

Date	February 25, 2016	Court	Tokyo District Court, 47th Civil Division
Case number	2013 (Wa) 21900		
<p>– A case in which the court dismissed the claim for distribution of proceeds (principal claim) based on joint copyright, which was made by the person who was involved in the production and development of a game, but partially upheld his/her claim for payment of reward (alternative claim) based on a reward agreement.</p>			

#### Summary of the Judgment

In this case, the plaintiff, who was involved in the development of a social application game (hereinafter referred to as the "Game") (at the time of the development of the Game, the plaintiff was not employed by the defendant but assumed the post of the defendant's director ex post facto), made the following allegations against the defendant who delivers the Game on the Internet: [i] principally, the plaintiff is one of the joint authors of the Game and co-owns the copyright of the Game and thus the plaintiff has the right to receive the payment of money in an amount equivalent to at least 60% of the proceeds generated by the Game; and [ii] alternatively, even if the plaintiff is not one of the joint authors of the Game, there is an agreement regarding rewards between the plaintiff and the defendant, and even if there was no such agreement, the plaintiff has the right to receive a reward based on Article 512 of the Commercial Code. Based on these allegations, the plaintiff sought payment of money in an amount equivalent to 60% of the profits gained by the defendant from the Game for the period from the commencement of delivery of the Game until the last day of July 2013 and delay damages accrued thereon (at the rate of 5% per annum principally and 6% per annum alternatively) based on the right to claim distribution of proceeds based on the copyright (principal claim) or the right to claim rewards based on a reward agreement, etc. (alternative claim).

In this judgment, the court held as follows and found that the plaintiff's principal claim lacks legal basis: Since Article 15, paragraph (1) of the Copyright Act apply to the Game, the copyright of the Game should be found to belong to the defendant and thus the plaintiff's principal claim, which is based on the premise that the plaintiff is the copyright holder of the Game, lacks legal basis. Yet, even if said provision does not apply, the Game falls under a "cinematographic work" and the defendant is the producer of said cinematographic work. The plaintiff has made a promise to the defendant, who is the producer of a cinematographic work, to participate in the production of the Game, and thus even if the plaintiff is the author of the Game, which is a cinematographic work, the copyright thereof belongs to the defendant pursuant to

Article 29, paragraph (1) of the Copyright Act. As described above, the Game falls under a work made in the course of duty or a "cinematographic work" and thus the plaintiff does not hold the copyright of the Game in any case.

In addition, in this judgment, the court held that it is appropriate to find that there was an implicit agreement between the plaintiff and the defendant to pay a bonus of 3,000,000 yen for the development of the Game and a reward of 300,000 yen per month for the period during which said development took place. Based on this holding, the court upheld the claim for payment of reward in an amount of 4,200,000 yen in total by finding that, since the claim for payment of reward based on a reward agreement between the plaintiff and the defendant can be upheld, there is no need to determine the appropriateness of the plaintiff's claim that was made against the defendant based on Article 512 of the Commercial Code in case the first-mentioned claim was not upheld.