

Date	November 10, 2010	Court	Intellectual Property High Court, Fourth Division
Case number	2010 (Ne) 10046		
<p>1. A case in which the copyright holder for a video of steam locomotives filed a lawsuit to claim damages for infringement of the copyright and moral rights of author against the company that sold the DVD containing the broadcast program, which was created by editing said video without the authorization of the copyright holder; the court held that it was difficult to find negligence on the part of the copyright holder and overturned the determination in the judgment of prior instance, which found comparative negligence (at 10%).</p> <p>2. A case in which, in the process of calculating the amount of damages under Article 114, paragraph (3) of the Copyright Act, the court ruled that the copyright holder's right of reproduction of the video was infringed with regard to not only the DVDs that were actually sold but also the DVDs that were supplied to the seller. Accordingly, the court modified the judgment in prior instance and calculated the amount corresponding to the copyright royalty that would be received by the copyright holder, on the basis of the number of DVDs supplied.</p>			

Reference:

Article 709 of the Civil Code, and Article 18, Article 19, Article 20, Article 21, Article 112, Article 114 of the Copyright Act

In this case, the appellant, who holds the copyright for a video of steam locomotives shot in various locations in the world, alleged that the appellee purchased and sold the DVD that contained the work, created by editing said video without the appellant's authorization. Accordingly, the appellant made the following claims against the appellee: [i] claims to seek an injunction against the distribution, etc. of said DVD and to demand the disposal of the same under Article 112 of the Copyright Act, on the grounds of infringement of the moral rights of author with regard to said video; and [ii] claim to seek payment of damages of 49.5 million yen in total, consisting of economic damages of 40 million yen (principally as an amount equivalent to lost profits or alternatively as an amount of damages under Article 114, paragraph (3) of the Copyright Act), non-economic damages of 5 million yen, and legal fees of 4.5 million yen, with delay damages on the total amount, on the grounds of infringement of the copyright (right of reproduction) and the moral rights of author (right to make the work public, right to determine the indication of the author's name, and right to maintain integrity) with regard to said video.

The court of prior instance found that the act of creating the DVD constitutes

infringement of the appellant's copyright (right of reproduction) and moral rights of author (right to make the work public, right to determine the indication of the author's name, and right to maintain integrity), and that the DVD was planned and produced as a product to be sold at the appellee's stores and was placed for sale only with the indication of the appellee's name. Hence, the appellee was also considered to have been engaged in an act of infringing the appellant's copyright and moral rights of author. Based on these findings, the court of prior instance determined the total amount of the appellant's damages to be 3,105,920 yen, consisting of economic damages of 2,105,920 yen under Article 114, paragraph (3) of the Copyright Act and solatium of 1,000,000 yen, and then reduced the total amount of damages by the percentage of the appellant's negligence under the comparative negligence law, i.e., 10%. The court thus partially upheld the appellant's monetary claim to the extent to seek payment of damages of 3,075,328 yen in total, consisting of damages of 2,795,328 yen after the 10% reduction and legal fees of 280,000 yen, with delay damages thereon, while dismissing the appellant's claims to seek an injunction against the distribution, etc. of the DVD and to demand the disposal of the same. Dissatisfied with the judgment in prior instance that thus partially dismissed his/her monetary claim, the appellant filed an appeal against the relevant part of said judgment.

This court partially modified the judgment in prior instance and upheld the appellant's claim for up to 3,296,800 yen in total, holding as follows.

The court of prior instance found comparative negligence on the part of the appellant (at 10%), on the grounds that the appellant had known that the production company that retained the video was to produce a broadcast program. However, this court denied comparative negligence, ruling as follows: "Although it may be possible to say that the appellant could have expected that the supporting intervener or Oska Kikaku would produce a broadcast program using the video in question (the "Video") because the appellant had been informed that the plan to produce a broadcast program was under consideration, it could only be said that it must have been difficult for the appellant to further expect that either company would produce a specific product using the broadcast program as a DVD work to be supplied to the appellee.

Consequently, it is difficult to find negligence on the part of the appellant to the extent that the appellee, etc. allege only because the appellant did not take any measures against the DV tape in question. Thus, the allegation of comparative negligence made by the appellee, etc. lacks basis and therefore cannot be accepted."

In the process of calculating the amount of damages under Article 114, paragraph (3) of the Copyright Act with regard to the DVD that is sold at 315 yen per unit, this

court determined the per-unit price of the DVD to be 4,000 yen and the amount corresponding to copyright royalty to be 5% of this unit price (the court of prior instance determined this to be 8%), and concluded as follows: "The volume of sales of the DVD by the appellee was 6,581 units, and the court of prior instance calculated the appellant's damages based on this figure. However, the appellant's right of reproduction of the Video was infringed with regard to the 9,984 units that had been supplied to the appellee. Therefore, the amount corresponding to copyright royalty that would be received by the appellant should be calculated with regard to the 9,984 units. Consequently, the amount corresponding to the amount of money which would be received by the appellant through the exercise of his/her copyright for the Video is found to be 1,996,800 yen" (the total amount awarded to the appellant was 3,296,800 yen, including 1,000,000 yen as solatium and 300,000 yen as legal fees).