

**Rogers v. Koons,
960 F.2d 301 (2d Cir. 1992)**

Year	1992
Court	United States Court of Appeals for the Second Circuit
Key Facts	Plaintiff photographer, Art Rogers, owned the copyright in a photograph called <i>Puppies</i> that defendant sculptor, Jeff Koons, used to create a sculpture, entitled <i>String of Puppies</i> . Defendant Koons claimed that the purpose of the resulting sculpture was to comment critically both on the original photo and the political and economic system that created it. He displayed <i>String of Puppies</i> at a gallery and sold copies to collectors. Plaintiff brought an action for copyright infringement, and defendant asserted that the copying was a fair use as a parody of the original. Defendant appealed the district court's judgment that his use of the photo to create the sculpture was not a fair use.
Issue	Whether defendant's copying of plaintiff's photograph for the purpose of making sculptures intended as social commentary on the photograph's image was a fair use.
Holding	On appeal, the court affirmed that defendant was not entitled to a defense of fair use. It found that the "purpose and character" factor weighed against fair use because, while the defendant's copying may have been a satirical critique of materialistic society in general, it "was done in bad faith, primarily for profit-making motives, and did not constitute a parody of the original work." The court further found that defendant copied the essence of the photograph nearly <i>in toto</i> and exceeded a permissible level of copying under the fair use doctrine. Additionally, the court concluded that because defendant's work was primarily commercial in nature, "the likelihood of future harm to [plaintiff's] photograph is presumed, and [the] market for his work has been prejudiced."
Tags	Second Circuit; Parody; Photograph; Review/Commentary; Sculpture
Outcome	Fair use not found

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