

SCOTUS To Examine Fair Use in Warhol 'Prince Series' Case

Tuesday, March 29, 2022

Samuel Lewis was quoted in *World Intellectual Property Review* discussing how the US Supreme Court has agreed to hear arguments on whether Andy Warhol's "Prince Series" infringed a photographer's copyright, the outcome of which could change the law on 'fair use'. "The court may focus on the statutory definition of derivative work, its reference to transformation, and how that does or does not impact the fair use analysis (in particular, whether Warhol's use of the image was transformative or derivative). While the court's decision in *Google v Oracle* focused more on the fair use factors, another recent decision, *Fourth Estate Public Benefit Corp v Wall-Street.com*, was very much focused on statutory construction. I suspect statutory construction and definitions may play a role in the outcome of this case," said Sam. The decision held that Google could "precisely" copy software code but avoid infringement by using the code to create a "highly creative and innovative" alternative to the original. With Warhol now being considered, it could give greater clarity to transformative fair use alongside that decision. He said he was "somewhat surprised" that the Supreme Court accepted cert given its *Google v Oracle* opinion. "That said, my understanding is that the petition was based, in part, on the notion that the framework employed by the Second and Ninth Circuits for assessing whether a work is transformative in nature is in conflict with Supreme Court precedent and the framework used by other circuits," he explained.

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