

Date	February 20, 1998	Court	Tokyo District Court
Case number	1994 (Wa) 18591		

– A case in which the court ruled that the book produced by the host of the art exhibition of the Barnes Foundation for the sale at the exhibition, in which the paintings of Pablo Picasso to be exhibited there were reproduced and printed, does not fall under "pamphlets" prescribed in Article 47 of the Copyright Act.

– A case in which the court ruled that the reproduction and printing of the paintings of Pablo Picasso: which were to be exhibited at said exhibition, on the admission tickets and discount exchange tickets for the exhibition does not fall under "quotation" prescribed in Article 32, paragraph (1) of the Copyright Act.

– A case in which the court ruled that the reproduction and printing in the newspaper of the paintings of Pablo Picasso: which were to be exhibited at said exhibition, does not fall under "quotation" prescribed in Article 32, paragraph (1) of the Copyright Act but constitutes use for reporting of current events under Article 41 of said Act.

References: Article 32, paragraph (1), Article 41 and Article 47 of the Copyright Act

Number of related rights, etc.: None

### Summary of the Judgment

1. The defendant, The Yomiuri Shimbun, jointly with the National Museum of Western Art, hosted "Great French Paintings from the Barnes Foundation" to exhibit the paintings possessed by the Barnes Foundation (a foundation based in the United States) (the "Exhibition") at the National Museum of Western Art. Upon holding the Exhibition, the defendant [i] produced and sold a catalog (the "Book") in which the paintings by Pablo Picasso, which were to be exhibited at the Exhibition (the "Paintings"), were reproduced and printed and [ii] reproduced and printed one of the Paintings on the admission ticket[s] and discount exchange tickets for the Exhibition. In addition, in order to introduce the Paintings and the Exhibition, the defendant [iii] reproduced and printed some of the Paintings in the newspaper issues it published.

The plaintiff, who is one of the heirs of Picasso, alleged that the abovementioned acts of the defendant infringed the copyrights held thereby for the Paintings, and claimed an injunction and payment of damages against the copyright infringement by the defendant.

2. In this judgment, the court partially upheld the plaintiff's claims against the defendant, making the findings and determinations as follows.

(1) The pamphlets for the purpose of explaining or introducing an artistic work or photographic work to persons viewing it as prescribed in Article 47 of the Copyright

Act means small catalogs, lists, or picture books, etc. for the purpose of explaining or introducing an exhibited work for persons viewing it, and it is for the purpose of explaining or introducing a work for those persons viewing it who intend to appreciate the exhibited original copy of the work. Therefore, it is considered that the quality of printed reproduction of a work is not the quality required for the purpose of appreciating the reproduction itself but is supposed to be only sufficient to make clear the correspondence relationship between the exhibited original copy of the work and the explanation or introduction thereof. It is reasonable to understand that even if a pamphlet is intended to be distributed to persons viewing a work, it is not included in the pamphlets prescribed in said Article if it has the same value as one that is sold as a book for the purpose of appreciating a reproduced work in consideration of paper quality, format, and the form of reproduction of the work, etc.

In light of the features of the Book, such as the paper quality and form of the Book and the form of reproduction of works, etc., the Book is substantially recognized as having the same value as books that are sold in the market as art collection books for appreciation. Therefore, the Book cannot be considered to fall under the pamphlets for the purpose of explaining or introducing a work as mentioned in Article 47 of the Copyright Act.

(2) It is reasonable to understand that in the "quotation" prescribed in Article 32, paragraph (1) of the Copyright Act, the whole or part of another person's work is incorporated in one's own work in the aim of news report, critique, study, etc., and in terms of the expression form of a work that includes a quotation, the work exploiting a work through quotation and the work exploited through quotation can be clearly distinguished from each other and said works are in the relationship wherein the former is superior and the latter is subordinate.

The legislative intent of this provision is considered to exist in ensuring that the effect of copyright does not extend to a quotation that fulfills the prescribed requirements because there are cases where it is necessary to exploit an expression in an existing work through quotation when creating a new work. Therefore, if a work which exploits another work is not recognized as being copyrightable or constituting a creation, the exploitation does not fall under quotation and this provision is not applicable to such case.

The matters described in the admission tickets and discount exchange tickets in question, except Painting 3, are nothing more than the mere descriptions of the name of the collection, the names of painters included therein, and other facts concerning the holding of the Exhibition. Therefore, the said admission tickets and discount exchange

tickets cannot be considered to be a work in which thoughts or sentiments are creatively expressed. Consequently, said reproduction of Painting 3 cannot be considered to be a quotation in one's own work.

(3) A. In the article on the November 5 issue in which Painting 2 was printed, the actress's discourse is an expression involving some degree of creativity and falls under a work. However, the discourse includes very little element of a new creation in the part concerning Painting 2, and it is hardly necessary to quote a reproduction of Painting 2 in consideration of the content of the discourse. Regarding appearance, although the discourse is slightly bigger in size on the paper than Painting 2, Painting 2 is printed in color and those who read said article may be considered to be more impressed by Painting 2 than the discourse. Taking these points into account, there is no relationship between the discourse and Painting 2 wherein the former is superior and the latter is subordinate. Rather, it is recognized that the emphasis was put on the printing of Painting 2 through reproduction, and such exploitation cannot be considered to fall under the quotation prescribed in Article 32, paragraph (1) of the Copyright Act. Therefore, a defense of exploitation through quotation is unacceptable.

Moreover, since the content of said article can never be considered to be a reporting of current events, the reproduction of Painting 2 in said article cannot be accepted as exploitation for reporting current events.

B. In the article on the December 2 issue in which Painting 3 was printed, the article reports mainly the fact that it was decided that the Exhibition will be held at the National Museum of Western Art in Tokyo, as well as the background to the showing of the collection, the fact that the collection will also be shown to the public in Washington DC and Paris, and the major works to be exhibited and the painters thereof. Therefore, said article should be considered to fall under the reporting of "current events" set forth in Article 41 of the Copyright Act. In said article, Painting 3 is cited as one of the seven works of famous painters introduced with their names cited, out of the 80 paintings to be exhibited at the Exhibition. Therefore, Painting 3 should be considered to fall under the "work that comprises the event" set forth in said Article. Moreover, taking into account the size of reproduced Painting 3, comparison thereof with the size of the entirety of said article, and the paper quality of said article (said article is in an ordinary newspaper though it is printed in color), said reproduction is recognized as having been made "to the extent that it is justified from the perspective of the aim to report the news," thus it can be accepted as exploitation for reporting current events.

C. In the article on the November 3 issue in which Painting 3 was printed, matters such

as the name of the collection and its brief introduction, the launch of the sale of advance tickets on said date, the host, venue, term, sponsors, special supporters, supporters, cooperators, and admission fees of the Exhibition, the places where advance tickets are available, and the places where admission coupons are available were described. These descriptions are formulaic greetings whereby the hosts of the Exhibition announce the start of sale of advance tickets for the Exhibition, and the content of said article is nothing more than the communication of the name of the collection and its brief introduction and other facts concerning the Exhibition. Therefore, said article cannot be considered to be a work in which thoughts or sentiments are creatively expressed. Consequently, said reproduction of Painting 3 cannot be considered to be a quotation in the defendant's own work.

Moreover, the content of said article is the announcement of the fact that the hosts of the Exhibition will start selling advance tickets on that day, and said article is recognized as the hosts' announcement or greetings, and may also be recognized as an article for advertising the start of advance sale of admission tickets for the Exhibition hosted by the defendant. Therefore, said article cannot be considered to fall under the "reporting of current events" set forth in Article 41 of the Copyright Act. Moreover, the reproduction of Painting 3 can also not be recognized as falling under a work that comprises the event or a work seen or heard in the course of the event.

D. In the article on the January 22 issue in which Painting 3 was printed, the background to Barnes' having become a collector of paintings is explained. As its content is ambiguous and abstract, said article is inevitably considered to be an article intended only to introduce Painting 3 in the newspaper. In said article, the part concerning Painting 3 and the reproduction of Painting 3 are rather recognized as being in the relationship wherein the former is subordinate and the latter is superior. Therefore, exploitation of Painting 3 in said article is not recognized as falling under the quotation prescribed in Article 32, paragraph (1) of the Copyright Act.

Moreover, said article is printed as a series under the title "Treasured Famous Paintings—From the Great French Paintings from the Barnes Foundation." The content thereof also does not fall under the reporting of current events at any point, and therefore, the reproduction of Painting 3 in said article cannot be accepted as exploitation for reporting current events.

E. In the article on the January 1 issue in which Painting 4 was printed, 10 paintings (one painting per famous painter), including Painting 4, out of the paintings exhibited at the Exhibition, were reproduced and printed for the purpose of introducing these paintings. The part concerning Painting 4 and the reproduction of Painting 4 are rather

recognized as being in the relationship wherein the former is subordinate and the latter is superior. Therefore, exploitation of Painting 4 in said article is not recognized as falling under the quotation prescribed in Article 32, paragraph (1) of the Copyright Act.

Moreover, since the content of said article does not fall under the reporting of current events in any way, the reproduction of Painting 4 in said article cannot be accepted as exploitation for reporting current events.

Judgment rendered on February 20,1998  
1994 (Wa) 18591

### Judgment

(Indication of the parties is omitted)

### Main Text

1. The defendant shall neither print, nor bind, nor distribute the book described in List 2 attached to this judgment.
2. The defendant shall destroy the photographic negatives of the paintings described in List 1 attached to this judgment, the original plates for printing of said paintings, and the book described in List 2 attached to this judgment, all of which it possesses.
3. The defendant shall pay to the plaintiff 10,090,000 yen and the amount accrued thereon at the rate of 5% per annum for the period from October 15, 1994, to the date of completion of the payment.
4. All the other claims of the plaintiff shall be dismissed.
5. The court costs shall be divided into two, and the plaintiff shall bear one-half thereof and the defendant shall bear the remaining amount.
6. Only the part of this judgment where the plaintiff won the case may be provisionally executed.

### Facts

No. 1 Judicial decision sought by the parties

#### 1. Objects of claims

- (1) The same effect as paragraphs (1) and (2) of the main text.
- (2) The defendant shall pay to the plaintiff 21,463,520 yen and the amount accrued thereon at the rate of 5% per annum for the period from October 15, 1994, to the date of completion of the payment.
- (3) The defendant shall bear the court costs.
- (4) Declaration of provisional execution

#### 2. Answers to the objects of claims

- (1) All of the plaintiff's claims shall be dismissed.
- (2) The plaintiff shall bear the court costs.

No. 2 Allegations of the parties

#### 1. Statements of claims

(1) Authority of the plaintiff

(i) Spanish painter P (hereinafter also simply referred to as "P") drew the paintings described in List 1 attached to this judgment (hereinafter all of the paintings described in said list are collectively referred to as the "Paintings," and individual paintings described in 1 to 7 in said list are referred to as "Painting 1" and the like, respectively) in the years described in the year of production section in said list.

(ii) P died on April 8, 1973, and the plaintiff, Q, R, and S, all of whom are P's children, inherited copyrights for the Paintings. After that, S died on June 5, 1975, which caused T and U, both of whom are S's children, to inherit the copyrights for the Paintings which had been held by S.

(iii) The plaintiff and said four persons jointly own the copyrights for the Paintings in an undivided manner, and earnings from the Paintings are equally distributed to each of them. As the manager of said undivided joint owners, the plaintiff has the authority to represent the undivided joint owners pursuant to the provisions of Article 187316 of the French Civil Code.

(2) Defendant's act

(i) The defendant, jointly with the National Museum of Western Art, hosted "Great French Paintings from the Barnes Foundation" (hereinafter referred to as the "Exhibition") at the National Museum of Western Art for the period from January 22 to April 3, 1994.

(ii) Upon holding the Exhibition, the defendant produced the book described in List 2 attached to this judgment (hereinafter referred to as the "Book") wherein the Paintings were printed through reproduction, and sold at least 500,000 copies of the Book at the fixed price of 2,000 yen.

(iii) The defendant printed Painting 3 through reproduction on the admission ticket and discount exchange ticket for the Exhibition.

(iv) The defendant reproduced and printed Painting 2 in the November 5, 1993 issue of Yomiuri Shimbun, Painting 3 in the December 2, 1992, November 3, 1993, and January 22, 1994 issues, and Painting 4 in the January 1, 1994 issue.

(v) The defendant produced a reproduction painting of Painting 3 (hereinafter referred to as the "Reproduction Painting") by attaching a print of said painting to a canvas, applying surface treatment to the canvas, and putting the canvas in a frame, and sold five copies of the Reproduction Painting whose fixed price is 150,000 yen and 15 copies of the Reproduction Painting whose fixed price is 45,000 yen.

(omitted)

## Reasons

(omitted)

### 4. Regarding Defense 2 (pamphlets for the purpose of explanation or introduction)

(1) The pamphlets for the purpose of explaining or introducing an artistic work or photographic work to persons viewing it as prescribed in Article 47 of the Copyright Act means small catalogues, lists, or picture books, etc. for the purpose of explaining or introducing an exhibited work for persons viewing it, and it is for the purpose of explaining or introducing a work for those persons viewing it who intend to appreciate the exhibited original copy of the work. Therefore, it is considered that the quality of printed reproduction of a work is not the quality required for the purpose of appreciating the reproduction itself but is supposed to be only sufficient to make clear the correspondence relationship between the exhibited original copy of the work and the explanation or introduction thereof. It is reasonable to understand that even if a pamphlet is intended to be distributed to persons viewing a work, it is not included in the pamphlets prescribed in said Article if it has the same value as one that is sold as a book for the purpose of appreciating a reproduced work in consideration of paper quality, format, and the form of reproduction of the work, etc.

(2) According to Object of Observation Ko 4 mentioned above, the Book is approximately 300 mm by 225 mm in size, is made with high-quality paper, and is a total of 136 pages long, of which 92 pages include the printing of 80 works that were exhibited at the Exhibition. In addition, each of those works is printed on one page or on a two-page spread. The Paintings are reproduced by color printing on seven pages, and they are approximately 200 mm high and approximately 113 to 147 mm wide depending on the painting. Paintings 1 to 7 are reproduced one by one on one page each. The explanatory writings for the Paintings are printed only in the space at the bottom of each page that occupies one-fourth of the page.

(3) According to the aforementioned facts, such as the paper quality and form of the Book and the form of reproduction of works, etc., the Book is substantially recognized as having the same value as books that are sold in the market as art collection books for appreciation. Therefore, the Book cannot be considered to fall under the pamphlets for the purpose of explaining or introducing a work as mentioned in Article 47 of the Copyright Act. Consequently, Defense 2 is unacceptable.

### 5. Regarding Defense 3 (exploitation through quotation in the admission ticket and



discount exchange ticket in question)

(1) According to Exhibit Ko 4, whose establishment is agreed on by the parties, the admission ticket in question (the "Admission Ticket") is approximately 195 mm by 70 mm in size. In the upper part thereof, Painting 3 is reproduced by color printing in the size of approximately 106 mm by 60 mm. In the lower part, there is the following description: "THE BARNES"; "World Debut: Great Master's Hall of Fame: Great French Paintings from the Barnes Foundation: Renoir, Cezanne, Seurat, Matisse, P, ...." In addition, the venue, term, names of hosts, names of sponsors, admission fees, and other relevant matters of the Exhibition are described on the Admission Ticket.

Moreover, according to Exhibit Ko 6, whose establishment is agreed on by the parties, the discount exchange ticket in question (the "Discount Exchange Ticket") is also recognized as being in the same format as the Admission Ticket in terms of the form of reproduction of Painting 3 and other described matters, etc. though the discount amount is described in place of the admission fees.

(2) Article 32, paragraph (1) of the Copyright Act provides that "It is permissible to quote from and thereby exploit a work that has been made public. In such a case, the work must be quoted consistent with fair practices and within a scope that is justified by the aim of the news report, critique, study, or other place in which the work is quoted." It is reasonable to understand that in the quotation mentioned here, the whole or part of another person's work is incorporated in one's own work in the aim of news report, critique, study, etc., and in terms of the expression form of a work that includes a quotation, the work exploiting a work through quotation and the work exploited through quotation can be clearly distinguished from each other and said works are in the relationship wherein the former is superior and the latter is subordinate.

The legislative intent of this provision is considered to exist in ensuring that the effect of copyright does not extend to a quotation that fulfills the prescribed requirements because there are cases where it is necessary to exploit an expression in an existing work through quotation when creating a new work. Therefore, if a work which exploits another work is not recognized as being copyrightable or constituting a creation, the exploitation does not fall under quotation and this provision is not applicable to such case.

(3) According to the aforementioned facts determined, the matters described in the Admission Ticket and the Discount Exchange Ticket, except Painting 3, are nothing more than the mere descriptions of the name of the collection, the names of painters included therein, and other facts concerning the holding of the Exhibition. Therefore, the Admission Ticket and the Discount Exchange Ticket cannot be considered to be a

work in which thoughts or sentiments are creatively expressed. Consequently, said reproduction of Painting 3 cannot be considered to be a quotation to one's own work, and Defense 3 is unacceptable.

The defendant alleges that it is a prevailing practice to include a representative work that is exhibited at an art exhibition on the admission ticket or discount exchange ticket for the exhibition. However, there is no evidence that is sufficient to recognize that it is popularly practiced to reproduce a work, which is within the term of protection of copyright, on an admission ticket or a discount exchange ticket without obtaining explicit or implicit authorization from the copyright owner. Even if such an act is committed in society by thoughtless art exhibition hosts, it is an act for which there is no justifiable ground and which constitutes infringement of copyright, and it cannot be considered to be a fair practice.

6. Regarding Defense 4 (exploitation through quotation in relation to printing in newspapers and exploitation for reporting current events)

(1) The parties agree on the fact that the defendant reproduced and printed Painting 2 in the November 5, 1993 issue of Yomiuri Shimbun, Painting 3 in the December 2, 1992, November 3, 1993, and January 22, 1994 issues, and Painting 4 in the January 1, 1994 issue, respectively.

(2) Regarding printing of Painting 2 in the November 5, 1993 issue

(i) According to Exhibit Ko 12, whose establishment is agreed on by the parties, the evening edition of the November 5, 1993 issue included a page whose lower one-third is advertisement of the paintings possessed by the Barnes Foundation and upper two-thirds feature the Exhibition. Specifically, the following matters are arranged under large headings "Treasured Famous Paintings Finally Coming to Japan" and "Great French Paintings from the Barnes Foundation": [i] an art critic's commentary titled "Fully Realizing the Greatness of Cezanne," [ii] a famous cartoonist's discourse titled "Color and Cartoony Composition: Excited about Rousseau," [iii] a young actress's discourse titled "P's 'The Ascetic': Want to Enjoy the Work Taking Plenty of Time Next Time," [iv] the color printed reproductions of the paintings of Matisse, Renoir, Cezanne, and Rousseau and Painting 2, [v] a box that lists the term, venue, hosts, sponsors, supporters, etc., and admission fees of the Exhibition, and [vi] a box that brackets such information as the places where advance tickets are available, the places where admission coupons are available, and explanation about the collection of the Barnes Foundation. The young actress's discourse consists of 16 lines in the three-column format (approximately 75 mm by 105 mm), including the title and the photograph of the actress's face, and Painting 3 is printed on the right side thereof in the size of approximately 68 mm by 95

mm. The young actress's discourse starts with the statement to the effect that she went to Paris and viewed the Exhibition and is followed by the statement "What attracted me the most in the Exhibition was 'The Ascetic,' which is a work representing P's blue period. What I felt then was similar to what I experienced when I participated in a tour of art museums in six European countries two years ago in the summer during my junior year at Seijo University (majoring in western art history). I was deeply moved by a group of works of van Gogh in his last days, and decided to select van Gogh as the theme of my graduation thesis." Furthermore, the discourse ends with the statement that she wants to appreciate the Exhibition as much as she can.

(ii) According to said article, said actress's discourse is an expression involving some degree of creativity and falls under a work. However, the depiction concerning Painting 2 is nothing more than the fact that said actress was attracted the most by said painting among the paintings in the collection and had a feeling that is similar to the feeling she had when deciding to select van Gogh as the theme of her university graduation thesis. Therefore, the discourse includes very little element of a new creation in the part concerning Painting 2, and it is hardly necessary to quote a reproduction of Painting 2 in consideration of the content of the discourse. Regarding appearance, although the discourse is slightly bigger in size on paper than Painting 2, Painting 2 is printed in color and those who read said article may be considered to be more impressed by Painting 2 than the discourse. Taking these points into account, there is no relationship between the discourse and Painting 2 wherein the former is superior and the latter is subordinate. Rather, it is recognized that the emphasis was put on the printing of Painting 2 through reproduction, and such exploitation cannot be considered to fall under the quotation prescribed in Article 32, paragraph (1) of the Copyright Act. Therefore, a defense of exploitation through quotation is unacceptable.

Moreover, the content of said article can never be considered to be a reporting of current events. Consequently, a defense of exploitation for reporting current events is also unacceptable.

(3) Regarding printing of Painting 3 in the December 2, 1992 issue

(i) According to Exhibit Ko 8, whose establishment is agreed on by the parties, the following facts are recognized.

In the upper left part on the front page of the morning edition of the December 2, 1992 issue, an article, which consists of the four-column text with the place of dispatch and the name of the writing reporter written at the beginning and the color printed illustrations of three paintings, including Painting 3, was printed under a five-column headline "Phantasmal Collection of the Barnes Foundation Coming to Japan" and

subheads "80 Famous Paintings, Including Cezanne's, Are Shown to the Public" and "January 1994: National Museum of Western Art."

Said article starts with the following statements: "The Barnes Foundation in the United States possesses first-rate paintings, such as works by Cezanne and Matisse, and it is known for its "phantasmal collection" that cannot be viewed even in art collection books. The 'Great French Paintings from the Barnes Foundation' is to be held in January 1994 at the National Museum of Western Art in Tokyo, and works selected from those paintings will be shown to the public. Yomiuri Shimbun and said museum, who host the exhibition, reached a basic agreement with the foundation by December 1. The foundation is scheduled to make public its idea of the first world tour exhibition, including Japan, on December 3rd in the United States, which will inevitably attract art admirers' attention throughout the world." The article then introduces the Barnes Foundation, followed by the following explanations:[i] The collection is very high in quality, but has been shown only to a limited number of persons on weekends; in accordance with Barnes' will, the paintings are prohibited from being lent to other museums and being printed in art collection books as well as being sold; therefore, the reality of the paintings has not been made known; [ii] The collection has come to be shown to the public for the first time because of a remodeling of the gallery due to aging, and the exhibition in Tokyo will be held for the period from January to April of the year after next, following the exhibitions held at the National Gallery of Art in Washington DC and at the Musée d'Orsay in France next year; [iii] The total number of works possessed by the Barnes Foundation exceeds 2,500, including 180 works of Renoir and 69 works of Cezanne. The article is closed with the statement "Out of these works, a total of 80 works are exhibited this time, including 20 works of Cezanne, such as 'The Card Players,' 16 works of Renoir, such as 'Start in Life of Students of School of Music,' 14 works of Matisse, such as 'The Joy of Life,' Seurat's 'Models,' van Gogh's 'The Postman (Joseph-Étienne Roulin),' Rousseau's 'Scouts Attacked by a Tiger,' and P's 'Acrobat and Young Harlequin.' All of these paintings are masterpieces that are shown to the public outside the United States for the first time."

In addition, for the illustrations of the paintings, Painting 3 is printed in the size of approximately 98 mm by 57 mm, Cezanne's "The Card Players" is printed in the size of approximately 97 mm by 135 mm, and Renoir's "Start in Life of Students of School of Music" is printed in the size of approximately 85 mm by 54 mm.

(ii) According to said facts, said article reports mainly the fact that it was decided by the previous day that the Exhibition to show to the public the works selected from the collection of the Barnes Foundation, which includes excellent works but cannot be

viewed even in art collection books, will be held in January 1994 at the National Museum of Western Art in Tokyo, as well as the background to the showing of the collection, the fact that the collection will also be shown to the public in Washington DC and Paris, and the major works to be exhibited and the painters thereof. Therefore, said article should be considered to fall under the reporting of "current events" set forth in Article 41 of the Copyright Act. In said article, Painting 3 is cited as one of the seven works of famous painters that are introduced in the article with their names cited, which are included in the 80 paintings to be exhibited at the Exhibition. Therefore, Painting 3 should be considered to fall under the "work that comprises the event" set forth in said Article. Moreover, taking into account the fact that the size of reproduced Painting 3 is as stated above, comparison with the size of the entirety of said article, and the paper quality of said article (said article is on ordinary newspaper though it is printed in color), said reproduction is recognized as having been made "to the extent that it is justified from the perspective of the aim to report the news."

Therefore, regarding the exploitation of Painting 3 in said article, there is a reason for a defense of exploitation for reporting current events.

(iii) The plaintiff alleges that said article does not fall under the reporting of current events, taking into account that the number of articles on the Exhibition that were printed in the defendant's newspaper is larger than the number of articles on exhibitions hosted by other newspaper companies printed in the defendant's newspaper and that said article was printed before the start of the Exhibition. However, even if articles on the Exhibition are frequently printed, said article is to report a current event that is relatively worthy of reporting, i.e. the fact that it was decided that the collection of the Barnes Foundation would be shown to the public in Japan, though the Exhibition is held by the defendant. Therefore, said article is not recognized as having inordinately made the Exhibition into an event. Taking into account that said article was printed one year and one month before the holding of the Exhibition, it is rather recognized as having little advertising element. Consequently, the plaintiff's allegation is unacceptable.

(4) Regarding printing of Painting 3 in the November 3, 1993 issue

(i) According to Exhibit Ko 9, whose establishment is agreed on by the parties, the following facts are recognized. A three-column 32-line article (approximately 100 mm by 153 mm) is printed in the center of the central column on page 30 of the morning edition of the November 3, 1993 issue. The article is boxed by a ruled line and thereby clearly distinguished from other articles. The heading "World Debut: Great Master's Hall of Fame: Great French Paintings from the Barnes Foundation: Renoir, Cezanne, Seurat, Matisse, P" is written in one-third from the right of the article. The text

"Exhibition of the Phantasmal Collection: Advance Ticket Sales Starts Today" is horizontally written in the center of the upper ruled line. The names of the hosts "Hosted by the National Museum of Western Art and Yomiuri Shimbun" are horizontally written in the center of the lower ruled line. The following text in the style of an announcement by the hosts is printed on the right side of said heading: "The 'Great French Paintings from the Barnes Foundation' will be held at the National Museum of Western Art in Ueno, Tokyo, in January next year in commemoration of the 120th anniversary of the first issue of Yomiuri Shimbun. Advance tickets sales will start today on the 3rd. The Barnes Foundation is said to be the world's greatest in terms of the private collection of impressionist and post-impressionist works, and possesses many representative works of Renoir and other painters. This exhibition will be held only in Tokyo, and well-selected 80 works will be shown to the public." Painting 3 is reproduced in the size of approximately 61 mm by 30 mm by color printing in the center of the entire box, and the venue, term, sponsors, special supporters, supporters, cooperators, admission fees, the places where advance tickets are available, the places where admission coupons are available, and other matters are described in the remaining space.

(ii) According to said facts, in said article, descriptions other than Painting 3 are, as a matter of form, formulaic greetings whereby the National Museum of Western Art and the defendant, both of which are the hosts of the Exhibition, announce the start of sale of advance tickets for the Exhibition. The content of said article is nothing more than the communication of the name of the collection and its brief introduction and other facts concerning the Exhibition. Therefore, said article cannot be considered to be a work in which thoughts or sentiments are creatively expressed. Consequently, said reproduction of Painting 3 cannot be considered to be a quotation in the defendant's own work, and a defense of exploitation through quotation is unacceptable.

Moreover, as mentioned above, the content of said article is the announcement of the fact that the hosts of the Exhibition will start selling advance tickets on that day, and said article is not an objective reporting though it is an advance notice of an event of the day. Said article is rather recognized, in a favorable attitude, as the hosts' announcement or greetings, and may also be recognized as an article for advertising the start of advance sale of admission tickets for the Exhibition hosted by the defendant. Therefore, at any rate, said article cannot be considered to fall under the "reporting of current events" set forth in Article 41 of the Copyright Act. Moreover, the reproduction of Painting 3 can also not be recognized as falling under a work that comprises the event or a work seen or heard in the course of the event. A defense of exploitation for

reporting current events is also unacceptable.

(5) Regarding printing of Painting 3 in the January 22, 1994 issue

According to Exhibit Ko 10, whose establishment is agreed on by the parties, the following facts are recognized. An article titled "Treasured Famous Paintings—From the Great French Paintings from the Barnes Foundation 4" is printed in the size of 6 columns by 25 lines in the upper right of page 10 of the evening edition of the January 22, 1994 issue. Painting 3 is reproduced in the size of 4 columns by 17 lines by color printing in the upper-left part of said article. Said article has a headline "Beyond the Ability to Describe," and the text of said article consists of 40 lines. Said article introduces the following facts: [i] Barnes, who was qualified as a doctor, transformed himself into a large-scale collector after becoming successful in life before age 40; [ii] Barnes, who developed a new drug and became rich, achieved a good living but started to feel unsatisfied with such living; his passion for paintings, which he had loved since his childhood, came back, and he started painting again; however, he came to be dissatisfied with only painting his own works, and started seeking excellent paintings. Following that, said article is closed with the following statement: "'Excellent painting' is a perfect word for" Painting 3;"It goes without saying that P was the genius of description. However, there is something about this painting that goes beyond the ability to describe. The identity of the content of the painting that touches my mind is called 'love' here. Out of two great masters who represent the paintings of the century, P and Matisse, Barnes favored Matisse. However, he had no choice but to acknowledge with an open mind that this masterpiece is excellent." Said article is recognized as a byline article of a cultural news reporter.

(ii) According to said facts, said article explains the background to Barnes' having become a collector of paintings in an abstract form. Painting 3 is predicated only in the following part: Although Barnes started seeking excellent paintings, excellent painting is a "perfect word for" Painting 3, and "there is something about this painting that goes beyond the ability to describe. The identity of the content of the painting that touches my mind is called 'love' here." The content is ambiguous and abstract, and even if the title of Painting 3 in said predicating part is replaced with the title of another work of P among the Paintings, said part also works out as a text. Therefore, said article is inevitably considered to be an article intended only to introduce Painting 3 in the newspaper. In said article, there is no relationship between the part concerning Painting 3 and the reproduction of Painting 3 wherein the former is superior and the latter is subordinate. They are rather recognized as being in the relationship wherein the former is subordinate and the latter is superior. Therefore, exploitation of Painting 3 in said

article is hardly recognized as falling under the quotation prescribed in Article 32, paragraph (1) of the Copyright Act. Consequently, a defense of exploitation through quotation is unacceptable.

Moreover, said article is printed as a series under the title "Treasured Famous Paintings—From the Great French Paintings from the Barnes Foundation." The content thereof also does not fall under the reporting of current events at any point. Therefore, a defense of exploitation for reporting current events is also unacceptable.

(6) Regarding printing of Painting 4 on the January 1, 1994 issue

(i) According to Exhibit Ko 11, whose establishment is agreed on by the parties, the New Year's special edition (fourth part) for the morning edition of the January 1, 1994 issue features the Exhibition. A two-page spread consisting of pages 2 and 3 of said special edition is titled "The World Meets This Beauty for the First Time," and Painting 4 is reproduced in the size of approximately 141 mm by 100 mm by color printing roughly in the center of page 2. The reproductions of the paintings of Renoir, Matisse, van Gogh, and Lautrec are printed in color around the reproduction of Painting 4. The reproductions of the paintings of Cezanne, Manet, and Modigliani are printed in color in the space slightly larger than the right-side half of page 3, and on the left of the reproductions, there is a byline article of a cultural news reporter titled "Collection of Foresight and Fighting Spirit." On the left of said byline article, the reproductions of the paintings of Gauguin and Rousseau are printed in color, and the term, venue, hosts, sponsors, etc., admission fees, the places where advance tickets are available, and the places where admission coupons are available are also described.

The first half of said article introduces the following facts: [i] The collection of the Barnes Foundation centers on western modern paintings, mainly impressionist and post-impressionist paintings, and the big three painters in these schools of painting, Renoir, Cezanne, and Matisse, were Barnes' most favorite painters; [ii] Barnes' collection is not necessarily one that caught cutting-edge art at the time, as Barnes was not at all interested in cubism and futurist works though cubism and futurism were positioned as avant-garde art around 1912 when Barnes started buying works; [iii] However, Barnes' collection is rich in pioneer spirit, and in particular, his early attention to the School of Paris, including Modigliani and Soutine, implies his foresight; [iv] Although some criticized the collection as being decadent, Barnes' fighting spirit of shutting those who criticized the collection out of the works left many interesting stories. The second half of said article starts with the statement "The quality of the works exhibited in this exhibition is high as might be expected." It introduces paintings reproduced by color printing in order of precedence. However, Painting 4 is described



only as follows: "P's 'Girl with a Goat' shows the appearance of the great master the night before cubism."

(ii) According to the facts determined above, said pages 2 and 3 comprise a feature article intended to introduce 10 paintings (one painting per famous painter), including Painting 4, out of the paintings exhibited at the Exhibition by reproducing them in the newspaper. In said article, there is no relationship between the part concerning Painting 4 and the reproduction of Painting 4 wherein the former is superior and the latter is subordinate. They are rather recognized as being in the relationship wherein the former is subordinate and the latter is superior. Therefore, exploitation of Painting 4 in said article is hardly recognized as falling under the quotation prescribed in Article 32, paragraph (1) of the Copyright Act. Consequently, a defense of exploitation through quotation is unacceptable.

Incidentally, a copy of only the right half of said two-page spread, i.e. page 2, is submitted as Exhibit Ko 11. Focusing attention only on said page, it is determined that the part excluding the reproductions of the paintings, including Painting 4, is only data on the painters, titles, year of creation, and actual size of the paintings. Therefore, there is no work that exploits Painting 4 through quotation. Consequently, it is obvious that a defense of exploitation through quotation is not established.

Moreover, the content of said article does not fall under the reporting of current events in any way. Therefore, a defense of exploitation for reporting current events is also unacceptable.

(omitted)

## 9. Conclusion

Therefore, there is a reason for the plaintiff's claims in question to the extent of seeking payment of the damage of 10,090,000 yen with delay damages accrued thereon at the rate of 5% per annum as prescribed in the Civil Code for the period from October 15, 1994, which is the day following the date of service of the complaint and after the tort, to the date of completion of the payment as well as the injunction and destruction, for which the court determined that there is a reason in 7. above. Consequently, these plaintiff's claims shall be upheld. Other claims of the plaintiff shall be dismissed as they are unreasonable. The judgment shall be rendered in the form of the main text by applying Article 61 and the main clause of Article 64 of the Code of Civil Procedure in relation to the bearing of the court costs and Article 259, paragraph (1) of said Code in relation to a declaration of provisional execution, respectively.

Tokyo District Court

Judge: NISHIDA Yoshiaki

Judge: YAGI Kimiko

Judge: OKINAKA Yasuhito

Attachments: List 1 and List 2

Indication of the Paintings

Title	Year of production
1. Young Woman Holding a Cigarette	1901
2. The Ascetic	1903
3. Acrobat and Young Harlequin	1905
4. Girl with a Goat	1906
5. Composition: The Peasants	1906
6. Head of a Man	1907
7. Head of a Woman	1907