

Date	December 26, 2016	Court	Intellectual Property High Court, Second Division
Case number	2015 (Ne) 10123		

– A case in which with regard to a lawsuit filed by Y, who is the author and copyright owner of two books (nonfiction novels) about her experience as a sexual offense victim, against X, who produced a film concerning sexual offense victims, to seek, based on Y's copyright, moral rights of author, moral rights, and the agreement made prior to the production of the film, an injunction against on-screen presentation, etc. of the film, to request destruction of the master tape, etc. of the film, and to demand payment of damages for X's act of tort, i.e., infringement of Y's moral rights of author, and also for nonperformance of the aforementioned agreement, the court of prior instance partially accepted Y's claims, in response to which X filed an appeal, and this court modified the judgment in prior instance and narrowed the scope of the injunction issued based on Y's copyright and moral rights, and the aforementioned agreement, and revoked parts of the judgment in prior instance that accepted Y's claims for an injunction based on Y's moral rights of author and for destruction of the film based on the aforementioned agreement.

References: Article 20, 21, 22-2, 23, 26, 27, 28, 112, and 113 of the Copyright Act and Article 415, 709, and 710 of the Civil Code

Numbers of related rights, etc.: None

Summary of the Judgment

1. Appellee Y is the author of Works 1 and 2 (the "Works"). The Works are nonfiction novels authored by Appellee Y about her experience as a sexual offense victim.

Appellant X is a TV director and producer. X also privately produces films for on-screen presentation.

Appellant X has been planning to produce a film based on the Works and had proposed this plan to Appellee Y, but has not been able to implement the plan. Subsequently, when Appellant X had to produce a film for on-screen presentation in a film festival to be held from February to March 2014, Appellant X made a concrete plan for production of a film based on the Works, and proposed the plan to Appellee Y and the publisher of the Works in around August 2013.

Appellant X produced the film in question (the "Film") concerning sexual offense victims for the film festival.

2. Appellee Y alleged against Appellant X as follows.

(1-1) Appellee Y alleged that the Film is a reproduction or derivative work (adaptation) of the Works. Furthermore, based on Appellee Y's copyright (reproduction right,

adaptation right) for the Works, Appellee Y's copyright (reproduction right, right of on-screen presentation, right to transmit to the public [including the right to make available for transmission in the case of automatic public transmission], and distribution right) for a derivative work of the Works, and Appellee Y's moral right of author (right to integrity) for the Works, Appellee Y sought an injunction against on-screen presentation, reproduction, public transmission of the Film, and making it available for transmission, and distribution of reproductions of the Film ("On-screen Presentation, etc. of the Film") (Article 112, paragraph (1) of the Copyright Act) and also demanded destruction of the master tape and master data of the Film and any reproductions thereof (the "Master Tape, etc. of the Film") (paragraph (2) of said Article).

(1-2) Appellee Y alleged that the Film infringes Appellee Y's right of honor, which is Appellee Y's moral right, and Appellee Y's sense of honor, and sought an injunction against On-screen Presentation, etc. of the Film, etc. based on said moral right and demanded destruction of the Master Tape, etc. of the Film.

(1-3) Based on the agreement of non-use of the Works made between Appellee Y and Appellant X prior to the production of the Film, Appellee Y sought an injunction against on-screen presentation of the Film and demanded destruction of the Master Tape, etc. of the Film.

(2) Appellee Y demanded payment of four million yen (three million yen as a solatium and one million yen as attorneys' fee) as damages for Appellant X's act of tort, i.e., infringement of Appellee Y's moral right of author (right to integrity) (an act of modifying the Works against the will of Appellee Y) as well as payment of delay damages accrued thereon.

(3) Appellee Y demanded payment of one million yen as damages (as a solatium for emotional distress) for nonperformance (the production of the Film in violation of the agreement of non-use of the Works between Appellant X and Appellee Y) as well as payment of delay damages accrued thereon.

3. In the judgment in prior instance,

(1-1-a) The court accepted Appellee Y's claim for an injunction against On-screen Presentation, etc. of the Film based on Appellee Y's copyright and moral rights of author to the extent that Appellee Y seeks an injunction against On-screen Presentation, etc. of the Film containing the expressions presented in the section "Film" of Episode Comparison Tables 3, 4, 6, and 7 attached to the judgment in prior instance (regarding the claim for an injunction based on Appellee Y's moral rights of author, the court accepted it to the extent that Appellee Y seeks an injunction against reproduction of the

Film).

(1-1-b) The court accepted Appellee Y's claim for destruction of the Master Tape, etc. of the Film based on Appellee Y's copyright and moral rights of author to the extent that Appellee Y demands destruction of the Master Tape, etc. of the Film containing the expressions presented in the section "Film" of Episode Comparison Tables 3, 4, 6, and 7 attached to the judgment in prior instance.

(1-2-a) The court accepted Appellee Y's claim for an injunction against On-screen Presentation, etc. of the Film based on Appellee Y's moral rights to the extent that Appellee Y seeks an injunction against on-screen presentation, etc. (excluding reproduction of the Film) of the Film containing the expressions presented in (1) to (3) of the Infringing Expression Lists 1 and 2 attached to the judgment in prior instance.

(1-2-b) The court dismissed Appellee Y's claim for destruction of the Master Tape, etc. of the Film based on Appellee Y's moral rights.

(1-3-a) The court accepted Appellee Y's claim for an injunction against On-screen Presentation, etc. of the Film based on the agreement of non-use of the Works to the extent that Appellee Y seeks an injunction against On-screen Presentation, etc. of the Film containing the expressions presented in the red, green, and light blue parts of the Final Script Comparison Table attached to the judgment in prior instance.

(1-3-b) The court accepted Appellee Y's claim for destruction of the Master Tape, etc. of the Film based on the agreement of non-use of the Works to the extent that Appellee Y demands destruction of the Master Tape, etc. of the Film containing the expressions presented in the red, green, and light blue parts of the Final Script Comparison Table attached to the judgment in prior instance.

(2) The court accepted Appellee Y's claim for payment of damages to the extent that Appellee Y demands payment of 550,000 yen (500,000 yen as a solatium and 50,000 yen as attorneys' fee) as damages for Appellant X's act of tort, i.e., infringement of Appellee Y's moral rights of author as well as payment of delay damages.

(3) The court dismissed Appellee Y's claim for payment of damages for the nonperformance, i.e., violation of the agreement of non-use of the Works.

4. Only the Appellant X filed an appeal in response to the judgment in prior instance.

5. In this judgment, the court modified the judgment in prior instance, by holding as follows in summary, narrowed the scope of the injunction against On-screen Presentation, etc. of the Film based on Appellee Y's copyright, moral rights, and the agreement of non-use of the Works, and revoked parts of the judgment in prior instance that accepted Y's claims for an injunction against reproduction of the Film based on Appellee Y's moral rights of author and for destruction of the Master Tape,

etc. of the Film based on the agreement of non-use of the Works.

(1-1-a-1) Appellee Y prepared the attached Episode Comparison Tables 4-1 and 4-2 (attached Comparison Tables 4-1 and 4-2) for the Works respectively. Based on this table, Appellee Y's allegation concerning infringement of Appellee Y's copyright and moral rights of author was re-examined in order to determine whether Appellee Y's copyright and moral rights of author were infringed or not. Consequently, it can be found that, regarding Episode 3 of the Comparison Table 4-1, the Film is identical with Work 1 in terms of the statements (descriptions) and the sequence thereof shown in (2) to (5) of the section "Whether or not to be regarded as an adaptation." The identical statements in Work 1, if separated from the rest of the statements, can be considered to be simply presenting facts. However, as a whole, those statements can be considered to be expressing thoughts and sentiments in a creative manner because those statements not only describe facts, but also show Appellee's distinctiveness and originality by expressing the sexual offense victim's hesitation to tell what happened, her resentment and sadness as a victim, and misdirected blame on herself. Those statements describe a tense, fast-changing scene by using short lines and descriptions depicting a stark contrast between a woman, who was sexually assaulted just a short while ago and is unable to tell the truth to her former boyfriend, whom she called for help, but is just nodding and saying "I'm sorry" over and over again, and her former boyfriend, who rushed to the site upon request from her for help but found that he was too late, shouting and breaking things in uncontrollable anger. In the case of the Film, the descriptions (excluding the first three lines) presented in the section "Film" about Episode 3 of the attached Comparison Table 4-1 can be found to be identical with Work 1 in terms of fundamental characteristics of expressions observed in the aforementioned identical statements. Thus, those descriptions can be considered to be adaptations of Work 1.

If such observation is made for Episodes 3, 4, 6, and 7 of the attached Comparison Tables 4-1 and 4-2 respectively, it can be found that the expressions presented in the Film that are stated in 1 to 7 of the attached List of Expressions Infringing Adaptation Rights are adaptations of the corresponding statements in the Works (while the court of prior instance recognized infringement of the adaptation rights for the expressions in the Film except for the following expressions: [i] the first three lines in the section "Film" about Episode 3 of the attached Comparison Tables 4-1 and 4-2, respectively (as mentioned above, the descriptions cannot be considered to be identical with the corresponding statements in the Works) and [ii] the last five lines in the section "Film" about Episode 6 of the attached Comparison Tables 4-1 and 4-2, respectively (while

the statements presented in the section "Work 1" about Episodes 6 of the attached Comparison Table 4-1 consist of two statements that are more than 30 lines apart from each other, it is not reasonable to consider said statements as one united depiction and compare it with the Film; the last five lines describe a scene that corresponds to the latter statement, but the latter statement can be considered neither creative nor identical with the statements presented in the section "Work 2" about Episode 6 of the attached Comparison Table 4-2).

Therefore, Appellee Y's claim for an injunction against On-screen Presentation, etc. of the Film based on Appellee Y's copyright is well grounded to the extent that Appellee Y seeks an injunction against On-screen Presentation, etc. of the Film containing the expressions presented in 1 to 7 of the attached List of Expressions Infringing Adaptation Rights.

(1-1-a-2) According to Article 20 and Article 113, paragraph (1) of the Copyright Act, the only claim Appellee Y is entitled to make based on Appellee Y's right to integrity with regard to the Works is a claim for an injunction against distribution of reproductions of the Film. Appellee Y is not entitled to seek an injunction against on-screen presentation, reproduction, public transmission of the Film, and making it available for transmission. Since this is an appeal case filed by Appellant X, it is not permissible to modify the judgment in prior instance, which did not accept the claim for an injunction against distribution of reproductions of the Film, in such a way that would be disadvantageous to Appellant X.

(1-1-b) Appellee Y's claim for destruction of the Master Tape, etc. of the Film based on Appellee Y's copyright is well grounded to the extent that Appellee Y seeks destruction of the Master Tape, etc. of the Film containing the expressions presented in 1 to 7 of the attached List of Expressions Infringing Adaptation Rights.

(1-2-a) Appellee Y is entitled to seek an injunction against On-screen Presentation, etc. of the Film (excluding reproduction of the Film) based on Appellee Y's right of honor, which is Appellee Y's moral right, to the extent that Appellee Y seeks such injunction with regard to the scenes presented in the Infringing Expression List attached to the judgment in prior instance as far as the scenes contain any expression that infringes Appellee Y's right of honor. All of the expressions presented in 1 of the Infringing Expression List can be considered to be expressions that infringe Appellee Y's right of honor. However, not all but only one expression "Ochinchin" presented in 2 of the Infringing Expression List can be considered to be an expression that infringes Appellee Y's right of honor.

(1-3-a) The expressions presented in the red, green, and light blue parts of the Final

Script Comparison Table attached to the judgment in prior instance include expressions that cannot be found to be identical or similar to the statements in Works and expressions that are not depicted in the corresponding parts of the script of the Film. The Film uses some scenes and lines in the Works to such extent as shown in the red, green, and light blue parts of the attached List of Injunctions Made Based on the Attached Agreement.

(1-3-b) Even a detailed examination of the mail showing the intention to conclude an agreement of non-use of the Works cannot prove the existence of an agreement that, if a film is produced by using some scenes and lines in the Works, any medium to which said film is fixed shall be destroyed. Therefore, Appellee Y's claim for destruction of the Master Tape, etc. of the Film based on the agreement of non-use of the Works is groundless.