

**Penguin Random House LLC, et al. v. Frederik Colting and Melissa Medina, d/b/a Moppet Books
No. 17-cv-386 (S.D.N.Y. Sept. 8, 2017)**

Year	2017
Court	United States District Court for the Southern District of New York
Key Facts	Defendants Frederik Colting and Melissa Medina created KinderGuides, which are condensed and sanitized versions of classic novels such as Jack Kerouac’s “On the Road” and Ernest Hemingway’s “The Old Man and the Sea,” with colorful illustrations, aimed at children ages 6 to 12. Defendants planned for a 50-book series. Plaintiffs, the estates of authors Arthur C. Clarke, Jack Kerouac, Truman Capote, and Ernest Hemingway, as well as the publishing houses Penguin Random House and Simon & Schuster, filed suit for copyright infringement. Defendants claimed that the books were intended as educational guides, similar to SparkNotes, whereas Plaintiffs argued that KinderGuides were unauthorized derivative works. After discovery, the parties cross-moved for summary judgment.
Issue	Whether the creation of versions of classic novels condensed and sanitized for children constitutes fair use.
Holding	After conducting the four-step analysis, the court held that Defendants’ use was not fair. As to the first factor, purpose and character of the use, the court held that “[n]one of [the Defendants’ alleged] alterations are sufficient to sustain” the claim of fair use: abridgements are considered derivative works and not fair use, the removal of adult themes “does not meaningfully ‘recast’ the work any more than an airline’s editing of R-rated films . . . absolve[s] the airline from paying a royalty,” and the KinderGuides do not “qualify as educational criticism or commentary” because the addition of a few pages of commentary “does not provide safe harbor for an otherwise infringing work.” Indeed, the court found that the KinderGuides “do not recount plaintiffs’ Novels in the service of literary analysis, they provide literary analysis in the service of trying to make the [KinderGuides] qualify for the fair use exception.” The court held that the second factor, the nature of the copyrighted work, weighed against a finding of fair use because the Plaintiffs’ works “are precisely the sorts of creative works that receive special solicitude in a fair use analysis.” As to the third factor, the amount of work used, the court held that “nearly all of [the KinderGuides] are devoted to telling plaintiffs’ copyrighted stories, with only two pages purporting to analyze them;” this factor favored Plaintiffs. Lastly, as to fourth factor, the effect on the market for the copyrighted work, the court noted that “[b]oth sides agree that there is an established market for children’s versions of adult novels” and found Defendants had not met their “burden to show that their works will not [also] adversely affect . . . the market for derivative works based on plaintiffs’ originals.” The court also rejected Defendants’ argument that this factor weighed in favor of fair use because Plaintiffs “have never created, marketed, or licensed any work that remotely resembles” the KinderGuides, stating that “plaintiffs might change their minds.” Defendants also asked the court to assess the interests of the public, arguing that Plaintiffs “explicitly seek to stifle the creation of new works”; the court noted that “Congress did not provide a use-it-or-lose-it mechanism for copyright protection,” and “the fact that any given author has decided not to exploit certain rights does not mean that others gain the right to exploit them.” The court also noted that “[i]mplicit in defendants’ argument. . . is a contention that the Copyright Act itself is unconstitutional,” and because Defendants “make no effort to show that Congress lacked . . . a rational basis for providing plaintiffs an exclusive right to exploit derivative works, . . . this Court cannot provide defendants with the relief they are seeking.”
Tags	Second Circuit; Textual Work; Education/Scholarship/Research
Outcome	Fair use not found

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