

Date	January 29, 2009	Court	Intellectual Property High Court, Second Division
Case number	2008 (Ne) 10025 2008 (Ne) 10042		
<p>– A case, with respect to the films created under the former Copyright Act, in which the court upheld the claim for injunction against import and distribution of the DVD goods manufactured by reproducing these films and the claim for damages, on the grounds that the term of protection for these films has not yet expired because these films, for which the director, etc. thereof are indicated as the authors, are categorized as works under the true name of the author and they cannot be regarded as works under the name of a corporate body, as provided in Article 6 of the former Copyright Act</p>			

References:

Article 3, Article 6, and Article 52, paragraph (1) of the former Copyright Act (Act No. 39 of 1899), Article 112, Article 113, paragraph (1), and Article 114, paragraph (1) of the Copyright Act

Background:

The works disputed in this case are films produced by the plaintiff (Shochiku Co., Ltd.) and directed by KUROSAWA Akira (deceased on September 6, 1998), namely Work 1 entitled "Shubun (Sukyandaru)" (*Scandal*), a theatrical film released on April 26, 1950 (starring MIFUNE Toshiro, YAMAGUCHI Toshiko, etc.), and Work 2 entitled "Hakuchi" (*The Idiot*), a theatrical film released on June 1, 1951 (starring HARA Setsuko, MORI Masayuki, MIFUNE Toshiro, etc.). In the prior instance of this case, the plaintiff alleged that the defendant, since around February 2007, more than 50 years after the release of the works and 9 years after the death of director KUROSAWA Akira, had been manufacturing and selling, without authorization from the plaintiff, the DVD goods manufactured by recording and reproducing Work 1 without modification, indicated in 1 of the list of articles attached to the judgment in prior instance (Defendant's Goods 1), and the DVD goods manufactured by recording and reproducing Work 2 without modification, indicated in 2 of the list of articles attached to the judgment in prior instance (Defendant's Goods 2), and thereby infringing the plaintiff's copyrights (right of reproduction and right of distribution) for both works. Under Article 112 of the Copyright Act, the plaintiff demanded that the defendant stop reproducing, importing, and distributing these DVD goods, and destroy the goods in stock and the master discs used for recording.

On January 28, 2008, the court of prior instance handed down a judgment which

upheld the plaintiff's claims for injunction against import and distribution of Defendant's Goods 1 and 2 and for destruction of the goods in stock and the master discs used for recording, while dismissing the claim for injunction against reproduction. In the judgment in prior instance, the court held as follows: under Article 3 and Article 52, paragraph (1) of the Copyright Act prior to the revision by Act No. 48 of 1970 (Act No. 39 of 1899; the former Copyright Act), the duration of the copyrights for both works had expired on December 31, 2036, when 38 years had passed since the death of the author; while the defendant's act infringes the plaintiff's copyright (right of distribution), there is no proof to find that the defendant conducts reproduction of these works or conducts manufacturing or reproduction of the defendant's goods in Japan. Dissatisfied with this ruling, the defendant filed an appeal.

In the present instance, the plaintiff filed an incidental appeal to claim damages against the defendant, demanding payment of 33,449,240 yen as compensation for damage from copyright infringement, with delay damages accrued thereon as calculated at a rate of 5% per annum for the period from April 26, 2008, the day immediately following the date of service of a petition for incidental appeal, until the completion of payment (no appeal or incidental appeal has been filed against the part of the judgment in prior instance which was against the plaintiff).

Summary of the court's decision:

"Concerning the claim for injunction"

"The defendant argues that, as Shochiku Co., Ltd., a juridical person, is named as the producer of both works, these works are categorized as works under the name of a corporate body, as provided in Article 6 of the former Copyright Act, which shall be eligible for protection for 33 years after being made public, and accordingly, the copyrights have expired upon the end of 1983 for Work 1 and 1984 for Work 2, respectively. On the other hand, the plaintiff contests that as the name of KUROSAWA Akira, a natural person, is indicated as the author of both works, these works are categorized as works under the true name of the author, as provided in Article 3 of the former Copyright Act, and that their term of protection will last until the end of December 2036, at the shortest, as a result of the series of legal revisions, and therefore the copyrights for these works are still effective. The court examines this point as follows."

"Both works disputed in this case are cinematographic works created in 1950 (Work 1) and 1951 (Work 2), respectively, before the existing Copyright Act (Act No. 48 of 1970) came into effect (as of January 1, 1971, Article 1 of the Supplementary

Provisions). As Article 16 of the existing Copyright Act, which provides for authors of cinematographic works, is not applicable in this case pursuant to Article 4 of the Supplementary Provisions of the existing Copyright Act, the issue as to who is the author of both works shall be determined pursuant to the former Copyright Act.

Cinematographic works, as those disputed in this case, shall be subject to Article 22-3 of the former Copyright Act, as well as Articles 3, 4, 5, 6, and 9 of said Act. In accordance with the provisions of these applicable clauses, it is appropriate to construe that Article 6 of the former Copyright Act, for ensuring stability of legal matters, specified the duration of a copyright for a work released or exhibited under the name of a corporate body or juridical person, who cannot die in the same meaning as a natural person's death, namely, a government agency, school, temple or shrine, association, or company, as 30 years after the release or exhibition.

Assuming so, if the works in question were screened under the name of a corporate body or juridical person, Article 6 of the former Copyright Act shall apply and they shall be eligible for protection for 30 years from the first screening, whereas, if they were screened under the name of the true name of a natural person, Article 3 of the former Copyright Act shall apply and the term of protection shall last while the author is alive and then for 30 years following his/her death."

"According to the evidence and the entire import of the oral argument, the court finds that Work 1, released on April 26, 1950, and Work 2, released on June 1, 1951, were screened in the following manner:

A. Work 1

- In the beginning of Work 1, the opening credits, which introduce the title and production staff, etc. of the film, show the following indications in succession, as presented in Attachment (i)1:

--- an indication of 'Shochiku Eiga' (Shochiku Film)

--- an indication of the title of the film 'Shubun' in Chinese characters of a large size, with another indication of the title 'Sukyandaru' in Japanese characters (katakana) of a somewhat smaller size being placed below the former

...

--- an indication of 'Kantoku KUROSAWA Akira' (Directed by KUROSAWA Akira)'..."

"- As well, the poster that was put up at the time of the release of Work 1 at theaters, as presented in Attachment (i)2, shows pictures of the leading actor, MIFUNE Toshiro, and other cast members, and the title of the film, and also shows statements that read, 'A spectacular monster film, in which KUROSAWA and MIFUNE uncover the truth of

the big city!,' 'Directed by KUROSAWA Akira; Screenplay by KUROSAWA Akira and KIKUSHIMA Ryuzo,' and the like."

"B. Work 2

- In the beginning of Work 2, the opening credits, which introduce the title and production staff, etc. of the film, show the following indications in succession, as presented in Attachment (ii)1:

--- an indication of 'Shochiku Eiga 1951' (Shochiku Film 1951)

--- an indication of the title of the film 'Hakuchi' in Chinese characters

...

--- an indication of 'Kantoku KUROSAWA Akira' (Directed by KUROSAWA Akira), with another indication of 'Eiga Geijutsu Kyokai' (Film Art Association) in Chinese characters of a somewhat smaller size being placed next to KUROSAWA's name."

"- As well, the poster that was put up at the time of the release of Work 2 at theaters, as presented in Attachment (ii)2, shows pictures of the leading actress and actors, SETSUKO Hara, MORI Masayuki, and MIFUNE Toshiro, and other cast members, and the title of the film, and also shows the indication of 'Kyakuhon Kantoku KUROSAWA Akira' (Directed and screenplay by KUROSAWA Akira), as well as the indication of 'Shochiku Eiga' (Shochiku Film) and the names of HARA Setsuko and other cast members. Also, the magazine issued at the time of the release of Work 2 at theaters, entitled 'Shochiku Eiga PRESS No. 170' (Attachment 16 of the plaintiff's Exhibit No. 15), refers to this film with a statement that reads, 'An ambitious monster film by KUROSAWA Akira, realistically portraying the facts of love and hatred in life!'"

"- According to the facts found as above, it is appropriate to understand that ordinary people in society who saw Work 1 and Work 2 would recognize both works as films directed by KUROSAWA Akira, a famous film director, while considering the indication of 'Shochiku Eiga' (Shochiku Film) to be nothing more than an indication of the producer or distributor of the films. Consequently, Work 1 and Work 2 are categorized as works under the true name of the author, for which KUROSAWA Akira, et al., who are natural persons, are indicated as authors, and they cannot be regarded as works under the name of a corporate body set forth in Article 6 of the former Copyright Act. In conclusion, the court cannot accept the defendant's arguments."

"Concerning the plaintiff's claim for damages"

"A. Amount of damage from copyright infringement

On Defendant's Goods 1 and 2, the defendant is indicated as the seller (with its former trade name), and the selling price per disc is indicated as 1,800 yen (the plaintiff's

Exhibit No. 3-1 and 2). The defendant imported 1,000 discs of each title and sold them in Japan (the defendant's Exhibit No. 34 and 36). The plaintiff sells DVD goods manufactured by reproducing Works 1 and 2 at 3,800 yen per disc (the plaintiff's Exhibit No. 19-1 and 2). The plaintiff claims that the amount of costs required for additional sales of these goods per disc is XXX yen (in relation to Defendant's Goods 1) and XXX yen (in relation to Defendant's Goods 2), respectively (the plaintiff's Exhibit No. 24), while the defendant has made no rebuttal on this point. Accordingly, it can be found that the amount calculated by subtracting the amount of costs from the selling price of the plaintiff's goods is the amount of profit per unit of the goods that the plaintiff could have sold had there been no infringement. It can also be found that the plaintiff could have sold the same volume of goods as that of Defendant's Goods 1 and 2 sold by the defendant (the defendant has not alleged or proved any grounds for arguing that the plaintiff could not have sold the whole or part of the volume sold by the defendant). Therefore, under Article 114, paragraph (1) of the Copyright Act, the amount of damage is calculated as XXXX yen, by applying the following formula:

$$(3,800 - XXX) \times 1,000 + (3,800 - XXX) \times 1,000 = XXXXXXXX"$$

"B. Costs for investigation of infringement

...

The reasonable amount of costs for investigation of infringement is determined to be 3,600 yen."

"C. Attorney's fee

It is reasonable to consider the attorney's fee that is in an adequate causal relationship with the act of infringement of the copyrights as 10% of the amount of damage as found in A above, and its amount is determined to be 714,000 yen.

D. In total, the amount of damage sustained by the plaintiff is 7,857,600 yen."

"For the reasons stated above, the plaintiff's claim for injunction is well-grounded to the extent that it was upheld in Paragraphs 1 and 2 of the main text of the judgment in prior instance, and the defendant's appeal to this court to seek revocation of that judgment is groundless. The plaintiff's claim for damages, made by filing an incidental appeal to this court, is also well-grounded to the extent that it demands payment of 7,857,600 yen as compensation for damage, with delay damages accrued thereon at the rate of 5% per annum for the period from April 26, 2008, after the commission of the tort, until the completion of payment, whereas the remaining part of the claim is groundless. Therefore, the court renders the judgment as stated in the main text, while declaring provisional execution only with regard to Paragraph 2(3) of the main text which partially upheld the plaintiff's claim before this court."