
Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith, No. 21-869

Introduction: Today, the Supreme Court held in a 7-2 decision that adding a new expression or aesthetic to a copyrighted work is insufficient to establish a new “purpose and character” for the “fair use” defense to copyright infringement.

Background: Under the fair use doctrine, a person may use a copyrighted work without committing infringement when engaged in criticism, commentary, reporting, teaching, scholarship, or research. Whether a use is “fair” depends on four factors, one of which is the “purpose and character” of the use.

Photographer Lynn Goldsmith took photographs of the singer Prince. She licensed one photograph to Vanity Fair to use as a magazine cover. Warhol then used Goldsmith’s photograph as a basis for 15 additional works. Years later, one of Warhol’s works was used as a magazine cover following Prince’s death. Goldsmith sued the Warhol Foundation for infringement, and the Foundation sought a declaration of fair use. The district court agreed with the Warhol Foundation, but the Second Circuit reversed.

Issue: Whether adding a new expression or aesthetic to a copyrighted work is sufficient to transform the work’s “purpose and character” for a fair use defense, and whether the “purpose and character” analysis focuses on the user’s subjective intent or the particular use in question.

Court’s Holding: In a 7-2 opinion by Justice Sotomayor, the Court held that the “purpose and character” factor did not favor the Warhol Foundation’s fair use of the underlying photograph. The Court explained that here, the purpose of the Warhol Foundation’s use of Warhol’s work was substantially the same as Goldsmith’s original use of the underlying photograph – a commercial license of an image of Prince for the cover of a magazine. The Warhol Foundation argued that Warhol had added a new expression or aesthetic to the work, but the Court held that in this case, any new expression did not outweigh the substantially similar purpose of the uses of the works. The Court did not address whether other uses of Warhol’s works would constitute fair use.

Justice Gorsuch filed a concurrence joined by Justice Jackson. Pointing to the statutory text, he stressed that reviewing courts must assess the purpose and character of the challenged use, not what the secondary user intended when producing the work. And here, he said, the use was as a commercial substitute for Goldsmith’s photograph.

Justice Kagan, joined by the Chief Justice, dissented, warning that the Court’s decision would stifle the artistic creativity embodied in Warhol’s iconic images. According to the dissent, because Warhol fundamentally transformed the character and meaning of Goldsmith’s original photograph, even the Warhol Foundation’s commercial licensing of that work should not weigh against fair use.

Read the opinion [here](#).