

Date	September 5, 2011	Court	Tokyo District Court, 29th Civil Division
Case number	2010 (Wa) 7213		
<p>– A case in which the court accepted the plaintiff's claim against the defendant, which was engaged in the business of providing the service of distributing TV programs to overseas residents through the Internet, for damages for the infringement of the plaintiff's neighboring rights (the right to make a work transmittable and the right of reproduction).</p>			

In this case, the plaintiff, which is a broadcasting organization, alleged, against the defendant, which was engaged in the business of providing the fee-based service (the "Service"), "J Network Service," of distributing to overseas residents, through the Internet, TV programs that had been broadcast in Japan, that the Service infringed the neighboring rights (the right to make a work transmittable and the right of reproduction) that the plaintiff holds for the terrestrial TV broadcasting and sought the payment of damages based on the liability for an act of tort.

In this judgment, regarding the details of the Service provided by the defendant, the court found as follows: [i] The video (sound and images) of TV programs is received from a cable TV connection, etc. and then input to a server through a tuner. After data conversion, said TV video data is streamed to users through the Internet; [ii] Similarly, the video of TV programs is received and input to a server through a tuner, and the TV video data is converted to a certain video file format. Then, said video file data is recorded in a recording medium to allow any user who submits a request to download them. The court found that the users of the Service were able to watch a TV program broadcast by using the streaming distribution system mentioned in [i] on a real time basis, and that, thanks to the recorded video files and the distribution system mentioned in [ii] above, the users were able to save TV video data as if they were "recording" TV programs and watch them at any time. The court also found that the Service, more specifically, the streaming distribution system mentioned in [i] above and the system to record and distribute TV video data in a certain video file format mentioned in [ii] above, infringed the plaintiff's right to make a work transmittable, and that the system to record and distribute TV video data in a certain video file format mentioned in [ii] above also infringed the plaintiff's right of reproduction.

The plaintiff alleged that the amount of damage should be calculated by first subtracting the costs of the Service from the income that the defendant gained from the Service (a fixed monthly fee paid by each user) and then identifying the portion related to the infringement of the plaintiff's neighboring rights for the plaintiff's terrestrial TV

broadcasting. In response, the defendant alleged that the cost of the Service exceeded the aforementioned income. In this judgment, the court found that the amount that may be recognized as the costs shouldered by the defendant did not exceed the amount recognized by the plaintiff as costs and dismissed the defendant's allegation. The court calculated the amount of damage by subtracting from the income gained by the defendant such portions that are related to other companies' TV broadcasting and satellite broadcasting and thereby partially accepted the plaintiff's claim.