

Date	July 19, 2016	Court	Osaka District Court, 21st Civil Division
Case number	2014 (Wa) 10559		
<p>– A case in which the court partially accepted the plaintiff's claim by holding that the defendant's act of creating Japanese-style paintings based on photographs taken by the plaintiff and displaying those paintings in exhibitions constitutes infringement of the plaintiff's copyrights (adaptation right and exhibition right) and moral rights of author (right to integrity and right to make a work public).</p>			

References:

Numbers of related rights, etc.:

Summary of the Judgment

In this case, the plaintiff, who is a Japanese-style painter, alleged that the defendant's act of creating four Japanese-style paintings (the "Paintings") based on three photographs of an apprentice geisha taken by the plaintiff (the "Photographs") and displaying the Paintings in exhibitions constitutes infringement of the plaintiff's copyrights (adaptation right and exhibition right) and moral rights of author (right to integrity and right to make a work public). Based on these allegations, the plaintiff sought an injunction, etc. against the defendant's act of infringement (sought an injunction against the defendant's act of adapting the Photographs based on the plaintiff's adaptation right and right to integrity, and also sought an injunction against the defendant's act of displaying and assigning the Paintings based on the plaintiff's exhibition right and right to make a work public, and demanded destruction of the Paintings) and demanded payment of damages for the defendant's act of tort.

In this judgment, the court recognized the copyrightability of the Photographs and found that, since the Paintings created by the defendant based on the Photographs exhibit creative expressions newly added by the defendant himself/herself, while maintaining the fundamental characteristics of the Photographs, the Paintings should be considered to have been created by adapting the Photographs. The court determined that the defendant's act of creating the Paintings, which can be regarded as derivative works of the Photographs, and displaying the Paintings in exhibitions constitutes infringement of the plaintiff's copyrights (adaptation right and exhibition right) and moral rights of author (right to integrity and right to make a work public). Furthermore, the court held that, even in light of the circumstances alleged by the defendant, the plaintiff cannot be found to have abandoned the copyrights and licensed the defendant to use the works and also held that the defendant can be at least found to have been negligent in committing infringement of the plaintiff's copyrights and infringement of

the plaintiff's moral rights of author and issued an injunction against the defendant's act of exhibiting and assigning two of the Paintings that were still owned by the defendant and ordered destruction thereof. Also, the court found that the amount of damage caused by the defendant's infringement of the plaintiff's copyrights is equivalent to the amount of loss in the value as a result of preventing the plaintiff from using the Photographs for the creation of paintings. Furthermore, the court determined the reasonable amount of solatium to compensate the damage caused by the defendant's infringement of the plaintiff's moral rights of author in consideration of the degree of alteration of the Photographs and the scales of the exhibitions that displayed the Paintings.