

Date	October 28, 1999	Court	Tokyo High Court
Case number	1998 (Ne) 2983		
– A case in which the appellant, who holds an independent or quasi co-owned editorial copyright with respect to a terminological dictionary issued by the appellee, claimed damages, etc. against the appellee based on an allegation that without permission from the appellant the appellee used the compilation, but the court dismissed the appeal by finding that what is alleged as the material of the terminological dictionary by the appellant cannot be found to have copyrightability independently unless there are special circumstances.			

References: Article 12, paragraph (1) of the Copyright Act

Number of related rights, etc.:

### Summary of the Judgment

The appellant claimed damages, etc. against the appellee based on an allegation that the layout and format sheet that serves as the basis for the layout policy for the pages of "Chiezo," a terminological dictionary issued by the appellee, ("Layout and Format Sheet") is an exclusive compilation of the appellant and that, even if the appellee holds the editorial copyright, the Layout and Format Sheet is co-owned by the appellant and appellee. However, these claims were dismissed in the judgment in prior instance.

In this judgment, the court made the following determinations and dismissed the appellant's appeal.

- i. The headline, folio, form of thumb index, headings of categories, items, font sizes, font types, lines, and shapes of the punctuation marks used in the explanation text, etc., which the appellant alleges to be the material of Chiezo, represent the layout policy for the pages in the process of compiling Chiezo, which is a compilation. Unless there are special circumstances to find that they have unique creativity and produce unique expressions apart from the process of compiling Chiezo, they cannot be found to have copyrightability independently.
- ii. The creation of the Layout and Format Sheet can be found to be an outcome of the appellant's intellectual activity but only remains at the stage of visualizing the ideas of compilation or layout works presented in the process of compilation up till the issuance of Chiezo; it cannot be found that an independent copyright that should be protected under the Copyright Act will consist in the Layout and Format Sheet itself apart from Chiezo, which is a compilation mainly containing explanatory articles for each category selected and arranged, as well as diagrams and pictures included therein.

Judgment rendered on October 28, 1999

1998 (Ne) 2983 Appeal Case of Seeking Royalties under Copyright, etc. (Date of conclusion of oral argument: September 2, 1999; court of prior instance: Tokyo District Court 1995 (Wa) 5273)

#### Judgment

Appellant: [A]

Appellee: The Asahi Shimbun Company

#### Main text

The appeal in question shall be dismissed.

The alternative claim made by the appellant shall be dismissed.

The court costs for this instance shall be borne by the appellant.

#### Facts

##### 1. Judicial decisions sought by the appellant

A judgment and a declaration of provisional execution as follows:

"1. The judgment in prior instance shall be revoked.

(As a principal claim continuously made from the prior instance)

2. The appellee shall pay to the appellant 10,600,000 yen and money accrued thereon at the rate of 5% per annum for the period from March 29, 1995 until the date of completion of the payment.

(As an alternative claim made in this instance)

3. The appellee shall pay to the appellant 4,500,000 yen and money accrued thereon at the rate of 6% per annum for the period from September 23, 1998 until the date of completion of the payment."

##### 2. Basic facts

Objective facts that are not disputed between the parties are as follows.

1. The appellant devotes him/herself to book designs. The appellee is a leading publisher of a national daily paper in Japan and also a comprehensive publishing company that issues various kinds of publications. It has also been publishing "知恵蔵(Chiezo)," an annually updated terminological dictionary, since 1989.

2. The appellant handled the book design of Chiezo from the 1990 edition to 1993 edition, issued by the appellee, at the request (made from August to September 1988) of the appellee, which was planning to issue an annually updated terminological dictionary (an oral request; "Business Entrustment Agreement").

3. The appellant was entrusted with the business of creating the layout and format sheet, basic design for the texts based on such sheet, as well as the designing and binding of individual pages, such as the front page and supplementary volumes, etc. The layout and format sheet and

basic designs of the texts based thereon that were set and adopted were programmed in a typesetting computer.

4. Later, the appellee issued the 1994 and 1995 editions of Chiezo, whose layout was implemented by using a layout and format other than the abovementioned layout and format (the appellant alleges that said other layout and format are fairly identical with those created by the appellant).

(omitted)

Reasons

(omitted)

## 2. Regarding the claims based on the copyright of compilations

(1) Under the Copyright Act, a work means a production in which thoughts or sentiments are creatively expressed. The layout and format sheet in question ("Layout and Format Sheet") in which the headline, folio, form of thumb index, headings of categories, items, font sizes, font types, lines, and shapes of the punctuation marks used in the explanation text, etc., which the appellant alleges to be the material of Chiezo, are arranged, and the headline, folio, form of thumb index, headings of categories, items, font sizes, font types, lines, and shapes of the punctuation marks used in the explanation text, etc., which the appellant alleges to be the material of Chiezo, both represent the layout policy for the pages in the process of compiling Chiezo, which is a compilation. Unless there are special circumstances to find that they have unique creativity and produce unique expressions apart from the process of compiling Chiezo, they cannot be found to have copyrightability independently. As long as the statement of the principal claim alleged by the appellant is based on the premise that the layout and format sheet used for the 1994 and 1995 editions of Chiezo are reproductions of the Layout and Format Sheet created by the appellant, it is obvious that the appellant's allegations are not based on the premise that the Layout and Format Sheet will be used without any change in books other than Chiezo, i.e., especially, books issued by a publishing company other than the appellee.

(Notes) "Headline" refers to the heading printed in the peripheral space of the type page.

"Folio" refers to the number indicating the page number.

"Thumb index" refers to certain codes, etc. printed in the edge of dictionaries, etc. for the sake of convenience for search.

"Punctuation marks" collectively refer to various types of printed codes other than letters and numbers.

The appellant alleges that the Layout and Format Sheet is a specific intellectual work of a book designer independent from the appellee. However, it is an evident fact that various works, including planning, preparation of manuscript, and layout, will be integrally accumulated until the issuance of compilations, such as Chiezo, which is an annually updated terminological dictionary, except for times before and after such issuance. In light of the facts on which the decision is premised as found in 1. above in this case, the creation of the Layout and Format Sheet can be found to be an outcome of the appellant's intellectual activity but is limited to the stage of visualizing the ideas of compilation or layout works presented in the process of compilation until the issuance of Chiezo; it cannot be found that an independent copyright that should be protected under the Copyright Act will consist in the Layout and Format Sheet itself apart from Chiezo, which is a compilation mainly containing explanatory articles titled "New trend," "New words and topical words," and "terms" for each category selected and arranged, as well as diagrams and pictures included therein.

(2) Thus, the appellant's allegations that the layout policy of the pages of Chiezo based on the Layout and Format Sheet is a compilation of the appellant or a joint work of the appellant and appellee based on the premise that the appellant holds a copyright for the Layout and Format Sheet are groundless. Thus, the principal claims based on the abovementioned allegations (claims for reimbursement of benefits and compensation for damages) are groundless, and the judgment in prior instance, which dismissed these claims, is appropriate.

### 3. Regarding the alternative claim

(1) In the alternative claim, the appellant alleges as follows: based on the premise that the parties agreed that the Business Entrustment Agreement entered into between the appellant and the appellee will be effective over a long period of time, the Layout and Format Sheet as well as the basic designs in question ("Basic Designs") that were created by the appellant were used for the 1994 and 1995 editions of Chiezo, and thus, a value for both editions of Chiezo should be paid to the appellant.

However, there is no objective evidence to find that the Business Entrustment Agreement was entered into between the parties based on the premise that it will be effective over a long period of time without limiting its duration as alleged by the appellant or it will remain, by rights, effective against the compilation of the 1994 and 1995 editions of Chiezo. Moreover, Exhibit Ko 45 (written statement) and the results of the examination of the appellant him/herself in this instance are insufficient to accept the abovementioned allegations.

(2) The appellant alleges that the Business Entrustment Agreement will remain, by rights, effective against the 1994 and 1995 editions of Chiezo for the following reasons: [i] managing editor [C] who was the contact personnel of the appellee at that time told the appellant that "We are counting on you as we are expecting to develop 'Chiezo' in a decade"; [ii] the characteristics

of Chiezo, which require continuity; [iii] the appellee asked for a layout and format sheet that can be continuously used over a long period of time; and [iv] the Layout and Format Sheet as well as the Basic Designs of the text based thereon were programmed in a typesetting computer. However, even if the allegations mentioned in the abovementioned point were to be taken into consideration, it could not be found that the Business Entrustment Agreement was entered into based on the premise that it will be effective over a long period of time without limiting its duration, as explained in the following parts.

With respect to the point mentioned in [i] above, even if a talk to that effect were to be made from the then managing editor of the appellee to the appellant, it might have been presumed that the managing editor showed fierce determination regarding the development of Chiezo and entrusted the business in question ("Business") by asking the appellant for cooperation. However, these presumptions are insufficient to find that the appellee stated the duration of the Business Entrustment Agreement to be, for example, specifically 10 years. In addition, regarding the points mentioned in [ii] through [iv] above, they can be found to be circumstances to presume that the parties implicitly kept in mind that the use of the Layout and Format Sheet created by the appellant for Chiezo, which is an annually updated terminological dictionary, would be continued for a certain period of time, but it cannot be found that such period presumed was expected to be a specific one. The Layout and Format Sheet created by the appellant turned out to be used over four years for the 1990 to 1993 editions based on the annual consultations held between the parties. However, the points mentioned in [ii] through [iv] above cannot be regarded as circumstances to find that the Business Entrustment Agreement will be, by rights, effective for the scope of period beyond the four-year period mentioned above.

According to Exhibits Ko 18 through 20 and 23, it can be found that the appellee had hopes to use the Layout and Format Sheet created by the appellant for the 1994 edition of Chiezo, but such hope was not realized due to the appellant's intention (Exhibits Ko 21-1 and 21-2 and the entire import of the oral argument). The background during this period leads to the presumption that it was agreed between the parties that consultations be held between the appellant and appellee regarding the selection of the layout and format sheet on each occasion of compilation of the Chiezo of each year.

(3) There is no other evidence to find that it was agreed that the Business Entrustment Agreement will also be effective against the compilation of the 1994 and 1995 editions of Chiezo. Therefore, without the need to make determinations on the other points, the appellant's claims based on the statement of the alternative claim are groundless.

#### 4. Conclusion

Therefore, the judgment shall be rendered in the form of the main text.

Tokyo High Court, 18th Civil Division

Presiding Judge: NAGAI Toshiaki

Judge: SHIOTSUKI Shuhei

Judge: ICHIKAWA Masami