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## Say Cheese<sup>©</sup>!

### Reproducing the composition of a photograph

I'm an amateur photographer, so I found a recent copyright case interesting: [Temple Island Collections v New English Teas](#) – about images of London on tasteful souvenirs in tourist shops. A photograph taken of the same general (but not exact) location and subjected to similar digital manipulation as the original was held to infringe copyright, even though no part of the original was physically copied. The two pictures are reproduced in the judgment or [here](#).

The case stretches copyright towards protecting the creative thought rather than the result. Traditionally it is said that copyright protects the expression of the idea rather than the idea. The problem with protecting the idea, as the judge himself recognised, is where the principle stops. It doesn't stop someone taking a picture from the same vantage point, or converting an image to black and white, or using spot colour on a black and white (which the claimant admitted he has copied from Spielberg's [Schindler's List](#)), or blanking the sky; but at some point doing all these things together, inspired by an earlier work, became copyright infringement.

Would any two, or any three of those factors have been sufficient? If I photograph [four of my mates crossing Abbey Road](#), is that copyright infringement? What if I have one of them take off his shoes? The case contrasts with [Creation Records and Noel Gallagher v News Group Newspapers](#) in which The Sun's photographer did not infringe copyright by snapping an elaborate photo-shoot set from the same position as the official photographer.

I think the new decision is right - after all the reproduction of other forms of work, such as a musical score, does not require mechanical copying, and copying in a different medium can be an infringement. If I made a painting from the photograph (which would be a very poor reproduction!) I would be infringing, so why not if I deliberately re-create a photograph? But it does make it hard to draw the boundary.

## Chris Robinson

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