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

CAMBRIDGE UNIVERSITY PRESS,
et al,

Plaintiffs,

-vs.-

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

Defendants.

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

[PROPOSED] ORDER, JUDGMENT, AND PERMANENT INJUNCTION

This action having been tried by the Court without a jury, the Honorable Orinda D. Evans, District Judge, presiding, on May 17, 2011-June 7, 2011, and the Court having duly entered an opinion with findings of fact and conclusions of law dated March 2, 2020 following a second remand from the United States Court of Appeals for the Eleventh Circuit, it is ORDERED AND ADJUDGED that:

- I. For purposes of this Order, Judgment, and Permanent Injunction (“Order”):
 - A. The term “GSU” means each and every Defendant, including the President, Provost, Associate Provost for Information Systems and Technology, and Dean of Libraries of Georgia State University, and the Vice Chair and members of the Board of Regents of the University System of Georgia and all of their agents, servants, employees, representatives, and successors, all other persons acting under their

direction, control, or supervision, including all part-time or full-time faculty employed by or under contract with, and students enrolled at, Georgia State University, and all those in active concert or participation with them.

- B. The terms “Work” or “Works” shall mean any non-fiction book other than a textbook, dictionary, encyclopedia, test preparation guide, workbook, or other similar instructional or reference work in print, e-book, or any other format, now in existence or yet to be published, in which a Plaintiff owns or controls the right to copy and distribute that GSU seeks to exercise.
 - C. The term “GSU Electronic Course Systems” shall include EReserves, uLearn, faculty websites, course websites, or any other system or platform now in existence or hereinafter developed that is owned, licensed, used, or controlled by GSU or the Georgia Board of Regents through which course reading materials including the Works (whether required, additional, supplemental, optional or otherwise) are made available to Georgia State University students, faculty, staff, or alumni electronically. Any copying, posting, uploading, downloading, or other distribution via any GSU Electronic Course System shall, for purposes of this Order, be attributed to and be considered done by GSU.
- II. GSU has infringed Plaintiffs’ copyrights by copying and distributing excerpts from the following Works on GSU Electronic Course Systems:
- A. *The Sage Handbook of Qualitative Research (Third Edition)* (SAGE Publications, Inc. 2005) (copied and distributed for Professor Kaufmann’s EPRS 8500 Qualitative/Interpretive Research in Education I in Maymester 2009);
 - B. *Handbook of Critical and Indigenous Methodologies* (SAGE Publications, Inc. 2006) (copied and distributed for Professor Kaufmann’s EPRS 8500 Qualitative/Interpretive Research in Education I in Maymester 2009);
 - C. *The Sage Handbook of Qualitative Research (Second Edition)* (SAGE Publications, Inc. 2000) (copied and distributed for Professor

Kaufmann's EPRS 8510 Qualitative/Interpretive Research in Education II – Data Collection in Summer 2009);

- D. *The Sage Handbook of Qualitative Research (Second Edition)* (SAGE Publications, Inc. 2000) (copied and distributed for Professor Esposito's EPSF 8280 Qualitative Research in Education II – Data Collection in Summer 2009);
- E. *The Sage Handbook of Qualitative Research (Third Edition)* (SAGE Publications, Inc. 2005) (copied and distributed for Professor Kaufmann's EPRS 8500 Qualitative/Interpretive Research in Education II in Fall 2009);
- F. *Theoretical Frameworks in Qualitative Research* (SAGE Publications, Inc. 2006) (copied and distributed for Professor Esposito's EPRS 8520 Qualitative Research in Education III in Fall 2009);
- G. *The Slave Community* (Oxford University Press 1979) (copied and distributed for Professor Dixon's AAS 3000 African American Family in Fall 2009);
- H. *The Power Elite* (Oxford University Press 2000) (copied and distributed for Professor Harvey's SOCI 8030 Social Theory II in Fall 2009);
- I. *The Sage Handbook of Qualitative Research (Second Edition)* (SAGE Publications, Inc. 2000) (copied and distributed for Professor Ohmer's SW 8200 Evaluation & Technology in Fall 2009);
- J. *Utilization-Focused Evaluation (Third Edition)* (SAGE Publications, Inc. 1997) (copied and distributed for Professor Ohmer's SW 8200 Evaluation and Technology in Fall 2009).

The Court finds that GSU's infringement of these Works is ongoing and continuous.

- III. Subject only to the provisions of Paragraph IV hereof, GSU shall be and is permanently enjoined and restrained from creating, reproducing, transmitting, selling, or in any manner distributing copies of any Work or

Works or portions thereof on GSU Electronic Course Systems and from assisting, participating in, soliciting, encouraging, or facilitating the creation, reproduction, download, display, sale, or distribution of copies in any format of any and all Works or portions thereof on GSU Electronic Course Systems.

- IV. Nothing in this Order shall be deemed to enjoin or restrain GSU from making or distributing copies of excerpts of any Works on GSU Electronic Course Systems where either Paragraph IV(A) or IV(B) below is satisfied.
- A. GSU, either itself or by and through an individual faculty member or instructor, has obtained a license or other legally binding authorization from the copyright owner or the copyright owner's authorized agent (such as Copyright Clearance Center, Inc.) for such use.
- B. In the event permission has not been obtained in accordance with Paragraph IV(A), GSU shall ensure—including by designating appropriate personnel to review faculty requests for unlicensed digital course readings—strict adherence to the following measures and strictures, which are calculated to protect copyrighted works from infringing use in accordance with the District Court's rulings:
1. Copies to be made, distributed, or otherwise made available as course readings:
 - i. may be made available only without charge and strictly for nonprofit educational purposes; AND
 - ii. shall be narrowly tailored to fulfill an identified legitimate pedagogical purpose in connection with the curriculum for that course; AND
 - iii. shall not reproduce an excessive amount of the Work, considering the quantity of the Work reproduced or made available as well as the quality and importance of that material; AND
 - iv. shall not include the "heart of the Work"; AND
 - v. shall not be from Works intended to be "consumable" in the course of study or of teaching, including but not limited to

workbooks, exercises, standardized tests, and test booklets and answer sheets and like consumable material; AND

- vi. shall be protected by a non-transferable, non-assignable username and password and may be accessed only by GSU students who are currently enrolled in the relevant course during the academic term in which the course is offered and who are prohibited from further copying or distributing the excerpts.
2. In addition to the foregoing, GSU or the individual faculty member or instructor shall determine if a license is available to reproduce or make available excerpts from the Work (whether from the publisher of the Work or through Copyright Clearance Center, Inc. or another authorized sub-licensor). GSU shall adopt measures to ensure that GSU and individual faculty members considering making excerpts available recognize and take into account that where such a license is available, such license availability weighs heavily against reproducing the Work or otherwise making it available without permission under the fair use doctrine, in light of the Court's finding that the widespread unlicensed use of similar excerpts at Georgia State University or other colleges and universities would cause substantial harm to the market value of the Work.
- C. For all excerpts of Works for which permission has not been obtained that are distributed through GSU Electronic Course Systems pursuant to Paragraph IV(B) above, personnel designated by GSU and familiar with this Order shall confirm that the excerpt meets these criteria and shall retain for at least three (3) years a record identifying at least the title, author, and publisher of the Work; the pages or chapter copied, as relevant; the total pages or chapters of the Work; the sources consulted to determine whether licensing was available (including without limitation, Copyright Clearance Center, Inc. and the publisher); the date of such investigation; the course and semester in which the Work was offered; the number of students enrolled in the course; and the name of the professor assigning the Work in the course.

- V. GSU shall promptly, and in any event no later than 45 days following entry of this Order, take all appropriate steps to modify its existing copyright policies governing its activities so as to comport with all aspects of this Order, including without limitation by notifying all faculty and other instructors that the criteria for fair use determinations set forth in this Order supersede use of GSU's existing "fair use" checklist and associated policies and practices.
- VI. GSU shall promptly and in any event no later than 30 days following entry of this Order provide a copy of this Order to all faculty and other instructors and users as well as to all other administrative and technical personnel who have to date been, or are reasonably likely in the future to be, involved in the development, operation, or maintenance of GSU Electronic Course Systems. In addition:
 - A. GSU shall post the full Order on the GSU website in an appropriately prominent manner and shall cause the provisions of Paragraphs III and IV of the Order to appear on the screen and be acknowledged before a faculty member, library employee, or other GSU personnel is able to upload, post, or otherwise make available any copyrighted material via GSU Electronic Course Systems; and
 - B. GSU shall incorporate reference to this Order, including either by reproducing its text or otherwise providing advice on how the reader can easily locate it, in all university-wide handbooks or the like that set forth codes of faculty, student, or employee conduct. Users must be reminded of the limitations imposed on their conduct by copyright law and must be prohibited from distributing to others copies otherwise permitted by this Order.
 - C. Upon request made no more frequently than once each semester, GSU shall provide such access to the GSU Electronic Course Systems and any relevant records concerning activities subject to this Order, including the uLearn system (or its equivalent), and to the records referred to in Paragraph IV(C) above, to a designated representative of Plaintiffs as will enable Plaintiffs to confirm GSU's compliance with the terms of the Order. Access shall be afforded at reasonable times during GSU's business hours upon fifteen (15) days' advance notice. In the event that any use or posting on any GSU Electronic Course

System is not in compliance with this Order, GSU will make best efforts to timely bring such use or posting into compliance.

- VII. The Court shall retain jurisdiction of this case and over judgment-compliance issues and shall entertain such requests for modification of the Order as may be warranted based upon technological or other future developments.
- VIII. Unless stayed by the United States Court of Appeals for the Eleventh Circuit, this Order shall remain in full force and effect during the pendency of any appeals filed by the parties.

SO ORDERED this ____ day of ____, 2020.

Hon. Orinda D. Evans
United States District Judge