

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 21–869

ANDY WARHOL FOUNDATION FOR THE VISUAL
ARTS, INC., PETITIONER *v.* LYNN
GOLDSMITH, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[May 18, 2023]

JUSTICE SOTOMAYOR delivered the opinion of the Court.

This copyright case involves not one, but two artists. The first, Andy Warhol, is well known. His images of products like Campbell’s soup cans and of celebrities like Marilyn Monroe appear in museums around the world. Warhol’s contribution to contemporary art is undeniable.

The second, Lynn Goldsmith, is less well known. But she too was a trailblazer. Goldsmith began a career in rock-and-roll photography when there were few women in the genre. Her award-winning concert and portrait images, however, shot to the top. Goldsmith’s work appeared in *Life*, *Time*, *Rolling Stone*, and *People* magazines, not to mention the National Portrait Gallery and the Museum of Modern Art. She captured some of the 20th century’s greatest rock stars: Bob Dylan, Mick Jagger, Patti Smith, Bruce Springsteen, and, as relevant here, Prince.

In 1984, *Vanity Fair* sought to license one of Goldsmith’s Prince photographs for use as an “artist reference.” The magazine wanted the photograph to help illustrate a story about the musician. Goldsmith agreed, on the condition

When Goldsmith informed AWF that she believed its use of her photograph infringed her copyright, AWF sued her. The District Court granted summary judgment for AWF on its assertion of “fair use,” 17 U. S. C. §107, but the Court of Appeals for the Second Circuit reversed. In this Court, the sole question presented is whether the first fair use factor, “the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes,” §107(1), weighs in favor of AWF’s recent commercial licensing to Condé Nast. On that narrow issue, and limited to the challenged use, the Court agrees with the Second Circuit: The first factor favors Goldsmith, not AWF.

I

Lynn Goldsmith is a professional photographer. Her specialty is concert and portrait photography of musicians. At age 16, Goldsmith got one of her first shots: an image of the Beatles' "trendy boots" before the band performed live on The Ed Sullivan Show. S. Michel, *Rock Portraits*, N. Y. Times, Dec. 2, 2007, p. G64. Within 10 years, Goldsmith had photographed everyone from Led Zeppelin to James Brown (the latter in concert in Kinshasa, no less). At that time, Goldsmith "had few female peers." *Ibid.* But she was

issue” was “the Foundation’s commercial licensing” of images of the Prince Series. *Id.*, at 55.

This Court granted certiorari. 596 U. S. ____ (2022).

II

AWF does not challenge the Court of Appeals’ holding that Goldsmith’s photograph and the Prince Series works are substantially similar. The question here is whether AWF can defend against a claim of copyright infringement because it made “fair use” of Goldsmith’s photograph. 17 U. S. C. §107.

Although the Court of Appeals analyzed each fair use factor, the only question before this Court is whether the court below correctly held that the first factor, “the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes,” §107(1), weighs in Goldsmith’s favor. AWF contends that the Prince Series works are “transformative,” and that the first factor therefore weighs in its favor, because the works convey a different meaning or message than the photograph. Brief for Petitioner 33. The Court of Appeals erred, according to AWF, by not considering that new expression. *Id.*, at 47–48.

But the first fair use factor instead focuses on whether an allegedly infringing use has a further purpose or different character, which is a matter of degree, and the degree of difference must be weighed against other considerations, like commercialism. *Campbell v. Acuff-Rose Music, Inc.*, 510 U. S. 569, 579 (1994). Although new expression may be relevant to whether a copying use has a sufficiently distinct purpose or character, it is not, without more, dispositive of the first factor.

Here, the specific use of Goldsmith’s photograph alleged to infringe her copyright is AWF’s licensing of Orange Prince to Condé Nast. As portraits of Prince used to depict

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Prince in magazine stories about Prince, the original photograph and AWF's copying use of it share substantially the same purpose. Moreover, the copying use is of a commercial nature. Even though Orange Prince adds new expression to Goldsmith's photograph, as the District Court found, this Court agrees with the Court of Appeals that, in the context of the challenged use, the first fair use factor still favors Goldsmith. *

A

The Copyright Act encourages creativity by granting to the author of an original work "a bundle of exclusive rights." *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U. S. 539, 546 (1985); see U. S. Const., Art. I, §8, cl. 8 ("The Congress shall have Power . . . To Promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries"). That bundle includes the rights to reproduce the copyrighted work, to prepare derivative works, and, in the case of pictorial or graphic works, to display the copyrighted work publicly. 17 U. S. C. §106.

The Act, however, "reflects a balance of competing claims upon the public interest: Creative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and the other arts." *Twentieth Century Music Corp. v. Aiken*, 422 U. S. 151, 156 (1975). Copyright thus trades off the benefits of incentives to create against the costs of restrictions on copying. The Act, for example, limits the duration of copyright, §§302–305, as required by the Constitution; makes facts and ideas uncopyrightable, §102; and limits the scope of copyright owners' exclusive rights, §§107–122.

This balancing act between creativity and availability (including for use in new works) is reflected in one such limitation, the defense of "fair use." In 1976, Congress codified

III

Lynn Goldsmith's original works, like those of other photographers, are entitled to copyright protection, even against famous artists. Such protection includes the right to prepare derivative works that transform the original. The use of a copyrighted work may nevertheless be fair if, among other things, the use has a purpose and character that is sufficiently distinct from the original. In this case, however, Goldsmith's original photograph of Prince, and AWF's copying use of that photograph in an image licensed to a special edition magazine devoted to Prince, share substantially the same purpose, and the use is of a commercial nature. AWF has offered no other persuasive justification for its unauthorized use of the photograph. Therefore, the "purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes," §107(1), weighs in Goldsmith's favor.

The Court has cautioned that the four statutory fair use factors may not "be treated in isolation, one from another. All are to be explored, and the results weighed together, in light of the purposes of copyright." *Campbell*, 510 U. S., at 578. AWF does not challenge the Court of Appeals' determinations that the second factor, "the nature of the copyrighted work," §107(2); third factor, "the amount and substantiality of the portion used in relation to the copyrighted work as a whole," §107(3); and fourth factor, "the effect of the use upon the potential market for or value of the copyrighted work," all favor Goldsmith. See 11 F. 4th, at 45–51. Because this Court agrees with the Court of Appeals that the first factor likewise favors her, the judgment of the Court of Appeals is

Affirmed.