

Date	June 19, 2009	Court	Tokyo District Court, 40th Civil Division
Case number	2008 (Wa) 12683		
<p>– A case wherein, with respect to a PC game software (computer program work) created by P, who was the representative director of Defendant 1, and sold by the plaintiff, the court dismissed the plaintiff's claims based on infringement of copyright by finding that the PC game software was created on the initiative of Defendant 1 and in the course of performance of the duties of Defendant 1 and thus the authorship of such software shall be attributed to Defendant 1 pursuant to Article 15, paragraph (2) of the Copyright Act.</p>			

The plaintiff is a company incorporated for the purpose of selling and otherwise handling PC game software and was engaged in the sale of software (a computer program work) for PC games (dating simulation game containing an appreciable amount of sexual expression) developed and created by a programmer, P, during the period from 2002 to 2003.

Defendant 1 (a company) reproduced the abovementioned software ("Software") by porting (adapting) it for home-use game machines (Dreamcast and Play Station 2) and started selling it in 2003.

In this case, the plaintiff claimed against Defendant 1 and Defendant 2, who is the representative of Defendant 1, an injunction against the sale and distribution of the abovementioned home-use game software on the grounds of infringement of the plaintiff's copyright in the Software (right of adaptation and right of reproduction related to a derivative work) and demanded compensation for damages based on tort.

The main issue in this case is the entity to which the copyright in the Software shall be attributed. With respect to this issue, the plaintiff alleged that the Software was created by P who is engaged in the plaintiff's business (and has been serving as the representative of the plaintiff since January 2008) in the course of the performance of his/her duties and thus the authorship of such Software shall be attributed to the plaintiff pursuant to Article 15, paragraph (2) of the Copyright Act and that the abovementioned acts conducted by Defendants 1 and 2 infringe the plaintiff's copyright (right of adaptation and right of reproduction related to a derivative work). In response to this, Defendants 1 and 2 denied the plaintiff's claims by alleging that since the Software was created by P, who served as the representative director of Defendant 1 together with Defendant 2 since the incorporation of Defendant 1 (2000) (but was dismissed as the director of Defendant 1 in May 2005), on the initiative of Defendant 1 and in the course of performance of the duties of Defendant 1, and thus

the authorship of the Software shall be attributed to Defendant 1 pursuant to said paragraph and the plaintiff has no copyright in the Software.

The court first found the facts that there was an agreement between the plaintiff and Defendant 1 that the plaintiff, who is a member of the Ethics Organization of Computer Software (EOCS), shall develop a business within a framework where the plaintiff would be the seller of the adult game software created by Defendant 1, who is not a member of EOCS, and that the Software was created by P, who was the representative director (in charge of developing game software) of Defendant 1, on the initiative of Defendant 1 and in the course of performance of the duties of Defendant 1 in accordance with said business scheme. Based on such finding, the court held that the copyright in the Software shall be attributed to Defendant 1 by finding that the "employee" as prescribed in Article 15, paragraph (2) of the Copyright Act includes a representative director of the juridical person. The court further held that the copyright in the Software could not be found to have been assigned to the plaintiff from Defendant 1 and that the plaintiff thus could not be found to be the copyright holder of the Software and thereby dismissed the plaintiff's claims.