

GSU wins e-reserves case, but not clarity on digital copyright policy

After 12 years of litigation, one may have forgotten about *Cambridge University Press et al v Patton et al*, also known as the Georgia State University (GSU) e-reserves case, where three publishers (Cambridge University Press, Oxford University Press, and Sage) sued GSU over their e-reserves policy. Teaching faculty and students preferred access to materials through digital networks. The further away they moved from course packs, where permission fees had been dutifully collected, the greater the drop in publishers' revenue. Plaintiffs in the case deemed GSU's policy too lax and encouraging of an "anything goes if it's for the classroom" approach to copyright.

The 2008 litigation dragged on, with rulings favoring GSU, but then sent back to the district on appeal for the district court judge to re-review her fair use assessment for each work that was allegedly infringed—not only once, but twice. In March 2020, having found only 10 of the 99 works infringing, the court ruled in favor of GSU.

Twelve years ago, the GSU e-reserves case was thought to be the test case of fair use in the digital age. Although GSU won the case, ultimately, not much light was shed on copyright policy. Since the suit was filed in 2008, technology has evolved, publishing and library vendor businesses merged, new business models emerged, journal prices went up, and now digital access is largely governed by licensing agreements. Balanced

copyright policy is not reflected in licensing agreements, and terms of some such agreements cannot be negotiated. New models of access to academic resources are more likely to be resolved in the marketplace and in library partnerships with rights holders such as university presses that embrace forms of open access.

Federal funding stalls, but support for libraries increases

Federal appropriations, both COVID-19 emergency funding and regular appropriations, stalled over the summer months, yet ALA worked with Congressional champions to introduce a \$2 billion library relief package and secure a \$2 million increase for the Library Services and Technology Act (LSTA) in the House appropriations bill.

To address the emergency needs of libraries, Senator Jack Reed (D-Rhode Island) and Rep. Andy Levin (D-Michigan) introduced companion bills, the Library Stabilization Fund Act (LSFA, S.4181/H.R.7486). The legislation would establish a \$2 billion fund for library stabilization, with \$1.7 billion to be immediately distributed to states. An additional \$45 million would be available for tribal libraries, and \$200 million would go to competitive grants related to COVID-19. As of this writing, there are 62 cosponsors to the House bill and 16 to the Senate.

For the fiscal year (FY) 2021 regular appropriations, the House passed its Labor, Health and Human Services, Education and Related Agencies bill, which rejected the administration's recommendation to eliminate LSTA. The Senate is not expected to pass any of the 12 appropriations bills, preferring to negotiate on a final package directly with the House and Administration. ¶¶

Carrie Russell is director of public policy and advocacy, email: crussell@alawash.org, and Kevin Maher is deputy director of government relations, email: kmaher@alawash.org, at ALA's Washington Office