

## Pop Art Time Bomb: The Second Circuit's Ruling in Hayden v. Koons

August 11, 2026

By W. Drew Kastner, Edward Baxter, Stephenie Wingyuen Yeung  
楊穎苑 and LuAnne Morrow



In the late 1980s, American artist Michael Hayden created a Styrofoam serpent sculpture for Ilona Staller, the Italian adult film actress and parliament member better known as Cicciolina, to use as a prop during her live erotic performances. Hayden sold the work to Staller's production company in 1988 for approximately \$900. A year later, Staller's husband, American artist Jeff Koons, posed with Staller for a series of erotic photographs that would become Koons' Made in Heaven series. Three of those works depicted Koons and Staller atop Hayden's sculpture, and they debuted at the 1990 Venice Biennale to what Hayden himself described in his complaint as a "media sensation and scandal" that "launched Koons into the art world's stratosphere." Hayden claims he did not discover any of this until 2019, when a news article about an unrelated Staller lawsuit caught his attention. He registered his copyright and sued Koons in December 2021.

The case never reached the merits. The Copyright Act requires that infringement claims be filed within three years of when the copyright owner discovers, or reasonably should have discovered, the infringement. The Second Circuit affirmed dismissal on statute of limitations grounds, rejecting Hayden's argument that constructive discovery requires a plaintiff to have actual knowledge of specific triggering facts before the clock starts running. The court clarified that constructive discovery turns on a fact-intensive, objective inquiry into whether a reasonably diligent copyright holder, given all the surrounding circumstances, should have uncovered the infringement. Applying that standard, the panel found the answer here was obvious: Hayden lived in Italy for nearly three decades, was fluent in Italian, consumed Italian news daily, had a direct professional relationship with Staller, and was present in Italy during the very Biennale that made Koons internationally famous, with Staller prominently featured. The court was careful to note that its ruling does not create a "celebrity privilege" that automatically starts the limitations clock whenever a famous artist is involved. Fame is one factor among many, not a categorical rule.

The practical lesson for copyright owners is sobering. A rights holder who ignores widespread, international coverage of allegedly infringing work does so at significant legal peril, regardless of whether they actually saw that coverage. Hayden's claim failed not because he sat on a known injury, but because the court concluded a reasonably diligent person in his position could not plausibly have missed it.