

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----- Appeal No. 11-1197-CV
Patrick Cariou,
Plaintiff-Appellee,
v.
Richard Prince, et al.
Defendants-Appellants.

On Appeal From the United
States District Court for the
Southern District of New York,
Civil Action No. 08-CV-11327
(DAB)

**AMICUS CURIAE THE ANDY WARHOL FOUNDATION FOR THE
VISUAL ARTS, INC.’S MOTION FOR INDEPENDENT ORAL
ARGUMENT**

The Andy Warhol Foundation for the Visual Arts, Inc. (“The Warhol Foundation”) respectfully moves this Court for ten minutes of oral argument as *amicus curiae* in addition to the time allotted to the parties in order to address the important public interests at stake in this case. Appellants Gagosian Gallery, Inc. and Lawrence Gagosian consent. Appellant Richard Prince and Appellee Patrick Cariou oppose.

Founded upon Mr. Warhol’s death, the Foundation advances the visual arts by promoting the creation, presentation and documentation of contemporary art. It has made grants totaling more than \$200 million to fund individual artists, scholars, researchers, museums and other organizations, including The Andy Warhol Museum. All of its work is premised upon the belief that art reflects an

important cultural dialogue, and that freedom of artistic expression is fundamental to a democratic society. While the Foundation generates substantial revenue from the copyrights it owns, it uses that revenue to help fund its non-profit mission of supporting contemporary art, including the work of many photographers. The Warhol Foundation's interest in this case is therefore the same as that of the public at large: a balanced copyright system that recognizes the need to provide strong economic incentives and the need to provide breathing room for artists who use existing images to create new art.

That balance is especially critical here. The artistic strategy of appropriating and collaging pre-existing images is not unique to Appellant Richard Prince. It is vitally important to contemporary art, and has origins dating back more than a century, as illustrated by these important works, and others reproduced in The Warhol Foundation's brief:



Richard Hamilton, *Just what is it that makes today's homes so different, so appealing?* (1956)
Collage on paper; 10 1/4 x 9 3/4"



Robert Rauschenberg, *Skyway* (1964)
Oil and silkscreen on canvas; 216 x 192"

Prince's work participates in the same tradition:



Richard Prince, *Naked Confessions* (2008), at A-259
Collage, inkjet, and acrylic on canvas; 45 1/4 x 46"

In granting summary judgment for Appellee Patrick Cariou, the district court adopted a fair use standard that threatens this tradition, and is contrary to controlling law. *See Warhol Br.* at 23-38. It refused to recognize any expressive interest or transformative meaning other than parody or direct commentary, and ignored the transformative meaning that is evident on the face of Prince's work because Prince failed to verbalize that meaning to the court's satisfaction. If the

district court's decision is upheld, it will jeopardize important and well-established modes of artistic expression, raise serious First Amendment concerns, and ultimately impede far more creativity than it would promote, both in the visual arts and beyond.

This case implicates important public speech and expression interests that go well beyond those of the parties involved, and the Warhol Foundation is uniquely qualified to speak to those interests. As an organization that is dedicated to supporting contemporary art in all of its forms, the Foundation can provide a broader perspective on the issues this case presents and the impact it may have across the spectrum of visual art.

CONCLUSION

For the reasons stated above, The Warhol Foundation requests ten minutes of argument time in addition to the time allotted to the parties.

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