

**Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith**  
**17-cv-2532 (JGK), 2019 U.S. Dist. LEXIS 110086 (S.D.N.Y. July 1, 2019)**

Year	2019
Court	United States District Court for the Southern District of New York
Key Facts	Plaintiff Andy Warhol Foundation for the Visual Arts, Inc. (“AWF”) is a not-for-profit corporation that controls and licenses the works of “art-world colossus” Andy Warhol. Defendant Lynn Goldsmith (“Goldsmith”) is a professional photographer who photographed the iconic singer Prince in 1981, although none of the photos taken were published. In 1984, Vanity Fair licensed one of Goldsmith’s black-and-white photographs of Prince for use as an artist’s reference in connection with a magazine article. Based on the photo, Warhol created sixteen works (the “Prince Series”)—including one used in Vanity Fair—that portrayed Prince as a “larger-than-life figure” in “loud, unnatural colors.” Following Prince’s death in 2016, Vanity Fair republished the 1984 article online and released a commemorative magazine with a Prince Series work on the cover. Goldsmith has sold and licensed other works featuring Prince, but has not sold or licensed works from the 1981 session since 1984. AWF sought a declaratory judgment that the Prince Series was not copyright infringement because the works were not substantially similar to Goldsmith’s photograph and the use of the photograph as a reference for the Prince Series was a fair use. Goldsmith counterclaimed seeking summary judgment for copyright infringement.
Issue	Whether using a photograph of an iconic singer as the basis for a series of artworks is protected as fair use.
Holding	Deciding the case “solely on fair use grounds,” the court found the first factor, purpose and character of the use, weighed in favor of fair use. Although the Prince Series was commercial in nature, it also added value to the public interest through the advancement of visual art. Moreover, the court found the Prince Series transformed Goldsmith’s black-and-white photograph, which portrayed Prince as a “vulnerable human being,” through alterations in color and shading that presented Prince as an “iconic, larger than life figure” and made the work “immediately recognizable as a ‘Warhol.’” On the second factor, nature of the copyrighted work, the court noted that ordinarily the “unpublished” and “creative” nature of the work would favor Goldsmith. But because the work was previously licensed once, and in light of the transformative use, the second factor was neutral. Addressing the third factor, the amount and substantiality of the work used, the court found that the Prince Series “removed nearly all the photograph’s protectible elements,” namely, “the subjects, lighting, angle selection of film and camera, evoking the desired expression, and almost any other variant involved.” Lastly, the court found the fourth factor, the effect of the use on the potential market for or value of the work, weighed in favor of fair use because the market for a Warhol is distinct from the licensing market for realistic photographs and the Prince Series works are not market substitutes for Goldsmith’s photograph. Weighing the four statutory factors together, the court determined that Warhol’s use of the photograph was fair and granted AWF’s motion for summary judgment.
Tags	Second Circuit; Painting/Drawing/Graphic; Photograph; Unpublished
Outcome	Fair use found

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