

Re: Legality of OEM Win XP 1-2 CPU

Source:

<http://www.tech-archive.net/Archive/WinXP/microsoft.public.windowsxp.general/2004-06/4447.html>

From: kurttrail (*dontemailme_at_anywhereintheknownuniverse.net*)

Date: 06/04/04

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Bruce Chambers wrote:

> *Greetings --*

>

> *Ah, yes. The much-ballyhoo-ed "Fair Use" argument. This is
> nothing more than a red herring that isn't even applicable in the case
> of making unauthorized copies of software for daily use, either
> personal or commercial. Specifically:*

>

> *"Fair use is a copyright principle based on the belief that the
> public is entitled to freely use *portions* of copyrighted materials
> for purposes of *commentary and criticism*. For example, if you wish
> to criticize a novelist, you should have the freedom to quote a
> portion of the novelist's work without asking permission. Absent this
> freedom, copyright owners could stifle any negative comments about
> their work."*

> ([http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/
> index.html](http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/index.html))

> (*Emphasis mine.*)

"Unfortunately, if the copyright owner disagrees with your fair use interpretation, the dispute will have to be resolved by courts or arbitration." –

http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/index.html

The copyright owner doesn't get to decide what is & is not a "fair use."

>

> *"Judges use four factors in resolving fair use disputes, which are
> discussed in detail below. It's important to understand that these
> factors are only guidelines and the courts are free to adapt them to
> particular situations on a case-by-case basis. In other words, a judge
> has a great deal of freedom when making a fair use determination and
> the outcome in any given case can be hard to predict.*

>

> *"The four factors judges consider are:*

>

> *1.. the purpose and character of your use*

Private non–commercial individual use.

"In a 1994 case, the Supreme Court emphasized this first factor as being a

primary indicator of fair use." –

http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/9–b.html

Of course public commercial use is sometimes legally allowable under "fair

use." Private non–commercial use in the home would be the most flexible form of "fair use."

> *2.. the nature of the copyrighted work*

"In addition, you will have a stronger case of fair use if the material copied is from a published work than an unpublished work." –

http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/9–b.html

Not only published, but sold in retail stores as a commercial product.

> *3.. the amount and substantiality of the portion taken, and*

Entire. The Supreme Court in 1984, when considering the taping of entire

movies on a VCR already concluded that individuals can copy an entire copyrighted work as a "fair use."

> *4.. the effect of the use upon the potential market. "*

> (http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/

> [9–b.html](http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/9–b.html))

Non–existent since copyright owner was paid for the original copy by the individual, thereby has already gotten a "fair return" for the creative labor of the author(s).

"The limited scope of the copyright holder's statutory monopoly, like the limited copyright duration required by the Constitution, reflects a balance of competing claims upon the public interest: Creative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and the other arts. The immediate effect of our copyright law is to secure a fair return for an 'author's' creative labor. But the ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good. 'The sole interest of the United States and the primary object in conferring the monopoly,' this Court has said, 'lie in the general benefits derived by the public from the labors of authors' When technological change has rendered its literal terms ambiguous, the Copyright Act must be construed in light of this basic purpose." – <http://laws.findlaw.com/us/422/151.html>

- > *Feel free to peruse the entire article, which will make it*
- > *abundantly clear that there is no way that anyone could successfully*
- > *argue that installing a second copy of an operation system onto a*
- > *second computer, without the copyright holder's express permission,*
- > *for the sole purpose of not having to buy a second license, could*
- > *possibly meet the criteria of "Fair Use."*

LOL! I just did!

- > *(Although, I suppose it is*
- > *theoretically possible that a judge might so rule, someday, but I*
- > *seriously doubt that such a ruling would withstand appeal.)*

LOL! Until a greedy corporate copyright owner has the balls to sue an individual for installing software on more than one computer, individuals have every right to follow their own interpretation of "fair use" when it comes to "fairly using" their copies of software.

- >
- > *You might also try actually reading the law, though it won't*
- > *support your position:*
- >
- > *TITLE 17, CHAPTER 1, Sec. 107.*
- > *<http://www4.law.cornell.edu/uscode/17/107.html>*
- >
- >

LOL! Brucey-baby!

--

Peace!

Kurt

Self-anointed Moderator

microsoft.public.windowsxp.gonorrhea

<http://microscum.com>

"Trustworthy Computing" is only another example of an Oxymoron!

"Produkt-Aktivierung macht frei!"