

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

CAMBRIDGE UNIVERSITY PRESS,  
et al.,

Plaintiffs,

v.

MARK P. BECKER, in his official  
capacity as Georgia State University  
President, et al.,

Defendants.

Civil Action File  
No.1:08-CV-1425-ODE

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF  
PROPOSED DECLARATORY JUDGMENT  
AND PERMANENT INJUNCTION**

On March 2, 2020, the Court issued a second remand ruling in which it held that Defendants had infringed certain of Plaintiffs' copyrights by distributing (and causing to be distributed) excerpts of copyrighted works without permission through the Electronic Reserves ("ERes") and uLearn systems at Georgia State University ("GSU"). Dkt. 563. The Court directed Plaintiffs to file, within twenty days, "the proposed text of any injunctive or declaratory relief they seek, together with the rationale supporting their request." *Id.* at 236.

## **ARGUMENT AND CITATION OF AUTHORITY**

The Court’s findings that Defendants infringed certain of Plaintiffs’ copyrights (*see* Dkt. No. 563 at 235) and that the infringement was caused by Defendants’ copyright policy (*see* Dkt. No. 423 at 337-38) requires the issuance of a declaratory judgment and a permanent injunction to prevent future infringement of Plaintiffs’ works, as the Court has held previously. *See* Dkt. Nos. 441, 531.

### **I. PLAINTIFFS ARE ENTITLED TO A DECLARATORY JUDGMENT**

A declaratory judgment is “an appropriate means of determining intellectual property rights” where an actual controversy exists as to whether a party is infringing a copyright. *See generally Baisden v. I’m Ready Prods., Inc.*, 804 F. Supp. 2d 549, 551-52 (S.D. Tex. 2011); 28 U.S.C. § 2201(a). Based on the Court’s infringement determinations, and consistent with the Court’s previous declaratory judgment order (*see* Dkt. No. 531 at 3-4), Plaintiffs request a declaration that Defendants infringed the works identified in the Court’s March 2, 2020 Order. *See* Dkt. No. 563 at 235.

### **II. PLAINTIFFS ARE ENTITLED TO A PERMANENT INJUNCTION**

The Court’s finding that Defendants infringed certain of Plaintiffs’ copyrights also merits permanent injunctive relief. The Copyright Act authorizes the Court to grant an injunction “on such terms as it may deem reasonable to

prevent or restrain infringement of a copyright.” 17 U.S.C. § 502(a). “[A]n injunction is appropriate when there is a past infringement and a substantial likelihood of future infringement.” *New World Music Co. v. Tampa Bay Downs, Inc.*, 2009 WL 35184, at \*9 (M.D. Fla. Jan. 6, 2009) (internal quotation marks and citation omitted); *see also Hounddog Prods., L.L.C. v. Empire Film Grp., Inc.*, 826 F. Supp. 2d 619, 632-33 (S.D.N.Y. 2011) (entering permanent injunction to prevent future copyright infringement); *Stygian Songs v. Johnson*, 776 F. Supp. 2d 233, 238 (N.D. Tex. 2011) (entering permanent injunction requiring defendant to acquire license before future public performances of copyrighted music).

Plaintiffs believe an injunction that provides more precise guidance to GSU administrators and staff than the injunctions the Court has entered previously in this case, *see* Dkt. No. 441 at 11; Dkt No. 531 at 5-6, is warranted, particularly given the multiplicity of decisions by this Court and the Court of Appeals and the voluminous nature of the Court’s latest remand ruling. Courts generally have frowned upon “obey the law” injunctions given their lack of precision in identifying the conduct that is proscribed. *See, e.g., Walker v. City of Calhoun*, 682 F. App’x 721, 724 (11th Cir. 2017) (“[W]e have repeatedly vacated injunctions containing only ‘[b]road, non-specific language that merely enjoins a party to obey the law or comply with an agreement’” (citation omitted)).

Particularly given the work-specific analysis in which the Court engaged in its remand ruling, it would be appropriate and desirable to delineate in an injunction the key elements of the fair use analysis that, this Court has determined, GSU and individual faculty members must consider and apply in relation to future proposed unlicensed uses of Plaintiffs' works as digital course readings.<sup>1</sup>

Conversely, it is not reasonable to assume that faculty will, without such clear direction, be able to distill the appropriate legal guideposts from the Court's ruling.

Also, an injunction lacking enforcement mechanisms would make little sense. Accordingly, beyond proposing an order that sets forth the key elements of the Court's rulings relating to the use of Plaintiffs' works as digital course readings, Plaintiffs also propose that the injunction require the Defendants to: (i) describe the manner in which Defendants must disseminate the guidelines contained in the Order to the faculty and staff responsible for implementing them; (ii) maintain records of unlicensed copying from Plaintiffs' works at GSU; and (iii) give Plaintiffs a periodic right to audit Defendants' compliance with the injunction.

A proposed injunction to this effect is attached hereto as Exhibit 1.

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<sup>1</sup> Plaintiffs note their disagreement with the Court's remand ruling, and they reserve all rights of appeal in connection with that ruling as embodied in any final order the Court issues.

## **CONCLUSION**

Based on the findings the Court has made, Plaintiffs submit that their proposed declaratory judgment and permanent injunction should be entered.

Respectfully submitted this 23rd day of March, 2020.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.1(D), I hereby certify that this document complies with the font and point selections set forth in Local Rule 5.1. This document was prepared in Times New Roman 14 point font.

/s/ John H. Rains IV  
John H. Rains IV

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the foregoing **PLAINTIFFS'**  
**MEMORANDUM OF LAW IN SUPPORT OF PROPOSED**  
**DECLARATORY JUDGMENT AND PERMANENT INJUNCTION** with the  
Clerk of Court using the CM/ECF filing system which will send e-mail notification  
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This 23rd day of March, 2020

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