

Date	August 4, 2010	Court	Intellectual Property High Court, Fourth Division
Case number	2010 (Ne) 10033		
<p>1 Although a derivative work is the result of infringement of a right of translation, lending of such work by the purchaser thereof does not constitute infringement of the original author's right to determine the indication of the author's name.</p> <p>2 The copyright holder is not allowed to seek injunction based on Article 112 of the Copyright Act for acts of persons who merely assisted copyright infringement.</p>			

#### References:

Article 19, paragraph (1) (for 1 above) and Article 112 (for 2 above) of the Copyright Act

1. The appellant (hereinafter referred to as "X") filed an action against the appellees, the entities including universities (hereinafter referred to as "Y, etc."), seeking injunction under the Copyright Act and compensation of damage in tort. X alleged that Y, etc. infringed X's copyright and moral rights of author by purchasing a Korean language work that infringes the copyright in the Japanese language work written by X, storing it, and making it available for lending and reproduction at their facilities including libraries.

2. The Tokyo District Court, which was the court of first instance, dismissed X's claim on the grounds that X's allegation of infringement of the right of rental was unacceptable without first determining whether the above-mentioned Korean language work infringes X's copyright by applying Article 4 of the Supplementary Provisions of the Act for Amendment of Copyright Act of 2004 (for lending of books or magazines possessed with a purpose of lending them to general public as of August 1, 2004, the provision relating to the right of rental shall not be applied as before the amendment of the law), and also on the ground that the infringement of moral rights of author could not be found. X filed an appeal against this judgment.

3. In this judgment, the court determined that the above-mentioned Korean language work was the result of infringement of X's right of translation. With regard to lending of the Korean language work, which is a derivative work, the court rendered the same decision as the court of first instance. Further, with regard to the allegation of infringement of the right of reproduction, which was added in the court of second instance, the court held that there is no violation of laws as reproduction of said work is permissible in the case of reproduction at libraries, etc. (Article 31 of the Copyright Act). The court further found that lending of such derivative work by the purchaser

thereof does not fall under Article 19, paragraph (1) of the Copyright Act (Finding 1), and that the copyright holder cannot seek injunction under Article 112 of the Copyright Act against parties such as Y, etc., who assisted infringement but are not considered as entities which directly infringed the copyright, etc. (Finding 2). Based on these findings, the court dismissed the appeal.

4. In this judgment, by determining the above-mentioned Korean language work to be the result of the infringement of right of translation, the court implied that Y, etc. will, after the rendition of this judgment, satisfy the requirement of being "aware of such infringement" as provided in Article 113, paragraph (1), item (ii) of the Copyright Act, which is the provision on acts deemed to constitute infringement.