

**Gaylord v. United States,
595 F.3d 1364 (Fed. Cir. 2010)**

Year	2010
Court	United States Court of Appeals for the Federal Circuit
Key Facts	Plaintiff Frank Gaylord created a sculpture known as <i>The Column</i> for the Korean War Veterans Memorial in Washington, D.C., which consisted of 19 stainless steel statues representing a platoon of American soldiers in the Korean War walking in formation. Defendant the U.S. Postal Service issued a stamp commemorating the 50 th anniversary of the Korean War armistice that included a picture showing 14 of the 19 soldier statues. Plaintiff appealed the Federal Claims Court ruling that defendant was not liable because the Post Office made fair use of plaintiff's work.
Issue	Whether the U.S. Postal Service's unauthorized use of an image of plaintiff's sculpture on a stamp was fair use.
Holding	The appellate court held that putting an image of plaintiff's sculpture on a stamp without permission was not fair use. Though the stamp altered colors and added snow, the court did not find it transformative because it shared a common purpose with the memorial—to honor Korean War veterans. The court found that the stamp also had a clearly commercial purpose in light of the fact that defendant received over \$17 million from sales. The court pointed out that the nature of <i>The Column</i> , being expressive and creative, and the amount of the memorial depicted—fourteen of the nineteen soldier sculptures—weighed against fair use. The court, however, noted that defendant's work harmed neither the value of plaintiff's work nor the market for derivatives based on this work, analogizing the stamp to the thumbnail images in <i>Kelly v. Arriba Soft Corp.</i> , 336 F.3d 811 (2003). Nonetheless, the court determined that this was not enough to overcome the other factors that weighed against a fair use finding.
Tags	Federal Circuit; Sculpture
Outcome	Fair use not found

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