

## Plaintiffs file appeal in Georgia State University e-reserves lawsuit

There has been another development in the lawsuit filed by a group of publishers claiming copyright infringement against Georgia State University (GSU). The lawsuit dates back to 2008, when a trio of academic publishers—Cambridge University Press, Oxford University Press, and SAGE Publications—filed suit in the U.S. District Court for the Northern District of Georgia.

At the heart of lawsuit, *Cambridge University Press, et al. v. Patton, et al.*, was the publishers' assertion that the public university's library was making electronic copies of some course readings (or e-reserves) available to students without paying royalty fees. (Court documents, including both parties' filings, are available at [www.justia.com](http://www.justia.com).)

In August 2012, Judge Orinda Evans issued her final order in the lawsuit, an approximately 350-page document, and found in favor of GSU and noted that "the Court is convinced that Defendants did try to comply with the copyright laws."

Jonathan Band, copyright lawyer and consultant to the Library Copyright Alliance (comprised of ALA, ACRL, and the Association of Research Libraries), said in response to the decision it was, "a great victory for libraries and the educational enterprise....the court provided a method for evaluating risk in situations that depart from the bright lines."

The evaluation of risk had to do with the Fair Use Doctrine of U.S. Copyright law ([www.copyright.gov/title17/92chap1.html#107](http://www.copyright.gov/title17/92chap1.html#107)), as applied by Evans to several specific instances of library e-reserves use by faculty at GSU. Since the practice of making course materials from the university's library collections available via e-reserve relies on

fair use (creating a single digital copy, usually from a resource already paid for, for educational purposes), permission generally is not sought or needed; thus, additional permission fees are not paid to the publisher.


On the heels of the judge's decision, the plaintiffs filed an appeal with the U.S. Court of Appeals, Eleventh Circuit, in September 2012. While it is unclear exactly the extent or substance of the appeal, this latest action by the plaintiffs breathes continued life into a case the library community determined was amply (and favorably) decided by the lower court judge.

Perhaps even more interesting, if not surprising, was the U.S. Department of Justice's (DOJ's) request to the court of appeals for an extension on the deadline to file an *amicus curiae*, or friend of the court, brief on the case.

In the DOJ's filing it stated, "The government is currently evaluating whether to participate...[and file] an amicus brief in support of appellants [publishers], or in support of neither party...and the government requests additional time to consider the issues presented in this case."

It is perplexing that the DOJ would consider weighing in on an appeal by publishers on the issue of e-reserves in college and university libraries. ALA will continue to monitor developments in this landmark fair use case.

## Register for National Library Legislative Day—May 7-8, 2013, in Washington, D.C.

Now is the time to register for the 2013 National Library Legislative Day (NLLD) at [www.ala.org/nlld](http://www.ala.org/nlld). Hosted by ALA's Office of Government Relations, NLLD is a two-day event that draws hundreds of library supporters to the nation's capital to advocate on the most pressing legislative issues affecting libraries. 

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