

Judgments of Tokyo District Court, 47th Civil Division

Date of the Judgment: 2005.3.15

Case Number: 2003(Wa)No.3184

Title (Case):

A case wherein the decision ruled that a person was entitled to be an author of a cinematographic work when he participated in the entire film-making process from the very beginning step of developing a film plan through the completion of the film by working as director; arranging the photographic equipments; and personally determining the content of the work and giving all instructions on the shooting and editing of the film.

The decision ruled that in consideration of all the relevant facts, such as how the project was operated, whether superintendence was given, how much compensation was given and how the compensation was paid, a person who filmed a movie under contract with a record company on equal terms with a film production company did not fall under the description of " a person engaged in duty " provided by Article 15(1) of the Copyright Law.

The decision ruled that a DVD constitutes a copy of a cinematographic work when it could be recognized to substantially maintain integrity of expression from an original film work notwithstanding that it was edited from an original film work with alternation, addition, reduction and changes in the expression.

The decision ruled that showing visual images from a cinematographic work, to such degree that it would enable audiences to feel the essential feature of expression of the original work, was infringement of the derivative right, the right to integrity of the work and the right to attribution.

The decision applied Article 114(2) of Copyright Law to the claim for damage caused by reproduction of DVD.

Summary of the Judgment:

With respect to the documentary movie work ("the Work"), filmed by the plaintiff company and directed by the representative of the said company, Company F, the predecessor company of the defendant company manufactured and sold the videotape ("Videotape") and then the defendant manufactured and sold the DVD ("DVD") based on the Videotape and the CD ("CD") concurrently. For the purpose of advertising both, the defendant created promotion images ("Promotion Images") by combining a part of the Work, edited it so that it looked like it was being sliced with the wipe method and aired the Promotion Images on TV and on giant screen display systems on the streets. In addition, the defendant sold the CD together with a DVD

that included the Promotion Images (" Premium DVD") as a special premium for the first purchase.

The plaintiff company, under the copyright of the Work (the right to reproduction, distribution, public performance, broadcasting and derivative work), and the representative under his moral right (the right of integrity and attribution) alleged that both of the Videotape and the DVD were reproductions of the Work and the Premium DVD and the Promotion Images were the derivative works of it and constituted infringement of the moral right; to this they demanded :(1) injunction of reproduction and distribution of the DVD and the Premium DVD and reproduction, as well as injunction of reproduction, public display and broadcasting of the Promotion Images under Article 112(1) of the Copyright Law; (2) disposal of the master tape of the Premium DVD and the Promotion Images under the said article(2); (3) the damage under Article 709 of the Civil Code ; and(4)apology ad.under Article 115 of the Copyright Law.

The issues at hand were: (1) labeling the author and the owner of the copyright of the Work :(2) determining whether the Videotape, the DVD, the Premium DVD and the Promotion Images had infringed the copyright and/ or moral right; and (3) assessing how much damage, if any, had been generated.

The decision ruled that the representative of the plaintiff company was the author of a cinematographic work under Article 16 of the Copyright Law because he participated in the entire film-making process, from originating the film plan to seeing it through to its completion, worked as director, arranged the photograph equipments, determined the content of the work and gave all the instruction by himself on shooting and editing, for which he was deemed " a person who has creatively contributed to the formation of the whole work."

The defendant company alleged that the Work was Company F' s work made for hire. However, the decision stated that in order to determine whether a person had been " engaged in duty under a corporation or other such business" as described in Article 15(1) of the Copyright Law, it was necessary to see if he had rendered the service under the superintendence of the corporation and if the money paid by such corporation resembled compensation for the service, with reference to a substantial relationship between the corporation and a person who has made the work, taking into consideration all the relevant facts such as the feature of the duty, whether superintendence was given, how much and the means through which compensation was paid. The decision dismissed the made-for-hire claim since the representative of the plaintiff company was not just responsible for shooting under the superintendence of the Company F, but both filmed the Work based on the contractual relationship on equal terms between a record company and a film production company.

With respect to the authorship of the Work, the decision ruled that it belonged to

the plaintiff company, from reasoning based on the purpose of Article 29(1) and the language of Article 2(x) of the Copyright Law, that a " film producer" means a subject who has intention to create a cinematographic work, to whom any legal rights and obligations concerning the creation of the work belong, reflecting on the fact that the producer obtains the income and bears expenditures arising from the creation of the work.

As to the Videotape, this was edited from the Work and could be recognized as maintaining a substantial integrity of expression from the original despite the alternation, reduction and changes in the expression, thus falling under the criteria as a reproduction of the Work. However the editing work was done by the plaintiff, Sato, himself. Therefore the reproduction and the distribution of the Videotape were given permission and it could not be deemed infringement of the copyright. On the other hand, the DVD is the reproduction of the Work; it could not be acknowledged that when the plaintiff gave permission to the reproduction of the Videotape, the plaintiff had assumed the sales of the DVD of the Work some 20 years later concurrently with the sales of the CD by the defendant, to which the Company F transferred its business; thus it is infringement of the reproduction right since the defendant did not obtain permission despite that it should have obtained the permission from the plaintiff company for the manufacture and sales of the DVD under Article 63 (2) of the Copyright Law;

Furthermore, as to the Premium DVD and the Promotion Images, both are infringement of the derivative right owned by the plaintiff company and the right to integrity and attribution owned by the representative of the plaintiff company because they exhibit the essential feature of the expression in the Work with no attribution to the name of the representative of the plaintiff company.

Accordingly, the decision approved the injunction for the reproduction and distribution of the DVD, the Premium and the use of the Promotion Images as well as the disposal of its mastertape.

Whether Article 114 (2) of the Copyright Law was applicable to the damage was also a major issue here and the decision stated that to apply the said paragraph, it was necessary to have established the possibility for an author to make profit by using a work in the same way done by an infringer. The decision acknowledged such possibility and applied the said paragraph' s reasoning that it was possible for the plaintiff company to make similar profit by using the work in the same way as it had method to manufacture and sell DVDs of the Work if it had licensed the work with other companies to manufacture and sell DVDs of the Work. With respect to the Premium DVD, the decision dismissed the claim under Article 114 (2) of the Copyright and calculated the damage under the said article (3) because it could not be acknowledged that the plaintiff company could have made any profit by exploiting it.

With respect to the damage caused by the Promotion Images, under Article 114-5 of the Copyright Law, calculation was made based off the direction of the oral proceedings and from the examination of evidence.

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