

Date	August 29, 2007	Court	Tokyo District Court, 29th Civil Division
Case number	2006 (Wa) 15552		
– A case in which the court determined that the duration of a copyright has not expired yet with regard to the films in which Charlie Chaplin was involved as a director, etc.			

The plaintiff is a corporation that holds and manages copyrights for the cinematographic works in which Charlie Chaplin was involved as a director, etc. The defendants are companies that manufacture, sell and otherwise handle DVDs of the films that are already in the public domain (for which the duration of a copyright has expired). The defendants reproduce the films directed by Mr. Chaplin (*Sunnyside*, *The Pilgrim*, *A Woman of Paris*, *The Gold Rush*, *City Lights*, *Modern Times*, *The Great Dictator*, *Monsieur Verdoux*, and *Limelight*; hereinafter referred to as the "Nine Films") on DVDs and sell them without authorization from the plaintiff.

The plaintiff alleged that it holds copyrights for the Nine Films and the defendants' acts constitute infringement of its right of reproduction (Article 21 of the Copyright Act) and right of distribution (Article 26 of said Act) for the Nine Films. The plaintiff sought an injunction against the defendants' reproduction and distribution of the DVDs, demanded the destruction of the DVDs in stock, etc., and demanded payment of 94,171,000 yen in total, which is equivalent to the royalties and legal fees. In response, the defendants argued that the copyrights for the Nine Films have already expired by reason of the expiration of the duration, and even if the duration has not expired yet, the plaintiff has sustained no damage or the amount of damage, if any, is extremely small.

The major issue of the case is whether or not the copyrights for the Nine Films have expired upon the expiration of the duration, and in connection with this, which of the clauses concerning the duration of a copyright under the Copyright Act prior to the revision by Act No. 48 of 1970 (hereinafter referred to as the "Former Act") is applicable to this point was also disputed.

The court determined that the duration of the plaintiff's copyrights for the Nine Films has not expired yet, and upheld its claims (while awarding part of the claimed amount).

The court denied the expiration of the duration of the copyrights on the following grounds.

First of all, the Nine Films are works that had been published before the Copyright Act came into effect, and in accordance with Article 7 of the Supplementary Provisions of the Copyright Act, if the duration of a copyright under the Former Act is longer than that under the Copyright Act, the relevant provisions of the Former Act apply.

As the Nine Films are works that involve originality, the provisions of Articles 3 through 6 and 9 of the Former Act apply to them as provided for in Article 22-3 of the Former Act. The Nine Films carry indications referring to Mr. Chaplin as their author. From this, there is no dispute that Mr. Chaplin is at least one of the authors. There is no other indication referring to any corporate body as an author of the Nine Films. Therefore, Article 6 of the Former Act (which provided for the duration of a copyright for a work published or displayed under the name of a corporate body; in accordance with this clause in combination with Article 52, paragraph (2) of the Former Act, the duration of a copyright for such a work comes to be 33 years after the publication) does not apply, and the duration of the copyrights for the Nine Films comes to be 38 years after the death of the author, in accordance with Article 3 and Article 52, paragraph (1) of the Former Act.

As Charlie Chaplin died in 1977, the duration under the Former Act is 38 years after his death and the copyrights for the Nine Films will continue to subsist until December 31, 2015. On the other hand, Article 54, paragraph (1) of the Copyright Act prior to the revision in 2003 (Act No. 85 of 2003; effective as of January 1, 2004) provides that the duration of a copyright for a cinematographic work is 50 years after the publication. Thus, the duration under the Former Act is longer than that under the Copyright Act.

The abovementioned revision in 2003 extended the duration of a copyright for a cinematographic work to 70 years after the publication, and in accordance with the Ordinance for Enforcement of the Revision Act, the duration is 70 years after the publication with regard to a cinematographic work for which a copyright existed as of January 1, 2004, the day the Revision Act came into effect. However, if the duration under the Former Act is longer than that, the copyright continues to subsist until the day of expiration of the duration under the Former Act. Consequently, among the Nine Films, the duration of the copyrights for *Monsieur Verdoux* and *Limelight* is 70 years after the publication (December 31, 2017 for *Monsieur Verdoux*, and December 31, 2022 for *Limelight*) and that for other films is until December 31, 2015, which is the duration of a copyright under the Former Act.

Thus, the duration of the copyright has not expired with regard to any of the Nine Films.