

Setting Aside the Course Reader: The Legal, Economic, and Pedagogical Reasons

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Abstract

This paper examines the changing status of the course reader as an instructional technology in higher education. It assesses the advantages of simply providing students bibliographic entries for assigned readings instead of readers. It evaluates this alternative in regards to intellectual property and fair use issues focusing on *Cambridge University Press v. Becker* (2012). A study of 110 courses readers demonstrates how 45 percent of the readings are freely available either through the university library or open access sources. Finally, the paper reviews a number of pedagogical benefits to having students work directly with scholarship within a dynamically hyperlinked environment.

Setting Aside the Course Reader: The Legal, Economic, and Pedagogical Reasons

The course reader, also known as the course-pack, may be among the least memorable artifacts in the history – or in anyone’s experience – of higher education. The cerlox- or spiral-bound stack of not-always-well-photocopied journal articles and book chapters is just something students plow through and mark up, week by week, as they make their way through the assigned readings for any given course. It has been a convenient instrument for handling of a course’s assigned readings for a number of decades. Yet the course reader has also served as the site of major intellectual property battles on campus, testing the limits of fair use for educational purposes. And, far less widely noted, it has been an instrument of some pedagogical reform.

At this point, the course reader also stands as one of the transitional objects in the move from the age of print into the digital era. The *electrophotographic* process that underlies photocopying, after all, involves neither *press* nor *print* (in their original sense, as verbs) in its reproduction of texts. Because the transition to the digital era has made considerable progress over the last decade, it is time to reconsider the course reader’s efficacy, economy, and convenience. In this paper, we present the case for the legal, economic, and pedagogical advantages to be had in setting aside the course reader as the principal means of introducing students to the best that has been thought and written in the disciplines they are pursuing.

On the legal side, we consider the recent court ruling – *Cambridge University Press v. Becker* (2012) – on the fair use issues that continue to be raised by the course reader’s digital rebirth in the form of *e-reserves* operated by the library. Economically, we present evidence that in a sample of two universities’ course readers, 45 percent of the items represented an unnecessary expense for the students. These items are available to the students online, whether through the library or through open access copies published or legally posted on the Internet

(Suber 2012). This legal and easily manageable method of reducing the cost and size of course readers not only takes advantage of the rapid online transition of research articles, it also holds, as we shall go on to present, considerable pedagogical promise for improving the quality of students' learning experience in ways that will serve them going forward in this age of digital information.

The course reader can be traced back to the end of the 1960s, after Xerox introduced the 914 plain-paper copier in 1959 (after IBM declined an offer to acquire the device), which brought down the price of photocopying, a process dating back to the 1940s, making course reader production highly feasible.¹ Before this and still, to a degree, in the present, instructors would place books and copies of journal articles “on reserve” in the institution’s library with a 2-3 hour loan period, during which time students might take notes in the library’s reserve room. This allowed students and instructors to manage the costs of readings, without unduly limiting the reach of what was read. The course reader took this a step farther, enabling students to purchase a course set of assigned articles and chapters, which they were able to mark up and arguably engage with more thoroughly than they would with “on reserve” materials (although course readers are also placed on reserve). But more significantly, from a pedagogical perspective, the course reader provided instructors with greater flexibility in designing their courses than was possible with textbooks, anthologies, or assigned texts. This introduced students to a much wider array of research studies and the work of leading scholars. With the common use of digital scanning and PDFs (Portable Document Format) by instructors and students in the twenty-first century, the library’s original reserve system has been replaced by the e-reserve, which acts much like a virtual course reader (with some faculty using course

management systems such as Blackboard and Moodle, in a similar fashion, to post PDF copies of course readings).

We hold that it is no longer necessary for instructors to gather all of the course readings in one place for the students, and that considerable benefits are to be had by simply providing students, in the course syllabus, with the appropriate bibliographical entry for the selected readings. Student can then access those materials through the library system or, in the case of open access materials, by finding them online using the URL included in the citation. At the very least, such an approach will provide students with a skill that will serve them well in life after graduation, especially in light of growing open access to research and scholarship.

As inconvenient as it might at first appear to a student used to turning each week to the next reading in the course reader and as concerned as some instructors are over the place of laptops and tablets in the classroom, we set out in what follows the legal, economic and pedagogical reasoning behind our recommendation of this approach. The advantages to be gained will apply to an increasing proportion of the readings selected for courses, given the growing availability of e-journals and e-books (with XXXXX University Library's collection of e-books, for example, approaching one million volumes), and the potential legal resolution of the Google Book Settlement, which will provide online access to students on many campuses to a vast array of books (Raff, 2011).

The Course Reader and E-Reserve as Case Studies in Fair Use

In the 1990s, two cases – *Basic Books Inc. v. Kinko's Graphic Corporation* (1991) and *Princeton University Press v. Michigan Document Services, Inc. (MDS)* (1996) – examined the legality of copy shop companies compiling copyrighted works into course readers, without obtaining permission from the publishers, and selling the course readers for profit to students.

The defendants argued they were protected under fair use provisions, but the courts found against them in both cases. The district court opinion in the Kinko's case nicely summarizes the main arguments and findings. The publishers successfully argued that by not obtaining and paying for permission to copy sections of copyrighted works, the publishers' rights were infringed. Kinko's defense relied predominantly on fair use in that they were only copying a portion of the works for educational purposes. Judge Motley's opinion evaluates the case on all four factors of fair use defined in the United States Code: "The purpose and character of use"; "the nature of copyrighted work"; "the amount and substantiality of the portion used"; and "the effect of the use upon the potential market for or value of copyrighted work" (17 U.S.C. §107). What proved critical to the court finding on behalf of the plaintiffs was the defendant's profit-seeking use of the work, as well as the quality and quantity of the amount copied. Entire chapters had been included in the course readers, which led the court to conclude that whole arguments and concepts from the copyrighted material were copied. Even though the statute does not specify a legal amount protected under fair use, as much as a quarter of some copyrighted works were used, and this amount is well above any previously allowed percentage in the relevant case law.

Similar findings occur in the 6th Circuit Court of Appeals opinion in the MDS case, which also found the copy shop had infringed. These two court decisions seemed to settle issues of copyright law with respect to course readers, but the digital revolution rocked the world of intellectual property protections. Due to the ease of copying and transmitting digital data files, violations of copyrights soared and countless examples of pirated movies, music, and books emerged. Although the Digital Millennium Copyright Act of 1998 sought to address some of

these issues in legislation, the judicial system is still working to fully define the legal limits of copyright and fair use, especially in academic settings.

More recently, two non-profit academic publishers, Cambridge University Press and Oxford University Press, along with one for-profit academic publisher, SAGE Publications, filed a civil suit against Georgia State University (GSU) in 2008, with backing from the Association of American Publishers and the Copyright Clearance Center (CCC).² The suit alleged that GSU made copyrighted documents, such as excerpts from books (averaging 10 percent of the book), available online through an electronic course reserve system known as e-reserves (Parry & Howard, 2011).³

On May 11, 2012, Judge Orinda Evans ruled that only *five* of the 75 excerpts at issue constituted copyright infringement. Judge Evans recognized the educational purpose of the library's e-reserves (as opposed to Kinko's profit motive) in light of the first fair use clause concerned with "the purpose and character of use" (17 U. S. C. §107). Yet she also acknowledged the force of the fourth clause – "the effect of the use upon the potential market for or value of copyrighted work" – as that potential market was increasingly established through agencies such as CCC, and which she defined as "easily accessible, reasonably priced, and they offer excerpts in a format which is reasonably convenient for users" (*Cambridge University Press v. Becker*, 2012, p. 28). When it came to the notoriously tricky question of the fair use second clause "the amount and substantiality of the portion used," Judge Evans took a bold stand, drawing a "bright line" to guide others on course readers, which limited fair use to excerpts that amount to a chapter or when a book has "fewer than ten chapters... 10 percent of the pages in the book" (*Cambridge University Press v. Becker*, 2012, p. 88).

So it was that Judge Evans found infringement in five cases in which the amount copied exceeded her line and the publishers provide ready licensing (while in some cases, they were not prepared to license the works). That number would have been higher, except that the publishers had been unable to establish that “they own valid copyrights in parts of some of the 64 works in this case,” while in other instances, the press did not make licensing readily available (*Cambridge University Press v. Becker*, 2012, p. 44).

Judge Evans also went on record in her judgment in respect to the needs of students and the rights of the public. With page charges running 10 to 25 cents and CCC adding \$3.50 per reading, she found that “if individual students had to pay the cost of excerpts, the total of all permission payments could be significant for an individual of modest means” (*Cambridge University Press v. Becker*, 2012, p. 33).⁴ She also held that fair use “recognizes ‘criticism and comment’ as deserving more public exposure, not less and hence works of this nature more likely will be protected by fair use,” which some of the scholarship at issue constituted for her. These are both important issues in thinking about the value of fair use. Yet she also held that this interest in public exposure was offset by “the tremendous amount of effort and expense which goes into creating high quality works of scholarship,” without noting how the greater part of that scholarly expense and effort is born, not by the publisher, but by faculty of public and tax-exempt institutions (*Cambridge University Press v. Becker*, 2012, p. 52).

In his blog on the case, James Grimmelman (2012), a NYU law professor, concludes that while GSU clearly won, at one level, “the big winner is CCC”: “It gains leverage against universities... and publishers who will be under much more pressure to participate in its full panoply of licenses.” By implication, *Cambridge University Press v. Becker* (2012) will lead to two outcomes: a tightening up of the author’s copyright transfer to publishers and more extensive

publisher licensing agreements with CCC. The later results because CCC has demonstrated, through this case, that it offers publishers the crucial trump card – ready online licensing of content –in reaping additional royalties for the course use of the publishers’ materials. What the Kinko’s case did for photocopying in the 1990s, the Cambridge case has done for online copies. However, this court decision risks further instantiating the photocopying principle in the digital age. This principle assumes that materials used in a course are distinct from those used in the library, leading to students paying for rights to use the course materials. We reject the notion that digitally available course materials should be held to a different copyright standard than materials used for academic research. When faculty or students conduct research, they may use the library resources as liberally as necessary without any expectation that they purchase their own individual access to the materials.

Some publishers already recognize this point within the scope of their campus-wide licenses for the use of their materials, with this as one of three examples provided to us: “Authorized users may download and print out multiple copies of material from the electronic database content for the purpose of making a multi-source collection of information for classroom use (course-pack) to be distributed to students at University free of charge or at a cost-based fee.”⁵

This recognition on the part of publishers that student use of their materials is integral to the digital licensing of these materials is an important recognition that we are entering a new age. At Stanford University, Franny Lee (2011) has led a computer science and law initiative to automate the checking of library holdings for course readers, which has led to the development of the Stanford Intellectual Property Exchange (SIPX). This software system utilizes an updateable database of information drawn from users as well as content providers enabling it to

identify works which are already paid for through the library or are in the public domain or under royalty free licenses, or require permission fees from an organization such as CCC. It is then able to produce a print-on-demand or digital version of the resulting course reader: “SIPX ensures full and authorized use of SUL’s substantial catalogue of subscribed academic content by the Stanford University community, and could potentially do so for other campuses and universities” (Lee, 2011, p. 10).

While it makes sense to continue to think of course readers in this time of transition between print and digital eras, and SIPX greatly facilitates the process of assembling such readers at a much fairer price for students, it also strikes us as important to be forward looking. The alternative that we are proposing, for a growing proportion of the readings used in instruction, is that instructors provide students with a bibliographic entry for the work in the syllabus, with a brief note on using Google Scholar to determine if it is in the library or available in an open access version. Students can use the library’s subscription or an open access online version of the reading, both of which students will be able to print or increasingly mark up electronically and share among their peers, much as their instructors do with their research colleagues.

This offers a number of legal advantages. The principle of the library copy having many users, even simultaneous users, is now too well established to challenge. After all, many publishers already charge a much higher rate for institutional subscriptions as well as for library editions of books. Directing students to the library edition holds some promise in harmonizing teaching and research, in its use of scholarship across the college campus. It returns the library to its integral role as foundational to instruction and research. In this way, it represents a legal advance for student and instructor. It removes from dispute the always equivocal judgment of

what constitutes fair use in course reader selections, given the challenging nature of “fair use” as a legal concept (Leval, 1989; Fisher, 1988).⁶ Yet this alternative approach also has economic and pedagogical implications which may be of far greater interest to student and instructor, given the typical level of concern over intellectual property legal issues among them.

The Economics of Course Reader Redundancy

Rising college costs have been a national concern for some time and have become a focus of the Obama administration (Lewin, 2012). Costs are rising for a variety of reasons (Ehrenberg, 2002), but close to two-thirds of the increase in college costs to students from 2000-2009 is attributable to non-tuition increases in room, board, and books (Gillen & Garrett, 2011). To test whether students may be paying unnecessarily for course reader content that is already available online to every student through the library (for which they are paying through tuition), we collected and analyzed a sample of course readers from an American private institution, XXXXX University, and a Canadian public institution, Queen’s University. XXXXX has a student body of 15,000 and a library collection of over 8.5 million volumes, with close to 75,000 electronic journal holdings; Queen’s has a student body of 24,000 and a library collections of over 2.2 million items, with 80,000 electronic serial holdings.

Our goal was to determine the percent of material in course readers that is freely available through an institution’s library system via electronic access or is available online from open access sources. Over the course of two academic years, we solicited from students, at every opportunity, their course readers, borrowing them long enough to record the bibliographic information about each item in their reader. This was not a completely systematic collection of data, but did cover graduate and undergraduate students, with representation from across the disciplines, although humanities courses are overrepresented as course readers are much more

common in those disciplines (Table 1). We collected a total of 110 undergraduate and graduate level course readers from a variety of disciplines (representing almost 2,000 articles) from these two institutions. For each course reader, we examined how many, if any, of the journal articles and book chapters were freely and legally available for students online, whether through their respective university's online collection or via open access on the Internet. We were careful not to count illegally posted versions of the publishers' PDFs to be found online.⁷

On average, 45.1 percent of course reader materials are freely available to students online.⁸ We found an example of one reader for which everything was available and several that had no material available electronically, but the readers mostly fell between those two extremes. There is substantial variation across disciplines with engineering, medicine, and law having the highest percentage available. This appears to be due to those disciplines relying more heavily on journal articles than book chapters, which have a lower rate of electronic availability.

Insert Table 1 about here

The course readers collected from XXXXX and Queen's had a similar number of items that could be found online through the library's collections, with 29 percent and 27 percent respectively (Table 2). This makes sense given that they both have similarly sized serial collections (while differing considerably in the number of books in their respective libraries). Where the two universities differed in their course readers was in the proportion of items that could be found in open access versions on the web, with XXXXX at 31 percent and Queen's at 20 percent.⁹ In both cases, there is overlap of items that are both in the library's collection and available through open access, although XXXXX course readers had less overlap, leading to a higher percentage of items available to students, 52 percent, through the library or open access. Taken together, for the 110 course readers between the two universities, 45 percent of the items

could be found in the library's collection and through open access online. It suggests that course readers could be nearly cut in half in size and price (although the royalty paid per-page varies by publisher). We were able to obtain pricing information on 73 course readers. Although there is limited availability of used course readers, the average price for a new reader is \$60. There is a substantial variation in range from a low of \$11 to a high of \$173.

Insert Table 2 about here

What these results reveal is the potential for cost-savings in the use of course readers, where typically royalty charges are paid on all items to protect the liability of the copy shop or bookstore. Publishers are likely to still object over the loss of revenue, but as pointed out in the previous section, this is no longer a matter of fair use, as there is no need for copying, per se, but for normal library use. Now it may be suggested that if students are gradually weaned away from course readers and e-reserves, the publishers will find other ways to make up for the lost revenue by increasing subscription costs, taking advantage of their monopoly ownership of the intellectual property. The publishers did threaten in the Georgia State University case that a loss of permissions might cause them to run a deficit "and possibly go out of business," as Judge Evans reports it (*Cambridge University Press v. Becker*, 2012, p. 84). She dismisses this reasoning, given the small part played by such book and journal permissions as a source of revenue, placing its share of the three publisher's total revenues at less than one quarter of a percent (*Cambridge University Press v. Becker*, 2012, p. 85). She also takes into account the intent of the U.S. Constitution's copyright clause to encourage invention – "To promote the Progress of Science..." – as she notes how "limited unpaid copying of excerpts will not deter academic authors from creating academic works," which is something of an understatement, given that the authors can only gain in reputation by such copying, which is the real currency of

academic life (*Cambridge University Press v. Becker*, 2012, p. 81). Finally, she takes this incentive principle one step further: “It is consistent with the principles of copyright to apply fair use doctrine in a way that promotes the dissemination of knowledge, and not simply its creation” (*Cambridge University Press v. Becker*, 2012, p. 81).

The Canadian context introduces another economic element into the discussion. On April 12, 2012, Access Copyright, which acts as permissions broker much like CCC, reached an agreement with the Association of Universities and Colleges of Canada to charge a flat permissions fee of \$26 per student a year to cover copying related to course readers (Tamburri, 2012). This replaced an earlier agreement, which saw the universities pay \$3.85 per student with the students paying 10 cents-a-page for the copies made for their classes. While a number of Canadian universities have signed this agreement, Queen’s has yet to decide, as we write. On the other hand, York University is among those that have declined, with Acting President Patrick Monahan stating that “Copies will continue to be made [at York] under licenses obtained directly from publishers, third-party vendors, content from our library subscriptions, open-access content, fair dealing or educational exceptions in the Copyright Act” (Monahan, 2012). The Canadian Association of University Teachers took a similar stand in opposing the new agreement, citing what it calculated to be its increased cost per student, overall, as this ran contrary to a declining use of course readers, given “the rise of fair dealing, open access, and site licensing” (*A Bad Deal*, 2012).¹⁰ While grounds exist for concerns over costs moving in the wrong direction for students, whether directly or by exerting pressure on tuition increases, we think the deciding factor here, and the one that is not being given its due in these deliberations by the courts, institutions of higher education, and faculty associations, is the pedagogical opportunities, the teachable moments, that this move to digital publishing holds for students.

The Pedagogical Advantage

Having reviewed the legal and economic benefits of moving beyond the course reader and e-reserve approaches to assigning readings for a class, this approach offers two principal pedagogical advantages: The first involves how using the online version further develops the students' research skills and information literacy, and the second comes from the enhanced properties of online publishing environments that also hold lessons about the nature of knowledge. We discuss each in turn, before introducing a potential pedagogical disadvantage.

One of the goals of higher education is to teach students a degree of independence in their seeking out and evaluating sources of information and knowledge. With the traditional course reader, professors are handing students their readings in a prepackaged format, with little need on the student's part to even attend to the relevant bibliographic information, such as when and where it was published, or by whom, especially with the typical course reader's week-by-week sequencing. It seems fair to describe such readings as relatively *de-contextualized*, even if they carry full bibliographic information and a complete set of references which is not always the case. And learning, we would not be the first to argue, has a great deal to do with learning the context.

Given the mix of library and open access materials that will make up the process, extracting readings from the prepackaged course reader will force students to learn how to use their library's search functions and internet searches to locate the course materials. For example, Google Scholar is a valuable tool in this process, with its ability to identify local library holdings, as well as PDFs that are likely open access. These are valuable skills for a student to have in place for a given topic or area, prior to taking on the writing of a research paper. This is all the more the case, in learning about open access materials. In going forward as educated

professionals, as well as informed citizens, it seems critical to be able to draw on this growing degree of publicly available research and scholarship especially considering such federal policies in the U.S. and elsewhere mandating open access for federally funded research (Author, 2011). Often, these open access materials will appear in institutional repositories, where they will also appear somewhat outside of the “native” context typically involving publication in a journal (which has permitted the author to archive the work in an open access repository). Yet these open access materials are also available from among the growing number of open access journals, where they will appear entirely contextualized in their publication environment.¹¹

When approaching the writing of their own research papers, this preparation will enable them to search for and locate the necessary literature. By locating individual journal articles, they will become familiar with the common journals in the field thereby giving them a richer sense of the discipline. Consistent practice with locating articles in different online sources will provide students with technological information literacy that is critical in the modern world. Although teaching students how to locate resources online through the library can certainly be taught separately, Eisenberg (2008) argues that it is essential to build information literacy skills simultaneously with technology skills and in the context of the current curriculum. This is precisely the advantage of our proposal. Within each course, learning how to employ the resources of the library to obtain readings electronically is vastly superior to the current practice.

The second major pedagogical benefit of students accessing course materials online is that online documents have many enhanced features relative to their paper versions. From searchable full-text to the ability to highlight and annotate, reading a document in a hyperlinked version of HTML or PDF on the computer provides improved opportunities for learning and substantially eases the research endeavor. But the advantages go well beyond simply having a

digital version of the document. By accessing the publisher's website, whether through the institution's library system or through an open access publication, readers have an array of links that provide access to additional related and relevant resources.¹² Some of the most useful features include links to the article's references, documents with shared references, other works by same authors, papers that have cited the article, and articles in same journal. Students are also a click away from the table of contents for the journal (or book), which is useful with a special issue devoted to a single topic, but even without that, as an introduction to an array of topics defining a field. This functionality is akin to browsing the shelf in the library for materials related to the book you came to pick up. Articles are often accompanied by statistics indicating the degree of and pattern of its use by others, with a move underway to increase the article-level statistics (Figure 1) to include not just citations but blog mentions, tweets, Facebook, and media coverage (Priem, Piwowar, & Hemminger, 2011).

Insert Figure 1 About Here

These materials and figures add up to the context in which the work circulates; they demonstrate in a dynamic fashion (as metrics and links are continuously updated) how particular areas of research operate and new directions emerge. Perhaps with the instructor's guidance in the first instance or two, but then independently, students can gain an appreciation of a work's standing as a classic paper or a new development; they can witness the contest of ideas, and patterns of take up within and across disciplines.

As part of our study, we interviewed a number of faculty members that use course readers and a few that do not, to learn about their knowledge of copyright issues and to discern their interest in pursuing our proposal. One professor we spoke to offered an additional advantage of using electronic course materials: it allows much more flexibility and responsiveness in teaching,

enabling the ready substitution of new works, which becomes a little awkward with a course reader of purchased readings. More commonly, we discovered faculty operating in a murky legal zone related to copyright law and their course materials. Of the faculty that do not use course readers, some post PDFs of the articles on the course website and others email PDFs of the articles to their entire class each week. Many, if not most of these articles are freely available to students online through the library. While these professors are certainly saving students money by not requiring them to purchase a course reader, they lose out on all of the contextual pedagogical advantages of our proposal. But more than that, they fail to respect, or help the students gain respect, for the work being studied as a form of *intellectual property*, that is as work that has a legal status and a value, as the exacting expression of ideas, by which knowledge holds its place in the world. One of us is currently working on the historical and legal case to be made for research and scholarship constituting a distinct class of intellectual property on a number of grounds (Author, 2012). But any sense of such a distinction is lost by the simple napsterization of the course readings, as if the readings and pop music were all cut from the same cloth.

Perhaps the most serious criticism of our proposed approach, as it speaks to its pedagogical disadvantages, came from an instructor who chose to use a course reader, knowing that all of the articles in the course reader were available online through the library. She did so because she found that the use of laptops in her small seminar class stifled discussion and caused too many distractions, while the course readers help focus attention on the texts under discussion. We certainly respect decisions made on the basis of the pedagogical quality of the class. The no-laptop rule does not preclude introducing students to the richer context in which the research circulates by projecting the publisher's site for the class, just as it does not prevent students from

printing out the work to bring to class, after having “discovered” it in its natural habitat, as many do print out online readings.

We would also note that as things currently stand, the evidence on using laptops in class is mixed: To cite two examples, Kolar, Sabatini, and Fink, (2002) compare two sections of the same engineering course in which one used laptops and the other did not. They find some evidence of improved performance and a more positive learning environment in the section with laptops. In contrast, Fried (2008) finds that students who use laptops in class are distracted and reports a negative correlation between laptop use and course performance. Unfortunately, the majority of laptop studies take place within a single institution and usually with a single course. They also do not adequately control for student selection of laptop use.

Conclusion

The classroom role of computing devices, be they laptops, tablets, or smart phones, is also part of this transitional culture of the early digital age. We are still learning whether or how best to use them in our teaching. For our part, we would be happy to see this discussion move forward with a focus on the legal, economic, and pedagogical aspects of using research and scholarship in teaching, and as a subject of ongoing research. On the legal side, we want to see an increase in faculty and student awareness of research as a form of intellectual property that needs to be respected and appreciated as such and to which the public are gaining increasing rights.

Economically, we appreciate the part played by publishers today in providing increasingly sophisticated publishing platforms that provide a valuable context for published work. Yet it is not all clear how to make sense of the current economic models needed to fund such a system, given the scholarly publishing market is divided between corporate and non-profit

players, subscription and open access models, and open source and proprietary online publishing systems, all of which lead to significant operating budgets, and profits (Author, 2009). On top of that, it is well to remember Judge Evans' two points on the economics of e-reserves, namely, that while permission fees for classroom use played only the most minor part in the publishers' revenue, they could still have a significant impact on student budgets. No one imagines that the production and publishing of research and scholarship is cost-free. The question today is how to arrive at a rational system for ascertaining and bearing those costs. And certainly, protecting the revenue streams from what is becoming an antiquated instructional model is not the best guiding principle for doing that.

For our part, we ask that instructors and students have an opportunity to consider the legal, economic, and pedagogical consequences of current and new practices affecting courses and classes given to the study of research and scholarship. We think that this digital age presents a great many new opportunities for students to witness how fields of inquiry operate, including how they operate in light of a growing public right to knowledge. The dynamics of the intellectual process by which ideas are built, taken up, and contested on a global scale have never been more apparent and available to students. We are particularly encouraged by the possibilities of this engagement with research and scholarship being sustained through their professional and personal lives after they graduate. This sense of a longer-term educational impact should, in itself, be a source of encouragement for any instructor, even without considering what this ongoing engagement on the part of our former students could mean for the vital public support of this work.

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¹The Xerox 914 proved a disruptive technology in higher education, with journal publishers responded by instituting, according to Liebowitz's (1985) analysis, widespread "institutional pricing" for journal subscriptions, with the resulting price increases year after year setting off the "serials crisis" among libraries that peaked in the 1990s and was part of the incentive for the open access movement in scholarly publishing (Emmett, Stratton, Peterson, Church-Duran, & Haricombe, 2011).

²The CCC serves as a clearinghouse for identifying copyright holders and paying royalties. In the traditional course reader process, the library will secure the right to reprint materials through the CCC.

³Technically, the publishers sued the university's president, provost, chief librarian, and associate provost for technology due to state sovereign immunity. Copyright law is codified in federal law, so any violation of it must be argued in federal court. However, state sovereign immunity prevents a state from being sued in federal court unless it grants permission, and, because it is a public school, Georgia State University is a state institution.

⁴The clearing of permissions, given the complications, by the bookstore or copy-shop can lead to additional overhead charges of \$10-23 a course reader (Lee, 2011).

⁵Thanks owed to Franny Lee for providing the relevant anonymous contract excerpts.

⁶Consider this Fair Use Chart (<http://www.starr.net/is/fu.html>) listed as a guide by the American Library Association, which offers by way of counsel advice on “Possible Fair Use” and “Probably Needs Permission.” Aufderheide and Jaszi refer to how the current approach to fair use can foster “a culture of fear and doubt” among content creators (2011, p.3).

⁷The SHERPA/RoMEO database list publishers’ policies on author self-archiving, with 58% of the publishers (including all the major corporations) permitting authors to typically post their final peer-review draft, but not the publisher’s PDF; <http://www.sherpa.ac.uk/romeo/>.

⁸Lee’s (2011) study of three courses using SIPX found that all of the materials for the economics course were freely available to the students, while the permission fees for the physics course could be reduced by 90 percent and by 14 percent for the psychology course.

⁹The sample includes seven course readers in engineering from XXXXX and none from Queen’s, and there appears to be a higher percentage of open access articles in engineering than other disciplines. Queen’s had course readers in drama, philosophy, gender studies, and religious studies where open access appears lower.

¹⁰In *CCH Canadian Ltd. v. Law Society of Upper Canada* (2004), the Canadian Supreme Court gave fair dealing (Canada’s equivalent to the U.S. fair use) a stronger claim in its ruling: “The fair dealing exception, like other exceptions in the Copyright Act, is a user’s right. In order to maintain the proper balance between the rights of a copyright owner and users’ interests, it must not be interpreted restrictively.”

¹¹The online Directory of Open Access Journals (<http://doaj.info>), listing over 7,000 titles, and the newly formed Directory of Open Access Books provide guides to the growing body of research and scholarship that is publicly available.

¹²We see no contradiction in extolling the seldom realized educational value of the publishers' websites, while recommending a reduction in the use of permissions-based course readers, given that (a) the universities have typically purchased a campus-wide site license to the websites, (b) some of the best sites are open access, and (c) the amount represented by permissions, as shown in *Cambridge University Press v. Becker* (2012), is such a small proportion of publisher revenue.

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Table 1

Summary of course reader articles available online by discipline

Discipline	# Course Readers	# Items	Items per Reader	% in Library	% Open Access	% Available
Business	2	27	14	37.0%	22.2%	40.7%
Education	18	345	19	32.8%	17.4%	47.2%
Engineering	7	183	26	38.8%	45.4%	63.4%
Humanities	58	950	16	17.4%	20.6%	32.5%
Law	5	105	21	40.0%	38.1%	73.3%
Medicine/Nursing	6	160	27	45.0%	50.0%	66.9%
Science	5	43	9	30.2%	14.0%	39.5%
Social Science	9	171	19	41.5%	25.1%	55.0%
Total	110	1984	18	28.1%	25.9%	45.1%

Note: Items in Library and Open Access Items add up to more than Available Items because some items are available both in the library and via open access sources.

Table 2

Summary of course reader items available online by university

University	# Course Readers	# Items	Items per Reader	% in Library	% Open Access	% Available
Queen's	50	897	18	26.8%	20.4%	36.7%
XXXXX	60	1087	18	29.2%	30.5%	52.0%
Total	110	1984	18	28.1%	25.9%	45.1%

Figure 1. The open access journal PLoS ONE provides an array of impact measures, as well as related content links.

RESEARCH ARTICLE OPEN ACCESS

A High Quality Draft Consensus Sequence of the Genome of a Heterozygous Grapevine Variety

Article Metrics Related Content Comments: 0

Article Usage

	HTML Page Views	PDF Downloads	XML Downloads	Totals
PLoS	12,930	3,033	94	16,057
PMC	1,335	691	n.a.	2,026
Totals	14,265	3,724	94	18,083

Total Article Views: **18,083**
Dec 19, 2007 (publication date) through Jun 19, 2012*

Cumulative Views

Months

Metrics

Total Article Views: **18,083**

Citations
[CrossRef \(177\)](#)
[PubMed Central \(92\)](#)
[Scopus \(256\)](#)
[Web of Science® \(254\)](#)

Social Networks
[CiteULike \(3\)](#)
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