

Date	May 19, 2010	Court	Tokyo District Court, 29th Civil Division
Case number	2008 (Wa) 31609		
A case in which the court found that the act of microcopying paintings in color when preparing certificates of authenticity of the paintings constituted infringement of the copyrights (the right of reproduction) and partially upheld the claim for damages			

Comments

The plaintiff who succeeded to copyrights for two paintings of a famous painter (Paintings) filed this case against the defendant engaging in the business of appraising art works, etc. to seek the payment of 120,000 yen as damages (Article 709 of the Civil Code and Article 114, paragraph (2) or (3) of the Copyright Act) with delay damages accrued thereon, alleging that the defendant infringed the copyrights (the right of reproduction) by microcopying the Paintings in color when preparing two certificates of authenticity of the Paintings (Certificates of Authenticity). The defendant asserted that the color microcopies of the Paintings attached to the Certificates of Authenticity did not fall under reproductions as they are used only for the purpose of specifying paintings which the defendant appraised and thus act only as mere symbols. The defendant also asserted that the claims in question fell under abuse of right and went against the theory of fair use and that Article 47-2 of the Copyright Act after revision in 2009 (Reproduction required for the offer of ownership transfer, etc. of artistic works, etc.) should be applied or applied *mutatis mutandis* to certificates of authenticity.

The court ruled as follows: Though the color microcopies of the Paintings attached to the Certificates of Authenticity are the Paintings scaled down by approximately 23% and approximately 16%, respectively, the color microcopies should be regarded as reproducing the essential distinctive parts of the Paintings as artistic works because the color microcopies are sufficient for a person who has ordinary powers of attention to sense the distinctive parts of the Paintings that are expressed by painting tools, the objects painted, composition, color, brushstrokes, etc. when seeing the color microcopies. Consequently, the court determined that the defendant's act of producing said color microcopies fell under reproduction of the

Paintings. With regard to the amount of damages, the court determined that the amount of damages incurred by the plaintiff under Article 114, paragraph (2) of the Copyright Act was found to be 60,000 yen, ruling that the amount of profits which the defendant obtained from the preparation of the Certificates of Authenticity to which said color microcopies are attached is calculated as 30,000 yen for each of the Paintings because both the plaintiff and the defendant engage in appraising services. With regard to the defendant's assertions of abuse of right, etc., the court determined that the plaintiff's claims were not recognized as falling under abuse of right. With regard to the theory of fair use, the court determined that the current Japanese Copyright Act did not include any provision stipulating said theory and that there was no inevitability of applying said theory adopted in the United States, directly in Japan. With regard to Article 47-2 of the Copyright Act, the court determined that the provision was not applicable, etc. because certificates of authenticity do not satisfy the requirements stipulated in said Article. Based on these, the court partially upheld the plaintiff's claims to the extent of the aforementioned amount of damages calculated.