

Date	February 26, 2008	Court	Tokyo District Court, 46th Civil Division
Case number	2007 (Wa) 15231		
– A case in which the court found that the act of posting another person's work on the electronic bulletin board on the LAN system in an organization constitutes infringement of the right to make it transmittable.			

Summary of the Judgment

In this case, the plaintiff alleged that the defendant's act of posting a magazine article, namely, a work authored by the plaintiff (the "Work"), on the electronic bulletin board on the LAN system in the defendant's organization without making any changes constitutes infringement of the plaintiff's right of reproduction or right of public transmission (including the case where it is made transmittable through automatic public transmission; hereinafter the same) and demanded against the defendant the deletion of the Work posted on said LAN system, a preliminary injunction against the posting of all of the plaintiff's works including the Work, and the payment of damages on the grounds of the infringement of either the right of reproduction or the right of public transmission.

The defendant disputed the plaintiff's allegation of infringement and the amount of damage claimed by the plaintiff by alleging that [i] since the act of reproducing the Work was conducted to such an extent that was necessary for internal use by administrative organs (the main text of Article 42, paragraph (1) of the Copyright Act) and does not unreasonably prejudice the interests of the copyright holder (the proviso to said paragraph), the plaintiff's right of reproduction shall be limited, [ii] if an act of reproduction does not constitute infringement of a right of reproduction under said paragraph, since a subsequent act of public transmission, i.e., an act of exploiting the reproduction, which was conducted for the administrative purpose of notifying the staff members of the content of the Work, shall not be subject to Article 49, paragraph (1), item (i) of said Act and shall not constitute infringement of the plaintiff's right of reproduction, and [iii] an act of public transmission, which is merely one way of exploiting the reproduction, does not constitute infringement of the plaintiff's right of public transmission as long as it is not conducted for any purpose other than the purpose specified in Article 42 of said Act.

In this judgment, the court found that the defendant's LAN system may be regarded as such type of telecommunication facilities that may be partially installed in one place, while the other parts do not have to be installed within the same premises and also found that the act of recording the Work in a recording medium for the bulletin board in question on said LAN system connected to telecommunications lines has made it

possible to automatically transmit the Work upon request from the public and therefore constitutes infringement of the plaintiff's right to make it transmittable. Furthermore, the court dismissed the defendant's allegation by holding as follows: the defendant's staff member's act of reproducing the Work constitutes an act of recording said article on a recording medium for the bulletin board in question and, in short, an act of making it transmittable through automatic public transmission; since it is clear that Article 42, paragraph (1) of the Copyright Act, which imposes limitations on a right of reproduction, does not apply to an act of public transmission, it is practically impossible to expand the scope of application of said provision to limit the use of reproductions to such an extent necessary for administrative purposes as internal materials, and make said provision also applicable to an act of making such information transmittable through automatic public transmission upon request of the public; and as long as said paragraph is not applicable, it is not necessary to discuss Article 49, paragraph (1), item (i) of said Act.

Regarding the calculation of the amount of damage, the court held that, in consideration of the facts that the Work is a magazine article and that the plaintiff (journalist) does not personally sell it, Article 114, paragraphs (1) and (2) of the Copyright Act do not apply to this case, and also held that the amount of damage specified in paragraph (3) of said Article shall be equivalent to the reasonable amount of royalties to be received by the plaintiff if the Work is included in a book and made available as an electronic book through a rental distribution system (made downloadable for viewing for a limited period of time).

Regarding the issue of whether an injunction is necessary or not, the court accepted a claim for a preliminary injunction against a future act of posting the Work, while not recognizing the benefits of issuing an injunction against the act of posting any work of the plaintiff other than the Work. However, the court did not accept the claim for deletion on the grounds that the Work had already been deleted from the electronic bulletin board.

Judgment rendered on February 26, 2008, the original received on the same date, Court Clerk

2007 (Wa) 15231 Case of seeking an injunction against acts of copyright infringement, etc.

Date of conclusion of oral argument: December 18, 2007

Judgment

Plaintiff: A

Defendant: National government

Main text

1. The defendant shall neither store his works listed in the attached List of Works in the storage medium of the electronic bulletin board of the Social Insurance Agency's LAN system operated by the Social Insurance Agency nor have them automatically transmitted upon request from the public.
2. The defendant shall pay the plaintiff 420,500 yen and delay damages accrued thereon at a rate of 5% per annum from April 17, 2007 until the date of full payment.
3. Any other claims of the plaintiff shall be dismissed.
4. The court costs shall be divided into seven portions, four of which shall be borne by the defendant with the remaining three portions borne by the plaintiff.

Facts and reasons

No. 1 Claims

1. The defendant shall delete Works 1 to 4 stated in the attached List of Works from the Social Insurance Agency's LAN system operated by the Social Insurance Agency.
2. The defendant shall not post the plaintiff's works on the Social Insurance Agency's LAN system operated by the Social Insurance Agency.
3. The defendant shall pay the plaintiff 3,740,000 yen and delay damages accrued thereon at a rate of 5% per annum from April 17, 2007 until the date of full payment.

No. 2 Outline of the case

Staff members of the Social Insurance Agency, which is an organ of the defendant, posted, without any modifications, magazine articles that are works of the plaintiff, who is a journalist, on the bulletin board concerning newspaper reporting, etc. in the

electronic bulletin board system of the Social Insurance Agency's LAN system. In this lawsuit, the plaintiff alleged that the aforementioned defendant's acts infringed the plaintiff's right of reproduction and the right to transmit his works to the public. By alleging that the defendant infringed the aforementioned right of reproduction or the right to transmit to the public as selective grounds for claims, the plaintiff demanded deletion of said articles, sought an injunction quia timet against the defendant's act of posting any of the plaintiff's works, and payment of 3,740,000 yen as damages (including delay damages accrued thereon at a rate of 5% per annum as specified in the Civil Code from April 17, 2007, which is after the date of the tort, until the date of full payment).

1. Presumed facts (which are undisputed by the parties concerned and found based on the evidence listed at the end of the corresponding section and on the entire import of oral argument)

(1) Parties concerned

The plaintiff is a journalist who wrote about the issues related to bureaucracy, mass media, etc. In recent years, the plaintiff has been writing many articles about pension-related issues.

The defendant established the Ministry of Health, Labour and Welfare, as an administrative organ under Article 3, paragraph (2) of the National Government Organization Act and established the Social Insurance Agency as an extra-ministerial bureau of said Ministry.

(2) The plaintiff authored Works 1 to 4 listed in the attached List of Works (hereinafter referred to as "Work 1," etc. respectively and the "Works" collectively) and published them in some issues of "Shukan Gendai," a magazine published by Kodansha Ltd. ("Kodansha") as listed at the end of each section of the aforementioned List of Works.

(3) The Social Insurance Agency, which is an organ of the defendant, manages and operates its LAN system (the "LAN System"), which performs various functions for such systems as an e-mail system, electronic bulletin board system, electronic reporting system, etc.

(4) The LAN System includes an electronic bulletin board system that has a bulletin board concerning newspaper reporting, etc. (the "Bulletin Board"). Staff members of the Social Insurance Agency had been posting copies of articles concerning the Social Insurance Agency published in newspapers and magazines.

(5) Staff members of the Social Insurance Agency posted, on the Bulletin Board, Work 1 on March 19, 2007, Work 2 on April 2, 2007, Work 3 on April 9, 2007, and Work 4 on April 16, 2007 (Exhibit Otsu 16).

(6) The Social Insurance Agency closed the Bulletin Board on June 18, 2007 (Exhibit Otsu 6, the entire import of oral argument)

(7) The LAN System is managed and operated independently and separately from the LAN system of the Ministry of Health, Labour and Welfare established by said Ministry. The LAN System is used as a network system to connect the networks of the internal departments of the Social Insurance Agency, institutions such as facilities, regional social insurance bureaus, and social insurance offices. The institutions that use the LAN System are the divisions in the internal departments of the Social Insurance Agency, the Social Insurance College, the Social Insurance Operation Center, regional social insurance bureaus, and social insurance offices.

2. Issues

(1) Whether the defendant infringed the plaintiff's right of reproduction

(2) Whether the defendant infringed the plaintiff's right to transmit his works to the public

(3) What is the amount of damages

(omitted)

No. 3 Court decision

1. Issue (2) (Whether the defendant infringed the plaintiff's right to transmit his works to the public)

The plaintiff alleged that the defendant infringed the plaintiff's right to transmit his works to the public as a selective ground for claims. First, the court made a determination on Issue (2) as follows.

(1) The LAN System is a network system to connect the networks of the internal departments of the Social Insurance Agency, institutions such as facilities, regional social insurance bureaus, and social insurance offices (presumed fact). The LAN System can be regarded as telecommunications facilities one part of which is not installed on the same premises as the other parts. Therefore, the acts of staff members of the Social Insurance Agency of storing Works 1 to 4 one after another in the storage medium of the Bulletin Board of the LAN System connected to the telecommunications circuits used by staff members of the Social Insurance Agency during the period from March 19, 2007 to April 16, 2007 made it possible to automatically transmit the Works upon request from the public and therefore constitutes infringement of the plaintiff's right to transmit the Works to the public (including an act of making available for transmission in the case of automatic public transmission).

(2) The defendant alleged that the act of staff members of the Social Insurance Agency of reproducing the Works does not constitute infringement of the right of reproduction under the main text of Article 42, paragraph (1) and that their subsequent acts of transmitting them to the public, which can be regarded as an act of using the reproductions, does not constitute infringement of the plaintiff's right of reproduction under Article 49, paragraph (1), item (i) on the grounds that said acts were conducted for the administrative purpose of notifying the staff members of the content of the Works. Furthermore, the defendant alleged that, in the case where reproductions are used by transmitting them to the public, if an act of transmitting them to the public was committed simply as a way of using the reproductions, such act would not constitute infringement of the copyright owner's right to transmit works to the public as long as such act was committed for the purpose specified in Article 42.

However, the acts of staff members of the Social Insurance Agency of making reproductions of the Works can be regarded as acts of storing the Works in the storage medium of the Bulletin Board and can be considered to be the very act of making the Works available for automatic public transmission. As specified in Article 42, paragraph (1), "It is permissible to reproduce a work if and to the extent that this is found to be necessary for (omitted) internal use by a (omitted) administrative organ," this is a provision specifying that an act of reproducing a work does not constitute infringement of the right of reproduction under certain circumstances. It is obvious that this provision would not apply to any act of infringing the right to transmit works to the public (including an act of making available for transmission in the case of automatic public transmission). Moreover, since Article 42, paragraph (1) permits reproduction of a work only if and to the extent that this is found to be necessary for internal use by an administrative organ, it is obvious that Article 42, paragraph (1) cannot be expansively applied, even in substance, to the act of storing the Works in the LAN System and making them automatically transmittable to the public upon request from any of the large number of staff members in the divisions in the internal departments of the Social Insurance Agency, the Social Insurance College, the Social Insurance Operation Center, regional social insurance bureaus, and social insurance offices. The defendant alleged that the applicability of Article 49, paragraph (1), item (i) should be examined, since it is a provision applicable to any unintended use of a reproduction made under Article 42, but it is not necessary to examine the applicability of Article 49, paragraph (1), item (i) in this case to which Article 42 is not applicable in the first place. Therefore, the defendant's allegation is unacceptable.

(omitted)

No. 4 Conclusion

As described above, the plaintiff's claims are well grounded to the extent that the plaintiff seeks an injunction against the defendant's acts of storing the Works in the storage medium of the Bulletin Board and automatically transmitting them to the public and also demands payment of 420,500 yen as damages for the defendant's acts of infringing the plaintiff's right to transmit the Works to the public, as well as delay damages accrued thereon at a rate of 5% per annum from April 17, 2007 until the date of full payment. Since a declaration of provisional execution is not appropriate in this case, it is not issued by this court.

The judgment shall be rendered in the form of the main text.

Tokyo District Court, 46th Civil Division

Presiding judge: SHITARA Ryuichi

Judge: NAKAJIMA Motoyuki

Judge: SEKINE Sumiko

List of Works

1. Work 1

Article titled "Unveiling the phony reform of the Social Insurance Agency: Part I. Confidential documents leaked! Chief Seiji Murase ignored 'improper pension premium exemption'" (published in March 31, 2007 issue of "Shukan Gendai")

2. Work 2

Article titled "Unveiling the phony reform of the Social Insurance Agency: Part II. Never-ending 'Greenpia' tragedy: Pension wasted by bureaucrats" (published in April 14, 2007 issue of "Shukan Gendai")

3. Work 3

Article titled "Unveiling the phony reform of the Social Insurance Agency: Part III. Pension money secretly donated to LDP politicians!" (published in April 21, 2007 issue of "Shukan Gendai")

4. Work 4

Article titled "Unveiling the phony reform of the Social Insurance Agency: Part IV. (Final) 'Pension fund corruption' is an organized crime of the Social Insurance Agency" (published in April 28, 2007 issue of "Shukan Gendai")