

Cambridge University Press v. Mark P. Becker
No. 1:08-cv-01425-ODE (N.D. Ga. Mar. 31, 2016)
appeal docketed, Aug. 26, 2016

Year	2016
Court	United States District Court for the Northern District of Georgia
Key Facts	<p>In 2008, plaintiffs Cambridge University Press and other publishing houses sued Georgia State University (GSU) officials for contributorily infringing their copyrights due to a fair use policy (and checklist) that allowed GSU faculty to post unlicensed portions of the publishers' works on university systems for students to obtain electronically. Plaintiffs pursued 74 allegations of infringement (initially 99, but dropped 25 at trial) and provided evidence that GSU could have purchased licenses for some of the works at issue.</p> <p>In 2012, of the 74 allegations at issue, the District Court for the Northern District of Georgia found that plaintiffs has not established a prima facie case of infringement for 26 allegations, and of the remaining 48 allegations, GSU had only infringed plaintiffs' works in five instances.. As such, the district court held that GSU's fair use policy led to the unlicensed and infringing use of five excerpts of plaintiffs' works because the policy "did not limit copying in those instances [of infringement] to decidedly small excerpts . . . [and it] did not provide sufficient guidance in determining the 'actual or potential effect on the market or the value of the copyrighted work.'"</p> <p>Plaintiff's appealed the district court's decision as to the 48 allegations of infringement and the Eleventh Circuit reversed the judgement and remanded for further proceedings because of the district court's flawed method of fair use analysis. In particular, the Eleventh Circuit found that the district court erred in "giving each of the four fair use factors equal weight," "setting a 10 percent-or-one-chapter benchmark" for the third factor, and should "have afforded the fourth fair use factor more significant weight in its overall fair use analysis." On remand, the district court reevaluated the specific instances of alleged infringement according to guidance from the Eleventh Circuit that required a more holistic balancing of the four fair use factors.</p>
Issue	Whether Georgia State University's adoption of the 2009 copyright policy caused ongoing and continuing misuse of the fair use doctrine and resulted in infringement of plaintiffs' works.
Holding	As directed by the Eleventh Circuit, the district court conducted a revised four-step analysis of each of the 48 allegation of infringement for which the plaintiffs had met their prima facie burden. In its revised analysis, the district court found that the GSU fair use policy led to infringing use of plaintiffs' works, this time, in four as opposed to five instances. The court found that the remaining 44 uses qualified as fair use. Although the weight and outcome of the factors varied for each alleged instance of infringement, the district court generally concluded that: (1) the first factor, purpose and character of the use, weighed in favor of fair use despite the nontransformative nature of the use because GSU is a nonprofit educational institution and the excerpts were used for the purpose of teaching students; (2) the second factor, the nature of the work, was "of comparatively little weight in this case, particularly because the works at issue are neither fictional nor unpublished;" (3) the third factor, the amount of work used, must take into account "the effect of the favored nonprofit educational purpose of the use under factor one," while considering "the impact of market substitution as recognized

	<p>under factor four, in determining whether the quantity and substantiality . . . of [d]efendants’ unlicensed copying was excessive;” and (4) the fourth factor, effect of the use on the potential market for the work, “concern[ed] not the market for Plaintiffs’ original works . . . but rather a market for licenses” to use excerpts, which initially favored plaintiffs where evidence of digital licensing was available. Taking into account the Eleventh Circuit’ guidance to afford “the fourth fair use factor more significant weight in its overall fair use analysis,” the district court estimated the initial weight of each of the four factors as follows: “25% for factor one, 5% for factor two, 30% for factor three and 40% for factor four.” Based on these findings of infringement, the court ordered plaintiffs to submit proposed text for injunctive and declaratory relief aimed at preventing future infringement of their works.</p>
Tags	Eleventh Circuit; Education/Scholarship/Research; Internet/Digitization; Textual work
Outcome	Preliminary ruling, mixed result, or remand

Source: U.S. Copyright Office Fair Use Index. For more information, see <http://copyright.gov/fair-use/index.html>.