

**Abstract**

## Quo vadis, What will be the Future of Appropriation Art?

- Focusing on “The Andy Warhol Foundation for the Visual Arts,  
Inc. v. Goldsmith” -

Min, Kyoungjae\*

The Supreme Court’s ruling on “Andy Warhol v. Goldsmith” (hereinafter referred to as the “Andy Warhol case”) was made on May 18, 2023. The Supreme Court agreed with the ruling of the Second Circuit Court of Appeals and ruled that Andy Warhol’s “Orange Prince” and “Prince Series” were copyright infringement, not fair use, because they could not be regarded as transformative use.

This case will be the most important case in the art world as a ruling on fair use in the past 20 years or so. And the outcome of this ruling could have a tremendous impact on the future of appropriation art, so-called pop art.

In the Andy Warhol case, the rulings of the first trial and the appeal trial were sharply divided. The first trial judged that Andy Warhol’s use could not be regarded as fair use for each factor of judgment, but as a result, it was fair use. However, the appeals court ruled in favor of Goldsmith, judging that the first trial court made a mistake in reviewing the fair use factors and that it was not fair use in all of the fair use judgment factors.

Therefore, this paper analyzed the rulings in each court. In addition, the concept of appropriation art in Korea and copyright infringement cases related to the current parody were reviewed, and

---

\* Managing director, Sungshin Co., Ph.D. in Law

what judgments would be made if the Andy Warhol ruling was applied to Korea in the future.

Finally, in Korea, it was concluded that it is desirable to actively interpret fair use doctrine as much as possible so that freedom of creation can be guaranteed if fair use is a problem in copyright infringement cases.

### Keywords

Andy Warhol case, Google case, fair use, appropriation, appropriation art, modern art, parody, copyright of appropriation art, pop art