

Date	May 28, 2009	Court	Tokyo District Court, 46th Civil Division
Case number	2007 (Wa) 23883		
A case in which the court found that the act of the defendant temple C of having requested a sculptor of Buddha to replace the head part of the statue of the Goddess of <i>Kannon</i> , which is an artistic work made by diseased A, who is the older brother of the plaintiff, falls under an act that would constitute an infringement of diseased A's right to maintain integrity if diseased A were alive, and admitted that the head part of a statue of the Goddess of <i>Kannon</i> should be restored to the original head part of the time when said statue of the Goddess of <i>Kannon</i> was initially made, for the purpose of protecting the moral interests of diseased A			

In this case, the plaintiff asserted that, regarding a statue of the Goddess of *Kannon* described in the attached list of articles, which is an artistic work that the plaintiff made jointly with diseased brother A and diseased father B, the act of defendant temple C, who is the owner of the original work, of having requested defendant D (a sculptor of Buddha statues) to replace the head part of the statue after the death of diseased A, etc. and offering the statue of Goddess of *Kannon* for public viewing (hereinafter the statue of the Goddess of *Kannon* prior to the replacement of the head part is referred to as the "Original Statue" and the statue of the Goddess of *Kannon* after the replacement of the head part is referred to as the "Statue") falls under infringement of the plaintiff's moral rights of author (right to maintain integrity) and copyright (right of exhibition) for the Original Statue or an act of exploitation of a work in a manner prejudicial to the honor or reputation of the plaintiff (deemed infringement of moral rights of author), as well as falls under an act that would constitute an infringement of the moral rights of author of diseased A and diseased B if they were alive. Based on this assertion, the plaintiff sought, against defendant temple C, (i) injunction against the offering of the Statue for public viewing until the head part of the Statue is restored to the original head part of the time when said Statue was initially made (head part of the Original Statue) pursuant to Article 112, paragraph (1), Article 115, and Article 113, paragraph (6) of the Copyright Act, or pursuant to Article 116, paragraph (1), Article 112, paragraph (1), and Article 115 of said Act as the bereaved family of diseased A and diseased B, and (ii) the restoration of the head part of the Statue to the head part of the Original Statue pursuant to Article 112, paragraph (2), Article 115, and Article 113, paragraph (6) of said Act, or pursuant to Article 116, paragraph (1), Article 112, paragraph (2), and Article 115 of said Act as the bereaved family of diseased A and diseased B. The plaintiff also sought, against both of the defendants, (iii) damages in

tort of infringement of the plaintiff's moral rights of author or deemed infringement of moral rights of author (for defendant temple C, including compensation for future damages for the period until the aforementioned restoration is made) and (iv) placement of apology advertising as described in the attached lists of apology advertising 1 and 2, as appropriate measures to restore the honor or reputation of the plaintiff, diseased A, and diseased B pursuant to Article 115 of said Act, and pursuant to Article 116, paragraph (1) and Article 115 of said Act as the bereaved family of diseased A and diseased B.

The court first ruled that the plaintiff and diseased B were not recognized as the joint authors of the Original Statue, and then determined that the act of replacing the head part of the Original Statue by the defendant, Kogenji Temple, which had offered the Original Statue to the public, fell under an act that would constitute an infringement of diseased A's moral rights of author (right to maintain integrity) if diseased A were alive, because the replacement of the aforementioned head part falls under the modification of the important part of the Original Statue and is recognized as being against the will of diseased A, who is the author of the Original Statue without dispute. Based on this determination, the court cast aside the defendant's assertions that the case falls under cases where the act "is found to not be against the will" (proviso to Article 60 of the Copyright Act) and that the modification falls under "modifications that are considered unavoidable" (Article 20, paragraph (2), item (iv) of the Copyright Act).

On that basis, the court ruled as follows: (i) Article 115 of the Copyright Act is literally construed as providing that the author is able to demand that a person who, intentionally or negligently, has infringed his/her moral rights of author, take three types of measures, specifically, appropriate measures to "ensure the identification of the author as the author," appropriate measures to "make corrections," and appropriate measures to "restore the honor and reputation of the author"; (ii) It is understood that damage to the honor or reputation of the author is not a requirement for demanding appropriate measures to "make corrections," which are of a different type than appropriate measures to "restore the honor and reputation of the author"; (iii) When a work, which has been modified through an act of infringement of the moral rights of the author (right to maintain integrity), is restored to the original state before the infringement, it is reasonable to understand that said restoration falls under "corrections" and the author may demand said restoration as an appropriate measure to "make corrections" if there is the need and feasibility thereof. Based on these rulings, the court determined that the plaintiff, as the bereaved family of diseased A, may

demand that the defendant, Kogenji Temple, restore the head part of the Statue to the original head part of the time when said Statue was initially made (head part of the Original Statue) as an appropriate measure to make corrections pursuant to Article 116, paragraph (1) and Article 115 of the Copyright Act, because there is the need and feasibility of said restoration, taking together into account that (i) the head part is important in expressing the thought or sentiment of diseased A, who is the author, in the Original Statue, that (ii) defendant temple C, intentionally or negligently, committed an act that would constitute an infringement of diseased A's moral rights of author (right to maintain integrity) if diseased A were alive, that (iii) the Statue after the replacement of the head part has been enshrined in the temple and has been offered for public viewing by worshippers, etc., which is obviously against the will of diseased A, and that (iv) the head part removed from the Original Statue (head part before the replacement) is stored by the defendants in its original form and it is possible to restore the Statue to the state of the Original Statue before the replacement by fitting said head part on the Statue (entire import of oral argument).

On the other hand, the court cast aside the plaintiff's claim (pursuant to Article 116, paragraph (1) and Article 115 of the Copyright Act) for suspension of offering of the Statue for public viewing until the head part is restored to the original head part of the time when said Statue was initially made (head part of the Original Statue), based on the ruling that such measure does not fall under "appropriate measures" mentioned in Article 115 of the Copyright Act. The court also cast aside the plaintiff's claim as the bereaved family of diseased A (pursuant to Article 116, paragraph (1) and Article 112, paragraph (1) of the Copyright Act) for suspension of offering of the Statue for public viewing until the head part is restored to the original head part of the time when said Statue was initially made (head part of the Original Statue), based on the ruling that the plaintiff may not demand suspension of offering of the Statue for public viewing because the act of defendant temple C of offering the Statue after the replacement of the head part for public viewing is an act committed after the aforementioned modification and is thus not recognized as falling under an act that would constitute an infringement of diseased A's moral rights of author (right to maintain integrity). Regarding apology advertising, the court did not uphold the plaintiff's claim therefor, based on the rulings that the replacement of the head part of the Original Statue is not recognized as having lowered the objective evaluation of diseased A in society and having damaged diseased A's honor or reputation in the society and that there is no need for apology advertising as long as the plaintiff may demand the restoration of the head part to the original state.