

Date	August 4, 2010	Court	Intellectual Property High Court, Fourth Division
Case number	2010 (Ne) 10029		
<p>In cases where a person who engages in the business of a juridical person, etc. is in the employment of the juridical person, etc. and performs his/her duties as designated in the business plan of the juridical person, etc. or the contract, etc. that the juridical person, etc. has concluded with a third party, even if no specific instruction or consent is given by the juridical person, etc., as long as the person who engages in the business is supposed or expected to make the work in the course of performance of his/her duties, the requirement of the “initiative of the juridical person, etc.” as set forth in Article 15, paragraph (1) of the Copyright Act is met.</p>			

References:

Article 15 of the Copyright Act

In this case in which X (appellant) sued Y (appellee) for having printed and published joint research reports and distributing these reports to Kitami City, etc.: (i) X alleges that he/she holds a copyright and author’s moral rights for the FY2003 reports and that Y’s act as described above infringed X’s copyright (right of reproduction) and author’s moral right (right to maintain integrity), and accordingly, X seeks an injunction against the publication or distribution of the joint research reports and demands destruction of these reports under Article 112, paragraphs (1) and (2) of the Copyright Act, and also seeks damages under Article 709 of the Civil Code for infringement of his/her author’s moral right (right to maintain integrity). (ii) Alternatively, X alleges that even if the FY2003 reports are not regarded as copyrightable works, Y’s act as described above is seriously antisocial and constitutes a tort, and accordingly, X seeks 11 million yen as damages under Article 709 of the Civil Code.

The court of prior instance dismissed all of X’s claims, ruling that: (i) the FY2003 reports were works made for hire for Y, and therefore X has no copyright or author’s moral rights for these reports, and without the need to rule on other points, all of X’s claims based on his/her allegation of infringement of his/her copyright and author’s moral rights are groundless; (ii) since there seems to be no reason for considering Y’s act as described above to be illegal enough to be the basis for a tort, said act cannot be deemed to constitute a tort. Dissatisfied with this, X appealed to the higher court.

The Intellectual Property High Court dismissed X’s appeal, holding as follows.

“In practice, it is often the case that a person who engages in the business of a juridical person, etc., on the initiative of the juridical person, etc., makes a work in the

course of performance of his/her duties under the supervision of the juridical person, etc., and such work thus made is made public under the name of the juridical person, etc. In view of such reality, Article 15, paragraph (1) of the Copyright Act provides that the authorship of a work that conforms to the requirements set forth therein shall be attributed to a juridical person, etc.”

Among the requirements set forth in said paragraph, as for the one that the work must be made on the initiative of the juridical person or any other employer (“juridical person, etc.”), the court stated as follows. “It is indisputable that the initiative of a juridical person, etc. can be found in cases where a juridical person, etc. plans and designs the making of a work and ordered a person who engages in its business to actually make the work, or where a person who engages in the business of a juridical person, etc. makes a work with the consent of the juridical person, etc. In addition, in cases where a person who engages in the business of a juridical person, etc. is in the employment of the juridical person, etc. and performs his/her duties as designated in the business plan of the juridical person, etc. or the contract, etc. that the juridical person, etc. has concluded with a third party, even if no specific instruction or consent is given by the juridical person, etc., as long as the person who engages in the business is supposed or expected to make the work in the course of performance of his/her duties, the requirement of the “initiative of the juridical person, etc.” is deemed to be met.” Based on this reasoning and in light of the findings of fact on the circumstances leading up to the conclusion of the joint research contracts, X’s role, and the circumstances leading up to the preparation of the FY2003 reports as well as the content of the reports, the court recognized Y’s initiative with respect to the preparation of the FY2003 reports, stating that, “In accordance with the contracts concluded between Y and Kitami City, etc., X was supposed or expected to perform duties assigned thereto as a researcher on Y’s part and to prepare the FY2003 reports in the course of performance of such duties, and in this respect, the preparation of these reports is deemed to be implemented on Y’s initiative.” The court then held that, “guarantee for academic freedom cannot be asserted as the reason for restricting the application of the provisions on a work made for hire even with regard to research activities based on a contract that a university concludes with an outside entity.”

Accordingly, the court determined that the FY2003 reports met the statutory requirements, that is, (i) the work should be made by a person who engages in the business of a juridical person, etc. in the course of performance of his/her duties, (ii) the work should be made public by the juridical person, etc. as a work under its name, and (iii) there should be no provisions to the contrary in the contract, work regulations

or the like at the time of the making of the work, and concluded that the FY2003 reports were works made for hire for Y.

X alleged that the conclusion that the FY2003 reports were works made for hire for Y was unreasonable. The court rejected this allegation, holding as follows: “Supposing, on the contrary, the right for the FY2003 reports, which were the results of the joint research projects, is attributed not to Y but to the individual researchers, it would be impossible for Kitami City, etc., the party with which Y concluded the contracts and which financially sponsored the joint research projects, to freely use the results of the joint research projects, and it would also be difficult for Kitami City, etc. to carry out similar joint research projects and prepare results thereof when the individual researchers no longer continuously participate in the joint research projects due to retirement or for other reasons. Such consequence would considerably impede the development and enhancement of joint research between universities and outside private entities, etc.”