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?Yes, Rasta,? and the Tenuous Line Between Infringement and Fair Use

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The copyright suit brought by French photographer Patrick Cariou against famous ?appropriation artist? Richard Prince has concluded with a denial for certiorari, and a denial of clarity for those of us still uncertain about what makes for an adequate ?fair use? defense. Several years into the litigation, and the public has yet to tire of this strange narrative leading to what could have been a significant moment in the history of the ?fair use? doctrine. In the art world, ?fair use? is an infamous affirmative defense to a claim of copyright infringement. The defense has been raised with varying degrees of success in cases with similar facts. The overwhelming majority of fair use defenses have been raised in California and New York, arguably the cultural and artistic epicenters of the east and west coasts of the United States.

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