

Copyright Law

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Topics:

- Legal rules as tools for solving problems
- Identify and understand the problem(s)
- Fair use problems:
 - (i) How to enable cultural “progress”; all creation builds on other material.
 - (ii) How to identify (reinforce?) markets that do/don’t work.
 - (iii) How to keep copyright out of non-copyright areas (*e.g.*, trademark, identity, & branding interests, free expression, tech development, privacy).

Fair use: Which factors (should) matter? / textual examples

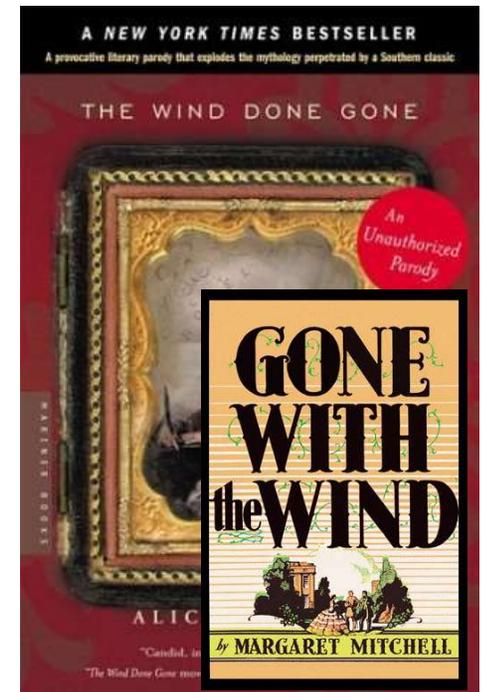
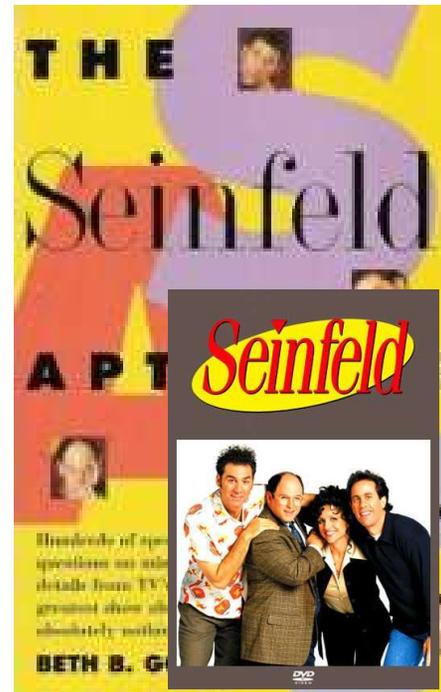
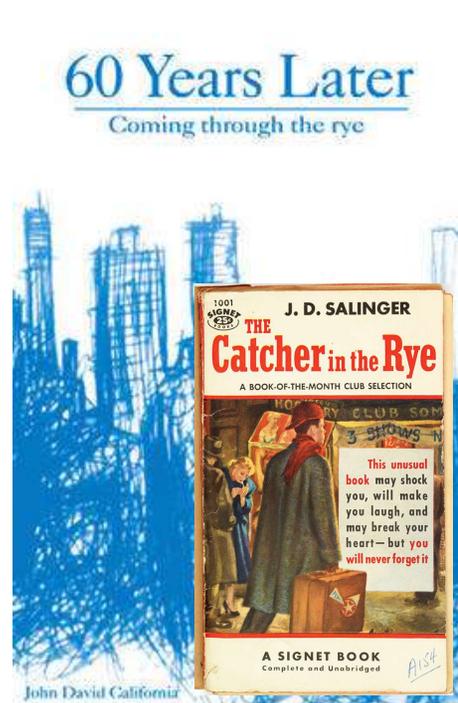
(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

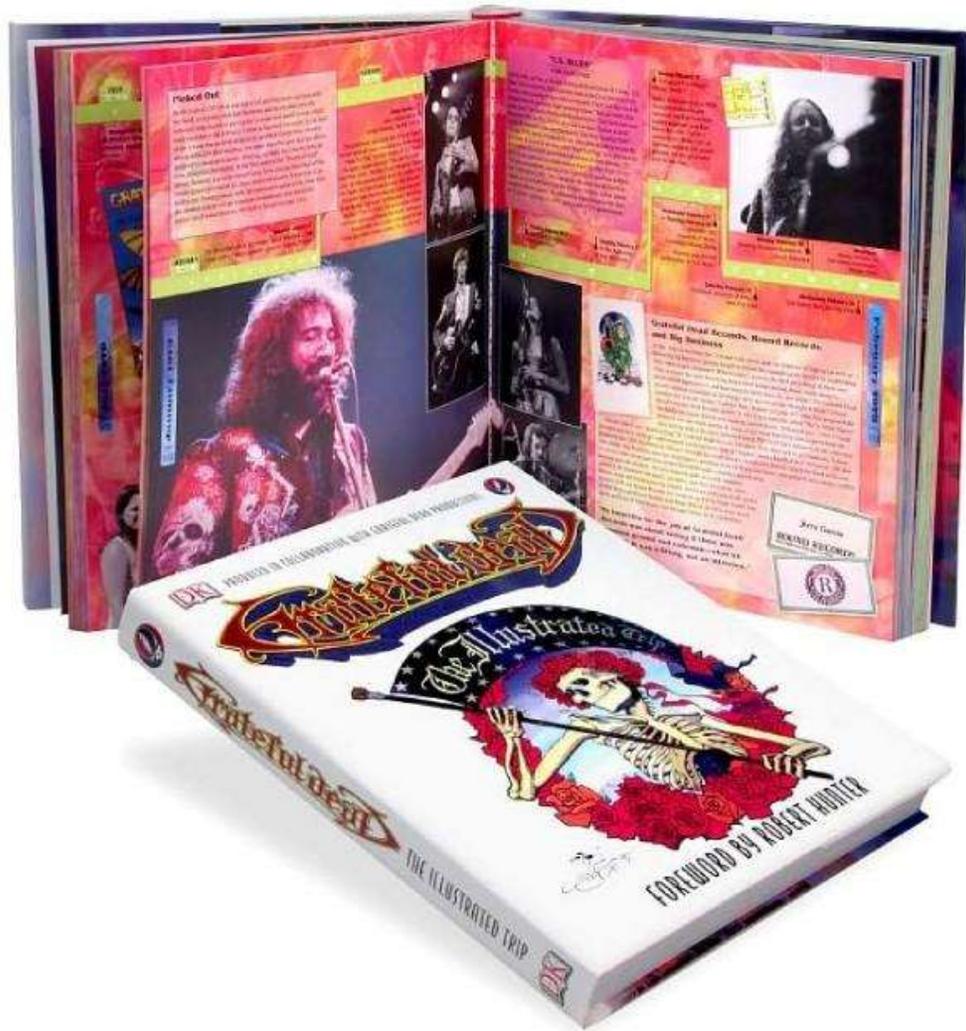
(3) the amount and substantiality of the portion used in

relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.



Fair use: Effect of the use on the market for the work (factor four)



Bill Graham Archives v. Dorling Kindersley Ltd. (2d Cir. 2006): negotiations failed. Should DK release the book anyway?

Fair use: Effect of the use on the [potential] market (factor four)

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

Sony v. Universal City Studios (US 1984) (“Betamax”)

American Geophysical Union v. Texaco (2d Cir. 1995) (compare *BGA v. Dorling Kindersley*)



A&M Records v. Napster (9th Cir. 2001) (compare *Sony [Betamax]*)



Fair use: Consider all factors

- (1) the purpose and character of the use,** including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;**
- (3) the amount and substantiality of the portion used** in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market** for or value of the copyrighted work.



Gaylord v. United States (Fed. Cir. 2010)

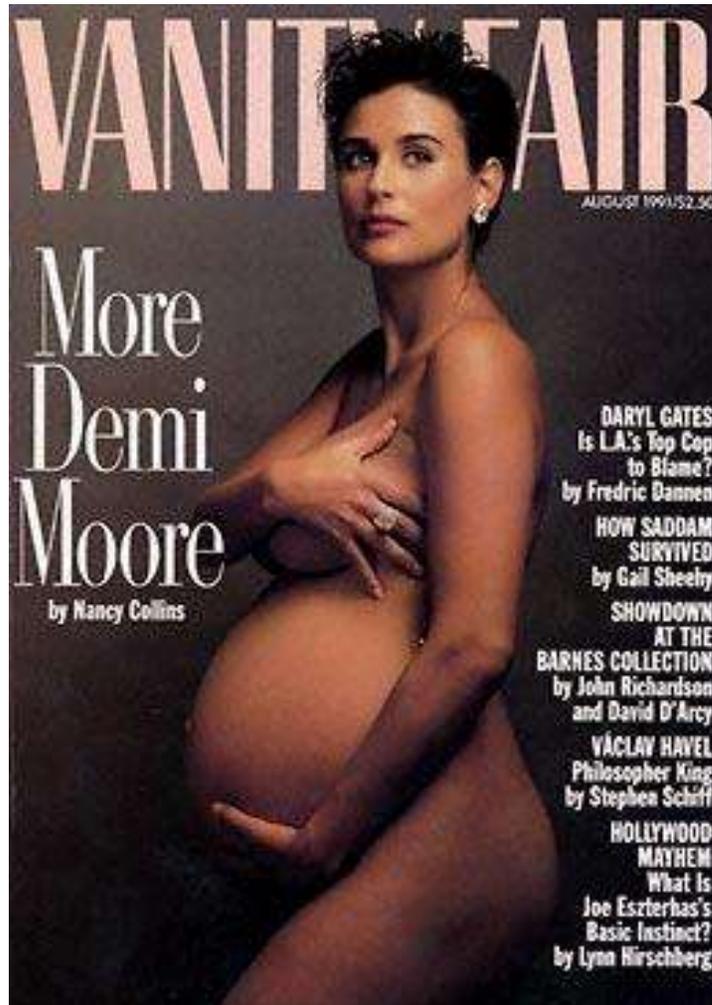
Fair use: Does it work differently for visual art (compared to text)?

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

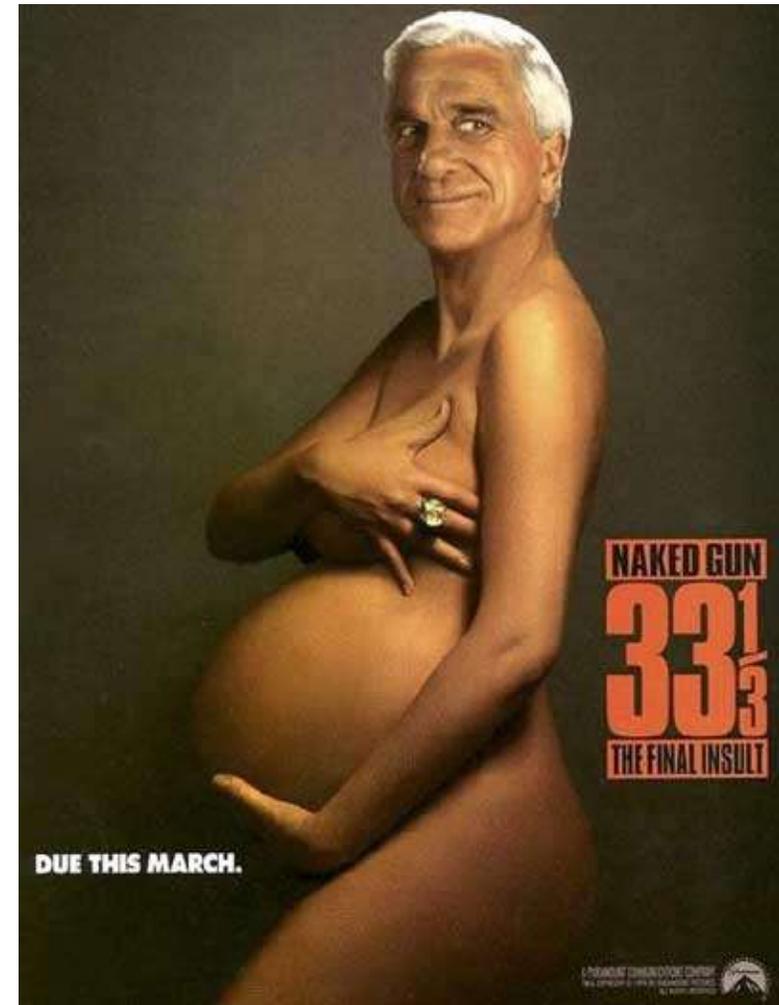
(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.



1991

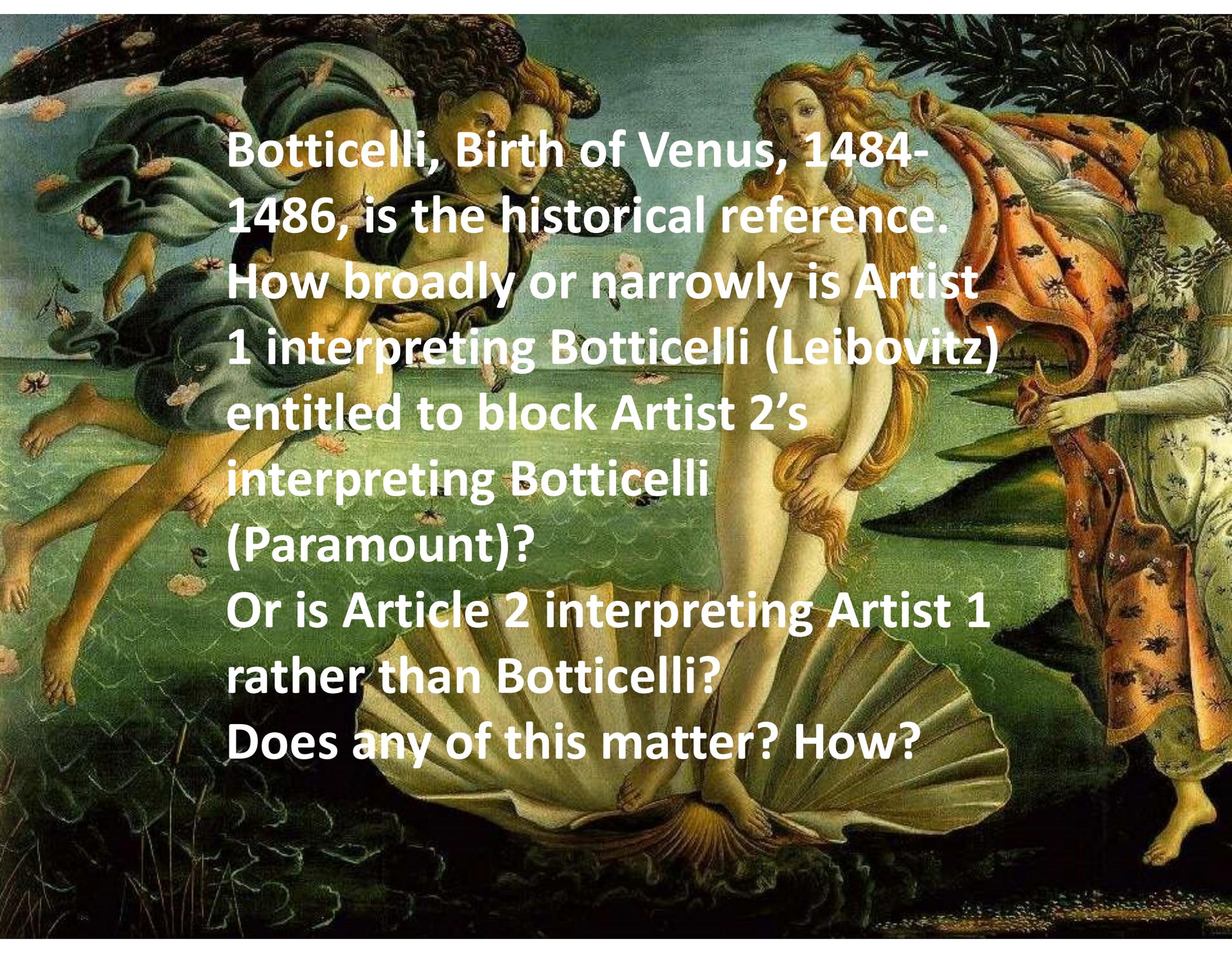


1994

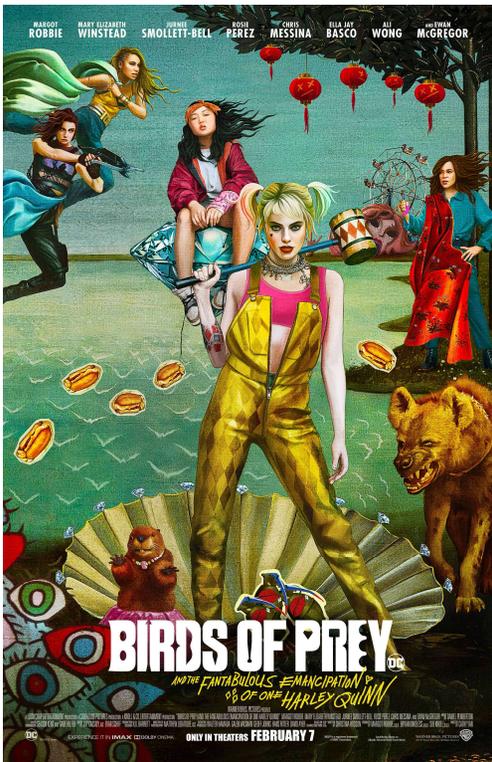
Leibovitz v. Paramount Pictures Corp.
(2d Cir. 1998)



Botticelli, Birth of Venus, 1484-1486

The painting 'Birth of Venus' by Sandro Botticelli depicts the goddess Venus emerging from a seashell on a grassy shore. To her left, the wind god Zephyrus and his wife Chloris are blowing her towards the shore. To her right, the Hora of Spring stands ready to clothe her. The scene is set against a background of a calm sea and a blue sky with soft clouds. The painting is characterized by its delicate lines and soft colors, typical of the High Renaissance style.

Botticelli, Birth of Venus, 1484-1486, is the historical reference. How broadly or narrowly is Artist 1 interpreting Botticelli (Leibovitz) entitled to block Artist 2's interpreting Botticelli (Paramount)? Or is Article 2 interpreting Artist 1 rather than Botticelli? Does any of this matter? How?



Dec 2019 Margot Robbie

June 1999 Cindy Crawford

June 1999 Claudia Schiffer

August 2006: Britney Spears

October 2011: composite

[All produced after the Demi Moore/Annie Leibovitz photo was published]

Fair use: Does it work differently for visual art?

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(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.



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**Associated Press & Mannie Garcia v.
Shepard Fairey**

Fair use: Does it work differently for visual art?



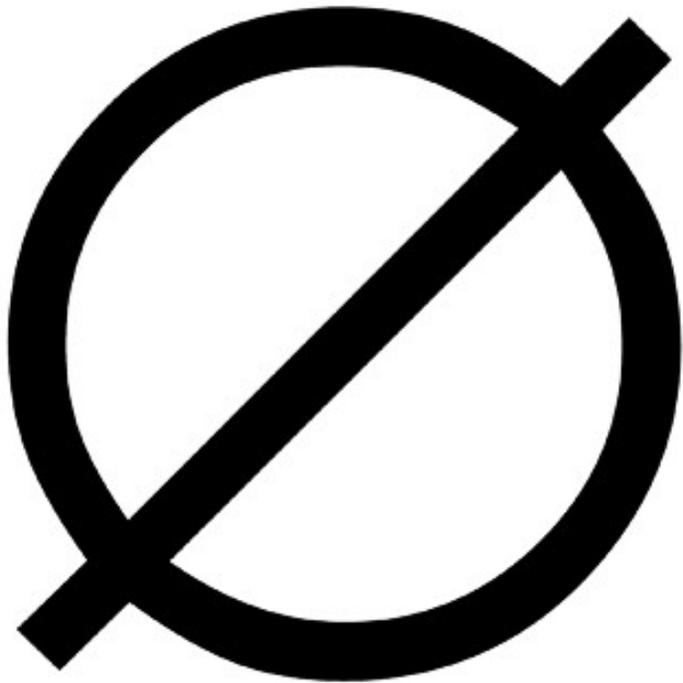
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What is the work?

Associated Press & Mannie Garcia v. Shepard Fairey

Fair use: Does it work differently for musical works and recordings?



Fair use is almost never litigated with respect to music; even extremely short snippets are cleared.



Pittsburgh's own Gregg Gillis (Girl Talk) is the exception that proves the rule.

<http://illegal-art.net/girltalk/>

Fair use: Commercial parodies of commercial works?

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

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(4) the effect of the use upon the potential market for or value of the copyrighted work.



Star Wars Robot Chicken: Would you advise consulting with Lucasfilm before making or distributing this work?

THE WINGS OF EAGLES

THE END



Made in Hollywood, U.S.A.

By

Metro - Goldwyn - Mayer