



# Boundary between idea and expression

Protection of ideas: conceptual art, derivative works, style, etc.

July 11th 2012  
Micol Nantiat

# What is an idea?



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# What is “expression”?

Burrow-Giles Lithographic Co. v. Sarony



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# Dichotomy of ideas and expressions

- Copyright does not protect ideas.
- Copyright protects the particular way an idea is expressed.
- Photographs of naturally occurring subject or objects (nature) are less protected than posed photographs where photographer selects the elements.

# How to identify the boundary

- Individuals and courts have difficult time distinguishing between the two.
- Perhaps there is some platonic ideal where it is easy to tell the difference between an idea and the expression of that idea, it is much harder in practice.

# Gentieu v. Getty Images



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In addition to accusing the agency of breach of fiduciary responsibilities, Penny Gentieu alleged that Getty had infringed her copyrighted photos of babies (far left) by directing photographers to make copies (near left and below). The court ruled that the similarities in the photos were inherent in the subject matter.

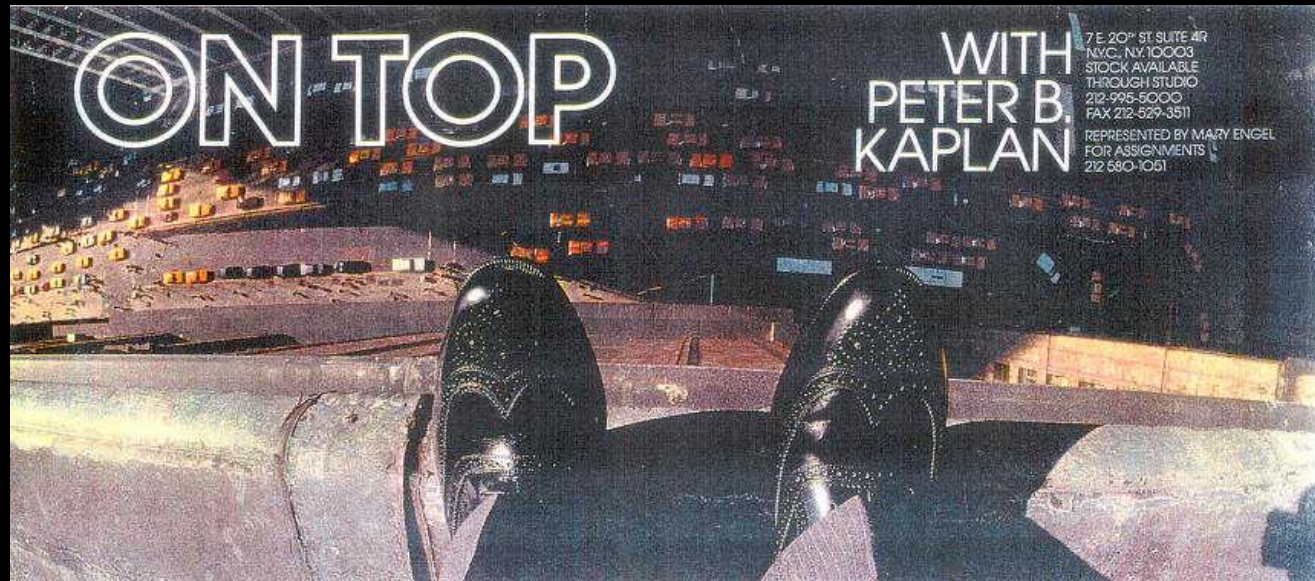
**IF THERE ARE ANY LESSONS** to be drawn from the summary dismissal of some recent copyright lawsuits, it is that proving someone infringed your rights by shooting copycat pictures can be a tough battle, indeed.

...March, federal courts dismissed two infringement claims against alleged

# Fournier v. Erickson



# Kaplan v. Stock Market Photo Agency

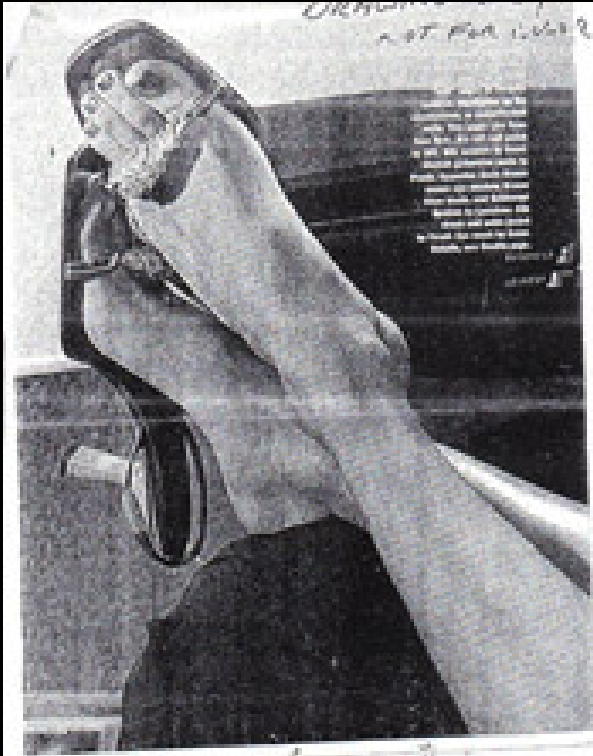




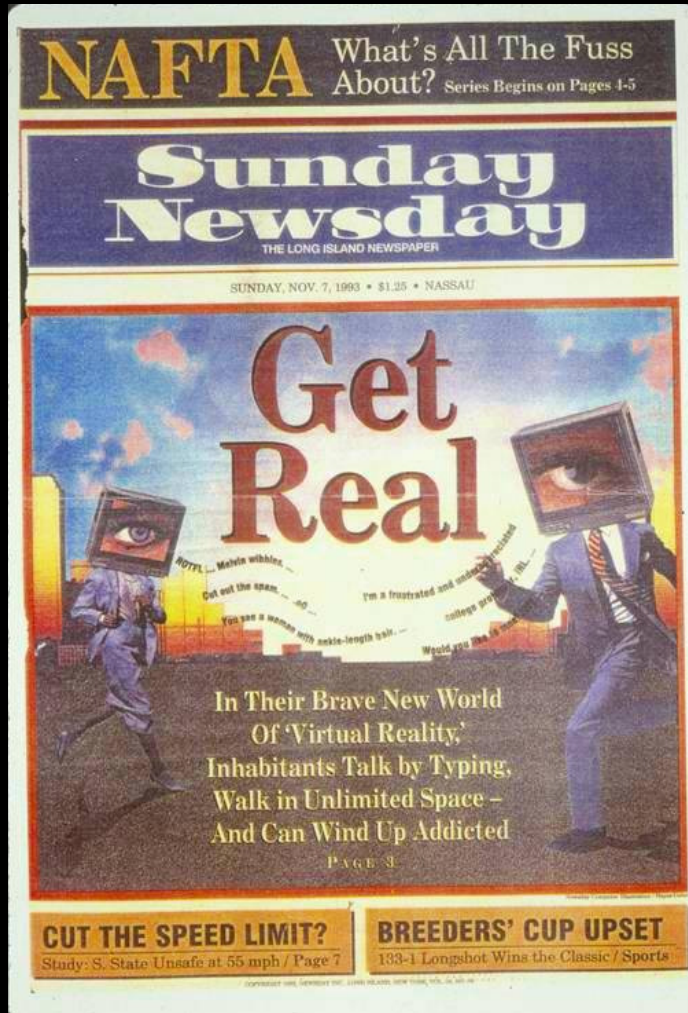
# Koons v. Art Rogers 506 U.S. 934



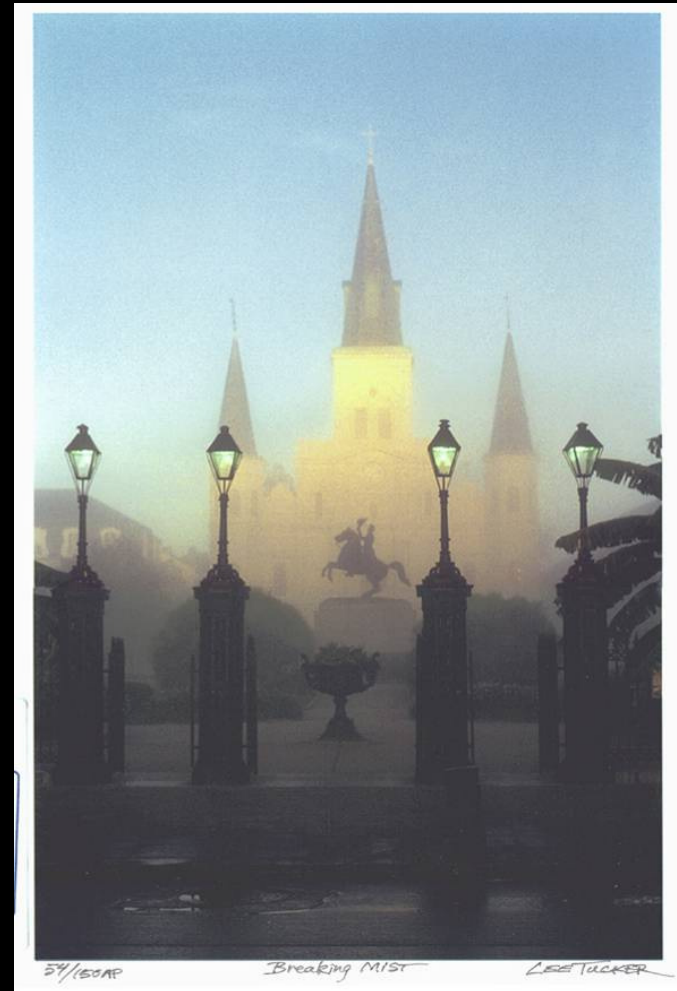
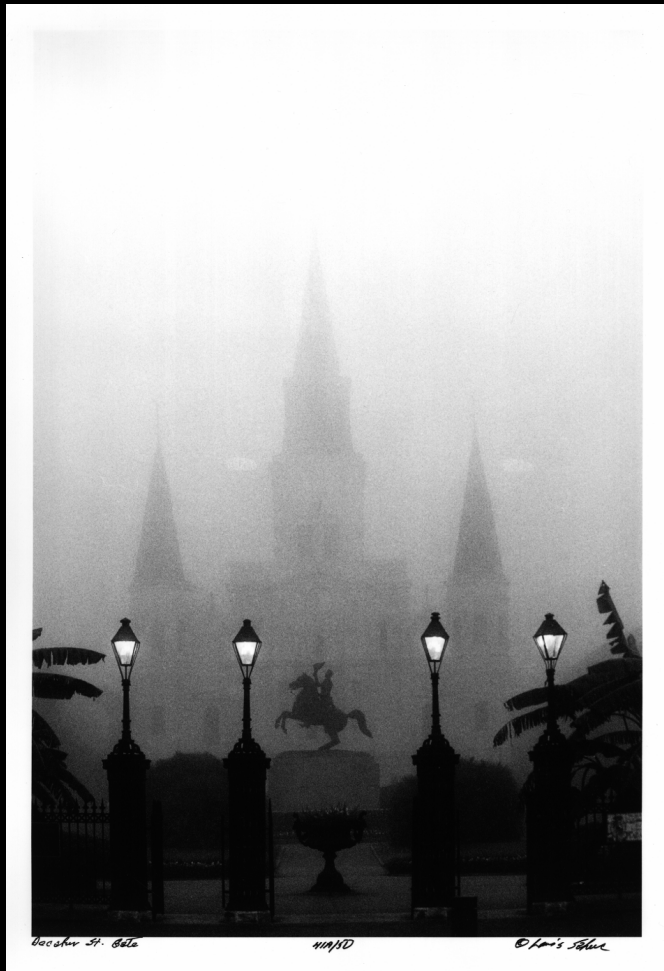
# Blanche v Koons



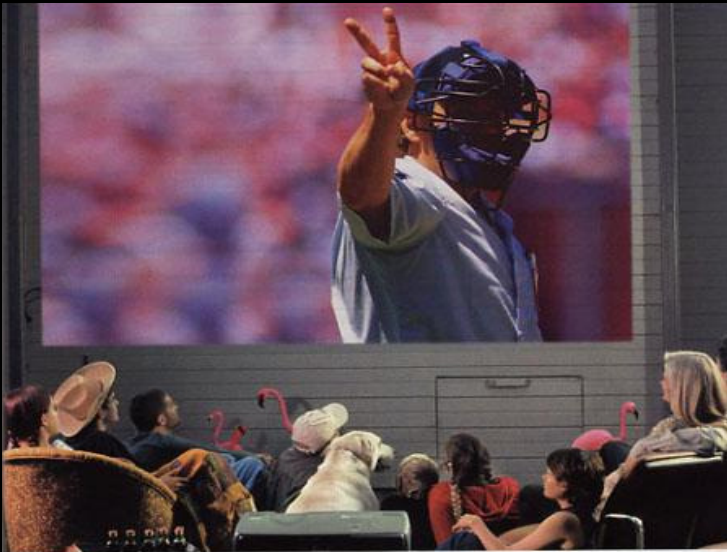
# FPG v Newsday



# Sahuc v. Tucker



# Just watching a movie?



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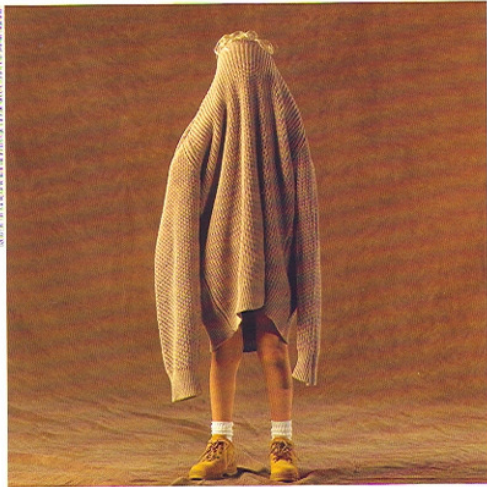
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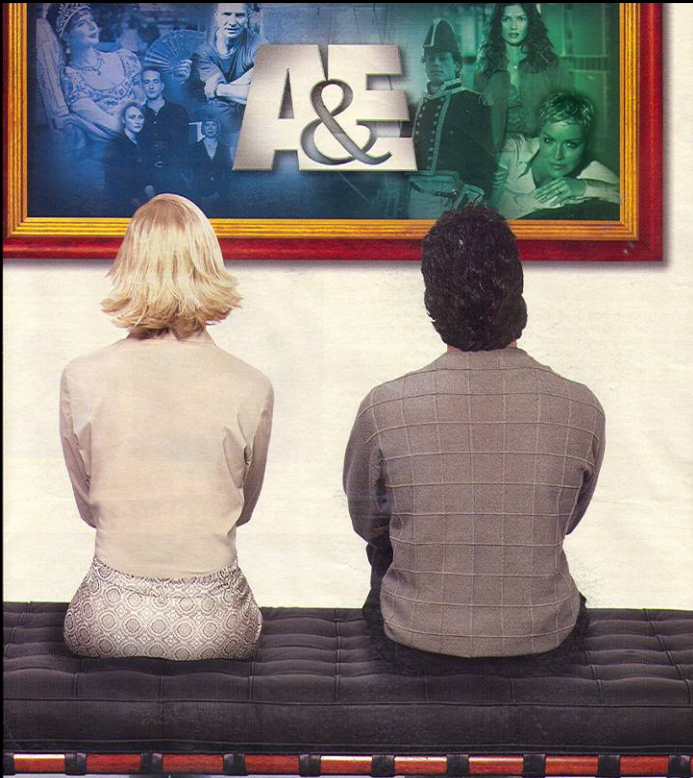


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# David LaChapelle v. Rihanna





# David LaChapelle v. Rihanna





# Summing up

## Protected

- Particular expression
- Total look and feel

## Not Protected

- Ideas
- Expression merged with an idea
- Commonplace subjects and compositions



Thank you!

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