

IN THE SUPREME COURT OF THE UNITED STATES

No. 21-869

ANDY WARHOL FOUNDATION FOR THE VISUAL ARTS INC., PETITIONER

v.

LYNN GOLDSMITH, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE
IN ORAL ARGUMENT AS AMICUS CURIAE, FOR DIVIDED ARGUMENT,
AND FOR ENLARGEMENT OF TIME FOR ARGUMENT

Pursuant to Rule 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as an amicus curiae supporting respondents; that the time allotted for oral argument be enlarged to 70 minutes; and that the time be allotted as follows: 35 minutes for petitioner, 20 minutes for respondents, and 15 minutes for the United States. Petitioner and respondents both consent to this motion.

This case concerns the fair-use defense to copyright infringement. The Copyright Act provides that "the fair use of a copyrighted work * * * is not an infringement of copyright." 17 U.S.C. 107. To determine whether an allegedly infringing use is fair, the Act directs courts to consider four enumerated factors, the first of which is "the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes." 17 U.S.C. 107(1). This case involves the commercial licensing of a silkscreen image that Andy Warhol had created based on respondent's copyrighted photograph. The question presented is whether petitioner established that its licensing of the silkscreen image was a "transformative" use, and that Section 107(1) therefore weighs in petitioner's favor, by showing that the image can reasonably be perceived to convey a meaning or message different from that of respondent's photograph. The United States has filed a brief as amicus curiae in support of respondents. The brief argues that petitioner failed to establish that Section 107(1) supports its claim of fair use here.

The United States has a substantial interest in the resolution of the question presented. The Copyright Office is responsible for, among other things, advising Congress, agencies, the courts, and the public on copyright matters, including the fair-use doctrine. 17 U.S.C. 701. The Copyright Office maintains a Fair Use Index that collects and summarizes fair-use precedents. The

United States Patent and Trademark Office, through the Secretary of Commerce, advises the President on intellectual-property matters. 35 U.S.C. 2(b)(8) and (c)(5). The question presented implicates the expertise and responsibilities of other federal agencies and components as well.

The United States regularly presents oral argument as amicus curiae in cases concerning copyright law. See, e.g., Unicolors, Inc. v. H&M Hennes & Mauritz, L.P., No. 20-915 (argued Nov. 8, 2021); Google L.L.C. v. Oracle Am., Inc., No. 18-956 (argued Oct. 7, 2020); Georgia v. Public.Resource.Org, Inc., No. 18-1150 (argued Dec. 2, 2019); Star Athletica, L.L.C. v. Varsity Brands, Inc., 137 S. Ct. 1002 (2017); Kirtsaeng v. John Wiley & Sons, Inc., 136 S. Ct. 1979 (2016); Petrella v. Metro-Goldwyn-Mayer, Inc., 572 U.S. 663 (2014). In light of the substantial federal interest in the question presented, the United States' participation at oral argument would materially assist the Court in its consideration of this case.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

AUGUST 2022