



AMERICAN
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ARTISTS

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) The American Photographic Artists joined a courageous effort supporting artist and photographer Patrick Cariou by filing an amici curiae or 'friend of the court' brief with the American Society Of Journalists and Authors, American Society of Media Photographers, Graphic Artists Guild, Jeremy Sparig, National Press Photographers Association, Picture Archive Council of America, and the Professional Photographers Of America, in Cariou vs. Prince, Case No. 08 Civ 11327 (Dab) in the Southern District Court of New York.

APA and this community of day-to-day working visual artists and authors have a "considerable interest in how the resolution of this matter will impact the rights in their original creations," states the brief. They submitted this brief primarily in opposition to the amicus brief filed by the Andy Warhol Foundation "and other elite foundations and museums who do not represent the views of working artists."

APA members have a strong interest in the issues presented by this case "because their businesses and livelihoods depend upon the broadly defined subject matter that is protected under the 'derivative works' right in the Copyright Act," according to the brief. More specifically, APA members "operate businesses which rely heavily upon, and derive substantial revenues from, a large, broadly defined, secondary and derivative market for the use of existing photographic work." The brief states that "APA members seek to preserve the licensing possibilities presented by this secondary and derivative market, and they seek a consistent application of the principles under which this market has traditionally functioned."

The Brief gives the following concerning the artist groups' reasoning for filing:

Prince took Cariou's photographs and displayed them as his own in his Five Paintings. He did not avail himself of any avenues by which he could easily have obtained permission to use Cariou's creations or other readily licensable images. He minimally altered the photographs; it was a bare display of Cariou's original work. As a result, Prince also usurped Cariou's right to control the marketing and exposure of Cariou's original aesthetic vision. Defendants and the Warhol Foundation propose an application of the "reasonable person" standard that would not

even require modification of the original photographs' aesthetic in any way. Such a standard would permit appropriating artists to circumvent the available licensing systems, knowing that a standard that permits simple after-the-fact rationalization for appropriation as a "fair use" defense forecloses many less-endowed visual artists from fighting them in the courts.

In short, such a standard deprives copyright owners of both their original copyrighted vision, as well as the additional valuable property rights conferred by the statutory scheme. Photographers, and all creators of original work, should not be deprived of their work's value on the basis of appropriation.

David Leichtman and Hillel Parness of the New York law firm of Robins, Kaplan, Miller & Ceresi wrote this brief. Plaintiff, Patrick Cariou, as well as Defendants, Richard Prince, the Gagosian Gallery, Inc., and Lawrence Gagosian have all, through their legal counsel, consented to the submission of this brief.

About American Photographic Artists (APA)

The American Photographic Artists (<http://www.apanational.com>) is a leading national organization run by and for professional photographers. With a culture that promotes a spirit of mutual cooperation, sharing and support, APA offers outstanding benefits, educational programs and essential business resources to help its members achieve their professional and artistic goals. Headquartered in Santa Fe, New Mexico with chapters in Atlanta, Los Angeles, the Midwest, New York, San Diego, San Francisco, Charlotte, Colorado, the Northwest, Washington, DC, and APA Editorial Photographers, APA strives to improve the environment for photographic artists and clear the pathways to success in the industry. Recognized for its broad industry reach, APA continues to expand benefits for its members and works to champion the rights of photographers and image-makers worldwide.