

**Cambridge Univ. Press v. Patton,
769 F.3d 1232 (11th Cir. 2014)**

Year	2014
Court	United States Court of Appeals for the Eleventh Circuit
Key Facts	Plaintiffs Cambridge University Press and other publishing houses sued Georgia State University officials for infringing their copyrights by allowing unlicensed portions of their works to be posted on university systems for students to obtain electronically. After the United States District Court for the Northern District of Georgia granted defendants' summary judgment on plaintiffs' claims of direct and vicarious infringement, it considered plaintiffs' allegations of continuing contributory infringement under defendants' revised fair use policy, which was implemented in February 2009 after the suit commenced. The revised policy required professors to complete a form to determine whether the fair use doctrine permitted them to post materials electronically for students to access. After establishing some general fair use guidelines for its analysis, the district court individually reviewed 74 violations plaintiffs alleged were the result of continuing infringement under the revised 2009 fair use policy. The court held that the revised policy did not provide adequate guidelines, which caused ongoing and continuing misuse of the fair use defense and resulted in five incidents of infringement.
Issue	Whether Georgia State University's adoption of the 2009 copyright policy caused ongoing and continuing misuse of the fair use doctrine and resulted in infringement of plaintiffs' works.
Holding	The Eleventh Circuit Court of Appeals reversed the district court's decision and remanded for further proceedings consistent with its opinion, which the court summarized as follows: In sum, we hold that the District Court did not err in performing a work-by-work analysis of individual instances of alleged infringement in order to determine the need for injunctive relief. However, the District Court did err by giving each of the four fair use factors equal weight, and by treating the four factors mechanistically. The District Court should have undertaken a holistic analysis which carefully balanced the four factors in the manner we have explained. The District Court did not err in holding that the first factor—the purpose and character of the use—favors fair use. Although Defendants' use was nontransformative, it was also for nonprofit educational purposes, which are favored under the fair use statute. However, the District Court did err in holding that the second fair use factor—the nature of the copyrighted work—favors fair use in every case. Though this factor is of comparatively little weight in this case particularly because the works at issue are neither fictional nor unpublished, where the excerpts in question contained evaluative, analytical, or subjectively descriptive material that surpasses the bare facts, or derives from the author's own experiences or opinions, the District Court should have held that the second factor was neutral or even weighed against fair use where such material dominated.

	With regard to the third factor—the amount used in relation to the copyrighted work as a whole—the District Court erred in setting a 10 percent-or-one-chapter benchmark. The District Court should have performed this analysis on a work-by-work basis, taking into account whether the amount taken—qualitatively and quantitatively—was reasonable in light of the pedagogical purpose of the use and the threat of market substitution. However, the District Court appropriately measured the amount copied based on the length of the entire book in all cases, declined to give much weight to the Classroom Guidelines, and found that the Defendants’ educational purpose may increase the amount of permissible copying. With regard to the fourth factor—the effect of Defendants’ use on the market for the original—the District Court did not err. However, because Defendants’ unpaid copying was nontransformative and they used Plaintiffs’ works for one of the purposes for which they are marketed, the threat of market substitution is severe. Therefore, the District Court should have afforded the fourth fair use factor more significant weight in its overall fair use analysis. Finally, the District Court erred by separating two considerations from its analysis of the first and fourth fair use factors Because the District Court’s grant of injunctive relief to Plaintiffs was predicated on its finding of infringement, which was in turn based on the District Court’s legally flawed methodology in balancing the four fair use factors and erroneous application of factors two and three, we find that the District Court abused its discretion in granting the injunction and the related declaratory relief. Similarly, because the District Court’s designation of Defendants as the prevailing party and consequent award of fees and costs were predicated on its erroneous fair use analysis, we find that the District Court erred in designating Defendants as the prevailing party and awarding fees and costs to Defendants.
Tags	Eleventh Circuit; Education/Scholarship/Research; Internet/Digitization; Textual work
Outcome	Preliminary ruling, mixed result, or remand

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