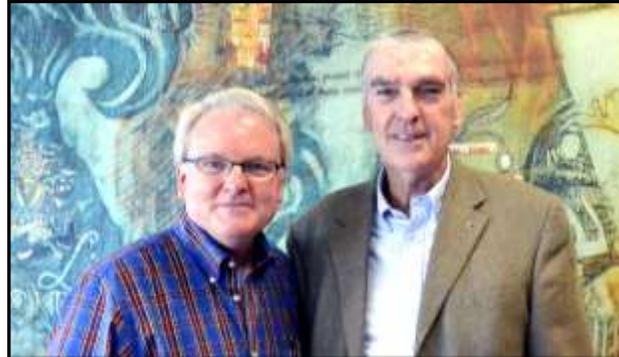


A Conversation with Dr. Kenneth Crews

July 17, 2012, Indianapolis, IN

Dr. Fritz Dolak

Dr. [Kenneth D. Crews](#) (left) is the Director of the Copyright Advisory Office, Columbia University Libraries, and a faculty member at Columbia Law School and the Munich Intellectual Property Law Center. Dr. Crews served as an expert witness in the Georgia State University case and testified in the trial.



Dr. Crews has a plethora of extremely useful and timely print and media resources for colleges and universities at his Columbia University Libraries/Information Service [Copyright Advisory Office](#) homepage:

- Copyright in General
- Fair Use in Education and Research
- Libraries and Copyright
- Copyright Ownership
- Permissions
- Special Topics
- And unique postings at his Blog

The legal environment has changed these past few years in regards to the way Fair Use is being applied and interpreted and consequently, an opportunity arose in which Dr. Crews took some of his extremely valuable time and made himself available to discuss the ramifications of the Georgia State University case.

Many questions about Fair Use are still present in spite of the [Georgia State University](#) [GSU] ruling in May 2012. Dr. Crews relates that as far as Fair Use goes now, “We need to be cautious, but not conservative in the use of copyrighted materials in the classroom which are used for research, course enhancement, and student achievement.” He continued that when using these copyrighted materials in the classroom, “We need to be prepared to give an account for our decisions.”

Dr. Crews' interpretation of the GSU ruling and the use of the Four Factors of Fair Use in that case are most insightful relating to using copyright materials for educational instructional objectives and learning outcomes. Dr. Crews states that these seven points are the essences of the GSU case:

1. In her 350-page order, Senior U.S. District Judge Orinda Evans rejected 69 copyright infringements brought by the plaintiffs deeming them to be Fair Use, but on the other hand she found that there were five excerpts from four books that were violations.
2. Judge Evans found that a safe zone of "decidedly small" excerpts could be copied. In most circumstances, she found it permissible for universities and colleges to copy 10 percent of a book with less than 10 chapters or one chapter of a book with 10 or more chapters.
3. She affirmed the Four Factors of Fair Use, Section 107 and found that all Four Factors must be considered and they can be applied in a flexible manner depending upon the circumstance of the use.
4. Importantly, colleges and universities can now completely ignore those rigid, quantified, measurable limits such as the word count interpretations of the 1976 "[Classroom Guidelines](#)" which Judge Evans noted, "[U]ndermine the teaching objectives" of Fair Use.
5. Further, she rejected the "One-Time Use" limitation.
6. Judge Evans determined that unpaid use of small excerpts of copyrighted works will not discourage academic authors from creating new works but rather will further promote the spread of knowledge.
7. Unfortunately, nothing was determined about "highly creative works" for example, fiction, music, art, poetry, drama, etc. Dr. Crews states that Fair Use may apply but it may not apply as generously.

Importantly, Dr. Crews relates that his [Fair Use Checklist](#) is still useful for assisting faculty, students and staff in making a Fair Use evaluation. On the other hand, Dr. Crews also emphasized that the full analysis of Fair Use is often more nuanced than a summary can usually provide. "As for the GSU case itself, we still have to see if the parties appeal the decision. A higher court may leave us with a different interpretation of the law. Colleges and universities should give their policies a fresh look, but not every institution will want to make changes at this time."

It should be remembered and noted that in the past few years, copyright has become more and more litigious. Dr. Crews warns that there are other lawsuits that are still pending of interest to and potential impact on colleges and universities.

Dr. Crews enumerated the copyright lawsuits that are going on right now -- many of which will impact educational uses of copyrighted materials. He has outlined these cases in a recent [webcast](#) from Educause. These cases include:

1. The Association for Information Media and Equipment versus The Regents of the University of California involving:
 - a. Fair Use, licensing, and streaming video issues.
2. The Authors Guild versus HathiTrust [the University of Michigan] in regards to:
 - a. Backup copies and the use of Orphan Works.
3. The Authors Guild versus Google Inc. which deals with:
 - a. Fair Use and the complete digitization of books.
4. John Wiley & Sons, Inc., versus Kirtsaeng:
 - a. The U. S. Supreme Court has granted cert and this case involves the importation of lawful copies produced outside of the United States. It should be decided in 2013.
 - b. For libraries, the Section 109, "First Sale" Doctrine is at issue here as well.
5. White versus West Publishing Corporation involves:
 - a. Alleged infringements of Westlaw, commercial legal pleadings.
6. The American Institute of Physics versus Schwegman, Lundberg & Woesser in which:
 - a. Journal articles were appended to patent applications.
 - b. The United State Patent and Trade Office issued an opinion of Fair Use.
7. International Interlibrary Loans in relating to:
 - a. The threats of legal action against some universities and further involves an interpretation of Section 108, "Library Copying."

Finally, Dr. Crews again reminds us that Cambridge University Press could appeal the GSU decision. Consequently, colleges and universities should not be complacent about the GSU findings and review their E-Reserve policy.

Besides these pending court cases mentioned above, Dr. Crews states that the potential Top Three Copyright Issues as of July 2012 are these:

1. The Georgia State University appeal [which might be completed by April 2013]
2. Faculty publication agreements and faculty keeping their intellectual property copyrights
3. MOOC, that is, Massive Open Online Courses and the uses of copyrighted materials in MOOC

Having such a rigorous conversation with Dr. Crews once again has proved his valuable acumen and profound insights in these extremely important copyright issues that directly impact teaching, research and learning in our colleges and universities.

The 10th Annual University Libraries' Copyright Conference at Ball State University will address these topics, and many more. The conference date is Wednesday, April 24, 2013. As of this writing, there is no conference URL.

For additional information about the copyright conference, "Copyright in Oz2: The Good, The Bad and the Ugly," please contact:

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