

Date	December 22, 2010	Court	Tokyo District Court, 29th Civil Division
Case number	2006 (Wa) 17244		
<p>– A case in which, while the defendant, who used to be a director of the plaintiff, created computer program works before and after the defendant’s appointment as a director, the court denied the allegation that the computer program created prior to the defendant’s appointment as a director should be regarded as an employee work and upheld the allegation that the computer programs created after the defendant’s appointment as a director should be regarded as employee works.</p>			

In this case, the plaintiff, which is a company engaged in the consulting business, etc. in the field of medicine, alleged that the four computer programs to analyze medical service fees, etc. that were created by the defendant, who used to be a director of the plaintiff, before and after the defendant’s appointment as a director in order to provide consulting services (one created prior to the defendant’s appointment as a director and the other three created after the appointment) may be regarded as employee works specified in Article 15, paragraph (2) of the Copyright Act and demanded a declaratory judgment against the defendant that the plaintiff has copyrights for said computer programs.

The major issue in this case is whether the plaintiff has copyrights for said computer programs or not. More specifically, regarding the computer program created prior to the defendant’s appointment as a director, the issues are whether [i] the defendant may be regarded as an "employee" of the plaintiff (Article 15, paragraph (2) of the Copyright Act), [ii] whether an agreement has been established between the plaintiff and the defendant for assignment of the copyrights or not, [iii] whether there is any agreement between the plaintiff and the defendant that is "otherwise stipulated" (said paragraph) (a defense against [i]). Regarding the three programs created after the defendant’s appointment as a director, the issue is [iv] whether there is any agreement between the plaintiff and the defendant that is "otherwise stipulated" (said paragraph) (regarding the three programs created after the defendant’s appointment as a director, the defendant is not disputing whether any requirements exist for the establishment of the employee works other than the requirement regarding the existence of an agreement between the plaintiff and the defendant that is "otherwise stipulated" as specified in said paragraph.).

In this judgment, regarding Issue [i], the court found that there is no evidence to prove the existence of an employment relationship between the plaintiff and the defendant as of the time when the defendant created said computer program (the plaintiff is not disputing the allegation that the defendant was not officially an employee

of the plaintiff at that time) and that, based on a comprehensive evaluation of specific factors of this case such as the defendant's working style, the plaintiff's supervision of the defendant, the amount of consideration paid from the plaintiff to the defendant, the payment method, etc., it cannot be said that the relationship between the plaintiff and the defendant was such that the defendant was to provide labor under the supervision of the plaintiff. Furthermore, the court found that, since the money paid from the plaintiff to the defendant may not be considered to be a consideration for the provision of labor, the defendant may not be considered to be an "employee" of the plaintiff. Regarding Issue [ii], in consideration of the specific factors of this case as described above, the court found that, an agreement for assignment of the copyrights may not be considered to have been established between the plaintiff and the defendant. Regarding Issue [iv], in consideration of the specific factors of this case as described above, the court found that an agreement between the plaintiff and the defendant that is "otherwise stipulated" may not be considered to exist. In conclusion, the court dismissed the plaintiff's claim for declaratory judgment for the computer program created prior to the defendant's appointment as a director and accepted the plaintiff's claim for declaratory judgment for the three programs created after the defendant's appointment as a director.