

**Cambridge University Press v. Albert
No. 16-15726 (11th Cir. Oct. 19, 2018)**

Year	2018
Court	United States Court of Appeals for the Eleventh Circuit
Key Facts	Plaintiffs are three academic publishing houses (the “Publishers”). Georgia State University (the “University”) provides students with digital excerpts of Plaintiffs’ works without payment. Plaintiffs filed a copyright infringement claim against the University. Initially, the district court held that the University had infringed Plaintiffs’ copyrights but found that, in 43 of the 48 instances at issue, the University’s use was fair. It found that the fair use defense applied whenever three or more factors favored the University. In the event of a tie, the court reconsidered the weight of certain factors. On appeal, the Eleventh Circuit reversed, vacated, and remanded, with instructions for the district court to “correct its ‘erroneous application of factors two and three’ and its errors in ‘[weighing and] balancing the four fair use factors’” in its analysis of the fair use defense. On remand, the district court found fair use in 44 of the 48 instances, reversing most of its original fourth-factor findings and considering the rates the Publishers charged as part of its third factor analysis. In weighing the factors, the district court assigned “initial, approximate respective weights of the four factors as follows: 25% for factor one, 5% for factor two, 30% for factor three, and 40% for factor four,” which it adjusted if it found a “noteworthy strength or weakness.” Plaintiffs again appealed.
Issue	Whether a university’s electronic distribution of unlicensed copyrighted works to students is a fair use.
Holding	The Eleventh Circuit vacated the district court’s fair use determination and remanded for further proceedings. The Eleventh Circuit discussed only the third and fourth fair use factors and the method of balancing the fair use factors. Regarding the fourth factor, effect of the use upon the potential market, the Eleventh Circuit held that its previous decision had not found any error in the district court’s analysis, because the district court had correctly focused on the “central question” of whether a use “would cause substantial economic harm such that allowing it would frustrate the purposes of copyright by materially impairing [the publishers’] incentive to publish the work.” That holding precluded the district court from revisiting the fourth factor, and thus the district court must “reinstate its original findings that the fourth factor strongly disfavors fair use for the 31 excerpts for which the publishers proved the availability of digital licenses.” The Eleventh Circuit rejected the district court’s determination that the high prices the Publishers charged for licenses justified the University’s use of more of the content than may otherwise be considered fair use. The Eleventh Circuit held that the third factor considers only the amount and substantiality of the portion used in relation to the copyright work as a whole, and “does not direct courts to consider the price of the unpaid use.” Finally, the court instructed the district court to “break free of its erroneous ‘arithmetic approach’ [in balancing the four factors as to each excerpt] and to give each excerpt the holistic review the Act demands.” The decision specified that “the district court must not apply a mathematical formula at any step of its analysis.”
Tags	Eleventh Circuit, Internet/Digitization, Textual work
Outcome	Preliminary ruling, remand