No. 21-869

In the Supreme Court of the United States

ANDY WARHOL FOUNDATION FOR THE VISUAL ARTS, INC.,
Petitioner,

v.

LYNN GOLDSMITH ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF ART PROFESSOR RICHARD MEYER AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

NICHOLAS J. HOFFMAN
MCGUIREWOODS LLP
355 S. Grand Ave.
Suite 4200
Los Angeles, CA 90071
(213) 627-2268
nhoffman@mcguirewoods.com

JONATHAN Y. ELLIS
Counsel of Record
MCGUIREWOODS LLP
888 16th Street N.W.
Suite 500
Washington, DC 20006
(202) 828-2887
jellis@mcguirewoods.com

TABLE OF CONTENTS

Page

INTEREST OF AMICUS CURIAE 1

SUMMARY OF ARGUMENT 2

ARGUMENT 4

A. Determining the Meaning and Message of Visual Art Requires Looking Closely and Thinking Contextually. 4

B. Warhol Conveyed a New Meaning and Message by Visually Altering Goldsmith's Photograph 6

C. The Context of the *Prince* Series Confirms the Artwork's New Meaning and Message. 19

CONCLUSION 25

TABLE OF AUTHORITIES

Page(s)

Other Authorities

Artnet, Andy Warhol, *Marilyn Monroe (twenty times)*, https://bit.ly/3O5CH4I (last visited June 16, 2022) 12

Benjamin H.D. Buchloh, "Andy Warhol's One-Dimensional Art," in McShine ed., *Andy Warhol: A Retrospective* 21

Christie's, *Andy Warhol's Marilyn: an icon of beauty*, https://bit.ly/3zP4jqF (last visited June 16, 2022) 13

Christie's, *Radical repetition: a collector's guide to Andy Warhol prints*, https://bit.ly/39AwZsC (last visited June 16, 2022).. 10

Rainer Crone, *Andy Warhol: A Catalogue Raisonné* (New York: Praeger, 1970)................... 21

Benjamin Genocchio, "When "Delinquents" Infiltrated Art," *N.Y. Times* (May 11, 2003), https://nyti.ms/3tJyqvz (last visited June 16, 2022).. 21

Judith Goldman, *James Rosenquist: Painting Pop Art* (New York: Viking, 1985)... 21

Richard Meyer, "An Invitation, Not a Command," *Robert Rauschenberg* (New York and London: Museum of Modern Art and Tate Gallery, 2016) 20

Museum of Modern Art Learning, Pablo Picasso, *Les Demoiselles d'Avignon*, https://mo.ma/3OjY2Hb (last visited June 16, 2022) 6

PRINCE, *Purple Rain*, on PURPLE RAIN (Warner Bros. 1984) 17

G.R. Swenson, 'What Is Pop Art? Answers from 8 Painters, Part I', *ARTnews*, vol. 62 no. 7 (November 1963)..................................... 20

G.R. Swenson, 'What is Pop Art? Part II', *ARTnews*, vol. 62 no. 7 (November 1963)... 21

Andy Warhol, *The Philosophy of Andy Warhol: From A to B and Back Again* (Harvest, 1977) 21

Cécile Whiting, "Andy Warhol, The Public Star and Private Self," *Oxford Art Journal*, vol. 10, Issue 2 (January 1987)... 19

INTEREST OF AMICUS CURIAE*

Richard Meyer, Ph.D., is the Robert and Ruth Halperin Professor in Art History at Stanford University. He teaches courses on twentieth-century American art, the history of photography, art censorship, and the First Amendment. He has published and taught courses on Andy Warhol for over 25 years and curated museum exhibitions including *Warhol's Jews: Ten Portraits Reconsidered* and *Contact Warhol: Photography Without End*. Dr. Meyer is the author of *What Was Contemporary Art?* (2013) and, most recently, *Master of the Two Left Feet: Morris Hirshfield Rediscovered* (2022).

Dr. Meyer has a strong and sincere interest in the appropriate recognition of the meaning and purpose of visual artwork like Andy Warhol's *Prince* series. He believes that, through careful visual examination and thoughtful consideration of context, the meaning of such works can be understood not only by an art professor or critic, but by any reasonable observer. He submits this brief to demonstrate how any reasonable observer can understand the meaning and message of the artwork at the center of this case.

---

* Pursuant to Rule 37, Amicus states that no counsel for a party authored this brief in whole or in part, and no person other than Amicus or his counsel made a monetary contribution to its preparation or submission. Counsel for petitioner and respondents filed blanket consent to the filing of all amicus briefs.

SUMMARY OF ARGUMENT

While analyzing visual art may seem daunting at first, it does not take a professional critic or curator to deduce its message and meaning. In teaching his students, Dr. Meyer emphasizes two foundational principles: (1) look closely, and (2) think contextually. These directives can assist first-day art students, or any reasonable observer, to understand the expressive purpose of visual art.

To consider the message and meaning of Warhol's *Prince* series, a reasonable person should first *look closely*. Close visual inspection reveals that Warhol cropped Prince's face out of Goldsmith's black-and-white photograph, made the image larger, removed humanizing details, changed the medium from photograph to painting, saturated the work in high contrast colors, and added multiple elements to the composition (*e.g.,* new contour lines around the face and hair through free-hand drawing).

The observer should then consider *context*, including how the work relates to the broader field of Pop art and its sustained focus on the machinery of consumerism and fame. Goldsmith's original black-and-white photograph was meant for print magazines and depicted a true-to-life, and apparently self-reflective, Prince. Warhol's series used the photograph as raw material for an entirely different type of art—a series of paintings, prints, and drawings meant to hang in galleries, museums, and private collection—in keeping with his career-long interest in using such celebrities and consumer products to provide social commentary on popular culture.

Considered in this light, the *Prince* series may be reasonably perceived to convey the dehumanizing effect of fame. Indeed, when carefully considered, it vividly demonstrates how celebrities are idolized and envied, but the machinery of fame packages them up like canned goods and turns them into endlessly repeatable images of desire.

This analysis does not require any judgment about the actual competency or value of Warhol's work. An observer may consider the message and meaning of Warhol's work without critiquing Warhol's skill level or whether his social commentary was good or in good taste. It requires only careful inspection and thoughtful consideration. Regardless how the Court resolves the legal questions in this case, Dr. Meyer respectfully submits that the Second Circuit erred in concluding otherwise.

ARGUMENT

Dr. Meyer takes no position on the legal questions before the Court. He respectfully submits, however, that the Second Circuit was wrong to suggest that only an "art critic" can "ascertain the intent behind or meaning of the works at issue." Pet. App. 22a-23a. At the core of Dr. Meyer's career as a teacher and writer has been the conviction that the valid interpretation of art is hardly the sole province of critics, curators, and scholars. Indeed, in his view, arts professionals sometimes rely too heavily on specialized knowledge—rather than common sense—in their claims.

By using principles that Dr. Meyer teaches his students on their first day of class—*i.e.*, by closely examining the artwork and then considering the artwork in its proper context—any reasonable observer can assess the message and meaning of visual artwork, including the artwork at the center of this case. Dr. Meyer offers this brief to demonstrate how the visual details of Warhol's *Prince* series and the context in which he created it conveys a meaning quite different from the source materials on which the artist draws. He explains how the series, like much of Warhol's work as a Pop artist, incorporated popular imagery of celebrity not to portray the celebrity as a human subject, but to comment on the machinery of fame itself.

A. Determining the Meaning and Message of Visual Art Requires Looking Closely and Thinking Contextually.

No work of visual art arises in isolation. Each relies on preceding sources and references. Pablo Picasso could never have painted his cubist paintings of the

1900s without having seen African sculptures and Iberian masks.[1] Italian Renaissance artists like Michelangelo were inspired by the idealizing precedent of Ancient Greek and Roman sculpture.[2] Locating the particular sources from which an artist draws is often quite helpful. But what matters more is what the artist has done with that source. The advancement of artistic expression requires the creation of new visual forms and meanings.

To consider the message and meaning of visual art, Dr. Meyer teaches his art history students to (1) look closely and (2) think contextually. This analysis can be performed by anyone. Assessing the expressive purpose of visual art does not include making value judgments; it does not matter whether the observer finds the expression to be beautiful or in good taste. For this purpose, the task is only determining the message and meaning the artist intended to convey from the visual and contextual cues he offers.

In a culture where the pace of communication has become ever more rapid, even instantaneous, it is sometimes a challenge to slow down and look carefully. We have become accustomed to Instagram feeds, Facebook posts, and phone camera albums as default modes of visual experience. Looking at a painting or

---

[1] Museum of Modern Art Learning, Pablo Picasso, *Les Demoiselles d'Avignon*, https://mo.ma/3OjY2Hb (last visited June 16, 2022).

[2] William E. Wallace, "Michelangelo Admires Antiquity... and Marcello Venusti," *Ashes to ashes : Art in Rome between Humanism and Maniera*, ed. Roy Eriksen and Victor Plahte Tschudi (Rome, 2006), 125-53.

photograph in material form—or even as a reproduction in a published book—has become less common than seeing a picture, often fleetingly, as a digital image.

Dr. Meyer asks his students to slow down and look more closely than may be their habit. Doing so reveals how the formal properties of a visual image shape the message or meaning we take away from it. The reasonable observer should perform a visual survey of the artwork, paying attention to things like scale, texture, medium, and asking how any sources were cropped, altered, re-positioned, reshaped, resized, or recolored. Dr. Meyer sometimes refers to these elements as the "visual evidence" on which any persuasive interpretation of an artwork must rest.

Visual evidence must be combined with the context in which the artwork was made and understood at the time. Just as context is critical to recognizing parody or satire in written works, it can be a significant aid in discerning the meaning of visual art. "Thinking contextually" includes considering how a visual work was presented (*e.g.*, in galleries and museums), the context in which it was created, and the audience to whom it was directed.

B. Warhol Conveyed a New Meaning and Message by Visually Altering Goldsmith's Photograph.

Looking at the small photographs on a piece of printer paper or viewed on a computer screen fails to tell the full story of Warhol's *Prince* series.

The Prince *Series*[3]

[3] Pet. App. 60a.

To understand Warhol's visual transformation of the Goldsmith photograph, one must look closer and dive deeper into his process. We must consider what constitutes the work in these works of art.

1. As the parties explain, the *Prince* series began with a black-and-white photograph that Goldsmith shot in 1981 of the musician Prince's head and upper torso.[4] To create the final product, however, Warhol relied on an elaborate and complicated silkscreen process that he employed throughout his career by which he pressed multiple layers of paint through a silkscreen, using a squeegee, one color at a time. As Warhol pushed paint onto the canvas through the silkscreen, he would overwhelm and partially erase details of the source photographs while gaining layers of color, lines, and visual texture. The effect was both to distort and to amplify the original image.

---

[4] *See* Pet. App. 9-10; Br. in Opp. 9; JA105-07.

Warhol Using a Silkscreen[5]

Among Warhol's first silkscreens was a series devoted to Marilyn Monroe's face. The series is based on a promotional still for the 1953 film *Niagara*.

[5] Christie's, *Radical repetition: a collector's guide to Andy Warhol prints*, https://bit.ly/39AwZsC (last visited June 16, 2022).

Marilyn Monroe, black-and-white photograph with Warhol's markings[6]

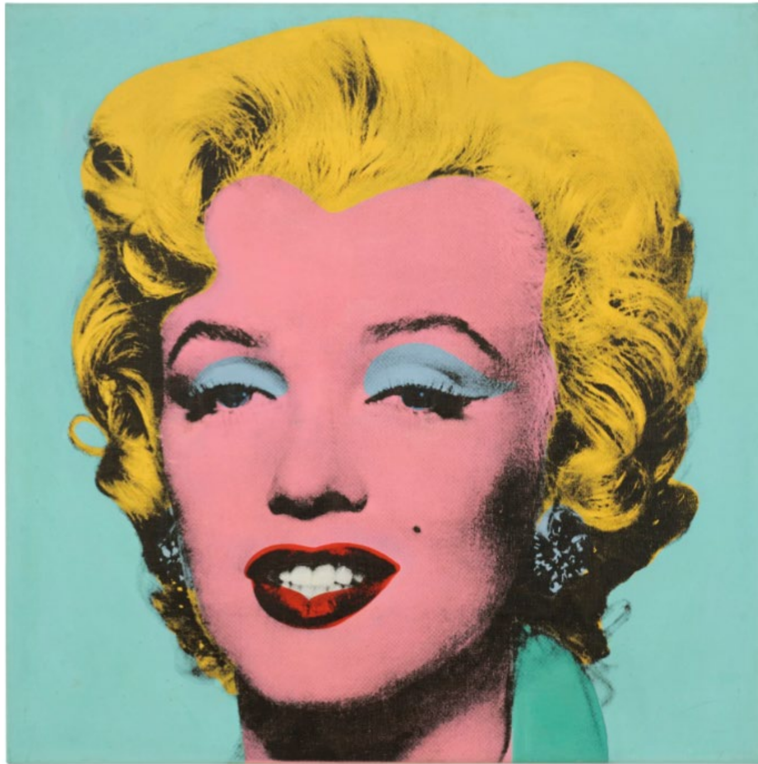
As he would later do with the photograph of Prince, Warhol cropped the photograph so that only the face (along with a bit of the neck and a trace of the collar of the blouse) remained visible. Then, through the silk-screen process, he pushed paint onto and over the canvas. In doing so, he obscured some details of the source photograph as well as its sense of depth, while gaining layers of color, lines, and form that exist only in the

[6] JA158.

painting. Warhol then employed the same source image across a series of paintings while varying its formal treatment so that each version of a portrait, whether *Gold Marilyn, Shot Sage Blue Marilyn,* or *Marilyn Twenty Times*, was unique.

Andy Warhol, Marilyn Twenty Times, 1962, acrylic on canvas, 76.8 in. x 44.7 in.[7]

[7] Artnet, Andy Warhol, *Marilyn Monroe (twenty times)*, https://bit.ly/3O5CH4I (last visited June 16, 2022).



Andy Warhol, Shot Sage Blue Marilyn, 1964, acrylic and silkscreen ink on linen, 40 in. x 40 in.[8]

The result leaves a starkly different visual impression than the source. Viewers of the *Marilyn* series looking for traditional portraits (*i.e.*, careful delineation of facial features and suggestion of the sitter's interior life) were sorely disappointed. Those looking for a radical break with the visual past—for a challenge

[8] Christie's, *Andy Warhol's Marilyn: an icon of beauty*, https://bit.ly/3zP4jqF (last visited June 16, 2022).

rather than a confirmation of established notions of art—were inspired.

But to what end? What is the visual meaning that differentiates a Warhol painting from its source image? Warhol's art was almost always based on photographs taken by other people. What made the finished silkscreen paintings into original works of art conveying a new meaning and message from the source? We can use the *Prince* series as a case study.

2. To create the paintings and prints in the *Prince* series, Warhol started, as he did with the *Marilyn* series, by cropping a source photograph of the musician such that only the face is visible. In Goldsmith's photograph, Prince is wearing a high-collared white shirt with suspenders. The lighting, black-and-white contrasts, stark background, and intense visual expression of Prince in Goldsmith's photograph make the musician look soulful and a bit vulnerable, perhaps even melancholy.

Goldsmith Photograph, 1981, 11 in. x 14 in.[9]

In Warhol's work, Prince's face floats free of his clothing and the rest of his body. Prince is no longer standing before us in a white, high-collared shirt, suspenders with silver clasps, and black braces. Prince's black, silver, and white clothing, and with them a

[9] JA320.

sense of fashionable minimalism, have vanished from view.

After cropping the photograph, Warhol enlarged the image to 20 inches by 16 inches, increasing the size of the disembodied head to nearly twice the size of the original photograph.

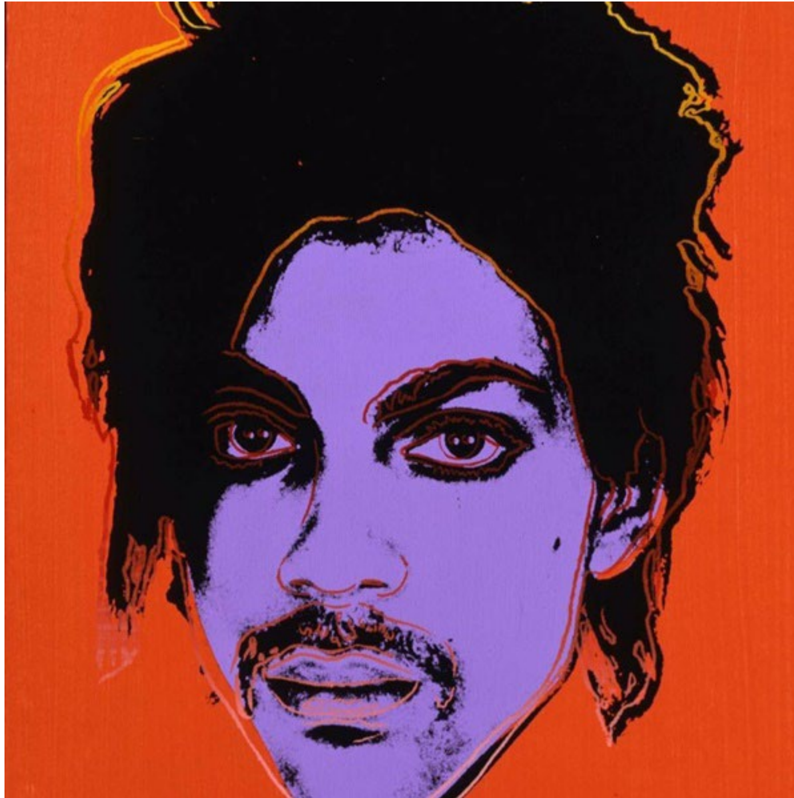
For most of the works in the *Prince* series, Warhol then had the outline for Prince's head transferred to a silkscreen. And he applied a solid layer of paint to create the background for the composition. In the purple *Prince*, for example, the background is fiery red.

Once the background paint dried, Warhol pressed multiple layers of paint through the silkscreen, using a squeegee, one color at a time. The process created a vibrant contrast of the black-and-white outline of Prince with blocks of light and dark colors transmitted through the mesh and onto the canvas. It eliminated any gradient or shadows, while isolating and exaggerating Prince's darkest details: his hair, moustache, eyes, and eyebrows.

Warhol often then added additional features (*e.g.,* lines, drawings, or exaggerated blocks of color) to complete the image.

Finally, he repeated the process over and over, varying color and the silkscreen registration of paint (sometimes heavy, sometimes streaky) to create the series.

The result is stunning.



Andy Warhol, Prince, 1984, acrylic and silkscreen ink on linen, 20 in. x 16 in.[10]

Consider the purple *Prince*. Warhol's silkscreened portrait does not offer a fleshly, fully embodied subject. Instead, the face, now colored electric purple, a flesh tone not known to humankind, is suspended in red. (The purple may have been a reference to Prince's song *Purple Rain*).[11] Meanwhile, Prince's hair is outlined

[10] JA177.
[11] PRINCE, *Purple Rain*, on PURPLE RAIN (Warner Bros. 1984).

in gold, as though encircled by a jagged electric current, and his eyes, lips, and brows are contoured in hot red, purple, and pink lines. The lighting from Goldsmith's photograph, a lighting that revealed Prince's glassy eyes, hollow cheeks, and uncomfortable stare, is gone, leaving only Prince the painted icon. The icon may be repeated and varied but the individual at its center will never seem as alive as he does in the Goldsmith photograph.

Andy Warhol, Prince, 1984, acrylic and silkscreen ink on linen, 20 in. x 16 in.[12]

---

[12] JA178.

3. Each visual transformation and step in the process contributes to the *Prince* series' message on the nature of fame.

The cropping and enlarging of the photograph help present Prince not as a person, but as a larger-than-life idol.

The silkscreen process distorts and amplifies the source photograph just as fame and celebrity distort the individual into a desirable product to be marketed. By stripping and obstructing detail—while leaving enough detail for Prince to be immediately recognizable—Warhol powerfully demonstrates how an indelible image of the star is imprinted on our minds, allowing us to easily supply what is missing.

The drastic flattening and exuberant colorization of the source image wash away any sense of vulnerability or fear, leaving the star's face as a representation of the musician's celebrity, rather than a specific moment in his career.

Finally, the series of similar prints created from the same source comments on the way in which images of celebrities, especially their faces, are relentlessly repeated, stage managed, made up, and distributed across popular media (films, magazines, advertisements, television, and today, of course, the internet). These pictures vary according to context (*e.g.,* the rock star in the photo-studio, on stage, in a music video, on TV, on the cover of a magazine) but function in aggregate to create a special aura around the individual, to crown the man who was born Prince Rogers Nelson into the superstar Prince.

The *Prince* series shows us the importance of images to the production of celebrity, while reminding us of the dehumanization that the process entails. In the star, we are given a highly prepared and professionally managed persona rather than a person. The star is a product to be promoted. Likewise, as art historian Cecile Whiting put it, "Warhol's paintings are not showing us any real or private [person], rather they depict the public image of these stars as given by the popular press and make us conscious of them as images or symbols through the manipulation of colour and shadow."[13] Indeed, Warhol's work does not even promote film starring Monroe or a song by Prince; it draws attention to the act of popular promotion itself.

C. The Context of the *Prince* Series Confirms the Artwork's New Meaning and Message.

While close visual inspection of the *Prince* series can tell the reasonable observer a great deal about their meaning, the context in which they were created and presented confirms it.

The *Prince* series must be understood as part of the broader Pop art movement. Warhol emerged in the early 1960s as a Pop artist—that is, an artist who takes up popular imagery (consumer objects, ads, celebrity images) as subject matter.[14] While this approach is now so prevalent among artists as to seem

---

[13] Cécile Whiting, "Andy Warhol, The Public Star and Private Self" *Oxford Art Journal*, vol. 10, Issue 2 (January 1987), 58-75.

[14] *See* G.R. Swenson, 'What Is Pop Art? Answers from 8 Painters, Part I', *ARTnews*, vol. 62, no. 7 (November 1963), pp. 24–7, 60–4, and 'What is Pop Art? Part II', *ARTnews*, vol. 62, no. 10 (February 1964), pp. 40–3, 62–7.

unremarkable, it was a radical break with inherited traditions of high art in Warhol's day. Indeed, the term "Pop art" had to be invented to describe a phenomenon that was startlingly new in the early 1960s.[15] To a degree greater than any other artist of day, Warhol's work became sensationally well-known and singularly influential. He was, at one point, dubbed "the Pope of Pop."[16] He challenged the boundaries and very definition of art.

It was not only the adoption of popular imagery that defined Pop art but also the use of techniques associated with the commercial realm rather than the fine art. Warhol's fellow Pop artist, James Rosenquist, had worked as a billboard painter and imported the expansive scale and gleaming consumer imagery of that form into his paintings.[17] In the fall of 1962, Warhol took up photo-silkscreen painting as his primary medium.[18] Although the technique had long been employed for commercial purposes, in shop signs, posters, printed fabrics, and so on, its application to fine art paintings was unprecedented.

The importance of the silkscreen technique to Warhol was not only its commercial association but the

---

[15] *See* Benjamin Genocchio, "When "Delinquents" Infiltrated Art," *N.Y. Times* (May 11, 2003), https://nyti.ms/3tJyqvz (last visited June 16, 2022).

[16] Andy Warhol, *The Philosophy of Andy Warhol: From A to B and Back Again* 193 (Harvest, 1977).

[17] *See* Judith Goldman, *James Rosenquist: Painting Pop Art* (New York: Viking, 1985).

[18] *See* Richard Meyer, "An Invitation, Not a Command," *Robert Rauschenberg* (New York and London: Museum of Modern Art and Tate Gallery, 2016): 188-97.

reason it had worked. Silkscreen signs and posters—with their blocks of color and radical flattening of form—can of-ten spark a sense of visual immediacy. Warhol want-ed his paintings to likewise arrest the attention of viewers, including gallery and museumgoers, in unexpected ways.[19]

The work of the Pop artists, and especially of Warhol, has often been mistaken as pandering to popular taste. In its moment, however, Pop marked a defiance of what was expected from high art including depth of meaning and emotional authenticity. That defiance shaped the *Marilyn* and *Prince* series, the Campbell's Soup Cans, the silkscreen paintings of Electric Chairs, and, indeed, Warhol's entire body of work. The artist's use of popular imagery sought to demonstrate, in vibrant visual form, the power it wields over individuals in modern society; the ways in which surface seems to matter more than substance.[20]

---

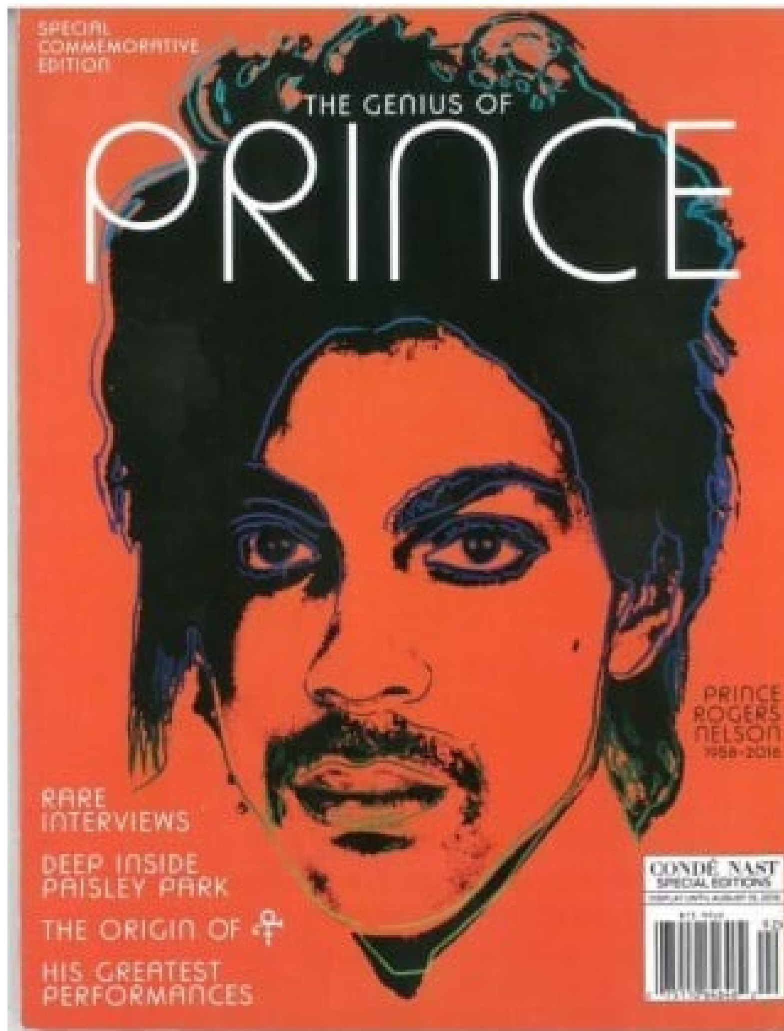
[19] *See* Rainer Crone, *Andy Warhol: A Catalogue Raisonné* (New York: Praeger, 1970), 10.

[20] *See* Benjamin H.D. Buchloh, "Andy Warhol's One-Dimensional Art," in McShine ed., *Andy Warhol: A Retrospective*, 53.

* * *

Warhol's red *Prince* appeared on the cover of a magazine paying tribute to the musician shortly after his death in 2016. The painting was chosen, presumably, because it conveys Prince's iconic stardom, across his career rather than the particular moment in 1981 when he posed for a camera in white shirt and suspenders in a studio. It is a picture of fame rather than vulnerability. In this sense, it is synoptic of Prince's success as a pop music star rather than specific to his emotional state on the day he was photographed by Goldsmith.

The work was an apt companion to the magazine's tribute, which was titled "The Genius of Prince," not "The Life of Prince." Like the story, the work has left the realm of real life behind in favor of a star with a blazingly red face, the same red that fills the entire background of the picture, with pulsing outlines of blue, green, purple, and yellow lines. On the cover of the magazine, Prince is an image, however artificial, that transcends death.



Conde Naste Cover[21]

The painting fits neatly into the movement of which Warhol was an important part and conveys a meaning or message with continuing relevance today.

---

[21] Pet. App. 62a; JA352.

One of Warhol's primary insights was to recognize that mass culture was not, as had been previously assumed, the opposite of high art. By creatively reworking popular photography of celebrities, Warhol forces us to look not simply at the pictures of stars (which, after all, we see all the time) but at the construction of stardom and the commodification of individuals. He transformed his source imagery of movie and music stars into representations of the machinery of fame itself. Through careful inspection and thoughtful consideration, his works are readily perceived to convey a meaning and message—that celebrity culture makes individuals into images; people into products—that remains all too relevant today.

CONCLUSION

The Second Circuit erred by concluding that only an art critic can determine whether a work of visual art is reasonably perceived as conveying a distinct meaning and message from its source materials. By looking closely and thinking contextually about Warhol's *Prince* series, any reasonable observer can perceive the artist's distinct message about the machinery of fame and the dehumanizing production of celebrity.

Respectfully submitted,

JONATHAN Y. ELLIS
Counsel of Record
MCGUIREWOODS LLP
888 16th Street N.W.
Suite 500
Washington, DC 20006
(202) 828-2887
jellis@mcguirewoods.com

NICHOLAS J. HOFFMAN
MCGUIREWOODS LLP
355 S. Grand Ave.
Suite 4200
Los Angeles, CA 90071
(213) 627-2268
nhoffman@mcguirewoods.com

June 17, 2022