


EXHIBIT A
TO CROWTHER DECLARATION
IN SUPPORT OF ONE 3 TWO, INC.'S
MOTION IN LIMINE NO. 4
PART IV

Confidential – Subject to Protective Order

from Mr. Fairey's actual use was significant. In addition, earnings that The AP might have received if Mr. Fairey had coordinated with The AP at the time of his infringement were also lost. Moreover, the loss The AP would suffer were uses like this in general excused could be so substantial that it would threaten the viability of The AP's image business.

60. And, importantly, there is no reason here for The AP to suffer those three distinct harms. The AP has an accessible and inexpensive licensing business. Had Mr. Fairey asked, The AP would have quickly agreed at a reasonable fee to allow both Mr. Fairey's initial, and later, extended use of the image. Fair use may sometimes be efficient when it is the only or most efficient way for copyright law to promote some valuable follow-on use of the copyrighted image. Here, this argument fails. Fair use in this case would undermine the incentives copyright law endeavors to create, but it would not increase the likelihood or extent of derivative uses like the ones Mr. Fairey seeks to champion. From an economic perspective, then, despite what Mr. Jarosz claims, not only does factor four strongly favor The AP, but there is no countervailing concern that weighs in the opposite direction.



William M. Landes

Table 1
 Analysis of Auction Prices for Works by Shepard Fairey
 Regression Coefficients with T-Statistics in Parentheses

	(1)	(2)
Image of Obama	1.00 (4.42)	
The "Obama Image"		1.03 (4.53)
Other Obama Image		0.55 (1.20)
Medium:		
Mixed Media	0.40 (1.20)	0.44 (1.31)
Prints on Paper	-0.41 (-1.33)	-0.49 (-1.56)
Prints on Other	-0.40 (-1.18)	-0.36 (-1.06)
Size of Edition	-0.26 (-4.12)	-0.23 (-3.36)
Image Signed	0.64 (2.25)	0.41 (1.16)
Size of Image	0.54 (5.31)	0.56 (5.43)
Number of Prints	0.58 (2.68)	0.54 (2.51)
Year Sold:		
2008	-0.21 (-1.09)	-0.26 (-1.31)
2009	-0.59 (-3.60)	-0.63 (-3.77)
Intercept	5.00 (6.00)	5.07 (6.08)
R Squared	0.72	0.72
Number of Observations	91	91

Source: www.artnet.com 11/01/10

Exhibit A

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EDUCATION

Ph.D., COLUMBIA UNIVERSITY: Economics, 1966

B.A., COLUMBIA UNIVERSITY: 1960

ACADEMIC EMPLOYMENT

THE UNIVERSITY OF CHICAGO, The Law School: Clifton R. Musser Professor of Law & Economics Emeritus since 4/09; Clifton R. Musser Professor of Law & Economics (7/92-3/09); Clifton R. Musser Professor of Economics (7/80-7/92); Professor of Economics (1/74-6/80).

FORDHAM UNIVERSITY, School of Law: 19967 Bacon-Kilkenny Chair of Law for a Distinguished Visiting Professor, 8/96–12/96.

NATIONAL BUREAU OF ECONOMIC RESEARCH, INC.: Research Staff (1973-1979); Research Associate (1969-1973); Research Fellow (1968-1969); Research Assistant (1962 - 1963).

CITY UNIVERSITY OF NEW YORK, Graduate Center (1972 - 1974): Associate Professor of Economics.

COLUMBIA UNIVERSITY (1969 - 1972): Associate Professor of Economics.

THE UNIVERSITY OF CHICAGO (1966 - 1969): Assistant Professor of Economics.

STANFORD UNIVERSITY (1965 - 1966): Assistant Professor of Economics

AREAS OF SPECIALIZATION

Economic Analysis of Law
Intellectual Property
Art Law
Industrial Organization
Antitrust

ACADEMIC HONORS AND PROFESSIONAL AFFILIATIONS

President's Fellowship, Columbia University, 1962-1963.
Ford Foundation Doctoral Dissertation Fellowship, 1963-1964.
I.B.M. Watson Fellowship, 1964-1965.
Ansley Award Nomination, Economics Department, Columbia University, 1966.
Member, American Economic Association
Editorial Board, *Journal of Cultural Economics*, 2003-
Editor, *The Journal of Law and Economics*, 1975-1991,
The Journal of Legal Studies, 1991-2000
Member, Panel on Legislative Impact on the Courts, National
Academy of Sciences, 1977-1979
Member, Mont Pelerin Society
Research Advisory Committee, U.S. Sentencing Commission, 1986-88
Adviser, Restatement of the Law, Third, Unfair Competition
Council of Economic Advisers, American Enterprise Institute
Board of Editors, Intellectual Property Fraud Reporter
Member, Scientific Committee of A Bibliography of Law and Economics with abstracts of
the European, non-English literature, Ruksuniversiteit-Gent, Belgium, 1990
Member, Committee of Patronage of the Erasmus Project in Law and Economics,
Ruksuniversiteit-Gent, Belgium, 1990
Member, Academic Advisory Council, The Locke Institute, 1990-
Member, American Law and Economics Association,
Executive Vice President, 1991 - 1992
President, 1992 - 1993
Advisory Board, Law and Economics Abstracts, 1996 -
Editorial Board, *Journal of Cultural Economics*, 2004 -
Editorial Advisory Board, *Journal of Empirical Legal Studies*, 2004 -
Fellows, American Academy of Arts and Sciences, 2008

PUBLICATIONS

BOOKS AND MONOGRAPHS

Essays in the Economics of Crime and Punishment, edited with Gary S. Becker, National
Bureau of Economic Research (1974).

The Economic Structure of Tort Law, co-authored with Richard A. Posner, Harvard Univ. Press (1987).

The Economic Structure of Intellectual Property Law, co-authored with Richard A. Posner, Harvard Univ. Press (2003).

RESEARCH PAPERS

"The Effect of State Fair Employment Law on the Economic Position of Non-Whites," Papers and Proceedings of the *American Economic Review*, Vol. LV III (May 1967).

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"Law and Economics," National Bureau of Economic Research--51st Annual Report (September 1971).

"Compulsory Schooling Legislation: An Economic Analysis of Law and Social Change in the Nineteenth Century," *Journal of Economic History* (March 1972), co-authored with Lewis Solomon.

"The Bail System: An Economic Approach," *Journal of Legal Studies* (January 1973). Reprinted in Becker and Landes, Essays in the Economics of Crime and Punishment (1974).

"Foreign Criminal Procedure: A Comment," The Economics of Crime and Punishment, conference volume of the American Enterprise Institute for Public Policy Research (1973).

"Legality and Reality: Some Evidence on Criminal Procedure," *Journal of Legal Studies* (June 1974).

"The Private Enforcement of Law," *Journal of Legal Studies* (January 1975), co-authored with Richard A. Posner.

"The Independent Judiciary in an Interest Group Perspective," (Universities-National Bureau Conference on Economic Analysis of Political Behavior) *Journal of Law and Economics* (December 1976), co-authored with Richard A. Posner.

"Legal Precedent: A Theoretical and Empirical Analysis," *Journal of Law and Economics* (September 1976), co-authored with Richard A. Posner.

"Salvors, Finders, Good Samaritans, and Other Rescuers: An Economic Study of Law and Altruism," *Journal of Legal Studies* (January 1978), co-authored with Richard A. Posner.
"Should We Tax Virgin Materials to Finance Waste Disposal?" *Waste Age* (March 1978), co-authored with Richard A. Posner.

"An Economic Study of U.S. Aircraft Hijacking, 1961-1976," *Journal of Law and Economics* (April 1978).

"Altruism in Law and Economics," Papers and Proceedings of the *American Economic Review* (May 1978), co-authored with Richard A. Posner.

"Adjudication as a Private Good," *Journal of Legal Studies* (March 1979), co-authored with Richard A. Posner.

"Should Indirect Purchasers Have Standing to Sue Under the Antitrust Laws?" An Economics Analysis of the Rule of Illinois Brick," *University of Chicago Law Review* (Spring 1979), co-authored with Richard A. Posner.

"Benefits and Costs of Airline Mergers: A Case Study," *The Bell Journal of Economics* (Spring, 1980), co-authored with Dennis W. Carlton and Richard A. Posner.

"Legal Change, Judicial Behavior and the Diversity Jurisdiction," *Journal of Legal Studies* (March 1980), co-authored with Richard A. Posner.

"Joint and Multiple Tortfeasors: An Economic Analysis," *Journal of Legal Studies* (June 1980), co-authored with Richard A. Posner.

"The Economics of Passing On: A Reply to Harris and Sullivan," *University of Pennsylvania Law Review* (May 1980), co-authored with Richard A. Posner.

"Contribution Among Antitrust Defendants: A Legal and Economic Analysis," *Journal of Law and Economics* (October 1980), co-authored with Frank H. Easterbrook and Richard A. Posner.

"An Introduction to the Economics of Antitrust," an appendix in Richard A. Posner and Frank H. Easterbrook, Antitrust: Cases, Economic Notes and Other Materials (West, 2d ed. 1980).

"Market Power in Antitrust Cases," *Harvard Law Review* (March 1981), co-authored with Richard A. Posner.

"The Positive Economic Theory of Tort Law," *Georgia Law Review* (Summer 1981) co-authored with Richard A. Posner.

"An Economic Theory of Intentional Torts," *International Review of Law and Economics* (December 1981) co-authored with Richard A. Posner.

"Causation in Tort Law: An Economic Approach," *Journal of Legal Studies* (January 1983) co-authored with Richard A. Posner.

"Optimal Sanctions for Antitrust Violations," *University of Chicago Law Review* (Spring 1983). Reprinted in 26 *The Journal of Reprints for Antitrust Law and Economics*, 79 (1996).

"Harm to Competition: Cartels, Mergers and Joint Ventures," 52 *Antitrust Law Journal* Vol. 3. Reprinted in *Antitrust Policy in Transition: The Convergence of Law and Economics* (E. Fox and J. Halverson, eds.), American Bar Assn. (1984).

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"A Positive Economic Analysis of Products Liability," *Journal of Legal Studies* (December 1985) co-authored with Richard A. Posner.

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"Insolvency and Joint Torts: A Comment," *Journal of Legal Studies* (June 1990).

"Some Economics of Trade Secret Law," *Journal of Economic Perspectives*, (Winter, 1991) co-authored with David Friedman and Richard A. Posner.

"Copyright Protection of Letters, Diaries and Other Unpublished Works: An Economic Approach," *Journal of Legal Studies* (January 1992).

"Sequential and Unitary Trials: An Economic Approach," *Journal of Legal Studies* (January, 1993).

"The Influence of Economics on Law: A Quantitative Study," *Journal of Law and Economics* (April 1993) co-authored with Richard A. Posner.

"The Economics of Anticipatory Adjudication," *Journal of Legal Studies* (June 1994) co-authored with Richard A. Posner.

“Counterclaims: An Economic Analysis,” *International Review of Law & Economics* (Sept. 1994).

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“Judicial Influence: A Citation Analysis of Federal Courts of Appeals Judges,” *Journal of Legal Studies* (June 1998) co-authored with Lawrence Lessig and Michael Solimine.

“Sequential and Bifurcated Trials” entry in *The New Palgrave Dictionary of Economics and the Law* (1998).

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“Citations, Age, Fame and the Web,” *Journal of Legal Studies* (January 2000) co-authored with Richard A. Posner.

“Introduction to Interpreting Legal Citations,” *Journal of Legal Studies* (January 2000).

“Winning the Art Lottery: The Economic Returns to the Ganz Collection,” *Recherches Economiques de Louvain, Louvain Economic Review* (Vol. 66(2) 2000).

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“Acts of Terror with Guns: Multiple Shooting Victim Shootings,” in *The Bias Against Guns*, John Lott, ed. (Regnery 2003) co-authored with John Lott.

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“The Test of Time: Does 20th Century American Art Survive?” in Contributions to Economic Analysis: The Economics of Art and Culture ed. by Victor Ginsburgh (Elsevier Science, 2004).

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“The Economic Analysis of Art Law” in Handbook of the Economics of Art and Culture, Vol. 1, ed. by Victor A. Ginsburgh and David Throsby (Elsevier B.V. 2006) coauthored with Daniel B. Levine.

“Posner on Beanie Babies,” 74 *University of Chicago Law Review* 1761 (2007)

“The Economics of Presidential Pardons and Commutations,” *Journal of Legal Studies* (Jan. 2009) co-authored with Richard A. Posner.

“Rational Judicial Behavior: A Statistical Study,” *Journal of Legal Analysis* (forthcoming 2009) co-authored with Richard A. Posner

“Inferring the Winning Party in the Supreme Court from the Pattern of Questioning at Oral Argument,” *Journal of Legal Studies* (forthcoming 2010) co-authored with Lee Epstein and Richard A. Posner

“Why, (and When) Judges Dissent: A Theoretical and Empirical Analysis,” *Journal of Legal Analysis* (forthcoming Spring 2011)

TESTIMONIAL EXPERIENCE IN PAST FOUR YEARS

Reply Declaration of William M. Landes in *Warner Bros. Entertainment Inc. and J.K. Rowling v. RDR Books* and Does 1-10 Case No. 07-CV-9667 (RPP) United States District Court, Southern District of New York (February 27, 2008)

Declaration of William M. Landes in *Warner Bros. Entertainment Inc. and J.K. Rowling v. RDR Books* and Does 1-10 Case No. 07-CV-9667 (RPP) United States District Court, Southern District of New York (January 15, 2008)

Expert Report, Deposition and Trial testimony of William M. Landes in the matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding before Copyright Royalty Judges Library of Congress (2008)

TESTIMONIAL EXPERIENCE AND OTHER CONSULTING ENGAGEMENTS IN THE YEARS 1978-2005

Statement of William M. Landes and Richard A. Posner, on Behalf of the National Soft Drink Association, Before the Resource Conservation Committee, concerning Beverage Deposit Container Legislation (October 19, 1977).

Summary of Landes-Posner Statement to the Resource Conservation Committee (October 19, 1977).

Comments on RCC Staff Background Paper No. 2: William M. Landes and Richard A. Posner (October 24, 1977).

Statement of William M. Landes and Richard A. Posner, submitted to the Resource Conservation Committee, concerning Solid Waste Product Charge Legislation (November 17, 1977).

Statement before the Interstate Commerce Commission, "Nationwide Increased Freight Rates and Charges--1977," co-authored with David F. Bradford and Richard A. Posner (January 10, 1978).

Exhibit before the Postal Rate Commission, "Economic Analysis of Express Mail's Anticompetitive Characteristics," co-authored with Richard A. Posner (March 7, 1978).

Joint Testimony of William M. Landes, Dennis W. Carlton and Richard A. Posner in Re: Competitive Effects of the Proposed North Central-Southern Airline Merger. Proceedings before the Civil Aeronautics Board, Docket No. 33136, Exhibit NC/SO-T-7 (October 13, 1978).

Statements of William M. Landes and Richard A. Posner before the Committee on the Judiciary United States Senate, Antitrust Enforcement Act of 1979, S.300 (February, March 1979).