

Noland v. Janssen
No. 17-CV-5452, 2020 U.S. Dist. LEXIS 95454 (S.D.N.Y. June 1, 2020)

Year	2020
Court	United States District Court Southern District of New York
Key Facts	Plaintiff Cady Noland’s “Log Cabin Façade” is a wooden sculpture resembling a façade of a log cabin. The sculpture was purchased by Defendant Wilhelm Shürmann in 1990 and, with Noland’s authorization, stained and displayed outdoors in Germany. The outdoor display led the sculpture to deteriorate. Shürmann, with the help of Defendant German art gallery KOW, “refurbished” the work in 2010 in Germany by replacing the original, rotted logs with logs shipped from Noland’s original Montana-based supplier. Shürmann then hired Defendant Janssen Art Gallery, owned and operated by Defendant Michael Janssen, to assist with resale of the sculpture. Janssen marketed the work in the U.S. by providing photographs and plans relating to the original and refurbished sculpture to potential buyers. Noland claimed Defendants’ distribution of photographs and plans of the sculpture constituted copyright infringement and the refurbishment and resale violated Noland’s moral rights under the Visual Artists Rights Act. Defendants moved to dismiss Noland’s Third Amended Complaint.
Issue	Whether the distribution of photographs of and plans for a sculptural work, in connection with attempts to resell the sculpture constitutes fair use.
Holding	The court assumed, but did not decide, that Log Cabin Façade is entitled to copyright protection in ruling that the distribution of photographs and plans of the sculpture in connection with its attempted sale constituted fair use. On the first factor, the purpose and character of the use, the court was persuaded by other courts that have found that disseminating photographs of copyrighted works “to provide information to legitimate purchasers under the first sale doctrine,” rather than for the original artistic purpose of the work, is transformative. Despite Defendants’ commercial interests in re-selling the work, the court found the use of the work was not exploitative in the traditional sense because the transformative purpose of reselling the work was completely different from the purpose of the original sculpture. On the second factor, the nature of the work, the court found the work to be creative, but this weighed only slightly against fair use because the use was transformative. The third factor, the amount and substantiality of the portion used in relation to the copyrighted work as a whole, weighed against fair use because the images allegedly depict the whole work; however, the court found the factor has limited significance in the context of seeking a legitimate sale, as a potential buyer would likely expect to see the whole work. Turning to the fourth factor, the effect of the use on the potential market for or value of the copyrighted work, Noland admitted the dissemination of the photographs and plans positively impacted the market for the original work. The court held that whether or not the sale of the sculpture was protected by the first sale doctrine had no bearing on whether the dissemination of the photographs and plans affected the market for the original work. Accordingly, the fourth factor “tip[ped] decidedly toward fair use.” On balance, the transformative nature of the use and lack of adverse market impact outweighed the “relative insubstantiality” of the other two factors.
Tags	Photograph; Sculpture
Outcome	Fair use found

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