

Date	April 25, 2000	Court	Tokyo High Court, 6th Civil Division
Case number	1999 (Ne) 4783		
<p>– A case in which the court found that, with regard to a book in which pictorial cuts of a cartoon are recorded, every act of recoding pictorial cuts therein can be considered to be a legal quotation on the grounds that the articles and the pictorial cuts are in a master-subordinate relationship, i.e. the former the master and the latter the subordinate.</p> <p>– A case in which the court found that, with regard to a book in which pictorial cuts of a cartoon are recorded, the act of using an eye-concealing line to the original pictorial cuts contained therein does not constitute infringement of the right to integrity but the act of moving the layout of the pictorial cuts and changing the composition constitutes infringement of the right to integrity.</p>			

Reference: Article 20, paragraph (1) and paragraph (2), item (iv), Article 32, paragraph (1) of the Copyright Act

Number of related rights, etc.:

#### Summary of the Judgment

The appellant is a cartoonist and is the author of the appellant's book ("Appellant's Book"). The appellees are the author, publisher and publishing company of the appellees' book ("Appellees' Book"). In the Appellees' Book, pictorial cuts (pictorial cuts 1 through 57; hereinafter they may be referred to as the "Appellant's Pictorial Cuts") that constitute part of the Appellant's Book are recorded.

The appellant claimed against the appellees an injunction against the publication, etc. of the Appellees' Book and compensation for damages based on the following allegations: [i] the act of recording the pictorial cuts constitutes infringement of the right of reproduction; and [ii] the act of modifying the recorded pictorial cuts constitutes infringement of the right to integrity. In the prior instance, the court dismissed the abovementioned claims based on the following grounds: [a] the act of recording the pictorial cuts satisfy the requirements for quotation and thus the right of reproduction cannot be found to have been infringed; and [b] the modifications made to the pictorial cuts do not fall under the category of "modification" or fall under the "modification found to be unavoidable," and thus the right to integrity cannot be found to have been infringed.

In this judgment, the court found that the articles and the pictorial cuts are in a master-subordinate relationship, i.e. the former the master and the latter the subordinate, in the Appellees' Book and thereby maintained the abovementioned determinations

made in the prior instance in which infringement of the right of reproduction was denied. Meanwhile the court found that part of the modifications made to the pictorial cuts constitutes infringement of the right to integrity and thereby ordered an injunction against the publication, etc. of the Appellees' Book containing the pictorial cuts subject to said modifications as well as the payment of damages. The reasons are as follows.

1. Regarding the appurtenant nature in quotations

Even if the texts may be inferior to the pictorial cuts of a cartoon in terms of the commercial value or amount of information, this fact cannot serve as the basis to find that a master-subordinate relationship cannot be found between the texts and cartoon pictorial cuts. In the Appellees' Book, the sentences which critique the pictorial cuts hold a prominent position and have higher existence value with respect to the theme of the Appellees' Book (i.e., the articles (critiques) on the overall attitude of the appellant's activity as a cartoonist and the criticism and counterargument on the parts of the appellant's cartoon dealing with the issue of military prostitutes). In addition, the Appellant's Pictorial Cuts quoted in the Appellees' Book only constitute a small portion of the appellant's cartoon and cannot be found to have involved the appeal of the appellant's cartoon beyond the extent necessary to provide a critique, criticism or counterargument in relation to the abovementioned theme in the Appellees' Book.

It cannot necessarily be said that the texts written for pictorial cuts of a cartoon must have an overwhelming volume in terms of amount in order to be instantly regarded as being in a "master" position with respect to the pictorial cuts of a cartoon. The master-subordinate relationship should not be determined based on the ratio of area occupied by the text and that by the Appellant's Pictorial Cuts in the pages in which pictorial cuts are recorded. Taking into consideration the ratio of the amount of the Appellant's Pictorial Cuts to the overall pages in the Appellees' Book, even if 57 pictorial cuts were quoted in a total of 90 pages, a master-subordinate relationship can be sufficiently found between the sentences and the pictorial cuts in the Appellees' Book.

As examined above, taking into consideration the following findings in particular, it should be said that, in the Appellees' Book, the appellees' articles and the Appellant's Pictorial Cuts are in a master-subordinate relationship, i.e., the former the master and the latter the subordinate: [i] the Appellant's Book is one wherein the appellant's opinions are expressed in the form of a cartoon as an "opinion stating cartoon" while the Appellees' Book has been created for the purpose of providing a critique, criticism or counterargument on the abovementioned opinions; and [ii] the Appellant's Pictorial Cuts which have been quoted in the Appellees' Book constitute only a small portion of the appellant's cartoon and the Appellees' Book cannot be found to have incorporated the

appeal of the appellant's cartoon beyond the extent necessary for providing the abovementioned critique, criticism or counterargument. Although the Appellant's Pictorial Cuts can be found to be an independent subject of appreciation, in light of the abovementioned relation between the Appellant's Book and the Appellees' Book, such fact cannot serve as the basis to find that the abovementioned master-subordinate relationship between the appellees' articles and the Appellant's Pictorial Cuts would be lost.

## 2. Regarding infringement of the right to integrity

In some pictorial cuts, an eye-concealing line is used for real persons whose faces have been drawn in the original cuts in order to reduce the risk of infringing the feeling of honor of the characters who have been portrayed in an ugly way, and thus the use of such eye-concealing line is a "modification found to be unavoidable."

The act of changing the layout of the third frame which is composed in a manner to be read after the second frame placed on the right side in the original pictorial cut to the lower side of the second frame in pictorial cut 37 falls under the "modification" prescribed in Article 20, paragraph (1) of the Copyright Act. There is no choice but to find that the act of changing the layout of the original pictorial cut in pictorial cut 37 was made by unreasonably placing weight on the convenience of the layout in the Appellees' Book while unreasonably disregarding the appellant's expressions used in the Appellant's Book. Thus, even if the nature of the work as well as the purpose and manner of quotation are taken into consideration, the modification made in pictorial cut 37 cannot be found to be a "modification found to be unavoidable" under Article 20, paragraph (2), item (iv) of the Copyright Act.

Judgment rendered on April 25, 2000

1999 (Ne) 4783, Appeal Case of Seeking Injunction Against Infringement of Copyright, etc.

(Court of prior instance: Tokyo District Court, 1997 (Wa) 27869)

Date of conclusion of oral argument: February 24, 2000

#### Judgment

Appellant: P

Appellee: Q

Same as above: R

Same as above: Toho Shuppan Kabushiki Kaisha

Representative and representative director of the abovementioned company: R

#### Main text

1. Paragraph 1 of the main text of the judgment in prior instance shall be modified as follows.

(1) The appellees shall not print, publish, sell or distribute the book stated in the List of the Appellees' Book attached to the judgment in prior instance which includes the pictorial cuts of the cartoon shown in the State of Record (30) attached to the judgment in prior instance.

(2) The appellees shall respectively pay to the appellant 200,000 yen and money accrued thereon at the rate of 5% per annum for the period from January 1, 1997, until the date of completion of payment.

(3) The other claims made by the appellant shall be dismissed.

2. The court costs shall be divided into 250 portions for both the first and second instances, one portion of which shall be borne by the appellees while the remaining portion shall be borne by the appellant.

#### Facts and reasons

No. 1 Judicial decisions sought by the parties

##### 1. Appellant

A judgment with the following contents and a declaration of provisional execution:

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

(2) The appellees shall not print, publish, sell or distribute the book stated in the List of the Appellees' Book attached to the judgment in prior instance.

(3) The appellees shall respectively pay to the appellant 26,200,000 yen and money accrued thereon at the rate of 5% per annum for the period from January 1, 1997, until the date of completion of payment.

(4) The court costs shall be borne by the appellees for both the first and second instances.

##### 2. Appellees

(1) The appeal in question shall be dismissed.

(2) The cost of the appeal shall be borne by the appellant.

(omitted)

### No. 3 Court decision

This court determines that the appellant's claims made in this action are well-grounded to the extent of seeking an injunction against the printing, publication, sale and distribution of the Appellee's Book and payment of solatium and delay damages accrued thereon based on infringement of the right to integrity related to Pictorial Cut 37 but that the other claims lack legal basis. In addition to the following additions and corrections, the reasons for such determination are as stated in paragraphs 1 through 3 of the section "No. 3 Court decision" in the part of facts and reasons of the judgment in prior instance and thus such parts shall be quoted.

(Determinations on the appellant's allegations made in this instance)

#### 1. Regarding the appurtenant nature in quotations

##### (1) Regarding the purpose of the quotation

The appellant alleges with respect to the 32 pictorial cuts that, in the Appellee's Book, if the pictorial cuts are removed, the sentences do not form a coherent text and thus do not constitute a unique and independent piece of work. Based on this allegation, the appellant further alleges that the appellee has recorded the 32 pictorial cuts in order to "have the pictorial cuts describe" the important part of the sentences itself instead of writing it by him/herself, and thus no master-subordinate relationship can be found between the sentences and the pictorial cuts.

However, even if the sentences do not form a coherent text if the pictorial cuts are removed, such fact cannot serve as the basis to instantly find that the appellee recorded the pictorial cuts in order to "have the pictorial cuts describe" the important part of the sentences itself instead of writing it by him/herself. This is because there are various reasons for the sentences failing to form a coherent text when the pictorial cuts are removed. For example, in the case of similarly quoting a part of another person's poetry, there are cases where the author quotes and uses a part of another person's poetry as an alternative instead of expressing what he/she wants to say in sentences, while there are cases where the author quotes a part of another person's poetry to critique it and writes sentences of critique. In the former case, if the poetry part is removed, the remaining sentences will naturally fail to form a coherent text, and, in this case, it may be regarded that the author has "had a part of another person's poetry describe" the important part of the sentences instead of writing it by him/herself. Even in the latter case, if the quoted part is removed, the subject of critique will be lost, and thus the sentences would not form a coherent text after all. However, in the latter case, since the subject of critique is clearly specified by

quotation (it may often be the case where the subject of critique may not be presented if it is not quoted), if the quoted part is lost, the subject of critique would be lost and the sentences will no longer form a coherent text. In such a case, it is obviously impossible to say that the relevant author has had the poetry quoted "describe" his/her critique instead of writing the sentences themselves (critique).

With respect to the 32 pictorial cuts alleged by the appellant, the reasons for the failure of the sentences to form a coherent text in the case of removing the Appellant's Pictorial Cuts correspond to the latter example. Specifically, the 32 pictorial cuts mentioned above clearly specify the subject of critique of the Appellee's Article (Pictorial Cuts 8, 9, 12, 16, 17, 18, 19, 20, 26, 33, 34, 35, 36, 38, 39, 41, 44, 45, 46, 47, 48, 49, 50, 51, 54, 56 and 57), indicate the Appellant's Pictorial Cuts that correspond to the subject of critique of the Appellee's Article (Pictorial Cuts 27, 32, 37 and 40) or present the examples of "a frame asking questions to the readers" that is the subject of the critique following the description which reads "There are frames asking questions to the readers as shown below" (Pictorial Cut 1). Thus, the sentences only fail to form a coherent text because it becomes impossible to recognize the subject of critique if the relevant Appellant's Pictorial Cuts are removed. As described above, the Appellant's Pictorial Cuts are recorded to present the subject of critique but have not been recorded by the appellee to "have the pictorial cuts describe" the important part of the sentences itself (i.e. critique) instead of writing it by him/herself. Accordingly, the appellant's allegation arguing that no master-subordinate relationship can be found between the sentences and the pictorial cuts with respect to the abovementioned 32 pictorial cuts is groundless as it lacks the conditions precedent.

## (2) Regarding the nature and contents of the two works

The appellant alleges as follows: [i] pictorial cuts of a cartoon have strong eye-catching power, message-transmission power and the power to attract customers, which, in other words, are product appeal and commercial value, and even one frame independently has an extremely large commercial value, amount of information and appeal; [ii] in order to "quote" a pictorial cut of a cartoon as a "subordinate," the text that critiques the pictorial cut must have further advanced existence value or copyrightability; and [iii] the critique sentences written by the appellee only consist of one line or merely state an abstract and readymade "impression" in a single phrase and are anything but a critique of the pictorial cuts, nor can they be regarded as a text with relative value to serve as the "master" and to use without permission the "pictorial cuts" as a "subordinate."

However, even if the texts may be inferior to the pictorial cuts of a cartoon in terms of the commercial value or amount of information, this fact cannot serve as the basis to find that a master-subordinate relationship cannot be found between the texts and cartoon pictorial cuts.

According to Exhibit Ko 1, it is obvious that, in the Appellee's Book, the sentences which critique the pictorial cuts hold a prominent position and have higher existence value with respect to the theme of the Appellee's Book (i.e., the articles (critiques) on the overall attitude of the appellant's activity as a cartoonist and the criticism and counterargument on the parts of the appellant's cartoon dealing with the issue of military prostitutes) (refer to part 4, "The effect of recording the Appellant's Pictorial Cuts on the readers of the Appellee's Book" related to the findings under the section "No. 3 Court decision" in the facts and reasons of the judgment in prior instance). In other words, the matters that are a pillar to what the author intended to discuss and has actually discussed in the Appellee's Book are the articles (critiques), criticism and counterargument related to the abovementioned theme, i.e., the part of the sentences.

On the other hand, according to Exhibits Ko 2 through 15 and the entire import of the oral argument, the Appellant's Book is an "opinion stating cartoon" as admitted by the appellant him/herself and the opinions can be found to have been argued and expressed in each story. In addition, the Appellant's Pictorial Cuts quoted in the Appellee's Book only constitute a small portion of the Appellant's Cartoon and cannot be found to have involved the appeal of the Appellant's Cartoon beyond the extent necessary to provide a critique, criticism or counterargument in relation to the abovementioned theme in the Appellee's Book.

Based on the abovementioned findings, it can be found that, in the Appellee's Book, the Appellee's Article and the Appellant's Pictorial cuts are in a master-subordinate relationship, i.e., the former the master and the latter the subordinate.

### (3) Regarding the amount

The appellant alleges that, in order to find that the text is in a "master" position with respect to the cartoon pictorial cuts, the text must have an overwhelming volume in terms of amount.

However, it cannot necessarily be said that the texts written for pictorial cuts of a cartoon must have an overwhelming volume in terms of amount in order to be instantly regarded as being in a "master" position with respect to the pictorial cuts of a cartoon.

In addition, the appellant alleges that the ratio of the area occupied by the text and that by the Appellant's Pictorial Cuts in the pages in which pictorial cuts are recorded in the Appellee's Book should be taken into consideration as one of the indicators to compare the pictorial cuts and the text in a quantitative manner and the master-subordinate relationship should be determined based on such ratio.

However, according to Exhibit Ko 1, it can be found that in the Appellee's Book, the articles that exemplify or use the Appellant's Pictorial Cuts as materials continue from the previous to following pages of the pages in which relevant pictorial cuts are recorded. Thus, the master-subordinate relationship should not be determined based on the ratio of area occupied by the text and that by the Appellant's Pictorial Cuts in the pages in which pictorial cuts are

recorded.

For example, in the Appellee's Book, the contents of description that directly refer to Pictorial Cut 6 read "It is an impressive scene where the character shouts alone that 'I've come to take a definite dislike to "movements" due to this issue of HIV-tainted blood products!'" on the page in which said pictorial cut is recorded. However, according to Exhibit Ko 1, in the Chapter in which said pictorial cut is recorded and which is titled "Enigma of 'P's transformation'" in the Appellee's Book, the "transformation of P (appellant)" is set as the theme over four pages including the page in which said pictorial cut is recorded and the Appellee's Article providing a critique on the theme is written. Moreover, said pictorial cut, together with Pictorial Cut 5, can be found to have been cited as a symbolic or impressive example of pictorial cuts corresponding to the abovementioned critique. In light of the abovementioned example, it is obvious that the quantitative comparison of the pictorial cut and text should not be made based on the ratio of area occupied by the texts and that by the pictorial cuts in the pages in which the Appellant's Pictorial Cuts are recorded.

In addition, according to Exhibit Ko 1, it is found that, in the Appellee's Book, each Chapter discusses one topic and the Appellant's Pictorial Cuts are serving as an exemplification or material of the Appellee's Article on each topic mentioned above, and that the ratio of the Appellant's Pictorial Cuts and the texts in each chapter is as follows: except for Chapter IX wherein the Appellant's Pictorial Cuts are occupying about four lines of the total of eight lines, the Appellant's Pictorial Cuts account for one-third or less of the pages in which they are recorded and the Appellant's Pictorial Cuts account for less than one-fifth of the overall Appellee's Book.

The appellant alleges that there is no master-subordinate relationship in terms of the amount by pointing out that, in the Appellee's Book, 57 pictorial cuts (69 frames) are reproduced and published on a total of 90 pages, i.e., a large number of the Appellant's Pictorial Cuts has been quoted. However, the appellant is expressing his/her opinion by using the form of a cartoon as an "opinion stating cartoon." Yet, if one intends to critique, criticize or counter-argue another person's opinion, such other person's opinion must be pointed out in an accurate manner, and thus, it is natural for the appellee to be compelled to quote the pictorial cuts of the cartoon if he/she intends to point out the appellant's opinions in order to critique, criticize or counter-argue such opinions. Moreover, it is also inevitable for the number of the pictorial cuts of the cartoon to be quoted to increase if such critique, criticism or counterargument covers a broad range of topics or is multifaceted.

Taking into consideration the ratio of the amount of the Appellant's Pictorial Cuts to the overall pages in the Appellee's Book related to the abovementioned findings based on the abovementioned circumstances, even if the number of pictorial cuts quoted is as stated above, a



master-subordinate relationship can be sufficiently found between the sentences and the pictorial cuts in the Appellee's Book.

(4) Regarding the method and manner of recording the quoted works

The appellant alleges that there is no master-subordinate relationship between the sentences and the pictorial cuts for the following reasons: in the Appellee's Book, the appellee is using a method wherein the readers are made to read the lines that are included in the pictorial cuts as a substitute for the sentences, the pictorial cuts are thus used to describe the important part, and then the appellee's critiques or counterarguments are made with respect to such lines; therefore, if the pictorial cuts are removed, the sentences do not form a coherent text.

However, even if the sentences do not form a coherent text if the pictorial cuts are removed, such fact cannot serve as the basis to find that there is no master-subordinate relationship between the sentences and the pictorial cuts as stated above.

In the Appellee's Book, there are seven parts in total wherein the reproductions of the Appellant's Pictorial Cuts more enlarged than the pictorial cuts used in the Appellant's Book are printed (Pictorial Cuts 8, 11, 21, 25, 30, 33 and 46). While the reasonable necessity of enlarging and reproducing the pictorial cuts as stated above is open to question, it does not lead to the loss of the master-subordinate relationship between the sentences and the Appellant's Pictorial Cuts.

(5) Summary of the master-subordinate relationship

As examined above, taking into consideration the following findings in particular, it should be said that, in the Appellee's Book, the Appellee's Article and the Appellant's Pictorial Cuts are in a master-subordinate relationship, i.e., the former the master and the latter the subordinate: [i] the Appellant's Book is one wherein the appellant's opinions are expressed in the form of a cartoon as an "opinion stating cartoon" while the Appellee's Book has been created for the purpose of providing a critique, criticism or counterargument on the abovementioned opinions; and [ii] the Appellant's Pictorial Cuts which have been quoted in the Appellee's Book constitute only a small portion of the Appellant's Cartoon and the Appellee's Book cannot be found to have incorporated the appeal of the Appellant's Cartoon beyond the extent necessary for providing the abovementioned critique, criticism or counterargument.

Although the Appellant's Pictorial Cuts can be found to be an independent subject of appreciation, in light of the abovementioned relation between the Appellant's Book and the Appellee's Book, such fact cannot serve as the basis to find that the abovementioned master-subordinate relationship between the Appellee's Articles and the Appellant's Pictorial Cuts would be lost.

2. Regarding the infringement of the right to integrity

(1) The appellant alleges that, in the case of quotation, it is necessary to make further cautious examination in finding whether or not the relevant quotation falls under an "unavoidable"

modification and such quotation should not be found legal unless there are no other methods available and there are truly unavoidable circumstances.

However, in Article 20, paragraph (2), item (iv) of the Copyright Act, with respect to the determination on whether or not the relevant act of exploiting a work falls under an "unavoidable modification," no special distinction has been made as to whether or not such act of exploitation is a quotation. In addition, considering this issue in a substantial manner, the provision prescribing quotations has been stipulated to allow the exploitation of works by making adjustments between the person who intends to make new cultural activities and the copyright owner, and the act of quoting is no different from other cases where the exploitation of work is allowed in that it is allowed to exploit works. As long as that is the case, in examining whether or not the exploitation of a work has been made in the form of an "unavoidable" modification, setting aside the point that the determination on whether or not the modification was "unavoidable" will be made in relation to "quotation" by necessity, there are no reasons to set a standard different from those of other cases.

Thus, the appellant's allegation cannot be accepted.

(2) Regarding Pictorial Cuts 4, 53 and 54

i. The appellant alleges as follows: [i] in caricatures and portraits, the "mordancy" or "ugliness" is the author's subjective insistence and the attractive resource in the publication and thus it would not meet the spirit of the Copyright Act to allow a third party to arbitrarily alter a work by using an extremely abstract idea such as "being ugly" based on the reason of "priori unpleasantness of others"; [ii] generally, an eye-concealing line (face anonymizer) is used for the purpose of making it impossible to identify the relevant person and thereby protecting the privacy of such person but not for the purpose of eliminating the "ugliness" of the portrayal or the "unpleasantness" of the relevant person or protecting the "feeling of honor" of said person; and [iii] the pictorial cuts for which eye concealing lines have been used are very dirty-looking, making the person look very suspicious, and thus the black eye concealing lines are not diminishing the "ugliness" of the portrayal.

However, it is a matter of course that even caricatures or portraits are not allowed to unreasonably infringe the feeling of honor of others. In addition, the determination on whether or not there is a risk of infringement of the feeling of honor due to the ugly portrayal should be made objectively based on common sense instead of merely being made subjectively. According to the Comparative Tables (i), (iv) and (v) attached to the judgment in prior instance, it is obvious that Original Pictorial Cuts (a), (d) and (e) are likely to infringe the feeling of honor due to the ugly portrayal while Pictorial Cuts 4, 53 and 54 are less likely to infringe the feeling of honor thanks to the eye concealing lines, and thus the use of said eye concealing lines should be found to be a reasonable method. According to Exhibits Otsu 23 and 24, it is found that the

person who has been portrayed in Pictorial Cuts 53 and 54 considered the portrayal in the Original Pictorial Cuts unpleasant and that such unpleasantness was reduced by the eye concealing lines, and such facts support the appropriateness of the abovementioned findings.

The appellant alleges that it is not a generally and widely used method to use eye concealing lines for cartoons or portraits but photographs. However, eye concealing lines are widely used and thus do not give an extraordinary impression even if they are used for cartoons or portraits and there are no reasons to distinguish whether eye concealing lines are used for photographs or portraits in determining whether or not the use of eye concealing lines is a reasonable method.

ii. The appellant alleges that if the Original Pictorial Cuts (a), (d) and (e) have portrayed the model in an "ugly" way and infringe the feeling of honor of the relevant person, the infringer is the appellant who is the author and there is no risk for the appellee to infringe the moral interests of the model.

However, it is obvious that the feeling of honor of the model is likely to be further infringed by the Appellee's Book being read if the Original Pictorial Cuts (a), (d) and (e) were quoted without any change, and there are no reasons to force the appellee to infringe said feeling of honor. In addition, this issue is irrelevant to who is to be held responsible by the model, the appellant or the appellee, and thus the appellant's allegation is groundless.

iii. The appellant alleges as follows: In the Appellee's Book, among the quoted portraits, eye concealing lines are used for three parts and not for ten parts and there is no clear standard for using the eye concealing lines; in other words, the eye concealing lines are used in a completely arbitrary and impromptu manner. Thus, there was no urgent situation such that "the quotation of the relevant work must be abandoned" unless modification is allowed.

However, as mentioned above, Original Pictorial Cuts (a), (d) and (e) are likely to infringe the feeling of honor due to the ugly portrayal while Pictorial Cuts 4, 53 and 54 are less likely to infringe the feeling of honor thanks to the eye concealing lines. As long as that is the case, even if there are other pictorial cuts that are likely to infringe the feeling of honor due to the ugly portrayal, this would not lead to a conclusion that the use of eye concealing lines is not a reasonable modification.

iv. The appellant alleges that in the Appellee's Book, the appellee has described Pictorial Cut 4 as "ugly" by making a comment on the appellant's portrayal ability and image management and thus Pictorial Cut 4 which is the subject of the critique must be accurately quoted without any change.

However, although the "ugliness" of Pictorial Cut 4 is diminished by the eye concealing lines, the state of portrayal of the Original Pictorial Cut can be recognized from Pictorial Cut 4 (in other words, Pictorial Cut 4 is still ugly though not to the extent of Original Pictorial Cut (a)) and thus Pictorial Cut 4 can be subject to the critique such as "being ugly." Thus, when there is

a reasonable method to reduce the risk of infringing the feeling of honor as mentioned above, there is no reason to prohibit the use of such method in providing a critique.

(3) Regarding Pictorial Cut 27

i. The appellant alleges with respect to Pictorial Cut 27 that the addition made thereto is irrelevant to the facts that "the contents of the Original Pictorial Cut can be completely recognized" or that the addition "is not accompanied with the risk of being misunderstood as a part of the appellant's work" based on the premise that an expression different from that of Original Pictorial Cut (b) is given to Pictorial Cut 27.

However, in the page previous to the page in which Pictorial Cut 27 is recorded in the Appellee's Book, there is a description which reads "This line becomes easier to understand if it is revised as I have handwritten as follows," as mentioned in section 2.(1)ii. of part "No. 3 Court decision" in the facts and reasons of the judgment in prior instance. In light of the abovementioned description and Pictorial Cut 27, it is obvious that the readers of the Appellee's Book will clearly recognize that the addition placed in Original Pictorial Cut (b) has been written in by the appellee to specify or emphasize the relevant part of the appellant's work. As long as that is the case, it can be found that the abovementioned readers will recognize Pictorial Cut 27 as an expression without the abovementioned addition; in other words the same expression as that of Original Pictorial Cut (b), with respect to the appellant's work. Therefore, Pictorial Cut 27 cannot be regarded as bringing about an expression different from that of Original Pictorial Cut (b). Thus, the appellant's allegation is groundless as it lacks the conditions precedent.

ii. The appellant alleges that, in the appellant's work, it is usually the case that the appellant him/herself handwrites a comment in the margin space of the layout and thus there is a sufficient risk for the readers to misunderstand the addition as a part of the appellant's work.

However, in the Appellee's Book, it is clearly stated that the characters handwritten in Pictorial Cut 27 are those written in by the appellee, and thus it is impossible to construe that the readers will have a misunderstanding.

(omitted)

(5) Based on the abovementioned findings, the abovementioned modification made to Pictorial Cut 37 should be regarded as having infringed the right to integrity held by the appellant with respect to the Appellant's Book. Moreover, according to the entire import of the oral argument, it can be found that the abovementioned act of infringement of the moral rights of author by the appellees is at least caused by the appellees' negligence and that the appellant has suffered emotional distress due to the abovementioned act by the appellees. Taking into consideration

the following facts and factors, the appropriate amount of solatium for the abovementioned distress is found to be 200,000 yen: [a] the appellant is famous as a comic artist; [b] Pictorial Cut 37 can be recognized as having the same meaning as that of Original Pictorial Cut (c); and [c] the contents and degree of the abovementioned act of infringement and other various factors found in the record in question."

#### No. 4 Conclusion

Based on the abovementioned findings, the appellant's claims made in this action are well-grounded to the extent of seeking an injunction against the printing, publication, sale and distribution of the Appellee's Book which includes Pictorial Cut 37 based on infringement of the right to integrity (since the appellant who is the author of Pictorial Cut (c) has filed this action against the appellees, it is obvious that the appellees know that Pictorial Cut 37 has been created by an act that infringes the right to integrity held by the appellant) and the payment of 200,000 yen as solatium based on infringement of the abovementioned right to integrity and delay damages accrued thereon at the rate of 5% per annum as prescribed in the Civil Code for the period from November 1, 1997, which is the date of infringement, until the date of completion of payment, but the other claims lack legal basis. The judgment in prior instance, which is different from this conclusion, is unjust to the extent of being different, and the Appeal made by the appellant is well-grounded to the abovementioned extent, and thus the judgment in prior instance shall be modified in accordance with the abovementioned gist, Articles 61, 64, 65 and 67 of the Code of Civil Procedure shall be applied with respect to the burden of court costs, the declaration of provisional execution shall be found unnecessary, and the judgment shall be rendered in the form of the main text.

Tokyo High Court, 6th Civil Division

Presiding judge: YAMASHITA Kazuaki

Judge: YAMADA Tomoji

Judge: SHISHIDO Mitsuru