

Navigating Copyright Boundaries: Insights from the Supreme Court Decision in *Warhol v. Goldsmith*

Legal Alert
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The recent copyright infringement court decision involving artist Andy Warhol and photographer Lynn Goldsmith has sparked significant discussions about the impact on artists. This case, which revolved around the fair use of a photograph taken by Goldsmith of musician Prince, raises concerns about the boundaries of transformative use and the applicability of the fair use defense. In this Q&A, we examine key questions about the case and the impact of this ruling for artists.

What is the background of this case?

This case involved the work of two artists: Andy Warhol and Lynn Goldsmith. Andy Warhol was, of course, a famous painter with works that permeated all aspects of pop culture. Lynn Goldsmith is a photographer specializing in rock musicians and concerts. At issue in this case was a photograph Ms. Goldsmith took of the musician Prince. One of her photographs, was licensed to serve as an “artist reference for an illustration” in *Vanity Fair*. This license was specifically for a one-time use. Ms. Goldsmith received \$400 and a credit as the original photographer for the artist work.

The artist that *Vanity Fair* ultimately commissioned was Andy Warhol. Mr. Warhol, however, did not make just one work. He ultimately made 15 pieces: 13 silkscreens and two pencil drawings. Ms. Goldsmith did not know about any of the other works until 2016, when to commemorate Prince’s death, Conde Nast, the parent company of *Vanity Fair*, used one of Warhol’s works on a cover. The Andy Warhol Foundation received \$10,000 for the license to that work and Ms. Goldsmith received neither credit nor a fee.

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In the proceedings in the lower courts, the district court found Warhol's use to be fair use, while the Second Circuit found that it was not fair use. Now the Supreme Court agreed with the Second Circuit ruling, saying that Warhol's use was not fair use. This case focused on whether Warhol's use sufficiently transformed the underlying work to qualify as fair use.

Why was this case so unique?

This is the second case in the last handful of years, along with 2021's *Google v. Oracle* case, where the Supreme Court weighed in on the fair use defense. Fair use is a very common defense to copyright infringement, and in both cases the Supreme Court narrowed the applicability of the fair use defense.

It is also important to note that the case did have a 7-2 decision written by Justice Sotomayor, and there was a dissenting opinion written by Justice Kagan, joined by Chief Justice Roberts. The dissent focused on the underlying works and would have found that the silkscreen sufficiently transformed the original photograph for that factor to weigh in favor of fair use. The dissent worries that the majority ruling will stifle future creativity. It would not be a surprise to find the dissent cited in the future if courts want to revisit this issue.

Who benefits most from this decision?

Original content creators benefit from this decision, and any decision limiting fair use. Many users of creative content consider their use to be "fair use" but often use the term more colloquially instead of analyzing whether the use qualifies as "fair use." Decisions such as this help in any analysis of whether the use would actually qualify as fair use.

What is "fair use" and how is it determined?

Fair use has four factors and they are all applied in a balancing test:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

In this case, the court reiterated the importance of fair use and that it "permits courts to avoid rigid application of the copyright statute when, on occasion, it would stifle the very creativity which that law is designed to foster."

Why was "transformativeness" so important in this case?

The Second Circuit's original inquiry found that Warhol's use was not transformative because it was also a work of visual art and depicted the same person. The Supreme Court reached the same conclusion but took a slightly different path to get there. The Court found that "the first fair use factor considers whether the use of a copyrighted work has a further purpose or different character, which is a matter of degree, and the degree of difference must be balanced against the commercial nature of the use."

The Supreme Court noted specifically that this case was not about Warhol's series as a whole and whether that was transformative or fair use; instead, only the licensing of the image to Conde Nast in 2016 was alleged to be infringing. With that narrow focus, the Court looked at the nature and purpose of the *licensing* and not in the *creation* of the works. As Goldsmith also licensed her works to other magazines, the Supreme Court found that the purpose and character of the work was not transformative.

How does Warhol's silkscreen of Prince image differ from the artist's other works that include copyrighted materials? (e.g., Campbell's Soup Cans and the Marilyn Monroe portraits)

The Court specifically noted how this use differed from other Warhol pieces, such as the Soup Cans. In that case, the purpose of the underlying Campbell's logo is to advertise and sell soup, where Warhol's canvases do not have that purpose.

What does this decision mean for artists – in particular, those whose works are inspired by or borrow from existing copyrighted materials?

The lesson here is that context is key. With the Court's focus on the transformative use factor, it looked very specifically at the particular use in context. The exact same piece of art could be fair use when used one way and not be fair use when used another way. The fair use defense is a very nuanced defense with multiple factors all balanced and should not be taken lightly.

While this decision provides clarity on the particular case at hand, its implications raise questions about potential limitations on future artistic creations that draw inspiration from or utilize existing copyrighted materials. As the art world continues to evolve, artists must remain vigilant and informed to navigate the ever-shifting landscape of copyright law and protect their creative expressions. If you have questions about copyrights and on the limitations of fair use, please contact a member of Foster Garvey's [Intellectual Property team](#).