENT?

15 A. YES.

16 Q. DID YOU FIND THAT TRAINING HELPFUL?

17 A. YES.

18 Q. AND HAVE YOU USED ANYTHING YOU LEARNED IN THOSE TRAININGS

19 IN YOUR CURRENT JOB?

20 A. I DON'T ACTUALLY HAVE TO -- GWEN TALKED ABOUT A LOT OF

21 THINGS. SO A LOT OF THE THINGS SHE TALKED ABOUT IS NOT GOING

22 TO BE APPLICABLE TO MY SPECIFIC JOB DUTIES, BUT I THOUGHT IT

23 WAS HELPFUL TO HAVE IT.

24 Q. SINCE THE NEW POLICY WENT INTO EFFECT IN THE SPRING OF 09,

25 HAVE YOU NOTICED A CHANGE IN THE NUMBER OF REQUESTS MADE BY

ANDRE G. ASHLEY, O.C.R.

1 PROFESSORS TO POST EXCERPTS FROM BOOKS ON ERES?

2 A. YES.

3 MR. LARSON: SAME OBJECTION, YOUR HONOR, AS TO THE
4 TIMEFRAME. TO THE EXTENT THIS QUESTION GOES TO PERIODS AFTER
5 THE SEMESTER AT ISSUE IN 2009 WE WOULD OBJECT.

6 THE COURT: OVERRULED

7 BY MS. QUICKER:

8 Q. I'M SORRY, I DIDN'T HEAR YOUR ANSWER.

9 A. YES.

10 THE COURT: LET ME JUST STOP HERE FOR A MINUTE TO
11 STATE AGAIN CLARIFICATION OF THE RULINGS I MADE EARLIER. I
12 RULED THAT ONLY CERTAIN SEMESTERS WOULD BE RELEVANT IN
13 DETERMINING THE INFRINGEMENT ISSUE THAT'S BEFORE THE COURT, AND
14 I DID THIS IN ORDER TO CIRCUMSCRIBE THE TIMEFRAME FOR PURPOSES
15 OF FOCUSING THE CASE AND GIVING A LEVEL PLAYING FIELD TO BOTH
16 SIDES.

17 IN SO RULING, I DID NOT SAY THAT NOTHING THAT
18 HAPPENED AFTER 2009 COULD HAVE ANY RELEVANCE. FOR EXAMPLE,
19 THIS WITNESS WAS TESTIFYING ABOUT SOME TRAINING OR EDUCATION
20 SHE HAD THAT WAS AFTER 2009. THAT IS NOT RULED OUT BY THE
21 RULING I MADE LIMITING THE SCOPE OF THE ALLEGED INFRINGEMENTS
22 THAT COULD BE INQUIRED INTO IN THIS CASE.

23 THE WITNESS IS HERE. SHE IS A PRODUCT OF WHATEVER
24 HAS HAPPENED IN THE PAST. IF SHE'S HAD CERTAIN TRAINING EVEN
25 IF IT WAS AFTER 2009, IT ARGUABLY HAS SOME IMPACT ON HER

1 TESTIMONY.

2 NOW IN SAYING THAT, I DON'T MEAN TO GIVE UNDUE
3 EMPHASIS TO THE TESTIMONY THAT SHE'S GIVING. I REALLY THINK
4 IT'S A LITTLE BIT PERIPHERAL, BUT YOU'RE FREE TO GO AHEAD. I
5 WISH YOU WOULD KIND OF ROLL THROUGH IT MORE QUICKLY.

6 DID YOU WANT TO SAY SOMETHING, MR. RICH?

7 MR. RICH: IF I MAY, YOUR HONOR, THANK YOU. THIS IS
8 OBVIOUSLY A VERY IMPORTANT TOPIC TO US BECAUSE WE HAD SOME
9 CONSIDERABLE RESERVATIONS ABOUT HOW THIS MIGHT PLAY.
10 ANTICIPATING WHICH I THINK THE FOUNDATION IS NOW ATTEMPTING TO
11 BE LAID WITH THIS FIRST GSU WITNESS A THEME FROM THE OTHER SIDE
12 WHICH MR. SCHAEZEL WAS UNABASHED IN OFFERING DURING HIS
13 OPENING WHICH IS WE'RE ON A LEARNING CURVE, IT'S REALLY GETTING
14 BETTER.

15 WE WERE NOT PERMITTED YOU'LL RECALL DISCOVERY BEYOND
16 THOSE THREE TERMS AS TO CONTINUING PRACTICE. YOUR HONOR SAID I
17 WILL TAKE THIS AS REPRESENTATIVE, AND WE HAVE PREPARED THE
18 ENTIRE CASE SINCE NOVEMBER ON THAT BASIS.

19 I RESPECT YOUR RULINGS. WE'LL OBVIOUSLY ABIDE BY
20 YOUR RULINGS. WE'RE ONLY CONCERNED THOUGH THAT THE LEVEL
21 PLAYING FIELD IN THE SENSE THAT IF THAT TESTIMONY COMES IN, WE
22 WILL HAVE BEEN DEPRIVED OF ANY BENEFIT TO MAKE A MORE RECENT
23 SHOWING AS TO THE CONTINUATION OF THE PRACTICE PAST THOSE THREE
24 TERMS.

25 THE COURT: WELL, I DO AGREE WITH YOU THAT MY RULING

1 DOES MEAN THAT THE DEFENDANTS CANNOT ARGUE THAT THINGS HAVE
2 GOTTEN BETTER SINCE THE CLOSE OF THE PERIOD THAT I IDENTIFIED.
3 I AGREE WITH THAT.

4 MR. RICH: THANK YOU.

5 THE COURT: BUT THAT DOESN'T REALLY GET TO MR.
6 LARSON'S OBJECTION THAT HE MADE. I THOUGHT IT WAS JUST TOO
7 TECHNICAL.

8 MR. RICH: THAT'S FAIR, YOUR HONOR. THANK YOU VERY
9 MUCH.

10 THE COURT: LET'S STEAMROLL AHEAD, AND I THINK WITH
11 RESPECT TO THE ISSUE OF WHETHER THINGS HAVE GOTTEN BETTER, WHAT
12 IT WOULD REALLY BOIL DOWN TO IS IF THERE ARE FEWER
13 INFRINGEMENTS OR ALLEGED INFRINGEMENTS NOW, BUT WE'RE NOT GOING
14 THERE.

15 BY MS. QUICKER:

16 Q. WILL YOU PLEASE LOOK AT DX-160?

17 A. I'VE GOT IT.

18 Q. YOU TESTIFIED EARLIER THAT YOU DID NOT ASK ANY OF THE
19 PROFESSORS TO PROVIDE YOU WITH A COPY OF THEIR FAIR USE
20 CHECKLIST?

21 A. YES.

22 Q. CAN YOU EXPLAIN WHY?

23 A. THE PROFESSOR WHO'S TEACHING THIS CLASS IS THE ONE WHO
24 NEEDS TO BE ABLE TO EVALUATE THAT. SO THE FAIR USE CHECKLIST
25 IS NOT GOING TO MEAN VERY MUCH TO ME. THE PROFESSOR KNOWS

1 HOW -- THEY KNOW THE MATERIAL. THEY KNOW HOW THEY'RE TEACHING
2 IT, AND THOSE ARE THE KINDS OF THINGS THAT YOU NEED TO KNOW IN
3 ORDER TO BE ABLE TO EVALUATE IT, AND I'M NOT GOING TO KNOW
4 THAT.

5 Q. AND SO WHEN YOU SEE NUMBER 3 HERE, THE FAIR USE CHECKLIST
6 LINK, DO YOU KNOW WHERE THAT TAKES A PROFESSOR WHO IS ABOUT TO
7 FILL OUT THE ERES FORM?

8 A. YES, IT DIRECTS THEM TO THE FAIR USE CHECKLIST.

9 Q. AND WITH RESPECT TO NUMBER 4 --

10 THE COURT: HAVEN'T WE BEEN OVER THIS BEFORE?

11 MS. QUICKER: I'M JUST FOLLOWING UP ON SOME OF THE
12 QUESTIONS I DON'T THINK MR. LARSON ASKED.

13 THE COURT: WHY DON'T YOU GO RIGHT TO ONE OF THOSE
14 QUESTIONS.

15 MS. QUICKER: OKAY.

16 BY MS. QUICKER:

17 Q. YOU MAY SEE THIS SENTENCE RIGHT HERE THAT SAYS YOU MAY NOT
18 SUBMIT SECOND GENERATION COPIES?

19 A. YES.

20 Q. WHY MAY YOU NOT SUBMIT SECOND GENERATION COPIES TO
21 PHYSICAL RESERVES?

22 A. OUR PHYSICAL RESERVES ARE JUST THE FIRST GENERATION
23 COPIES.

24 Q. DO YOU ACCEPT THOSE FOR ERES?

25 A. WE WILL ONLY CONDITIONED THAT THE INSTRUCTOR OWNS THE

1 ORIGINAL, OR IF WE OWN THE ORIGINAL. IT'S JUST AS A
2 CONVENIENCE TO THEM.

3 Q. A CONVENIENCE TO THE PROFESSOR?

4 A. YES, IF THEY DON'T WANT TO LET GO OF THEIR MATERIALS.

5 Q. AND YOUR TESTIMONY EARLIER ABOUT PAGE 4 AND THE PASSWORD
6 PROTECTED ELECTRONIC RESERVES PAGE I BELIEVE WAS THAT YOU
7 ARCHIVE THE MATERIALS THAT YOU SCAN CURRENTLY.

8 EVEN THOUGH AT THE END OF THE SEMESTER THE STUDENTS
9 CAN NO LONGER ACCESS IT, THE LIBRARY STAFF STILL HAS THE
10 DOCUMENT IN ARCHIVE.

11 MR. LARSON: I OBJECT THAT IT MISCHARACTERIZES THE
12 TESTIMONY.

13 THE COURT: STATE YOUR QUESTION AGAIN.

14 MS. QUICKER: THE MATERIALS THAT YOU SCAN THAT ARE
15 EVENTUALLY NO LONGER ACCESSIBLE AT THE END OF THE SEMESTER, I
16 BELIEVE YOUR TESTIMONY WAS THOSE ARE ARCHIVED ON THE HARD DRIVE
17 OF THE LOCAL COMPUTER AND ERES.

18 THE COURT: OVERRULED.

19 THE WITNESS: WE HAVE ACCESS TO THE FILES IF THAT'S
20 WHAT YOU MEAN.

21 BY MS. QUICKER:

22 Q. AND THAT THEY ARE ACTUALLY NOT DELETED?

23 A. RIGHT.

24 Q. WHY ARE THOSE ITEMS NOT DELETED?

25 A. RIGHT NOW WE CAN'T DELETE THEM BECAUSE WE'RE UNDER

1 LITIGATION. IT'S IN THE SYSTEM. IT MAY OR MAY NOT BE
2 CONTINUED ON THE PAGE.

3 Q. I BELIEVE YOU WERE ASKED ABOUT THIS FORM AND THE LACK OF A
4 TOTAL PAGES?

5 A. YES.

6 Q. IF ANYONE IN THE LIBRARY WANTED TO DETERMINE THE TOTAL
7 PAGES OF THE BOOK, WHAT WOULD THEY DO?

8 A. IF YOU HAD THE BOOK, YOU COULD JUST LOOK AT IT. IF I WERE
9 LOOKING AT IT, I WOULD JUST PROBABLY FLIP TO THE BACK, BUT IF I
10 WANTED TO KNOW I ALSO USE THE WORLD CAT A LOT. IT'S GOT THAT
11 LISTED IN THE BIBLIOGRAPHIC RECORD.

12 Q. AND WHAT IS WORLD CAT?

13 A. IT'S A DATABASE OF ROUGHLY ALL THE BOOKS IN THE WORLD
14 THAT'S CATALOGED.

15 MS. QUICKER: YOUR HONOR, I DON'T BELIEVE THAT WE
16 HAVE MOVED INTO EVIDENCE DEFENDANTS' EXHIBIT 160. I'D LIKE TO
17 MOVE INTO EVIDENCE DEFENDANTS' EXHIBIT 160.

18 THE COURT: ANY OBJECTIONS?

19 MR. LARSON: NO OBJECTIONS.

20 THE COURT: IT'S ADMITTED.

21 BY MS. QUICKER:

22 Q. IS THIS FORM FILLED OUT AT THE BEGINNING OF EVERY SEMESTER
23 DESPITE THE FACT THAT YOU MAY HAVE ARCHIVED ON YOUR HARD DRIVE
24 A COPY OF THE MATERIAL THAT THE PROFESSOR WANTED TO USE FOR THE
25 COURSE THAT SEMESTER, THE SUBSEQUENT SEMESTER?

1 A. YES.

2 Q. IS THE POLICY THAT THEY NEED TO REFILL OUT THIS FORM?

3 A. IF THEY ARE USING -- YES, IT DOESN'T MATTER WHAT'S ON OUR

4 HARD DRIVE. IF YOU WANT SOMETHING THAT'S DIGITAL -- IF WE'RE

5 GOING TO UPLOAD A FILE THAT'S DIGITAL, IT'S GOING TO BE LIKE A

6 PDF OR WORD OR POWERPOINT OR WHATEVER. IF WE'RE UPLOADING IT

7 THEN THAT'S NOT GOING TO BE VISIBLE UNLESS YOU FILLED OUT THIS

8 FORM.

9 Q. SO A PROFESSOR THAT HAD POSTED THE SAME EXCERPT A SEMESTER

10 BEFORE CAN'T JUST CALL THE LIBRARY AND SAY HEY, IT'S THE SAME

11 MATERIAL, SAME CLASS, GO AHEAD AND JUST REPOST IT; THAT

12 WOULDN'T BE ACCEPTABLE TO YOU?

13 A. NOT IF IT'S A DIGITAL FILE.

14 Q. THEY WOULD HAVE TO GO THROUGH THE PROCESS?

15 A. RIGHT.

16 Q. CAN YOU EXPLAIN TO ME WHAT WOULD HAPPEN IF A PROFESSOR

17 TRIED TO PUT AN ENTIRE BOOK ON ERES?

18 A. IF IT WAS -- IF IT'S AN ENTIRE BOOK, IT'S ONE OF OUR RED

19 FLAGS. IF IT'S AN ENTIRE BOOK, THE FIRST THING THAT WE WOULD

20 DO IS SEE IF WE CAN LINK TO IT IN OUR DATABASES. IF WE CAN

21 WE'LL JUST POST A LINK TO THAT.

22 IF IT'S IN THE PUBLIC DOMAIN, THEN THAT'S AN OPTION

23 AS WELL. WE'D PROBABLY TRY TO LINK TO THAT. IF THEY HAD

24 PERMISSION TO PUT THE ENTIRE BOOK ON RESERVE, THEY COULD --

25 THEY WOULD HAVE TO FILL OUT THE FORM THAT WAY AND WE WOULD SEE

1 THAT, AND THEY WOULD PROVIDE US WITH THE PERMISSION LETTER OR
2 CORRESPONDENCE OR RECEIPT, AND IF NONE OF THOSE APPLY, THEN WE
3 WOULD REFER THAT TO GWEN.

4 Q. AND GWEN BEING THE LEGAL DEPARTMENT?

5 A. YES.

6 Q. AND BACK IN MAY OF 09 AFTER THE POLICY HAD JUST BEEN
7 ADOPTED, DO YOU REMEMBER HOW MANY ITEMS YOU READ FLAGGED DURING
8 THAT SEMESTER?

9 A. IF YOU'RE STARTING IN MAY, THAT'S ACTUALLY NOT A VERY BUSY
10 SEMESTER, BUT RIGHT THEN PEOPLE DIDN'T QUITE GET WHAT WE WERE
11 DOING. SO IT SEEMED AS THOUGH THE PROFESSORS WEREN'T QUITE
12 UNDERSTANDING THINGS. SO IT SEEMED LIKE PROBABLY EVERY -- I
13 DON'T KNOW. IN FALL RIGHT AFTER THAT PROBABLY EVERY DAY.

14 MAY IS NOT AS BUSY OF A SEMESTER, BUT I WOULD SAY
15 FREQUENTLY BECAUSE IT WAS BRAND NEW, PEOPLE DIDN'T UNDERSTAND
16 WHAT WE WERE DOING EXACTLY ALL THE TIME.

17 Q. SO YOU OR MELIA IN FALL OF 09 RED FLAGGED SOMETHING
18 APPROXIMATELY EVERY DAY?

19 A. YES.

20 Q. DO YOU SPECIFICALLY RECALL ANY INSTANCE OF RED FLAGGING IN
21 2009? LET ME ASK IT THIS WAY. WHAT TYPES OF THINGS WOULD
22 TRIGGER THE RED FLAG?

23 A. IF IT SEEMED LIKE THE PROFESSOR DIDN'T KNOW OR DIDN'T
24 UNDERSTAND WHAT WE WERE DOING, WE WOULD SEND THEM TO LEGAL. SO
25 THAT'S ONE.

1 IF SOMETHING CAME IN ON A REQUEST FORM AND IT SAID
 2 PUBLIC DOMAIN AND THE ITEM ACTUALLY WAS PUBLIC DOMAIN BUT IT
 3 ALSO INCLUDED AN INTRODUCTION THAT WAS NOT PUBLIC DOMAIN, THEN
 4 WE WOULD PUBLISH THE PUBLIC DOMAIN MATERIAL BUT NOT THE INTRO.

5 THE INTRO WOULD BE A RED FLAG. WE WOULD ASK THEM IF
 6 THEY REALLY MEANT TO INCLUDE THAT. IF THEY DID, THEY WOULD
 7 HAVE TO -- PUBLIC DOMAIN DOESN'T WORK. SO THEY WOULD HAVE TO
 8 CHOSE SOMETHING ELSE OR TALK TO GWEN OR WHATEVER THEY NEEDED TO
 9 DO.

10 IF THERE'S A SITUATION WHERE SOMEONE REQUESTED
 11 PERMISSION AND THE INFORMATION ABOUT THAT PERMISSION DIDN'T
 12 CLEARLY LET US KNOW THAT PERMISSION WAS ACTUALLY GRANTED, THEN
 13 WE WOULD QUESTION THAT, AND IF WE LOOKED AT THE MATERIAL AND IT
 14 SEEMED LIKE IT WAS EXCESSIVE, AN EXCESSIVE AMOUNT, WE MIGHT
 15 QUESTION THAT, AS WELL.

16 Q. APPROXIMATELY THE SECOND TO THE LAST PAGE OF DX-160, CAN
 17 YOU TURN TO THAT PLEASE? IF I CAN DIRECT YOUR ATTENTION TO THE
 18 FIRST BUBBLE?

19 A. YES.

20 Q. ARE PROFESSORS ABLE TO USE ERES FOR THINGS OTHER THAN
 21 EXCERPTS FROM BOOKS?

22 A. YES, THERE'S A LOT OF USES ACTUALLY. WE POST REFERENCES
 23 TO PHYSICAL ITEMS IN ERES OR PHYSICAL BOOKS IN ALL OF OUR
 24 MEDIA. ALSO PROFESSORS CAN PUT THEIR OWN MATERIAL ON RESERVE
 25 LIKE THEY CAN PUT THEIR LECTURES UP OR THEIR SYLLABI OR THEIR

1 CLASS NOTES.

2 Q. AND IN YOUR EXPERIENCE DO PROFESSORS USE THAT FUNCTION?

3 A. YES.

4 Q. AND THEY HAVE TO FILL OUT THIS FORM THE SAME WAY THAT THEY
5 WOULD FOR AN EXCERPT?

6 A. YES, IF WE'RE POSTING -- IF THE MATERIAL THAT THEY WANT
7 POSTED IS A DIGITAL FILE, THEN, YES, THEY WOULD FILL THIS FORM
8 OUT.

9 MS. QUICKER: YOUR HONOR, MAY I APPROACH?

10 THE COURT: YES.

11 BY MS. QUICKER:

12 Q. CAN I DIRECT YOUR ATTENTION TO DX-510 IN THAT NOTEBOOK?
13 DO YOU RECOGNIZE THAT DOCUMENT?

14 A. IT LOOKS LIKE A RESPONSE TO AN E-MAIL REQUEST.

15 Q. FROM WHOM?

16 A. ADIA HARVEY.

17 Q. THE FROM LINE FROM LIBRARY RESERVES, WHO IS LIBRARY
18 RESERVES?

19 A. LIBRARY RESERVES IS AN E-MAIL ACCOUNT.

20 WHAT'S YOUR QUESTION EXACTLY?

21 Q. WHO HAS ACCESS TO THIS E-MAIL ACCOUNT?

22 A. LIBRARY RESERVE STAFF.

23 Q. AND WHO WITHIN YOUR STAFF?

24 A. THAT'S GOING TO BE ME, MELIA, DOUG OR CORY.

25 Q. AND IS IT PASSWORD PROTECTED?

- 1 A. YES.
- 2 Q. WHAT KIND OF INFORMATION IS RECORDED IN THESE E-MAILS TO
- 3 THE LIBRARY RESERVES?
- 4 A. IT'S HOW WE GET THE ONLINE REQUEST FORMS.
- 5 Q. SO THE INFORMATION THAT IS FILLED OUT IN DX-160 GENERATES
- 6 AN E-MAIL LIKE THE ONE THAT IS REPRESENTED IN DX-510?
- 7 A. YES.
- 8 Q. AND WHO IN THE LIBRARY RESERVES IS RESPONSIBLE FOR SENDING
- 9 AND RECEIVING SUCH E-MAILS?
- 10 A. IF YOU MEAN THIS ONE SPECIFICALLY, THEN THAT'S AN E-MAIL
- 11 THAT WOULD HAVE BEEN SENT EITHER BY ME OR MELIA.
- 12 Q. IS THERE ANYONE ELSE IN YOUR DEPARTMENT WHO WOULD SEND
- 13 E-MAILS LIKE THIS ONE?
- 14 A. NOT LIKE THIS ONE.
- 15 Q. AND WOULD THIS E-MAIL HAVE BEEN GENERATED IN RESPONSE TO
- 16 THE ONLINE REQUEST FORM SUBMITTED BY PROFESSOR HARVEY?
- 17 A. YES.
- 18 Q. AND WAS IT MADE APPROXIMATELY NEAR THE TIME THAT THE
- 19 E-MAIL REQUEST FORM WAS RECEIVED FROM PROFESSOR HARVEY?
- 20 A. YES.
- 21 Q. AND IS IT A REGULAR PRACTICE TO SEND THESE E-MAILS IN
- 22 RESPONSE TO AN ONLINE REQUEST FORM?
- 23 A. YES.
- 24 Q. AND ARE THESE E-MAILS KEPT AS PART OF YOUR NORMAL COURSE?
- 25 A. YES.

ANDRE G. ASHLEY, O.C.R.

1 Q. AND WHERE ARE THEY KEPT?

2 A. THE E-MAIL IS -- WHEN IT'S IN THE IN BOX, THAT MEANS THAT
3 WE HAVE NOT FINISHED PROCESSING IT. ONCE WE'RE FINISHED
4 PROCESSING THE REQUEST, WE'LL SEND AN E-MAIL SUCH AS THIS ONE.

5 WHEN WE'RE DONE WITH IT OR WHEN WE'VE FINISHED
6 PROCESSING IT OR WE'VE DONE ALL WE CAN DO, THEN WE PUT IT IN A
7 DONE FOLDER.

8 Q. IS THAT THE SAME FOR DX-515, DX-522 AND DX-524?

9 A. YES.

10 MS. QUICKER: YOUR HONOR, WE'D LIKE TO MOVE INTO
11 EVIDENCE DX-510, 515, 522 AND 524.

12 MR. LARSON: I'D OBJECT. I DON'T THINK THE WITNESS
13 WAS ABLE TO SAY WHETHER SHE WROTE THE E-MAILS OR SOMEONE ELSE
14 IN HER DEPARTMENT.

15 MS. QUICKER: YOUR HONOR, SHE TESTIFIED THAT HER
16 DEPARTMENT GENERATES THESE E-MAILS IN RESPONSE TO THE AUTOMATIC
17 FORMS THAT ARE SENT TO HER DEPARTMENT AFTER A PROFESSOR
18 FILLS --

19 THE COURT: FOR WHAT PURPOSE ARE THEY OFFERED?

20 MS. QUICKER: THEY'RE OFFERED TO ESTABLISH THAT THE
21 PARTICULAR PROFESSOR IN FACT SUBMITTED AN ONLINE REQUEST FORM
22 TO POST MATERIALS ON ERES DURING THE SEMESTERS AT ISSUE.

23 THE COURT: ARE YOU TALKING ABOUT PROFESSOR HARVEY?

24 MS. QUICKER: FOR DX-510 IT'S PROFESSOR HARVEY. FOR
25 THE OTHER 515, IT IS PROFESSOR LASNER. FOR 522 IT'S PROFESSOR

1 PERKINS, AND 524 IT'S PROFESSOR THOMPSON.

2 MR. LARSON: YOUR HONOR, IF I MIGHT, THERE IS MORE TO
3 THESE E-MAILS THAN JUST THE SUBMISSION FROM THE PROFESSOR.
4 THERE WAS A RESPONSE FROM SOMEBODY IN LIBRARY RESERVES GETTING
5 IT, WHETHER THE WORK WAS AVAILABLE, PERHAPS WHETHER IT WAS
6 POSTED, IT'S NOT ENTIRELY CLEAR. TO THE EXTENT THEY'RE
7 INTENDING TO BRING IT IN TO SHOW SOMETHING ALONG THOSE LINES, I
8 RENEW MY OBJECTION.

9 THE COURT: I WILL ADMIT DEFENDANTS' 510, 515, 522
10 AND 524.

11 MS. QUICKER: WE HAVE NOTHING FURTHER, YOUR HONOR.

12 REDIRECT EXAMINATION

13 BY MR. LARSON:

14 Q. MS. DIMSDALE, YOU JUST SPOKE ON YOUR DIRECT ABOUT
15 SOMETHING YOU CALLED RED FLAGS; DO YOU RECALL THAT?

16 A. YES.

17 Q. AND YOU INDICATED THAT YOU FLAG CERTAIN MATERIALS THAT
18 PROFESSORS SUBMITTED FOR ERESERVES, CORRECT?

19 A. YES.

20 Q. DID YOU MAINTAIN ANY RECORDS AS TO THE MATERIALS THAT WERE
21 RED FLAGGED?

22 A. THERE IS PROBABLY SOME E-MAIL CORRESPONDENCE ABOUT THAT.
23 THE WORD RED FLAG DOESN'T REALLY SHOW UP ANYWHERE, THOUGH.

24 MR. LARSON: YOUR HONOR, THAT MATERIAL WAS NOT
25 PRODUCED TO PLAINTIFFS IN THE LITIGATION. SO ON THAT BASIS I

1 MOVE TO STRIKE THAT TESTIMONY.

2 THE COURT: WELL, THE QUESTION WOULD BE WHETHER YOU
3 ASKED -- FIRST OF ALL DID YOU ASK FOR IT, AND THEN IF YOU DID
4 DID THEY GIVE IT TO YOU?

5 MR. LARSON: I'D HAVE TO CHECK OUR RECORDS. I CAN'T
6 SAY HERE FOR SURE. I THINK IT WOULD HAVE BEEN ENCOMPASSED IN
7 OUR ORIGINAL REQUEST BUT WE CAN CHECK THAT.

8 THE COURT: I'M GOING TO OVERRULE THE OBJECTION AT
9 THIS TIME JUST TO MOVE FORWARD.

10 BY MR. LARSON:

11 Q. NOW THAT RED FLAG TEST THAT YOU MENTIONED, THAT'S NOT
12 WRITTEN ANYWHERE IN THE GSU POLICY, CORRECT?

13 A. THERE'S NOTHING THAT SAYS RED FLAG WITH A DEFINITION
14 BESIDE IT.

15 Q. AND YOU DON'T HAVE A SPECIFIC NUMBER OF PAGES THAT RAISES
16 A RED FLAG, CORRECT?

17 A. CORRECT.

18 Q. AND WHAT MIGHT BE A RED FLAG FOR YOU COULD BE DIFFERENT
19 FOR WHAT MIGHT BE A RED FLAG FOR MS. CARGILE; IS THAT RIGHT?

20 A. SOME OF THEM ARE -- THE ONLY THING THAT MIGHT BE
21 QUESTIONABLE IS THE AMOUNT. ALL THE OTHER RED FLAGS WOULD BE
22 THE SAME. I MENTIONED SEVERAL.

23 Q. OKAY. AND YOU WERE DEPOSED IN THIS CASE; DO YOU RECALL
24 THAT?

25 A. DO I RECALL WHAT?

1 Q. DO YOU RECALL BEING DEPOSED IN THIS MATTER?

2 A. YES.

3 Q. AND DO YOU RECALL THAT IN THE DEPOSITION YOU INDICATED
4 THAT FOR THE MAYMESTER THE ONLY THING YOU FLAGGED WAS ACTUALLY
5 AN AUDIO FILE NOT AN ERES POSTING?

6 A. I DON'T REMEMBER.

7 MR. LARSON: LET'S TAKE A LOOK. MAY I APPROACH?

8 THE COURT: YES.

9 BY MR. LARSON:

10 Q. I'M GOING TO DIRECT YOU TO PAGE 64 OF YOUR DEPOSITION AND
11 TURNING TO -- IF YOU CAN GO BACK TO PAGE 63 AT THE BOTTOM? YOU
12 SEE YOU WERE ASKED THE QUESTION: HAVE YOU REVIEWED ANY OF THE
13 REQUESTS FOR THE MAYMESTER.

14 ANSWER: SOME OF THEM, YES.

15 QUESTION: DID YOU RAISE ANY RED FLAGS FOR ANYTHING
16 THAT WAS REQUESTED TO BE POSTED FOR THE MAYMESTER?

17 ANSWER: YES, THERE WAS AN AUDIO STREAMING PAGE.

18 QUESTION: OTHER THAN THE AUDIO STREAMING PAGE, DID
19 YOU RAISE ANY RED FLAGS FOR THE MAYMESTER?

20 ANSWER: I DON'T REMEMBER ANY.

21 QUESTION: ARE YOU AWARE WHETHER MELIA RAISED ANY RED
22 FLAGS FOR THE MAYMESTER REQUESTS?

23 ANSWER: I DON'T REMEMBER ANY.

24 QUESTION: WAS THE DEADLINE FOR POSTING -- SORRY,
25 STRIKE THAT. WHAT IS THE DEADLINE FOR SUBMITTING REQUESTS TO

1 POST MATERIAL FOR THE SUMMER SEMESTER?

2 ANSWER: I DON'T HAVE A DEADLINE FOR SUMMER.

3 QUESTION: HAVE ANY REQUESTS FOR THE SUMMER SEMESTER

4 BEEN SUBMITTED ALREADY?

5 ANSWER: YES.

6 QUESTION: HAVE YOU REVIEWED ANY OF THOSE REQUESTS?

7 ANSWER: YES.

8 QUESTION: HAVE ANY OF THEM RAISED RED FLAGS FOR YOU?

9 ANSWER: I DON'T REMEMBER ANY.

10 QUESTION: HAS MELIA REVIEWED ANY QUESTIONS FOR THE

11 SUMMER SEMESTER?

12 ANSWER: YES.

13 QUESTION: HAVE THEY RAISED ANY RED FLAGS FOR HER.

14 ANSWER: I DON'T REMEMBER ANY.

15 WAS THAT TRUTHFUL TESTIMONY?

16 A. YES.

17 Q. I'D LIKE TO CALL UP, IF I COULD, JX-5, SPECIFICALLY THE

18 EXHIBIT C, THE FALL 2009 SEMESTER. COULD WE GO TO C-9 PLEASE

19 AND IF WE COULD HIGHLIGHT THE SECOND ROW.

20 MS. DIMSDALE, JX-5 WHICH IS THE LISTING OF WORKS AT

21 ISSUE IN THIS CASE INDICATES THAT PROFESSOR KAUFMANN MADE SOME

22 POSTINGS IN THE FALL 2009 SEMESTER IN HER COURSE EPRS 8500, AND

23 WE'VE CALLED THESE UP ON THE SCREEN, AND IT SHOWS BY MY COUNT I

24 THINK EIGHT EXCERPTS FROM THE SAGE HANDBOOK OF QUALITATIVE

25 RESEARCH; DO YOU SEE THAT?

ANDRE G. ASHLEY, O.C.R.

1 A. YES.

2 Q. DID YOU RED FLAG PROFESSOR KAUFMANN'S EIGHT CHAPTERS OF

3 THE SAGE HANDBOOK OF QUALITATIVE RESEARCH?

4 A. I DON'T REMEMBER.

5 Q. IF YOU HAD RED FLAGGED THEM WOULD THEY BE POSTED HERE?

6 A. THAT DEPENDS.

7 Q. YOU DON'T REMEMBER FLAGGING THESE?

8 A. NO, I DON'T REMEMBER IF I DID THESE OR NOT.

9 Q. DO YOU REMEMBER MELIA FLAGGING THESE?

10 A. NO.

11 MR. LARSON: I HAVE NO MORE QUESTIONS.

12 THE COURT: SHALL THE WITNESS BE EXCUSED?

13 MS. QUICKER: YES, WE HAVE NO MORE QUESTIONS.

14 THE COURT: YOU ARE EXCUSED. THANK YOU.

15 HAVE YOU GOT A REAL SHORT WITNESS? LET'S QUIT FOR

16 THE DAY. LET'S TALK ABOUT NEXT WEEK. ON MONDAY, I'M GOING TO

17 TRY TO GO FROM 9:30 TO 4:30. ON TUESDAY WE'LL GO FROM ELEVEN

18 O'CLOCK UNTIL 4:30, ON WEDNESDAY 9:30 TO 4:30, ON THURSDAY 9:30

19 TO 4:30.

20 NOW THERE'S A CHANCE WE MIGHT HAVE TO HAVE A SHORT

21 LITTLE HEARING AT THREE IN ANOTHER CASE, BUT I DON'T THINK IT

22 WOULD TAKE MORE THAN 15 MINUTES IF WE DO HAVE IT, AND THEN NEXT

23 FRIDAY 9:30 TO 2:30.

24 I HOPE YOU ALL HAVE A VERY NICE WEEKEND.

25 (PROCEEDINGS ADJOURNED)

1 INDEX

2

3	TRACEY ARMSTRONG	
	DIRECT EXAMINATION	
4	BY MR. RICH:	4
	CROSS-EXAMINATION	
5	BY MR. SCHAEZEL:	55
	REDIRECT EXAMINATION	
6	BY MR. RICH:	84
7	MARJORIE DENISE DIMSDALE	
	DIRECT EXAMINATION	
8	BY MR. LARSON:.....	94
	CROSS-EXAMINATION	
9	BY MS. QUICKER:.....	117
	REDIRECT EXAMINATION	
10	BY MR. LARSON:.....	133

11

12

13

14 REPORTER'S CERTIFICATION

15

16

17 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
 18 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

19

20

21 ANDRE G. ASHLEY
 22 OFFICIAL COURT REPORTER
 23 UNITED DISTRICT COURT
 NORTHERN DISTRICT OF GEORGIA

24 DATE:

25

ANDRE G. ASHLEY, O.C.R.