

Copyright infringement or just artistic freedom?

- Andy Warhol vs Lynn Goldsmith Case Lessons -

Although Andy Warhol passed away more than three decades ago, he is still considered perhaps one of America's best-known artists. The U.S. Supreme Court's ruling in a lawsuit between Andy Warhol's Andy Warhol Foundation and prominent rock photographer Lynn Goldsmith could affect the approach of other courts as well.

According to the facts of the case, Lynn Goldsmith transformed a photograph of Prince by Warhol using various artistic means. Lynn Goldsmith demanded royalties for the use in the lawsuit, while the Warhol Foundation argued that in the case in question, the photograph was used in a copyrighted manner because it falls under one of the most well-known copyright exceptions in the United States, known as "fair use," after the work has been transformed to such an extent that Warhol has created something new and worthy of copyright protection in its own right.

The photo is originally black and white. After Prince released its new album, the "Purple Rain", Vanity Fair wanted to dedicate a special issue to Prince and asked Andy Warhol to illustrate the title page of the issue. Warhol saw Goldsmith's photo, asked for permission for a single use, painted the photo purple, shaded it differently, so the transformed image of Prince gave a completely different impression. This photo appeared on the cover of Vanity Fair. Warhol, however, made 15 other variations, which Warhol is well known for. The rights over the variations were granted to the Foundation after his death.

After Prince passed away, Vanity Fair released another special issue, and this time the Foundation presented another redesigned image. Goldsmith countered the allegations, alleging copyright infringement. The Warhol Foundation responded by filing a lawsuit against Goldsmith, alleging that the hundreds of thousands of dollars in royalty claims were unlawful and as a matter of principle, since it had always been of paramount importance not only to Warhol but **to the art world as a whole that artists should have room to use earlier works, draw inspiration, and that freedom of artistic expression be adequately protected in court.**

The case follows the fact that the U.S. Supreme Court had already considered the scope for copyright exceptions in the context of rock music, in the 2 Live Crew case, when it declared the use by the rock band that transformed "Pretty Woman" into Hairy Woman to be copyrighted, ruling that it falls under the parody, fair use, exception. Since the freedom of parody and criticism must be ensured, because otherwise it would not be possible at all to criticize, criticize or parody a work or way of expression.

However, the current case differs from the above rock music case cited in that Warhol does not say anything about the Goldsmith photo, but uses it, which is an important difference between the two cases. Nine U.S. Supreme Court justices were also extremely divided on the issue. Some judges were persuaded by the Warhol Foundation's argument that Warhol's image conveys a fundamentally different message, has a completely different meaning and therefore deserves protection, as a social critique, while the Goldsmith photo merely shows how Prince looked like, and therefore Warhol's expression deserves protection in its own right, instead of being treated as a mere copying.

They argue that freedom of artistic expression is at stake, and that the functioning of art is affected by the issue, as artists must be given the opportunity to reflect on previous works of art.



However, the majority ultimately accepted Goldsmith's legal counsel that the question was not how extraordinary Warhol truly was, but whether he had to pay Goldsmith a license fee. They argued that the Supreme Court would open up a Pandora's box, a rift of copyright violations if the Warhol Foundation's argument were accepted.

An interesting contradiction of the decision, apart from the fact that it may not yet have an appreciable impact on the freedom of artistic life, and not only within the borders of the United States, is that while the majority position claims, on the one hand, that they are not art critics and that it is not their job to decide what is artistic and what is not, nevertheless, they may indirectly conclude that the transformations made by America's most famous artist in the Prince photo were not sufficiently transformative.