

Date	December 20, 2013	Court	Tokyo District Court
Case number	2012 (Wa) 268		29th Civil Division
– A case in which the court upheld the claim for damages by holding that the reproduction of the photographs of artistic works in an auction catalog constituted infringement of copyright (right of reproduction) for the relevant artistic works.			

In this case, the plaintiffs claimed against the defendant damages based on tort by alleging that the defendant's act of reproducing the photographs of the artistic works in an auction catalog ("Catalog") without obtaining from the plaintiffs the authorization to exploit the artistic works constituted infringement of the copyright (right of reproduction) held by the plaintiffs.

While this case covers a broad range of issues, the court found that there was an infringement of copyright (right of reproduction) with respect to the artistic works in question (however, the court upheld the application of Article 47-2 of the Copyright Act for one artistic work). Furthermore, with respect to the issue of whether or not the Catalog falls under the category of "pamphlets" as provided for in Article 47 of the Copyright Act, the court held as follows: Taking into account that the "pamphlets" as provided for in said Article are to be used "for the purpose of explaining or introducing them [artistic works] to viewers," it is appropriate to construe that those that shall be distributed to many people irrespective of whether or not they are viewers do not fall under the category of "pamphlets." Since the Catalog shall be distributed to the defendant's members regardless of whether or not they will participate in the auction in question or preview, it cannot be found to fall under the category of "pamphlets" as provided for in Article 47 of the Copyright Act. Based on this holding, the court rejected the defendant's allegation and upheld the plaintiffs' claim for damages.