

Warhol v Goldsmith Could Be ‘Biggest Copyright Case in Decades’

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Samuel Lewis was quoted in *Managing IP* discussing the U.S. Supreme Court picking up a fair use case between the Andy Warhol Foundation and photographer Lynn Goldsmith over pictures of the late pop star Prince. Sam says there are two ways the court could go with Warhol: either give some guidance on the kinds of things that could be considered transformative or restrict the doctrine. “I don’t see the court issuing the guidance – it seems a little too touchy feely,” he says. “I think we’re going to see some pushback or curtailment.” He adds that the court should issue a curtailment ruling because the doctrine of transformative use has been expanded so much over the years that it has crowded derivative works out. “There must be some kind of limit placed on transformative use because otherwise the exclusive right to make a derivative work gets pushed to the side.” Some stakeholders argue that SCOTUS might issue a narrow decision in Warhol like it did in Google. But Sam says this too is unlikely. He points out that in *Google v Oracle*, the court had to create a balance between the declaring code and the underlying source code. “But art and photography doesn’t lend itself to that sort of analysis, so it would be difficult to split hairs in the same way,” he says.

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