

Date	October 27, 1994	Court	Tokyo High Court
Case number	1993 (Ne) 3528		
<ul style="list-style-type: none">– A case in which the court found infringement of copyright in a compilation with regard to the act of producing and distributing documents containing the abridged translation of articles on the pages of a daily newspaper issued by another company.– A case in which the court upheld a claim for an injunction against the act of producing and distributing the adaptation of the future issues of a daily newspaper based on the copyright that will come into existence in the future, on condition that the newspaper will continue to be issued in the future.			

References: Articles 12 and 112 of the Copyright Act, Article 226 of the Code of Civil Procedure

Summary of the Judgment

1. Since September 1986, the appellant has been engaged in the service of providing its members with the abridged translation of articles in the newspaper issued by the appellee (the "Appellee's Newspaper"; a document containing such translation is referred to as the "Appellant's Document").
2. The entire content of the issue of the Appellee's Newspaper under a certain date is considered to be a compilation.
3. In this case, the following facts can be found: [i] the Appellant's Document clarifies that it is based on the Appellee's Newspaper issued on a certain date; [ii] there are only few articles, etc. that are contained in the Appellee's Newspaper but omitted in the Appellant's Document and the Appellant's Document does not include any article, etc. that is not contained in the Appellee's Newspaper; [iii] the content of most of the descriptions in the Appellant's Document allows readers to roughly capture the core content of the information presented in the corresponding articles etc. in the Appellee's Newspaper and readers can obtain an overview of the events covered in the Appellee's Newspaper issued on a certain date; [iv] the Appellant's Document categorizes the items corresponding to the articles contained in the Appellee's Newspaper under titles that are similar to the titles used in the Appellee's Newspaper and said items are arranged in almost the same order as the order of arrangement of articles in the Appellee's Newspaper. Based on these facts, it is found that: [i] the Appellant's Document was created based on the Appellee's Newspaper; [ii] the content of the Appellant's Document is consistent with the expressions concerning the objective events that are presented in the articles as a result of being selected as information worth containing in the Appellee's Newspaper as the article's core content; and [iii] the

arrangement of the Appellant's Document is similar to that of the articles, etc. in the Appellee's Newspaper. Therefore, the Appellant's Document constitutes an adaptation of the corresponding issue of the Appellee's Newspaper on a certain date. Consequently, the production and distribution of the Appellant's Document constitutes an infringement of the copyright in a compilation concerning the Appellee's Newspaper.

4. In the case of a newspaper, when there is a situation where it is highly likely that editors will select and arrange the content based on the same certain editorial policy that has been maintained from before and accordingly said newspaper will be published as a compilation with creativity, while at the same time, the act of infringement of the copyright in a compilation has been constantly conducted for each issue of said newspaper newly published and thus it is predicted that an act of infringing copyright in a compilation that is similar to said act will be also conducted concerning the future issues of the newspaper, it is appropriate to construe that a copyright owner can seek the prevention of a possible act of infringement, as an action for future performance, based on the condition that said newspaper will be published in the future, when the followings are taken into account: [i] the purpose of the provisions of Article 112 of the Copyright Act and Article 226 of the Code of Civil Procedure; [ii] the fact that it would be practically impossible to provide relief to the copyright owner if the responsibility for an infringement had to be questioned only after the generation of the copyright, since newspapers are published regularly, constantly and repeatedly in short periods; and [iii] the fact that it is difficult to find that there is a risk of causing confusion concerning a legal relationship or harming the equity between the parties by treating a newspaper as having the nature of a compilation if it is fully expected that certain editorial policy will not be changed in the future, even when the specific content itself in the newspaper will be changed.

In this case, the following facts can also be found: [i] it is appropriate to find that with regard to the future issues of the Appellee's Newspaper that will be published by the appellee as well, the same kind of copyright in a compilation as that of the past issues will arise; [ii] it is found that the appellant will most probably conduct the same act of infringement of the copyright in a compilation by producing and distributing the Appellant's Document in the same manner as in the past based on the Appellee's Newspaper each time its new issue is published in the future; and [iii] it is practically extremely difficult for the appellee to file a claim seeking, and to achieve the purpose of said claim for, the prevention or discontinuation of the production and distribution of the corresponding issues of the Appellant's Document each time a new issue of the

Appellee's Newspaper is published. Taking all these facts into consideration, based on the condition that the Appellee's Newspaper will continue to be published in the future, the appellee is entitled to seek, as an action for future performance, the prevention of the act of producing and distributing the Appellant's Document corresponding to said Appellee's Newspaper to be published in the future.

Judgment rendered on October 27,1994

1993(Ne)3528

Judgment

(Indication of the parties is omitted)

Main text

This appeal shall be dismissed.

The costs of the appeal shall be borne by the appellant.

Facts

No. 1 Judicial decisions sought by the parties

1. The appellant

(1) The judgment in prior instance shall be revoked.

(2) The decision on provisional dispositions rendered by the Tokyo District Court on September 24, 1991, regarding the case between the appellant and appellee seeking provisional dispositions concerning a copyright (Tokyo District Court 1990 (Yo) 2550) shall be revoked.

(3) The petition for provisional dispositions in question made by the appellee shall be dismissed.

(4) The appellee shall pay the court costs for both the first and second instances.

2. The appellee

Same as the main text.

(omitted)

Reasons

1. According to the "Exhibits So-Ko 1 to 14, 20 to 28, 30, 33, and 46 to 48, Exhibit So-Otsu 101, and the entire import of the oral argument," the following facts can be found.

(1) The appellee is a company whose main office is located in the State of New York, the United States of America. It publishes business newspapers and more than 20 local newspapers and provides an information provision service using various media. In FY1987, its annual sales reached 1.3 billion dollars and the number of employees 9,000, and the company was ranked at 264th in the ranking of the 500 companies selected by the US business magazine Fortune.

The newspaper published by the appellee (the Appellee's Newspaper) has been continuously

in print since its first issue in 1889 and has grown to be the leading major daily newspaper in the US with a daily circulation of more than 2 million copies. The newspaper has a high reputation not only because of its quality as a medium, but also because of the quality of readers supporting it. Having been distributed in the US and many other countries, the Appellee's Newspaper has gained great influence.

The Appellee's Newspaper has maintained certain traditional editorial policy from before, which includes the following: [i] the newspaper is mainly composed of economic articles, and general social issues, such as sports and crimes, are not covered; [ii] it puts a high value on analyzing figures and facts behind information, capturing the trends accurately, and providing proper explanations; [iii] photographs are avoided in order to deliver as much information as possible; and [iv] large-scale characters are not used.

(2) The reporters working for the appellee prepare articles based on information collected through telephone and face-to-face interviews, press conferences, document research, etc. Articles thus prepared undergo a checking process, which involves reviews and correction by the manager in charge and the branch office manager, before they are sent to the appellee's Wall Street Journal News Office located in New York. In addition to these articles, said office also receives telegraph articles from AP, Reuters, etc. From this enormous amount of articles, the editors working for the appellee select the articles to be contained in the newspaper based on the editorial policy of the Appellee's Newspaper and the articles' value as news. Said editors devise the best arrangement of the selected articles based on their importance, nature and content, etc.

(3) The Appellee's Newspaper is composed of several dozen pages of A2 size paper. It covers economic news, international news, editorials and reviews, various quotations, including stock quotations and futures quotations, and advertisements. Among these, news reports, editorials and reviews account for a major portion.

The Appellee's Newspaper dated September 28, 1989 (Exhibit So-Ko 8) consists of 62 pages. The first page is divided into six columns. The second and third columns from the left are titled together as "What's News-," under which there are two columns titled "Business and Finance" and "World-Wide." The column titled "Business and Finance" features economic news and market conditions as described in No. 1 to 14 of Attachment (1), while the column titled "World-Wide" features international news, etc. as described in No. 15 to 26 of Attachment (1). The fifth column from the left is titled "Business Bulletin," which features seven news items. The first, fourth and sixth columns from the left have long special feature articles. Pages 2 to 26 feature articles containing detailed information concerning said economic news and

international news as described in Attachment (1) (for example, the details of items (i) and (ii) of Attachment (1) are given in items (i) and (ii) of Attachment (2), respectively). Said pages also contain other special feature articles, economic news that is considered to be important or urgent, international news, political news, leisure-related articles, editorials and reviews, advertisements, etc. (of which three items are also covered in pages 32, 33 and 35). Pages 27 to 33 mainly feature economic news that is less urgent under the title of "MARKETPLACE." Pages 35 to 62 are titled "MONEY & INVESTING" and these pages are mainly composed of articles on stocks, bonds, commodities, foreign exchange and other investment information. Said pages also include various quotations and advertisements.

As seen above, the Appellee's Newspaper can be divided into three parts in terms of content, namely, the part mainly composed of articles on economic news, international news, etc., and editorials and reviews, the part composed of articles on the marketplace ("MARKETPLACE"), and the part composed of articles on finance and investment ("MONEY & INVESTING"). The Appellee's Newspaper issued on said date has approximately 170 articles, etc. (articles, editorials and reviews).

The volume of the articles of said issue ranges widely, from the shortest article consisting of six lines (each line contains approximately 40 characters) to longer articles that continue for more than 300 lines.

(4) Under the name of "America wo yomu kenkyūkai" (literally meaning "a study group to read America"), the appellant has solicited members to receive the "headline service" (abridged translation service) for the Appellee's Newspaper, New York Times (weekdays and Sunday editions), etc. since September 1986 (the membership fee is 30,000 yen per newspaper). Each time one of said newspapers is issued, the appellant prepares, based on the Appellee's Newspaper, the Appellant's Document as shown in Attachment (3) (Attachment (3) is a part of the Appellant's Document), for example, and sends it to the members by mail or facsimile. The advertisements that the appellant has placed in magazines and newspapers concerning said service include the following sentences: "Abridged translation service covering all articles"; "We cover all articles without selecting or omitting them"; "Read today's America in five minutes"; and "Merits of reading information by 'headlines' are as follows. [i] Fuss-free: Abridged translation will enable you to grasp the articles of the day at a glance. [ii] Speedy information collection: Our service enables you speedier information collection than others'. [iii] All articles are covered: You can choose necessary information. [iv] Business hints: Hints for business are hidden in headlines. [v] Information with scarcity value: You can also get

information that is not covered by Japanese media. [vi] Use as an index: The headlines are short so they can also be used as a file index." The number of members of said study group had already reached more than 20 as of November 8, 1988.

(5) (i) The form of the Appellant's Document is as shown in Attachment (3). It describes the name of the Appellee's Newspaper, date and day (e.g. "Wall Street Journal on September 28, 1989 (Thursday)") at the top of the first page, clarifying that the document is about the Appellee's Newspaper issued on a certain date.

(ii) The Appellant's Document dated September 28, 1989 (Exhibit So-Ko 1) consists of 11 pages. Said document contains: [i] under the title of "[Front Page]," descriptions corresponding to the articles contained in Pages 1 to 26 of the Appellee's Newspaper issued on said date (Exhibit So-Ko 8), to which numbers from A1 to A78 are allotted respectively (however, three items are missing); [ii] under the title of "[マーケットプレース (Mākettopurēsu)]," descriptions corresponding to the articles contained in Pages 27 to 33 of said Appellee's Newspaper, to which numbers from B1 to B27 are allotted respectively; and [iii] under the title of "[マネー&インベスティング (Manē & Inbesutingu)]," descriptions corresponding to the articles contained in Pages 35 to 62 of said Appellee's Newspaper, to which numbers from C1 to C42 are allotted respectively.

Said descriptions marked with A1 to A78, B1 to B27 and C1 to C42 are arranged in almost the same order as the order of the arrangement of the articles, etc. in the Appellee's Newspaper (in the same order of pages, the items corresponding to articles, etc. contained in a single page are arranged in the order of left top, left bottom, right top and right bottom).

Items A1 to A13 stated under the title of "<Major Economic News>" in the "[Front Page]" section of said Appellant's Document correspond to the economic news contained in the "Business and Finance" column of said Appellee's Newspaper (No. 1 to 13 of Attachment (1)) and the articles explaining their details, and items A14 to A26 (A15 is missing) stated under the title of "<Major International News>" respectively correspond to the international news, etc. contained in the "World-Wide" column of said Appellee's Newspaper (No. 15 to 26 of Attachment (1)) and the articles explaining their details.

Said Appellee's Newspaper contains approximately 170 articles, etc., among which about 10 articles are omitted in the Appellant's Document. The Appellant's Document does not include any article, etc. that is not contained in the Appellee's Newspaper.

(iii) The Appellee's Newspaper uses such titles as "What's News-," "Business and Finance," "World-Wide," "MARKETPLACE," "MONEY & INVENSTING" as stated above. In addition

to these, the Appellee's Newspaper also uses such titles as "LEISURE & ARTS" and "REVIEW & OUTLOOK" in order to categorize the articles. The Appellant's Document uses the Japanese translation of these titles, "レジャー&アート" and "社説&論評."

The Appellant's Document does not include the advertisements and quotations contained in the Appellee's Newspaper.

(iv) Each item in the Appellant's Document consists of one to three lines (each line contains about 34 characters), which is found to be considerably short compared to the articles, etc. in the Appellee's Newspaper. The information contained in each item is not as detailed as the information contained in respective articles, etc., but most of the descriptions in the Appellant's Document consist of the abridged translation of the core content of the corresponding articles, etc. in the Appellee's Newspaper or such abridged translation with a few phrases changed or a description summarizing the core content of the entire article. From said descriptions, readers can capture the core content of the information presented in the articles, etc. in the Appellee's Newspaper (this fact can be recognized by, for example, comparing the descriptions in items (i) and (ii) as stated in Attachments (1) and (2), respectively, and the descriptions of items A1 and A2 of Attachment (3)). In addition to this, the Appellant's Document covers most of the articles contained in the Appellee's Newspaper. Therefore, it is found that the Appellant's Document enables readers to understand what kind of objective events are featured and what importance is placed on these events in the Appellee's Newspaper issued on a certain date.

(6) Although the appellant has repeatedly received requests for the discontinuation of the service from the appellee on the ground of infringement of copyrights since around April 1988, the appellant did not cease producing and distributing the Appellant's Document. Especially, although the appellant received a request for discontinuation by content-certified mail in May 1989 under the title "Warning Letter," the appellant sent to its members a document to the effect that the appellant "will discontinue the original article photocopy service and the complete translation service, but will continue the abridged Japanese translation service (production and distribution of the Appellant's Document) as an alternative service for those discontinued."

2. According to the above findings, the Appellee's Newspaper is composed of news articles, editorials and reviews, which account for a major portion of the newspaper, and some quotations and advertisements, etc. From among a number of articles, etc. that they receive, editors working for the appellee select articles that should be delivered as information according to the certain editorial policy of the Appellee's Newspaper and the articles' value as news. Said editors then analyze the importance, nature and content, etc. of individual articles, etc. to

categorize them and arrange them on the paper. Since such composition of the Appellee's Newspaper is an outcome of said editors' mental activities, which forms the unique characteristics of the Appellee's Newspaper, it is appropriate to say that the entire newspaper on a certain date is a compilation that, by reason of the selection or arrangement of its contents, constitutes an intellectual creation. It should be said that the copyright in said compilation belongs to the appellee that publishes the Appellee's Newspaper.

3. Accordingly, the court will firstly examine whether an injunction against the production, etc. of the Appellant's Document can be granted based on the copyright in compilation with respect to the Appellee's Newspaper that has already been issued.

The purpose of a newspaper is to promptly and widely deliver various events that happen in society in each day. Therefore, it is construed that the most important factor in order for a newspaper to be recognized as having creativity as a compilation by reason of the selection of its content lies in the question of what events the newspaper selects and expresses as information worth delivering from among the information presented in an enormous number of collected articles, which are in other words the content, based on certain editorial policy or their value as news, etc. In terms of the arrangement, the most important factor lies in the question of how the selected information (articles) is arranged according to its importance, nature and content, etc.

Since the above is the reason why the Appellee's Newspaper is found to have a nature of compilation under the Copyright Act, it is relevant to construe that whether the production and distribution of the Appellant's Document infringes the copyright in compilation concerning the Appellee's Newspaper, or in other words, whether the Appellant's Document constitutes an adaptation of the Appellee's Newspaper, should be determined with the following factors in mind: [i] whether the Appellant's Document was created based on the Appellee's Newspaper; [ii] whether the content of the Appellant's Document is consistent with the expressions concerning the objective events that are presented in the articles as a result of being selected as information worth containing in the Appellee's Newspaper as the article's core content; and [iii] whether the arrangement of the Appellant's Document is identical or similar to that of the articles, etc. in the Appellee's Newspaper.

Meanwhile, according to the findings as stated in 1(5) above, which include [i] that the Appellant's Document clarifies that it is based on the Appellee's Newspaper issued on a certain date; [ii] that there are few articles, etc. that are contained in the Appellee's Newspaper but omitted in the Appellant's Document and the Appellant's Document does not include any article,

etc. that is not contained in the Appellee's Newspaper; [iii] that the content of most of the descriptions in the Appellant's Document allows readers to roughly capture said core content of the information presented in the corresponding articles etc. in the Appellee's Newspaper and readers can obtain an overview of the events covered in the Appellee's Newspaper issued on a certain date; and [iv] that the Appellant's Document categorizes the items corresponding to the articles contained in the Appellee's Newspaper under titles that are similar to the titles used in the Appellee's Newspaper and said items are arranged in almost the same order as the order of arrangement of articles in the Appellee's Newspaper, the following facts can be found: [i] the Appellant's Document was created based on the Appellee's Newspaper; [ii] the content of the Appellant's Document is consistent with the expressions concerning the objective events that are presented in the articles as a result of being selected as information worth containing in the Appellee's Newspaper as the article's core content; and [iii] the arrangement of the Appellant's Document is identical or similar to that of the articles, etc. in the Appellee's Newspaper. Therefore, it is relevant to find that the Appellant's Document constitutes an adaptation of the corresponding Appellee's Newspaper issued on a certain date and the production and distribution of the Appellant's Document constitutes an infringement of the copyright in compilation concerning the Appellee's Newspaper.

4. Next, the court will examine whether an injunction against the act of producing and distributing the Appellant's Document in the future can be granted.

(1) Since Article 112 of the Copyright Act provides that a copyright owner may file a claim against a person who is likely to infringe the copyright for the prevention of such infringement, it is obviously possible for a copyright owner to file a claim seeking the prevention of possible infringement as long as the copyright has already been generated, even if the act of infringement per se has not been conducted yet.

The question is whether a copyright owner is entitled to claim an injunction as an action for future performance even when a work that provides a ground for such claim has not yet come into existence as of the time of conclusion of oral argument but will be generated in the future.

Article 226 of the Code of Civil Procedure provides that an action for future performance may be filed only where it is necessary to make a claim therefor in advance. However, in order for such a claim to be accepted, it is required as a premise that there exists a factual or legal relationship that provides the foundation for the generation of the right (relationship as foundation of a claim). Therefore, it is impossible to unconditionally grant an injunction based on a copyright that is expected to be generated in the future.

However, in the case of a newspaper, when there is a situation where it is highly likely that editors will select and arrange the content based on the same certain editorial policy that has been maintained from before and thereby said newspaper will be published as a compilation with creativity, while at the same time the act of infringement of the copyright in compilation has been constantly conducted each time a new issue of said newspaper was published and thus it is predicted that an act of infringing copyright in compilation that is similar to said act will be also conducted concerning the future issues of the newspaper, it is relevant to construe that a copyright owner can seek the prevention of a possible act of infringement, as an action for future performance, based on the condition that said newspaper will be published in the future, when the followings are taken into account: [i] the purpose of the provisions of Article 112 of the Copyright Act and Article 226 of the Code of Civil Procedure; [ii] the fact that it would be practically impossible to provide relief to the copyright owner if the responsibility for an infringement had to be questioned only after the generation of the copyright, since newspapers are published regularly, constantly and repeatedly in short periods; and [iii] that it is difficult to find that there is a risk to cause confusion concerning a legal relationship or harm equity between the parties by finding that a newspaper is deemed to have the nature as a compilation if certain editorial policy will not be changed in the future, even when the specific content itself in the newspaper will be different.

(2) In this case, it should be said that the appellee is entitled to, based on the condition that the Appellee's Newspaper will be published in the future, seek as an action for future performance the prevention of the act of producing and distributing the Appellant's Document corresponding to said Appellee's Newspaper to be published in the future, based on a comprehensive evaluation of the following facts. [i] In light of the fact that [a] the appellee is a major media company with 1.3 billion dollar annual sales that is ranked at 264th in the ranking of the 500 companies selected by Fortune magazine and [b] the Appellee's Newspaper is the leading major daily newspaper that has been continuously in print since its first issue in 1889 and it has traditionally maintained certain editorial policy, it is found that it is highly likely that this certain editorial policy that has been used from before will be maintained and the Appellee's Newspaper will continue to be published as a newspaper that is found to be creative by reason of the selection and arrangement of the content. Therefore, it is relevant to find that the future issues of the Appellee's Newspaper that will be published by the appellee will also obtain the same kind of copyright in compilation as that of the past issues. [ii] As found and explained above, the appellant has continuously produced and distributed the Appellant's Document each time a new

issue of the Appellee's Newspaper was issued since September 1986 and this act constitutes an infringement of the copyright in compilation concerning the Appellee's Newspaper. In addition, after receiving the appellee's request for the discontinuation of the service the appellant stopped its service of sending a copy of the original articles, etc., but did not relinquish the production and distribution of the Appellant's Document; it even sent to its members, or its customers, a document to the effect that it will continue to provide service involving such act. When taking into account these facts, it is found that the appellant will most probably conduct the same act of infringement of the copyright in compilation by producing and distributing the same Appellant's Document as the past ones created based on the Appellee's Newspaper each time its new issue is published in the future. [iii] Since the Appellant's Document is produced and distributed immediately after the Appellee's Newspaper is issued, it has to be said that it is practically extremely difficult for the appellee to file a claim seeking, and to achieve the purpose of said claim for, the prevention or discontinuation of the production and distribution of the corresponding issues of the Appellant's Document each time a new issue of the Appellee's Newspaper is published.

(3) The appellant asserts that [i] since copyrights are generated based on the fact of the creation of works, it is impossible, in accordance with the Copyright Act, to grant a protection as a work when a work has not yet come into existence or when even its content is unknown; and [ii] a claim seeking an injunction based on a copyright in compilation concerning the future issues of the Appellee's Newspaper has no reason, because a claim seeking the elimination of copyright infringement that may occur in the future after the creation of work, which is made at a time when a work has not yet been created, is not found to be a dispute concerning a specific legal relationship (Appellant's Allegation 5).

However, the claim seeking the prevention based on a copyright in compilation that will be generated due to the future publication of the Appellee's Newspaper is accepted based on [i] the premise that it is relevant to find that the future issues of the Appellee's Newspaper that the appellee will publish will obtain a similar copyright in compilation to the ones the past issues obtained due to the reason as stated in 2 above; and [ii] the condition that the Appellee's Newspaper will be published in the future, as this is the case where there is a need for an action for future performance. Since the requirements for a dispute concerning a specific legal relationship are satisfied in the first place, the appellant's allegations as stated above do not have any reason.

(omitted)

(6) The appellant asserts that the Appellant's Document constitutes a fair exploitation due to the ground as stated in Appellant's Allegation 8.

Article 1 of the Copyright Act provides that the purpose of the Copyright Act is "to ensure protection for the rights of authors, etc. while according attention to the fair exploitation of these cultural products, and thereby to contribute to the development of culture" and Article 30 and subsequent Articles of the same Act provide provisions concerning the limitations of copyrights based on the legislative purpose of the Act. It is not appropriate to conclude immediately based on these provisions that the doctrine of fair use is generally accepted in Japan, too. Since the limitation on fair use of copyrights stands on the adjustment of conflicting interests between the interests of the copyright owner and the demand within the public, it is relevant to construe that, in order for said doctrine to be applied, the requirements for application must be clearly stipulated. As there is no such provision under the Japanese law, it is impossible to adopt the doctrine of fair use.

It should be also added, by way of caution, that Section 107 of the Copyright Law of the United States stipulates that whether the use made of a work is a fair use must be determined by considering the following factors: (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work (Exhibit So-Otsu 128-1). The appellant asserts that the doctrine of fair use should be adopted in this case when said criteria are applied as a premise. However, the Appellant's Document cannot be found to constitute a fair use, even based on said criteria and taking into account that the main purpose of the Appellee's Newspaper is to report news and that the Appellant's Document is useful to some extent, when considering the following facts. [i] It is not deniable that the Appellant's Document has used the Appellee's Newspaper for a commercial purpose. [ii] Although the volume of the Appellant's Document is much smaller than that of the Appellee's Newspaper, each description in the Appellant's Document expresses the core content of the information that the articles, etc. in the Appellee's Newspaper try to convey, rather than just enabling readers to access the news contained in the Appellee's Newspaper. Readers can obtain an overview of the events that are covered in the Appellee's Newspaper issued on a certain date. [iii] As found in 1 above, the appellant has placed advertisements that can be

interpreted as saying that readers will not even have to subscribe to the Appellee's Newspaper, if they subscribe to the Appellant's Document, in order to capture the content of the articles contained in said newspaper. [iv] If the appellant continues to produce and distribute the Appellant's Document in the future, it would give rise to a risk that the subscribers to the Appellee's Newspaper switch their subscription to the Appellant's Document or potential subscribers to the Appellee's Newspaper subscribe to the Appellant's Document.

Therefore, Appellant's Allegation 8 does not have any reason.

7. Based on the above findings, the judgment in prior instance is justifiable, which rendered an order for injunction against the production and distribution of the document as described in the List of Document (1) attached to the judgment in prior instance and injunction against the production and distribution of the document as described in the List of Document (2) attached to the same judgment based on a condition that the Appellee's Newspaper marked with a certain date will be published. The judgment shall be rendered in the form of the main text by dismissing the appeal in question due to the lack of reason and applying the provisions of Article 95 and Article 89 of the Code of Civil Procedure with respect to the burden of the court costs.

Tokyo High Court

Judges: ITO Hiroshi, HAMASAKI Koichi and OSHIKIRI Hitomi

(omitted)

Attachment (3) ■ ■ Wall Street Journal on September 28, 1989 (Thursday) ■ ■

America wo yomu kenkyūkai

[Front Page]

<Major Economic News>

A1. IBM says profit for 3rd quarter and for the year will be well below forecasts

A2. Sony concludes a final agreement on the acquisition of Columbia Pictures; the company is sold for 3.4 billion dollars, the highest ever value for a Japanese company

A3. Braniff to reduce flights in most routes, giving rise to speculation over financial crunch

A4. OPEC decides on raising the upper limit on production volume; members fail to agree on the revision of quota for increasing oil price

A5. Corporate buyer [P3] receives 4 years in prison, is fined 1.5 million dollars on a charge of unfair securities trading

A6. US House votes to repeal tax benefit proviso, section 89, that encourages extra allowances for corporate executives

A7. Goldman Sachs and three other securities firms plan to establish a joint venture for selling securities price statistics

A8. Kraft General Foods appoints current president [P4] to chairman and CEO posts

A9. Toyota increases automobile price by up to 2.5% for the next year, aiming to expand its share of the US market

A10. Dollar sinks amidst coordinated intervention by central banks – Stock prices stay stable, while bond prices go down

A11. Pepsi launches trial sale of decaffeinated drink PEPSI AM in the Mid West

A12. Apple isn't investing in US Memories, joint venture formed in June to battle Japanese chip companies

A13. Chairman [P25] of Saks Fifth Avenue plans leveraged buyout of the company

<Major International News>

A14. President [P6] calls on the International Monetary Fund and the World Bank to work rapidly with Poland to help it mend its economy

A15. = missing =

A16. The Senate approves a \$3.18 billion anti-drug and anti-crime initiative, while cutting domestic and defense spending accounts

A17. President [P6] meets Governors, calling for the improvement of education standards of the States

A18. Slovenia demands split from Yugoslavia, accelerating concerns over domestic political situation

A19. Thousands of people participate in a demonstration against apartheid in South Africa conducted in Cape Province in East London

A20. 2,000 demonstrators against the stationing of US Forces in Manila clash with police; more than 150 people arrested

A21. Colombian government signs a peace treaty with guerrilla troops, demanding disarmament in return for remedies for farmers and the poor

A22. A tourist plane crashes in the Grand Canyon; at least 10 people dead, 11 people severely injured

A23. Areas of South Carolina hit by Hurricane Hugo last week receive clothes and plywood from the rescue team

A24. Former high official of HUD refuses to answer questions before a House subcommittee probing influence peddling at the housing agency

A25. Secretary of State [P13] calls for financial cooperation to help [P26] in the Nicaraguan president election in February next year

A26. Senator [P15] calls on the government to suspend trade restrictions against the Soviet Union, criticizing President [P6] for his overly cautious policy toward the union

<Features>

A27. COMECON aims to conduct a reform amid the political changes in Eastern Europe, but sees a rough road ahead while the gap in economic strength from the EC still remains