

**Cambridge University Press v. Becker**  
**No. 1:08-cv-1425-ODE, 2020 U.S. Dist. LEXIS 35134 (N.D. Ga. Mar. 2, 2020)**

Year	2020
Court	United States District Court for the Northern District of Georgia
Key Facts	Plaintiffs are three academic publishing houses (the “Publishers”). Georgia State University (“GSU”) adopted a program for professors to post unlicensed digital excerpts of Publishers’ works that students could access for courses. Publishers sued GSU for copyright infringement and a nonjury trial was held on 48 works. Initially, the district court found that use of 43 of the 48 works were fair uses because three or more fair use factors favored GSU. On appeal, the Eleventh Circuit reversed 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 factors. On remand, the district court found fair use with respect to 44 of the 48 works, reversing most of its original fourth-factor findings and considering the Publishers’ licensing rates as part of its third factor analysis. In weighing the factors, the district court assigned arithmetic weights to the four factors: 25% for factor one, 5% for factor two, 30% for factor three, and 40% for factor four, adjusted where the court found a “noteworthy strength or weakness.” On the second appeal, the panel remanded with instructions for the district court to reinstate its original findings that the fourth factor disfavored fair use as to 31 works and “evaluate the four factors qualitatively, not quantitatively.”
Issue	Whether a university’s electronic distribution of unlicensed copyrighted works to students is a fair use.
Holding	On remand, the court separately analyzed whether GSU’s use of each of the 48 works at issue was a fair use based on the principles and instructions provided in the two circuit opinions. For all 48 works, the court found the first factor, the purpose and character of the use, favored fair use because, although not transformative and serving the same function as the copyrighted works, the uses were for a nonprofit educational purpose by a nonprofit educational institution. On the second factor, the nature of the copyrighted work, the court looked at whether a work was primarily factual or “expressive opinion.” For most works, the court found the factor to be neutral, though it disfavored fair use where the author’s opinion and analysis dominated the excerpt. As to the third factor, the amount and substantiality of the work used, the court looked at the overall percentage of the work used, the number of pages used, and whether the portion used constituted the heart of the work. Except where a substantial amount or the heart of the work was taken, the court found this factor favored fair use. For the fourth factor, the effect of the use on the potential market for or value of the work, the court the found permissions revenues earned by the Publishers to be a “useful proxy” to estimate relative licensing demand for the works. The court observed that even if small excerpts are not a substitute for entire books, some uses caused actual damage to permissions revenue for works. Further, if widespread, such uses would cause substantial damage to the market for the works. Applying the circuit’s instructions to holistically evaluate the factors, the court gave the fourth factor “extra weight” and the second factor “insubstantial weight.” For some works, the court further augmented or mitigated the factors. Overall, the court found that the university’s use of 11 of the works was not fair use, while its use of 37 works was fair use.
Tags	Education/Scholarship/Research; Internet/Digitization; Textual work
Outcome	Mixed result