

Obama Artwork Copyright Case Dismissed

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In the December 2009 issue of *Risk Management*, I wrote about how [the artist who created the Barack Obama "HOPE" image was being sued by the Associated Press](#) for using the original photograph that the image was based on without permission or payment. The artist, Shepard Fairey, had initially claimed "fair use" since he had made significant alterations to the original image in creating a new work of art. The case was anticipated to have possible implications for copyright law in the digital age, namely what kind of use would be considered "fair use" and therefore permissible under the law?

Well, a little more than a year later, [the case has been dismissed by U.S. District Judge Alvin Hellerstein](#). The judge dropped the case, citing a "suggestion of settlement" between Fairey and the Associated Press. The claims could be reinstated within a month, however, if either side requests it.

What did remain in play, however, were related claims between the AP and a clothing manufacturer affiliated with Fairey that marketed and sold more than 230,000 products based on the Obama image. That case is generally considered a more typical copyright infringement case and is expected to go to a civil trial in March.

In papers filed last week, the AP said the case presents "the straightforward question of whether a T-shirt company may use a nearly verbatim copy of a copyrighted image to generate millions in dollars of revenues for itself without securing the permission of the copyright owner."

But regardless of how this civil case is resolved, it now looks like greater question of "What is 'fair use' in the digital age?" will remain unanswered.

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