

Copyright	Date	September 21, 2023	Court	Tokyo District Court, 40th Civil Division
	Case number	2023 (Wa) 70006		
- A case in which, even if a sender holds a file of a video of the Plaintiff, it is insufficient to verify that the file is playable.				

Summary of the Judgment

This case is a case in which the Plaintiff asserted against the Defendant that those whose names are unknown (hereinafter, referred to as "Each of the Present Senders") infringed the Plaintiff's right to make transmittable related to the video described in the list of works in the Attachment to the Judgment (hereinafter, referred to as the "Present Video") by using BitTorrent compatible software, which is file exchange / sharing software (hereinafter, referred to as "BitTorrent") and claimed for disclosure of each item of information described in the list of Sender Identification Information in the Attachment on the grounds of Article 4, paragraph (1) in the Act on the Limitation of Liability of Specified Telecommunications Service Providers for Damages and the Right to Demand Disclosure of Sender Identification Information prior to the 2021 Amendment Act No. 27 (hereinafter, as long as there is no particular need to discriminate between before and after the amendment, it shall be referred to as "Providers Liability Limitation Act" including it after the amendment) or Article 5, paragraph (1) of the Providers Liability Limitation Act after the amendment by the same item.

The Judgment taught as follows in summary and decided that none of the Plaintiff's assertions can be employed.

The Plaintiff asserts that if a peer holds at least 1% of the files of the Present Video, it was confirmed that they can be played and asserts that it is highly likely that each of the Present Senders infringes the right to make transmittable of the Plaintiff.

However, regardless of repeated clarification by this Court, the Plaintiff asserted in the end that the fact of holding by the each of the Present Senders of 1% or more of the pieces cannot be verified and thus, even if each of the Present Senders holds the files of the Present Video, the Plaintiff cannot sufficiently verify the playability. Then, the Plaintiff's assertion is insufficient to express the infringement of the right to make transmittable in the first place, which is nothing but unreasonable due to lack of the premises.

Not only the above, the infringement of the right to make transmittable is roughly classified into the information recording / input type referred to in Article 2, paragraph (1), item (ix), 5A and the device connection type in 5B, and according to

the aforementioned found facts, the communication related to Handshake related to the Plaintiff's assertion is only for checking a response of the peer and thus, it is not the communication for downloading or uploading data related to the Present Video (information recording / input type) or the communication related to an initial notification to a tracker related to infringement information (device connection type). Then, the aforementioned communication related to the Plaintiff's assertion is not considered to directly incur right infringement by distribution of infringement information, and disclosure of the information cannot be requested.

As described above, the Judgment dismissed all the Plaintiff's claims.