

**Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith**  
**143 S. Ct. 1258 (2023)**

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| Year      | 2023  |
| Court     | Supreme Court of the United States  |
| Key Facts | <p>Petitioner Andy Warhol Foundation for the Visual Arts, Inc. (“AWF”) controls and licenses the works of deceased pop artist Andy Warhol. Respondent Lynn Goldsmith is a professional photographer who took a series of photographs of the musician Prince in 1981. In 1984, Goldsmith’s agency licensed one of the photographs to Vanity Fair for one-time use as an artist reference. The magazine provided the photograph to Warhol, who used it to create an illustration that was published in the magazine alongside an article about Prince as well as fifteen additional silkscreen prints and drawings (the “Prince Series”). Following Prince’s death in 2016, Condé Nast (Vanity Fair’s parent company) contacted AWF about republishing the Warhol illustration in a special edition magazine commemorating Prince, but ultimately AWF licensed a different work from the Prince Series to Condé Nast to use on the cover. Goldsmith became aware of the Prince Series when the tribute issue was published, after which she contacted AWF and alleged copyright infringement. AWF brought a declaratory judgment action and Goldsmith countersued for copyright infringement. The district court granted summary judgment for AWF, concluding that Warhol’s use of the photograph was a fair use. A Second Circuit panel reversed in March 2021 and issued a slightly revised opinion in August 2021 after a motion for reconsideration in light of the Supreme Court’s decision in <i>Google v. Oracle</i>. AWF petitioned for certiorari on the proper analysis of the first fair use factor, which the Supreme Court granted.</p>  |
| Issue     | <p>Whether commercially licensing an image that is derived from a photograph for use in a publication about the subject of the photograph is a use with a purpose and character different from that of the original photograph.</p>   |
| Holding   | <p>The question presented to the Court focused solely on the first fair use factor, that is, “the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.” In considering this factor, the Court concluded that this factor did not favor fair use because the specific use, AWF’s 2016 commercial licensing to Condé Nast, was not for a “further purpose or different character” than that of Goldsmith’s photograph, which was also licensed by magazines to illustrate articles about Prince. The Court noted that a secondary work’s “new expression may be relevant” when assessing whether the use is of further purpose and different character, which is “a matter of degree,” but “it is not, without more, dispositive of the first factor.” If the addition of new expression, meaning, or message were determinative on the first factor, the Court cautioned that “‘transformative use’ would swallow the copyright owner’s exclusive right to prepare derivative works.” The Court further explained that the “degree of difference” in the use’s purpose and character “must be weighed against other considerations,” including the use’s commerciality. In addition, the Court explained that the first factor “relates to the justification for the use,” meaning that “a use may be justified because copying is reasonably necessary to achieve the user’s new purpose.” For example, a parody needs to “mimic” the original work. Similarly, criticism and commentary need to “conjure up” the original. In sum, the Court concluded that where the “original work and secondary use share the same or highly similar purposes,” and the use is commercial, the first factor disfavors fair use “absent some other justification for copying.” As the other three fair use factors</p> |

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|         | were not in dispute and disfavored fair use, the Court affirmed the Second Circuit determination that the use was not fair as a matter of law. |
| Tags    | Painting/Drawing/Graphic; Photograph   |
| Outcome | Fair use not found   |

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