

Warhols, Tigers and Monkees, Oh My! – The Tenth Circuit Applies the Supreme Court’s Warhol Decision Against Netflix

April 15, 2024 – The TMCA

by Bruce R. Ewing

In a mashup that the late pop artist Andy Warhol surely would have loved, the U.S. Court of Appeals for the Tenth Circuit has applied the Supreme Court’s 2023 decision in *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith* to vacate a prior district court decision on the issue of fair use, and to remand the case for further fact-finding. Does the decision settle the defense of fair use in that case? No, but as explained below, the defendants in that case still have reason to hope that their defense will prevail.

In the dark days of the 2020 pandemic, one obsession of many television viewers looking for something to take themselves out of the world in which we were then living was the Netflix documentary, *Tiger King*. As explained by Netflix, the documentary focused on “the stranger-than-fiction world of big cat owners,” most notably “Joe Exotic, a mulleted, gun-toting polygamist and country western singer who presides over an Oklahoma roadside zoo. Charismatic but misguided, Joe and an unbelievable cast of characters including drug kingpins, conmen, and cult leaders all share a passion for big cats and the status and attention their dangerous menageries garner. But things take a dark turn when Carole Baskin, an animal activist and owner of a big cat sanctuary, threatens to put them out of business, stoking a rivalry that eventually leads to Joe’s arrest for a murder-for-hire plot, and reveals a twisted tale where the only thing more dangerous than a big cat is its owner.”

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