

Abstract

The Implications of the Andy Warhol Foundation v. Goldsmith Ruling by the United States Supreme Court

Shin, Chang-Hwan*

The recent United States Supreme Court ruling in *Andy Warhol Foundation v. Goldsmith* (2023) has clarified the concept of fair use. The Supreme Court ruling can be summarized as follows: “In the United States Copyright Act, the first factor in determining fair use is the purpose and character of the use. Transformativeness is the degree to which the use has a different purpose and character from the original work. Transformativeness is evaluated by considering the two factors of ‘commercial character’ and ‘justification of use’. If transformativeness is found, it means that the first factor of fair use has been passed favorably. Additionally, for fair use to be recognized overall, especially in relation to the first factor of the purpose and character of use, it must be reviewed in the context of the specific use of the relevant case. In the case of specific use, if the purpose of the original work and the subsequent work are different, fair use may be established.” When compared to the *Google* ruling of the United States Supreme Court in 2021, there is a greater possibility that the justification of use related to compatibility, standards, and efficiency will be recognized in technical cases, but the justification of use of another's work is relatively less likely to be recognized in artistic cases where the individual expression of the artist is the main part. In this regard, it is also noteworthy that the distinction between ‘technical transformativeness’ and ‘artistic transformativeness’ may be regarded

* Adjunct Professor, Yonsei University Graduate School Department of Law

as established by recent US case laws.

Keywords

Fair Use, Transformativeness, Transformative Use, Copyright, Andy Warhol, Pop Art, Appropriation Art, Sorites Paradox, Artificial Intelligence

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