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# US Judge Shuts Down French Court's Picasso Copyright Ruling

September 12, 2019 [MARIA DINZEO](#)

(CN) – A French court's €2 million judgment against a U.S. art editor who allegedly infringed on copyrighted photos of Pablo Picasso's artworks will not stand, according to a federal judge who ruled them fair use on Thursday.

"The court is mindful of concerns over comity between the French and U.S. courts," U.S. District Judge Edward Davila wrote in his [ruling](#) refusing to enforce the judgment. "However, the court finds that the defendants' use of plaintiffs' photographs qualifies as fair use."

Picasso's friend Christian Zervos took almost 16,000 photographs of his art between 1932 and 1970. Cahiers d'Art published the photos in a universally recognized catalog, and Yves Sicre de Fontbrune acquired intellectual property rights to the Zervos Catalog under French law in 1979.



A woman looking at Pablo Picasso's *The Dream*, 1932, during a preview of the exhibition *Picasso 1932 – Love, Fame, Tragedy* at Tate Modern in London, Tuesday March 6, 2018. (Yui Mok/PA via AP)

American art editor Alan Wofsy later reproduced several photographs from the catalog in two volumes on Picasso, which he offered for sale at a Parisian book fair, prompting de Fontbrune to sue in France for copyright infringement.

Although a French trial court initially rejected that 1996 claim, the Paris Court of Appeal in 2001 concluded that Wofsy had infringed on de Fontbrune's rights and prohibited him from further use of the Zervos photographs under penalty of 10,000 francs (\$1,700) per infraction.

A decade later in 2012, de Fontbrune filed a claim with a French enforcement judge, who ruled that Wofsy had violated the 2001 judgment by reproducing copyrighted images from the Zervos Catalog. In 2012, the judge awarded an *astreinte* (penalty) in the amount of 2 million euros (\$2.25 million).

But Davila ruled the 2012 French judgment "repugnant" to U.S. policy promoting both free speech and "criticism, teaching, scholarship, and research," as Wofsy's reference books are used by academic institutions, libraries, art collectors and auction houses.

Davila said the two works are not in competition with each other and there is no evidence Wofsy's "Picasso Project" has any effect on the market for the Zervos Catalog.

"Moreover, the two publications have distinctly separate markets and do not compete," he wrote.

"I think that the judge made a bold and correct decision. Recognizing that French law is very different from U.S. law in this regard and that the special place of the First Amendment in terms of protecting freedom of speech and artistic expression is important in our legal system," Wofsy's lawyer Neil Popovic with Sheppard Mullin Richter & Hampton LLP said in a phone interview late Thursday.

He said Wofsy "feels vindicated because it was recognized that the activity he was engaged in— publishing the reference books for use by academic institutions— is not something in competition with the French publication and it is protected by the First

Amendment.”