

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 11-1197-cv Caption [use short title]

Motion for: leave to file reply amicus curiae brief Cariou v. Prince, et al.

Set forth below precise, complete statement of relief sought:
See attached.

Amicus The Andy Warhol Foundation for the
MOVING PARTY: Visual Arts, Inc.
Plaintiff Defendant
Appellant/Petitioner Appellee/Respondent

OPPOSING PARTY: Plaintiff-Appellee Patrick Cariou

MOVING ATTORNEY: Anthony T. Falzone
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OPPOSING ATTORNEY: Daniel J. Brooks
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Court-Judge/Agency appealed from: United States District Court for the Southern District of New York

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
[X] Yes [ ] No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? [ ] Yes [ ] No
Has this relief been previously sought in this Court? [ ] Yes [ ] No
Requested return date and explanation of emergency:

Opposing counsel's position on motion:
[ ] Unopposed [X] Opposed [ ] Don't Know

Does opposing counsel intend to file a response:
[ ] Yes [ ] No [X] Don't Know

Is oral argument on motion requested? [ ] Yes [X] No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? [ ] Yes [X] No If yes, enter date:

Signature of Moving Attorney: /s/ Anthony T. Falzone Date: 2/22/12 Has service been effected? [X] Yes [ ] No [Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED DENIED.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: By:

UNITED STATES COURT OF  
APPEALS FOR THE SECOND  
CIRCUIT

Appeal No. 11-1197-CV

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Patrick Cariou,

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

Plaintiff-Appellee,

v.

**MOTION FOR LEAVE TO  
FILE REPLY AMICUS  
CURIAE BRIEF**

Richard Prince, et al.

Defendants-  
Appellants

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The Andy Warhol Foundation for the Visual Arts, Inc. (“The Warhol Foundation”) respectfully moves for leave to file the accompanying reply brief as amicus curiae in support of Defendants-Appellants and urging reversal of the district court’s decision.

The Warhol Foundation makes this unusual request because it is in a unique position to represent public interests that go beyond those of the parties to this case. It generates substantial revenue from the copyrights it owns and 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 therefore parallels the public’s interest in a

balanced copyright system that recognizes the need to provide strong economic incentives and the need to provide plenty of breathing room for artists who use existing images to create new art.

Plaintiff-Appellee Patrick Cariou, and the amici curiae that filed in support of him, urge the Court to adopt a fair use standard that would upset that balance profoundly. The Warhol Foundation believes its reply brief will assist the Court in understanding how far Cariou and his amici depart from the controlling law of the Supreme Court and the Second Circuit, why their proposed standard is particularly inappropriate for visual art, and the extent to which the adoption of that standard would threaten established modes of artistic expression and ultimately impede far more creativity than it would promote.

The reply brief meets the requirements of Federal Rule of Appellate Procedure 29, totals 2,402 words, and provides the Court with an important perspective not offered by the parties to the litigation. On this basis, The Warhol Foundation respectfully asks the Court to grant it leave to file the reply brief submitted with this motion.

DATED: February 22, 2012

/s/ Anthony T. Falzone

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The Andy Warhol Foundation  
for the Visual Arts, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 22, 2012, I served by E-Mail a true and correct copy of the foregoing Motion by Amicus The Andy Warhol Foundation for the Visual Arts, Inc. for Leave to File Reply Amicus Curiae Brief and accompanying Motion Information Statement upon the parties listed below:

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*/s/ Anthony T. Falzone*  
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ANTHONY T. Falzone