

MIDWINTER MEETING 2024

JANUARY 26-28, 2024

Detailed Agenda – Session 5

The 15 Minutes Are Over...Now What?: The Application of Warhol v. Goldsmith In and Out of the Courts

January 28, 2024 | 10:45 AM – 11:45 AM PST

In May 2023, the Supreme Court decided the closely watched fair use case *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, which asked whether an Andy Warhol painting based on a photograph of musician Prince by Lynn Goldsmith was "transformative" under the first factor of the fair use test. In the past eight months, the lower courts and practitioners have had to grapple with the extent to which the ruling does, or does not, impact the analysis of fair use questions arising in cases involving not just visual arts, but a wide variety of works. Our panel of knowledgeable experts will discuss the impacts of *Goldsmith* on the overall fair use analysis, the impact on parody and commentary, and how wide-reaching the ruling may be on future fair use disputes.

Speakers:

- Andrew Hannibal
Senior Counsel | Sesame Workshop
- Aaron J. Moss
Chair, Litigation Department | Greenberg Glusker
- Dale Nelson
Partner | Donaldson Callif Perez LLP
- Xiyin Tang
Assistant Professor of Law | University of California Los Angeles School of Law

Introduction (10 minutes)

Andrew Hannibal (moderator) will introduce the speakers and provide an overview of the *Warhol* decision, followed by an introduction to the discussion: how have things changed for advising clients and litigating in the courts, and how have they stayed the same?

- **Supporting written material:** *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, 21-869, Slip Op. (May 18, 2023): https://www.supremecourt.gov/opinions/22pdf/21-869_87ad.pdf

Aaron Moss will speak about recent post-*Warhol* rulings and the courts' interpretations of the opinion, including the types of cases where the decision may have more or less of an impact (10 minutes)

- **Supporting written material:** Aaron Moss, *Court to Revisit Fair Use in Tattoo Infringement Case*, Aug. 14, 2023: <https://copyrightlately.com/court-to-revisit-fair-use-in-tattoo-infringement-case/>; Order, *Sedlik v. Von Drachenberg*, 21-cv-1102 (C.D. Cal. Oct. 10, 2023); Order, *Vogts v. Penske Media Corp.*, 22-cv-1153 (C.D. Cal. Aug. 30, 2023); Memorandum & Order, *Larson v. Perry*, 19-cv-10203 (D. Mass. Sept. 14, 2023)

Xiyin Tang will speak about the impact of the ruling on visual art (10 minutes)

- **Supporting written materials:**
 - Xiyin Tang, *Art After Warhol*, 17 UCLA L. Rev. __ (forthcoming 2024): https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4542784
 - *Art After Warhol*, UCLA Law Review, Forthcoming: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4542784

Dale Nelson will speak about the practitioner's interpretation of the ruling as it impacts filmmakers and other audiovisual creators (10 minutes)

- **Supporting written material:** *Documentary Filmmakers' Statement of Best Practices in Fair Use*, American University Washington College of Law: <https://www.wcl.american.edu/index.cfm?LinkServID=48BD27F0-E970-E3FA-529A2167E0975207>

The whole panel will discuss common themes and give concluding remarks and takeaways (10 minutes)

Questions from the audience (10 minutes)