

APPENDIX C

"FAIR USE" IN COPYRIGHT

"Fair Use" is an implied right to use copyrighted materials under certain circumstances without permission. For the first time, the 1976 Copyright Act makes provisions for exemptions with a "Fair Use" clause. The "Fair Use" provisions are detailed in the United States Code Title 14 Section 107 and are summarized as follows:

Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use be reproduction in copies of phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

(1) the purpose and character of the use, including such use is of a commercial nature or is for nonprofit educational purposes: (i.e. How will the material be used? If it is for a commercial venture, it is a violation, but if it is copied for a nonprofit educational purpose, it is "fair use.")

(2) the nature of the copyrighted work; (i.e. What type of work is being copied? Each type of copyrighted material (music, software etc.) has different criteria for "fair use.")

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; (i.e. How much of the work will be copied? If the copied amount exceeds half of the copyrighted materials, or even 10% in some cases, you may be abusing "fair use.")

and

(4) the effect of the use upon the potential market for or value of the copyrighted work. (i.e. Will your copied material cause the copyright holder to miss out on sales? If you cause the owner to lose sales because you are giving out materials free then "fair use" does not apply and you are violating a copyright.)

Section 107 of Title 14 does not define "Fair Use", but does give us some guidelines as to when the principal of "Fair Use" applies. The courts have decided not to define "Fair Use" because they believe each case must be decided on the facts presented. It is clear certain standards for using the "Fair Use" section have been developed to protect teachers from liability for infringement. If you would like to see the detailed code, which specifies the use of "Fair Use" for certain, circumstances, visit the library and look into the United States Code Annotated - 14 Copyrights. For further information, assistance in interpreting the code or to learn how to acquire a copyright; call or write the following:

Copyright Office
Library of Congress
Washington, D.C. 20559
(202) 707-8700