Date	May 25, 2007	Court	Tokyo District Court, 47th Civil Division
Case number	2006 (Wa) 10166		
A case in which the court determined that provision of a service entitled "MYUTA" whereby people can listen to music in CDs, etc. by their own mobile phones constitutes infringement of the right of reproduction and right of automatic public transmission of the authors of musical works (MYUTA case)			

The defendant (JASRAC) is a music copyright management business operator and manages copyrights for musical works (Managed Works) on consignment from lyric writers, composers, music publishers, etc. The plaintiff is a company engaging in the business of storage services, etc. for mobile phones and plans to provide users of au-WIN mobile phones with a service entitled "MYUTA" whereby the users can listen to music in CDs, etc. by their own mobile phones (Service).

In this case, the plaintiff seeks a declaratory judgment to the effect that the defendant does not have the right to claim injunction against the plaintiff's provision of the Service based on copyrights for musical works.

The defendant asserts that the plaintiff infringes, in relation to the Service, the right of reproduction (Article 21 of the Copyright Act) and right of public transmission (Article 23 of said Act; right to make transmittable and right of automatic public transmission) of the Managed Works. On the other hand, the plaintiff admits that the Managed Works are reproduced in the Service, and then asserts that users commit the reproduction and that the Service does not fall under public transmission.

The major issues of this case were the actors who infringed the right of reproduction as well as the establishment of automatic public transmission and the actor who commits automatic public transmission.

The court determined that the plaintiff was likely to infringe the right of reproduction of the Managed Works through provision of the Service, based on the following rulings: (i) The Service which the plaintiff plans to provide enables users who have access to the Internet connection through computer and mobile phone to listen to music from CDs, etc. by their own mobile phones, and the act of reproduction is unavoidable in that process and the act of reproduction by storing 3G2 files in the server is positioned as a very important process in the Service; (ii) The server which plays a central role in the Service, including storage of 3G2 files and transmission to mobile phones, is possessed by the plaintiff, and has been established and managed under the plaintiff's control; (iii) The plaintiff creates and provides user software that is essential for using the Service and the user software does not operate without the

authentication of the server while being connected to the server through the Internet line; (iv) The system of reproduction of 3G2 files in the server was designed by the plaintiff in the manner that the user software above is launched in users' computers and functions with the storage software in the server through the Internet line; (v) It is considerably difficult from a technical standpoint for users to individually use the sound source data of music from CDs, etc. in mobile phones, and users can do so only through the act of reproduction by storing sound source data in a site that enables downloading the sound source data to mobile phones, such as the storage service of the server in the Service; (vi) Although users are involved in the beginning of operations, including selection of music to be reproduced in the server, the actor who commits the act of reproducing 3G2 files in the server should be said to be the plaintiff and could not be said to be the users, in light of the facts that the specification of user software that is essential for storing sound source data in the server and the necessary conditions for saving in storage are decided by the plaintiff in the system design in advance and that the act of reproduction is committed solely in the server which is under the plaintiff's control.

The court then ruled that the actor who transmits (downloads) 3G2 files from the server to users' mobile phones should be said to be the plaintiff and could not be said to be the users, in the same manner as for the act of reproduction. Based on this ruling, the court determined that the transmission of 3G2 files of sound source data from the server to users' mobile phones was automatically committed in response to requests from users, who are the general public, for the purpose of making the files directly receivable by the users and could be recognized as automatic public transmission (Article 2, paragraph (1), item (ix-4)), because the server which plays a central role in the Service has the function of automatically transmitting 3G2 files of sound source data in response to requests from users' mobile phones and users of the Service should be regarded as unspecified people from the viewpoint of the plaintiff that has established the server.

Based on this determination, the court ruled that as it is possible to say that the plaintiff commits reproduction of musical works in the server and automatic public transmission to users' mobile phones in the Service, these acts constitute infringement of copyrights for the Managed Works unless t the defendant's permission is received, and the defendant has the right to claim injunction against storage of musical works in the server and transmission of musical works to users' mobile phones. Consequently, the court dismissed the plaintiff's claim.

Judgment rendered on May 25, 2007, the original received on the same date, court clerk
2006 (Wa) 10166 Case of Seeking Declaratory Judgment for Non-existence of Right to Seek Injunction against Copyright Infringement
Date of conclusion of oral argument: March 27, 2007

Judgment

Plaintiff: Imēji Shitī Kabushiki Kaisha ("Image City")

Defendant: Japanese Society for Rights of Authors, Composers and Publishers ("JASRAC")

Main text

1. The plaintiff's claim shall be dismissed.
2. The plaintiff shall bear the court costs.

Facts and reasons

No. 1 Claims

The plaintiff sought a declaratory judgment to the effect that the defendant does not have the right to seek an injunction against the plaintiff's act of providing the service specified in the attached list under the service name "MYUTA" based on the copyrights for the musical works managed by JASRAC under commission from the lyricists, composers, music publishers, and other copyright owners.

No. 2 Outline of the case

1. Facts on which the decision is premised (in addition to the facts that were not disputed by the parties, the facts that can be found based on the entire import of the oral argument and the evidence presented below)

(1) Parties concerned

The plaintiff is a stock company providing services such as mobile phone storage service in the course of trade. On January 1, 2006, its trade name was changed from Kabushiki Kaisha Compyūtā Sitī to the current name (the entire import of the oral argument).

The defendant is a music copyright management organization registered in the copyright management organization register under the Copyright Management Business Act (Act No. 131 of 2000). The defendant is an incorporated association established mainly for the following purpose. The defendant manages domestic works by becoming entrusted with copyrights and subdivided rights (musical performance rights, stage

performance rights, and sound recording rights, etc.) from copyright owners such as lyricists, composers, and music publishers, and also manages foreign works by concluding mutual management agreements with copyright intermediary organizations in other countries that have signed the Universal Copyright Convention, of which Japan is also a signatory. The defendant grants licenses for musical works not only to domestic public transmission companies but also to music users in various fields including the record industry, films, publishing, entertainment, bars, restaurants, etc., collects usage fees from users as compensation, and subsequently distributes the fees to the copyright owners inside and outside Japan.

(2) Plaintiff's service

The plaintiff is planning to provide the service specified in the attached list (the "Service") under the service name "MYUTA," which allows users who have an Internet connection between their computers and mobile phones (initially, only the users of au WIN terminals of KDDI) to listen to music recorded on CDs, etc. by using their mobile phones (Exhibit Ko 4, the entire import of the oral argument).

The Service can be summarized as follows (Exhibits Ko 4, 5-1, and 5-2).

A. Basic structure

In order to allow users to download music to their mobile phones on demand, the Service allows users to compress the audio source data of music into a file compatible with their mobile phones by using the "MYUTA Music Uploader," which the plaintiff created and provided, (the "User Software") on their computers and upload and keep it in the storage (external storage medium, more specifically, a high-capacity hard disk in the storage server) of the "MYUTA Server" (the "Server") that is managed by the plaintiff through the Internet. Thanks to this system, users can freely play the stored music on their mobile phones.

B. Flow of the audio source data of music

In the Service, the audio source data of music is converted into a different format as a data file, stored, and transmitted through the Internet as described in the attachment titled "Use of Musical Works in the Service" (the "Flow Chart").

(A) (1) in the Flow Chart

A user uses his or her own computer and obtains an MP3 file or WMA file already prepared for a music player (file formats will be hereinafter indicated by using their extensions in this manner) or produces such file from a CD by using any software widely available.

(B) (2) in the Flow Chart

On the user's computer, the user converts the MP3 file or WMA file to an AVI file

by using the User Software and stores and consequently reproduces the file.

(C) (3) and (4) in the Flow Chart

On the user's computer, the user converts the AVI file to a 3G2 file by using the User Software and stores and consequently reproduces the file. Then, the user uploads it to the Server through the Internet. When the upload is completed, the 3G2 file is deleted from the user's computer.

(D) (4) in the Flow Chart

In the Server, the 3G2 file, which was uploaded by the user through the Internet, is stored and consequently reproduced.

(E) (4) and (5) in the Flow Chart

In the user's mobile phone, the 3G2 file, which was downloaded from the Server through the Internet, is stored and consequently reproduced.

(3) Background of this lawsuit

In November 2005, the plaintiff issued a press release and started providing the Service for free on a trial basis by limiting functions (Exhibit Ko 4).

The defendant sent the plaintiff a message titled "Regarding 'MYUTA'" dated February 1, 2006, to request the plaintiff to suspend the Service and restart the Service after obtaining licenses from the right holders (Exhibit Ko 1).

Subsequently, the plaintiff and the defendant exchanged messages regarding whether the Service violates the Copyright Act or not (Exhibits Ko 2 and 3). On April 20, 2006, the plaintiff suspended the Service in order to "restart the Service after clarifying interpretation of the Copyright Act." On May 17, 2006, the plaintiff filed this lawsuit (Exhibit 7, the fact of which this court takes judicial notice).

(4) Musical works handled by the users

Most of the audio source of the music handled by the users of the Service are musical works managed by the defendant ("managed work(s)").

2. Outline of the case

This is a case where the plaintiff sought a declaratory judgment that the defendant does not have the right to seek an injunction against the plaintiff's act of providing the Service based on the copyrights for the managed works. In response, the defendant alleged that the Service infringes the right of reproduction and the right to transmit to the public (the right to make available for transmission and the right of automatic public transmission) and that the defendant has the right to seek an injunction based on the aforementioned rights. While admitting that the managed works are reproduced in the course of the Service, the plaintiff alleged that the act of reproduction is committed by users and that the plaintiff's act does not constitute public transmission.

3. Issues

(1) Issue of whether the right of reproduction is infringed or not

A. Reproduction Right 1

Regarding (4) in the Flow Chart, the issue of who reproduces the 3G2 file in the Server

B. Reproduction Right 2

Regarding (5) in the Flow Chart, the issue of who reproduces the 3G2 file in the user's mobile phone

C. Reproduction Right 3

Regarding (2) in the Flow Chart, the issue of who reproduces the AVI file in the user's computer, and regarding (3) in the Flow Chart, the issue of who reproduces the 3G2 file in the user's computer

(2) Issue of whether the right to transmit to the public is infringed or not

A. Right of automatic public transmission

Regarding (4) to (5) in the Flow Chart, the issue of whether the transmission of the 3G2 file from the Server to the user's mobile phone (download) constitutes an act of automatic public transmission

If yes, the issue of who commits the act of automatic public transmission

B. Right to make available for transmission

Regarding (4) in the Flow Chart, the issue of whether the act of storing the 3G2 file in the Server constitutes an act of making it available for transmission

If yes, the issue of who commits the act of making it available for transmission

(omitted)

No. 4 Court decision

1. Facts proven by evidence

Based on a comprehensive evaluation of the facts on which the decision is premised as specified in No. 2, 1 above, the following facts can be found.

(1) Outline and purpose of the Service (Exhibit Ko 4, the entire import of the oral argument)

A. The outline of the Service is as described in the attached list.

A user who has registered with the plaintiff as a member installs the User Software, which is provided by the plaintiff, in his/her computer. The user converts the audio source data of music into a file format compatible with this/her mobile phone by using

the User Software and uploads the converted file to the Server, and downloads it to his/her mobile phone.

In this way, the Service allows users to download the audio source data of music from the Server to their mobile phones via the Internet to enjoy music on their mobile phones anytime and anywhere.

B. A 3G2 file can be made from a music CD and used as the audio source data of music by using free software as well. However, it is technically very difficult for individual users to transfer such file to their mobile phones: which generally do not have such function, and play the music on the phones.

The purpose of the Service is to allow users to easily play their chosen music on their mobile phones by using the system of data transfer via the Server, regardless of whether users understand technologies related to audio source data and mobile phones.

C. In order to provide the Service, the plaintiff installed, in the service center managed by the plaintiff's group company in Yokohama, a set of equipment owned by the plaintiff such as the Server consisting of a Web server, a database server, and a storage server. The plaintiff monitored them to ensure constant operation by conducting maintenance, etc., and managed them, while making preparations in case of failure.

(2) Security of the Service (Exhibits Ko 5-1 and 5-2)

The System is designed as follows in order to improve security.

A. Separation of a network

In order to protect the users' personal information from leakage, or damage or falsification caused by those who have gained access with malicious intent, the database server containing users' personal information is separated from the Internet domain and managed within the local network.

B. management of user accounts

A user account is issued for the purpose of user management when a user gains access from his/her computer.

(A) User password

A user password (consisting of more than eight alphanumeric characters, in principle) is allocated and issued.

(B) Access key (ID for access)

In order to identify the computer and mobile phone of each user, an access key is issued. An access key is generated on the side of a computer when the User Software is installed in the computer for the first time. An access key is used as an ID to uniquely identify the computer of each user (to confirm that no other computer will be identified by the same ID). An access key is also generated on the side of a mobile phone when

the User Software is installed in the mobile phone for the first time. An access key is used as an ID to uniquely identify the mobile phone of each user. The use of an access key in the Service is hidden discreetly and will not be noticed by the users.

C. Limitation of access terminals

In order to control access from computers and mobile phones, a unique access key (ID) is generated.

D. Folders in servers

In order to prevent users from sharing data, making unauthorized copies, or engaging in other wrongful activities in servers, the security of the folders in the servers is maintained by using an access key (ID).

E. Special process to identify mobile phones qualified to access data and play music

(A) A subscriber ID (identical with the mobile phone number) is used to prevent access from any mobile phone other than the registered user's mobile phone.

(B) A double check is conducted by using the user's password.

(C) An access key (nine-digit access identification number to check identity) is used to perform another check after checking the user's subscriber ID and password.

F. As described above, when a person becomes a member of the Service, he/she designates his/her computer and mobile phone to be used for the Service by registering his/her mail address, password, etc. The plaintiff uses the access key that the plaintiff had issued to the user as well as the subscriber ID (Member ID) specific to the user's mobile phone in order to identify the user. In this way, the user's computer, the storage area of the Server, and the user's mobile phone are linked with each other in order to block access from any other device.

(3) Initial settings made by each user of the Service (Exhibits Ko 5-2 and 9, and Otsu 1)

In the Service, the system is designed as follow to allow each user to make initial settings.

A. Membership registration and establishment of linkage

Each user makes the following settings by using his/her computer and mobile phone.

(A) User's computer

(i) Access the top page of the website and select the membership registration page.

(ii) Read the users' rules and press the "Agree" button.

(iii) Register membership information such as name, gender, age, email address for the computer, email address for the mobile phone, and password in accordance with the instructions shown on the membership registration page.

(iv) Confirm the input data on the registration confirmation page.

(v) Receive nine-digit access key on the access key issuance page.
(vi) Check the access key, and press the button to send the URL for registration to the mobile phone.
(B) User's mobile phone
(i) Receive the email from the Server on the mobile phone.
(ii) Access the Server from the mobile phone to visit the mobile phone registration page.
(iii) Input the same password as the one set when the membership registration was completed on the computer.

By completing the aforementioned series of set-up procedures, a link is established among the user's computer, the storage area of the Server for the user ("box"), and the user's mobile phone (only one). No other unidentifiable device can gain access to the box. In this way, the environment in which the user can use the Service is created.

B. Set-up of the User Software

Each user makes the following environmental settings on his/her computer.

(A) Press the download button when a download page for the User Software is shown.
(B) Check the content of the folders to be installed and complete the installation procedure in accordance with the instructions.
(C) Activate the User Software.
(D) Input the access key, which was issued when the membership registration procedure was carried out, and complete the registration procedure.

After the completion of this procedure, the access key on the side of the User Software set up in the computer and the Server and the access key on the side of the mobile home match and the user is identified as the same person. Only the registered mobile phone can be used to gain access. Only the user himself/herself is permitted to access the Server.

C. Regarding the Service provided by the plaintiff, each user has no choice other than to decide whether he/she will use the Service in compliance with the users' rules established by the plaintiff on the premise that he/she will follow the system designed by the plaintiff. No individual user is permitted to change the conditions of use or the settings for use.

(4) Flow of the system processing in the Service

A. Flow of the processing

The Server consists of a Web server, database server, and storage server. In the Service, music data information is processed as follows.

(A) A user's membership registration application from his/her computer is processed.
(B) In the phase of user registration, a storage server and a storage area are allocated.

(C) After user registration, an access key is issued. The access key is used to limit access to the stored music data information.
(D) When the user's mobile phone or computer tries to access music data for the first time, a login authentication procedure is carried out. Authentication (first time) is performed by using the access key.
(E) After authentication (first time) is successfully performed based on the access key, the next step in the login authentication process is to send information about the location of the storage server back to the user's mobile phone and computer.
(F) After receiving the information about the location of the storage server, the mobile phone or computer sends an inquiry about music data information by using the access key to the application program in the storage server (program for music data access; the "Storage Software").
(G) The Storage Software conducts authentication (second time) based on the access key.
(H) After authentication (second time) is successfully performed based on the access key, the Storage Software identifies the area allocated to the user linked to the access key.
(I) After identifying the area allocated to the user, the Storage Software accesses music data information in response to the inquiry about music data information.
(J) The Storage Software sends the result of the processing of the inquiry about music data information back to the mobile phone or computer and, if the inquiry is about a download of music data, transmits the music data along with the result of the processing.
B. Management of the area
The disk area in the storage server within the Server is divided into a part open to the public through the Internet and a part not open to the public. Music data information is stored in the non-public part. The public part holds open information about the website and also the Storage Software, which is used to access the non-public part.
(5) Actual system processing in the Service (Exhibits Ko 8, and Otsu 3)
A. Basic system
The Server, which consists of a Web server, database server, and storage server, uses basic software, i.e., an operating system ("OS"), incorporated into the storage server for the purpose of process management related to the execution of programs, file system management related to the input and output of data to and from the hard disk in the Server, and network management related to network connection.
In the Service, when audio source data files (music data) are stored in the storage of

the Server (the hard disk in the storage server; hereinafter the same), such storage is made possible by the file system management function of the OS. More specifically, if the Storage Software requests the storage or readout of audio source data, the file system of the OS will be activated to access the hard disk.

B. File storage of audio source data

Audio source data is uploaded from the user's computer to the storage of the Server as follows. (Attached Figure 1)

(A) The User Software, which was installed in the user's computer, accesses the Storage Software in the storage server via the Internet and requests the upload of audio source data.

(B) Upon request, the Storage Software instructs the file system of the OS to store, in the hard disk, the audio source data received from the User Software.

(C) The result of the access to the hard disk is sent to the file system of the OS.

(D) When the requested amount of data is stored by the file system, the result of the data storage will be sent back to the Storage Software.

(E) The Storage Software will send the result of the upload back to the User Software.

C. Readout of audio source data

The audio source data is downloaded from the storage of the Server to the user's mobile phone as follows. (Attached Figure 2)

(A) The user's mobile phone is connected to the Storage Software via the Internet and requests download of audio source data.

(B) Upon request, the Storage Software instructs the file system of the OS to access the hard disk and read the audio source data.

(C) The file system reads the audio source data from the hard disk.

(D) The result of the access to the hard disk is sent from the hard disk back to the file system.

(E) After the file system finishes reading the requested audio source data, the result is sent back to the Storage Software.

(F) The Storage Software edits the audio source data received from the file system into a format suitable for Internet transmission and transmits it to the user's mobile phone.

(6) Flow of audio source data

A. Audio source data (the entire import of the oral argument)

In the Service, a 3G2 file is created as the audio source data of music by using the User Software, transmitted through the Internet and stored in the storage of the Server. This 3G2 file, whose file format is 3GPP2, has been compressed by using HE-AAC technology. Thanks to a high compression ratio, a 3G2 file, which is about one fifth of

an MP3 file or MWA file in size, can be more easily stored in the small memory of a mobile phone.

Generally speaking, when an MP3 file or WMA file is created by ripping the audio source data of music from a music CD, the digital data of the CD and such file data are identical with each other in substance because such file is created simply by compressing the amount of data in a manner that would prevent sound quality deterioration.

In the Service, the User Software generates an AVI file (only the audio data therein is used) in order to return the file format to a more easily workable format to produce a 3G2 file. An AVI file and a 3G2 file produced from the same audio source data can also be considered to be identical in substance.

B. Upload of audio source data (Exhibits Ko 5-2 and 9, and Otsu 1)

A user can upload audio source data in accordance with the instructions shown on the screen as follows, while his/her computer, in which the User Software has been installed, is connected to the Internet.

(A) Listing of the files

Click the listing button and visit the file uploading page, look for the relevant folder such as My Music, and click a file to put on a list, and complete the listing process.

(B) Addition of a file to the My List

Click each file on the list and click the "My List" button to add the file to the My List.

(C) Upload of the files in the My List area

Click the "Transfer" button when a file is in My List and complete the upload process.

C. Download of audio source data (Exhibits Ko 5-2 and 9)

When a user accesses the MYUTA website from his/her mobile phone through the Internet, the Server automatically identifies the subscriber ID, etc. and confirms the membership. The user can access the storage area of the Server from the top page on the mobile phone and select the audio source data of music to be downloaded. After the music is downloaded and stored in the memory of the mobile phone, the user can play the music as many times as he/she wants. However, the user can download only a limited number of tunes due to the limitation in the memory size of his/her mobile phone.

Audio source data is downloaded to a registered mobile phone connected to the website of the Service through the Internet as follows.

(A) Selection of a music download function

A user selects "Music download" from among the options shown on the top page of the website, such as "Music download," "Confirmation of the model compatibility," "Add to favorites," and "Sign-up/Withdrawal."

(B) Selection of My List

Select and click "My list" on a screen where "My list" is shown under the title "Music download."

(C) Selection of a folder name

On the screen where multiple folders are shown under the title "My List," select and click the folder containing the file of the audio source data of the music to be downloaded.

(D) Selection of a file name

On the screen where multiple files are shown under the title "Folder," select and click the file of the audio source data of the music to be downloaded.

(E) Selection of download

On the screen, under the title "Music file," the artist name and size of each tune is indicated, and below that, two options, "Download" and "Delete," are presented. If "Download" is selected and clicked, download will begin. A sign "Downloading" is shown until the completion of the download process, which is indicated by a sign "Download completed."

2. Issue (1) A (Reproduction right 1)

(1) There is a consensus among the parties concerned regarding the fact that an act of reproduction is committed as shown in (4) in the Flow Chart. Based on the fact found above, the issue of who commits the act of reproduction is examined below.

A. Purpose

Upon designing the system, the plaintiff decided in advance the specifications of the User Software, which are indispensable for the storage of audio source data in the Server, and the conditions for keeping data in the storage of the Server. The 3G2 file reproduced in the storage of the Server is stored with the expectation of being downloaded by the user to his/her mobile phone. In other words, the purpose of the act of making reproduction in the Server is not to simply store a reproduced file for the purpose of backing up the audio source data, but to eventually use the audio source data on a mobile phone, which is a part of the process of the Service provided by the plaintiff. In a sense, the storage of the Server performs a relay function between the user's computer and mobile phone.

If an individual user tries to turn audio source data on a CD, etc. into a file usable on his/her mobile phone: which can be done by using the Service, the user would be able to

turn the audio source data into a 3G2 file by using free software, etc. without using the User Software, as found in 1 (1) above. However, it is technically very difficult for the user to transfer the 3G2 file to his/her mobile phone in a playable form.

Therefore, an act of reproduction, i.e., uploading audio source data to a website (the storage of the Server) from which it can be downloaded on a mobile phone and storing it in the Server, can be considered to be an extremely important part of the process carried out by the Service.

B. Nature of the act

There is no dispute between the parties concerned about the fact that a managed work is reproduced in the Server as shown in (4) in the Flow Chart.

An act of reproduction of a 3G2 file in the Server is committed when said file is uploaded from the user's computer through the Internet and stored in the Server. In other words, as found in 1 (5) above, the User Software in the user's computer and the Storage Software in the Server (storage server) work together through the Internet. A function of the OS of the storage server completes the process of storing an audio source data file.

As found in 1 (4) above, when a 3G2 file is uploaded, the User Software will not function unless it is working together with the Server via the Internet and authenticated by the Server. Only after authentication by using an access key issued at the time of membership registration is the user permitted to access the system of the Server and store audio source data in a storage area specifically linked to the user.

C. Role of the Server

As found in 1 (1) above, the plaintiff owns a set of equipment including the Server consisting of a Web server, database server, and storage server, installed in the service center of the plaintiff's group company, monitors it to ensure its constant operation and makes preparations to deal with any incident of failure. In short, the plaintiff has been managing the Server.

The Server is an integral part of the system used to provide the Service to users. As found in 1 (2) to (4) above, the Server carries out tasks in accordance with the system designed by the plaintiff and performs its functions. The User Software created by the plaintiff is activated within the user's computer and works together with the Storage Software in the Server through the Internet. As found in 1 (3) above, no individual user can change the conditions or settings for use and has no choice other than to decide whether he/she will use the Service in accordance with the system designed by the plaintiff.

It is indispensable for the storage of the Server to store audio source data to be downloaded to the user's mobile phone. Since the purpose of the Service is to allow

users to play music on their mobile phones, the plaintiff designed the system on the premise that audio source data will be reproduced in the Server.

The plaintiff owns, manages, maintains, and operates the Server solely for achieving such purpose in the Service. The Server will not be used for any other purposes.

D. Role of users

Meanwhile, since users of the Service will use the system that is integrated into the Server, they are expected to initiate operations such as making a decision as to which tune should be reproduced in the Server, as found in 1 (4) and (6) above.

However, as found in 1 (2) to (4) above, when designing the system, the plaintiff already decided the specifications of the User Software, which are indispensable for storage of audio source data in the Server, and the conditions for keeping data in the storage of the Server. The Server is designed to store a 3G2 file only if the User Software is activated within the user's computer and works together with the Storage Software in the Server through the Internet.

Thus, even if it can be interpreted that storage of each 3G2 file involves an act of a user as an initiator of the storage operation through the Internet, an act of reproduction committed as a result of such storage is conducted in the Server, which is under the management of the plaintiff.

E. Fee-based service

As found in 1 (1) above, the monthly fee of the Service of the plaintiff was announced to be free as long as a beta version of the Service is used on a trial basis. However, there was a schedule from the beginning to turn the Service into a fee-based service and expand its functions.

F. Summary

It should be interpreted that it is not the users, but the plaintiff that commits an act of reproducing a 3G2 file in the Server in consideration of various factors such as the following facts. [i] Since the Service, which the plaintiff plans to provide, is designed to allow users who have an Internet connection between their computer and mobile phone to listen to music originally stored in a CD, etc. by using their mobile phones, an act of storing a 3G2 file in the Server and consequently reproducing it as shown in (4) in the Flow Chart explaining the Service is inevitable and can be considered to be an extremely important process of the Service. [ii] The plaintiff owns and manages, under its supervision, the Server, which plays a central role in the Service such as the storage of a 3G2 file and the transmission of the file to the user's mobile phone. [iii] The plaintiff created and provided the User Software, which is indispensable for the use of the Service, while the User Software would not operate unless it can work together with

the Server through the Internet and be authenticated by the Server. [iv] Reproduction of a 3G2 file in the Server is made possible by a system designed by the plaintiff in a manner that prompts the aforementioned User Software to be activated on the user's computer and work together with the Storage Software in the Server through the Internet. [v] Individual users would face considerable technical difficulty if they tried to use audio source data of music originally stored in a CD, etc. on their mobile phones and would be able to overcome such difficulty only through the act of reproduction by storing audio source data on a website from which users can download it to their mobile phones just like the storage of the Server provided by the Service. [vi] While users initiate operations such as making a decision as to which tune should be reproduced in the Server, the plaintiff, when designing the system, already decided the specifications of the User Software, which are indispensable for the storage of audio source data in the Server, and the conditions for keeping data in the storage of the Server, and the act of reproduction is conducted in the Server, which is under the management of the plaintiff.

(2) Allegation of the plaintiff

A. The plaintiff alleged that, in consideration of the fact that the plaintiff sets up the environment on a one-on-one basis and links the user's computer, the designated area in the storage of the Server, and user's mobile phone, said storage can be considered to be an external hard disk of the user's computer and that it is users that store data in the Server, which can be compared to the banks' service of providing safety deposit boxes (No. 3, 1 "Allegation of the plaintiff" (1) above).

It is true that, based on a simplistic examination of the data input device and the data output device in the Service, a one-on-one relationship can be found between the user's computer and the user's mobile phone. However, it would not affect the fact that, as described in (4) in the Flow Chart, an audio source file is reproduced in the Server. Moreover, an act of storing and consequently reproducing a 3G2 file in the Server is an extremely important process of the Service. As mentioned in (1) D above, in the case of an act of reproducing a 3G2 file in the Server, it is users who initiate the operation of storing data, which consequently produces a reproduction. The plaintiff does not conduct an act of reproduction at its own discretion whenever the plaintiff wants to. However, an act of storing data and consequently reproducing it is conducted under the management of the plaintiff. In other words, while the act of reproducing a 3G2 file in the Server is conducted based on a user's decision as to which music data should be uploaded, the process of reproduction is carried out in the Server, which is owned and managed by the plaintiff, under the system designed and managed by the plaintiff, and only after the authentication procedure requested by the plaintiff to the user. In sum, the

plaintiff is fully involved in an act of reproduction. Thus, in the course of this process, users should be considered to have merely initiated the operation of reproduction. As mentioned in (1) F, it is reasonable to consider the aforementioned act of reproduction itself as an act of plaintiff.

B. Furthermore, the plaintiff alleged that, in view of the fact that the plaintiff does not create an environment where a user can easily produce a file to be stored, recommend a user to make a file, or select a specific tune for a user and thus that it cannot be said that the plaintiff manages and controls a user's act of reproducing a file (No. 3, 1 "Allegation of the plaintiff" (2) above).

However, as mentioned in (1) C and D above, the provision of the Service itself has enabled a user to conduct an operation to store data. Consequently, the system of the Server, which is under the control and management of the plaintiff, conducts file processing to produce a reproduction.

C. The plaintiff alleged that, in the Service, a reproduction is temporarily produced in the user's computer or the Server as is the case with some software that is temporarily reproduced in computer memory and that the entirety of such act of reproduction can be considered to be carried out by a user from a physical and normative viewpoint (No. 3, 1 "Allegation of the plaintiff" (3) above).

However, the term "temporarily" used in the allegation of the plaintiff is unclear. Moreover, the plaintiff failed to provide grounds for the allegation that the exercise of a reproduction right must be considered to be limited in the case of temporary storage. The aforementioned allegation is unreasonable in consideration of the fact that an act of making a reproduction in the Server is an integral part of the Service.

(3) Conclusion

As described above, regarding (4) in the Flow Chart, since it should be said that it is the plaintiff who commits an act of reproducing a 3G2 file in the Server, the plaintiff's act of providing the Service could infringe reproduction rights for the managed works.

3. Issue (2) A (Right of automatic public transmission)

(1) Next, in light of the characteristics of this case, in addition to the determination made in 2 above, it is necessary to make a determination as to whether the rights of automatic public transmission have been infringed in the process described in (4) to (5) in the Flow Chart.

Regarding the process described in (4) to (5) in the Flow Chart, an examination as to who transmits a 3G2 file (download) from the Server to the user's mobile phone has revealed that, as mentioned in 2 above, it should be interpreted that it is not the users, but rather the plaintiff that transmits a 3G2 file from the Server in light of the following

facts. [i] Since the Service, which the plaintiff plans to provide, is designed to allow a user who has an Internet connection between his/her computer and mobile phone to listen to music originally stored in a CD, etc. by using his/her mobile phone, an act of transmitting audio source data as shown in (4) to (5) in the Flow Chart explaining the Service is inevitable and can be considered to be an indispensable final process of the Service. [ii] The plaintiff owns and manages, under its supervision, the Server, which plays a central role in the Service such as storage of a 3G2 and transmission of the file to the user's mobile phone. [iii] Act of transmitting a 3G2 file from the Server can be carried out thanks to the system designed by the plaintiff in a manner that allows the Storage Software in the Server to work together with the user's mobile phone through the Internet. [iv] Since an act of transmitting a 3G2 file from the Server is conducted only after an act of reproduction is committed in the Server, individual users would face considerable technical difficulty if they tried to use audio source data of music originally stored in a CD, etc. on their mobile phones. [v] While users initiate operations such as making a decision as to which tune should be downloaded in the Server, the plaintiff, when designing the system, already decided the specifications and conditions pertaining to the transmission of audio source data from the Server, and such act of transmission is committed in the Server, which is under the management of the plaintiff.

(2) Issue of whether an act of automatic public transmission has been committed or not

As found in 1(2) to (6) above, the Server, which is indispensable for the Service, has the function to automatically transmit a 3G2 file of audio source data in response to a request from the user's mobile phone.

As found in 1 (1) above, the Service is available to any person who has completed the membership registration process as long as he/she has a computer and a mobile phone with an Internet connection (initially, limited to au WIN terminals). The plaintiff does not filter nor select membership applicants before the process of online membership registration. The term "public" means unspecified persons or exclusive groups made up of many persons (Article 2, paragraph (5) of the Copyright Act). In this sense, the users of the Service can be considered to be unspecified persons in relation to the plaintiff, which installed the Server. Therefore, an act of transmitting a 3G2 file of audio source data from the Server to the user's mobile phone can be considered to constitute an act of automatic public transmission (Article 2, paragraph (1), item (ix)-4 of said Act) because such transmission is conducted upon the request of users, who can be considered to be the "public," for the purpose of allowing them to directly receive the file.

In this way, the Server can be regarded as equipment installed for the purpose of

automatic public transmission. An act of transmitting (downloading) a 3G2 file from the Server to the user's mobile phone as described in (4) to (5) in the Flow Chart can be considered to constitute an act of automatic public transmission.

(3) Allegation of the plaintiff

A. The plaintiff alleged that an audio source data file stored by a user in the Server is accessible only by said users and that, since there is a one-on-one relationship between a file and a user, always linking the file to the identical user, the act of storing such file can be considered to be conducted solely by the user as a purely private information transmission to the user himself/herself and therefore does not constitute infringement of a right to transmit to the public (No. 3, 4 "Allegation of the plaintiff" (1)).

However, as mentioned in (1) above, it is the plaintiff that transmits audio source data from the Server because the plaintiff owns and manages the Server. Since the purpose of an act of transmission to the public is to allow the public to directly receive data (Article 2, paragraph (1), item (vii)-2 of the Copyright Act), if receivers of the transmitted data (direct receivers) are unspecified persons or exclusive groups consisting of many persons, it could be regarded as transmission to the public. As mentioned in (2) above, in relation to the plaintiff, who transmits data, the users of the Service can be regarded as the public. Although an audio source data file stored in the Server is accessible only by the user who had stored it, it can be considered to be just a result of the design of the system of the Service by the plaintiff that was made in a manner that links the user's computer, the storage area of the Server, and the user's mobile phone and blocks connection from any other devices by use of authentication technology checking the user's mail address, password, and other personal information as well as the access key and the subscriber ID (Member ID). It is undeniable that the transmitter is the plaintiff and that the receiver is unspecified persons.

B. The plaintiff also alleged that an audio source data file stored by the user in the Server is accessible only by the user who had stored it and that the plaintiff provides a system to assign a certain storage area that is accessible only by a particular user, which can be compared to the banks' service of providing safety deposit boxes (No. 3, 4 "Allegation of the plaintiff" (2)). However, in light of the role of the Server, which operates under the management of the plaintiff in accordance with the system designed by the plaintiff, the aforementioned allegation is unreasonable because it is a one-sided interpretation of the Service from the viewpoint of the plaintiff.

(4) Conclusion

On these grounds, it should be said that it is the plaintiff that commits an act of automatic public transmission with regard to the transmission of a 3G2 file from the

Server to the user's mobile phone (download) as described in (4) to (5) in the Flow Chart, and that the plaintiff is highly likely to infringe the rights of automatic public transmission for the managed works through the provision of the Service.

4. Conclusion

On these grounds, it can be found that it is the plaintiff that commits an act of reproducing a musical work as described in (4) in the Flow Chart explaining the Service and also an act of automatic public transmission described in (4) to (5) in the Flow Chart. These acts constitute infringement of copyrights for the managed works unless the plaintiff has been licensed by the defendant. Thus, the defendant has the right to seek an injunction against the act of storing a musical work as described in (4) in the Flow Chart and an act of transmitting the work to the user's mobile phone.

Therefore, the plaintiff's claim is groundless without needing to examine any other factors.

The judgment shall be rendered in the form of the main text.

Tokyo District Court, 47th Civil Division

Presiding judge: TAKABE Makiko

Judge: HIRATA Naoto

Judge TANABE Minoru cannot sign and seal this document due to a transfer of position.

Presiding judge: TAKABE Makiko

List

- Name of the site: MYUTA
- URL: http://www.******.jp
- Content

Features

You can enjoy music on your mobile phone anytime anywhere.
You can store music files on the Internet only for your personal use.
You can freely download and delete music to and from your mobile phone (the data will remain accessible even after changing your mobile phone to a different model).

Becoming a member
Access the MYUTA website from your computer and complete the membership registration.
If you follow the registration procedure, we will link your computer with your mobile phone and provide you with a box specifically for your use.

Uploading music
You can upload music by using the MYUTA Music Uploader, which will be lent to you for free.

Downloading music
You can freely download music from your box stored in MYUTA to your mobile phone.

Storage capacity
150 MB (about 100 tunes)
To be increased to 650MB after the Service becomes a fee-based service
(Note) Average storage capacity of a mobile phone
About 20 tunes depending on the model of the user's mobile phone

- Compatible format of music data
MP3
One of the audio compression techniques used for MPEG-1, which is a video compression format. MP3 compresses audio source data to one-tenth of the original size, while maintaining sound quality comparable to audio CDs.

WMA
An audio compression format developed by Microsoft
WMA allows distribution of audio source data through low-speed telecommunication circuits such as ISDN, while maintaining the sound quality comparable to music CDs.

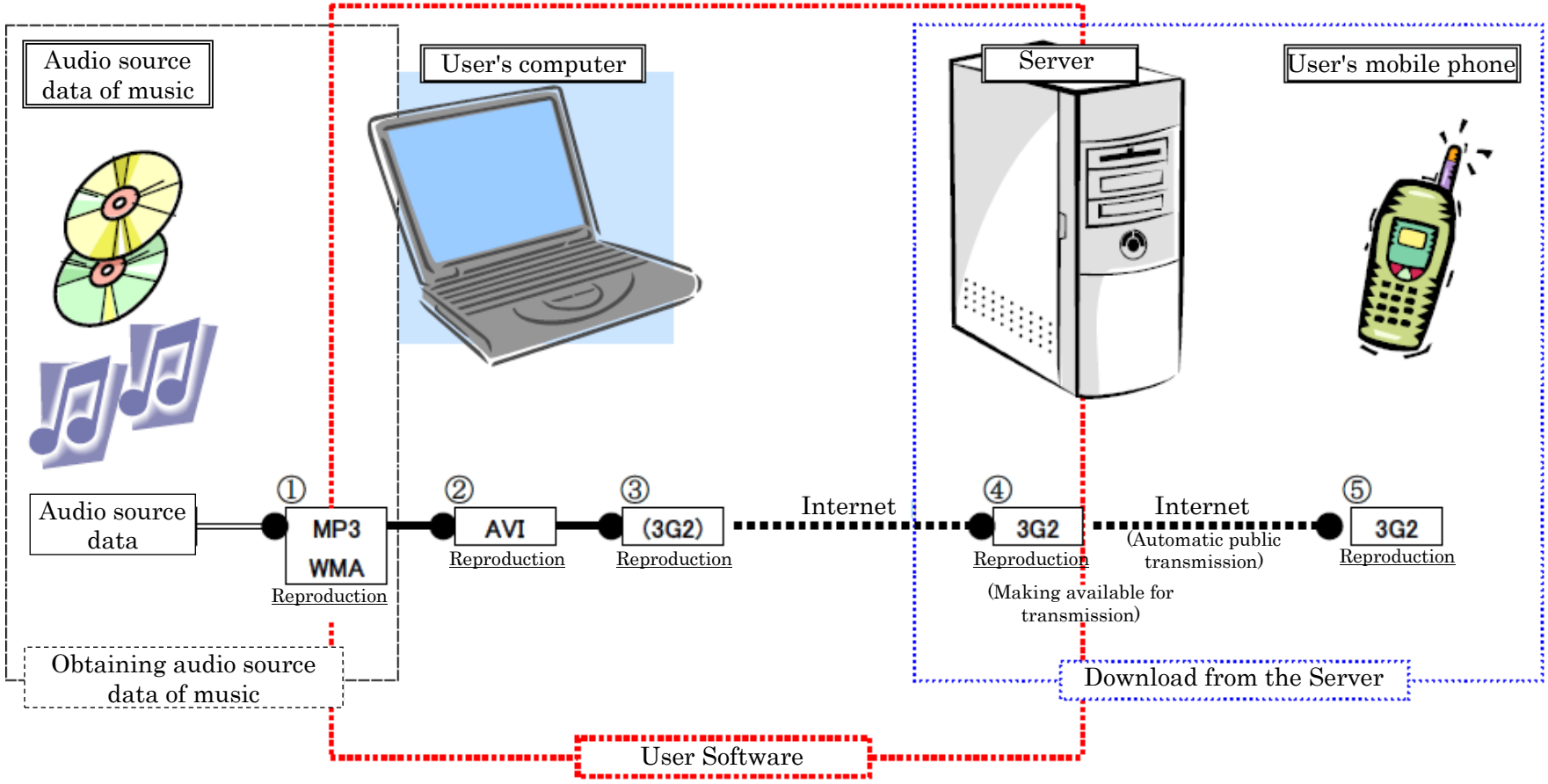
Compatible formats are scheduled to be expanded.

- Compatible models
Computer: Windows2000/XP
Mobile phone: au WIN terminals (compatible terminals are scheduled to be expanded)

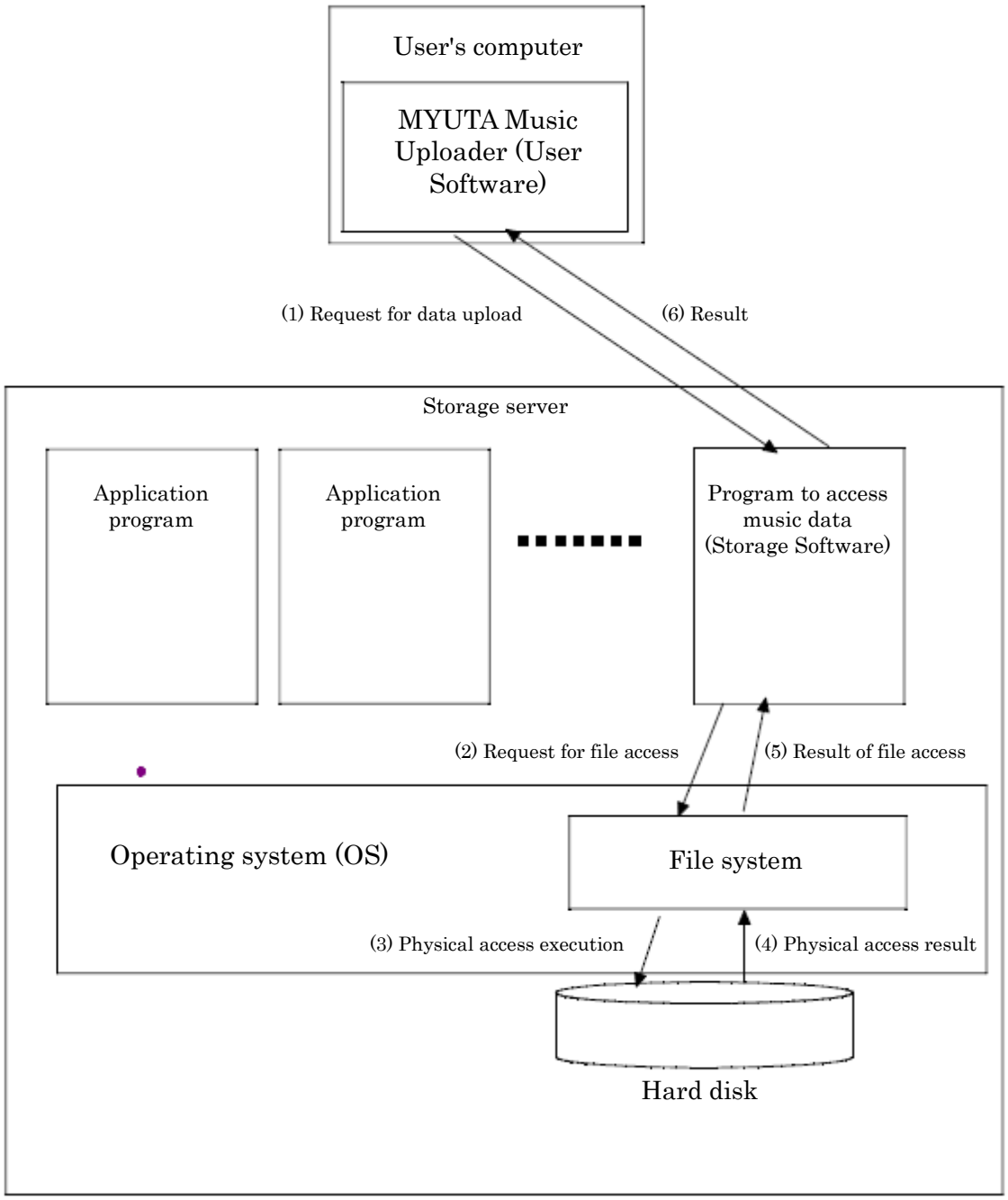
Compatible mobile phone terminals are scheduled to be expanded.

- Fees
Monthly fee: None for a while
(Note) A packet communication fee will be separately charged for downloading.

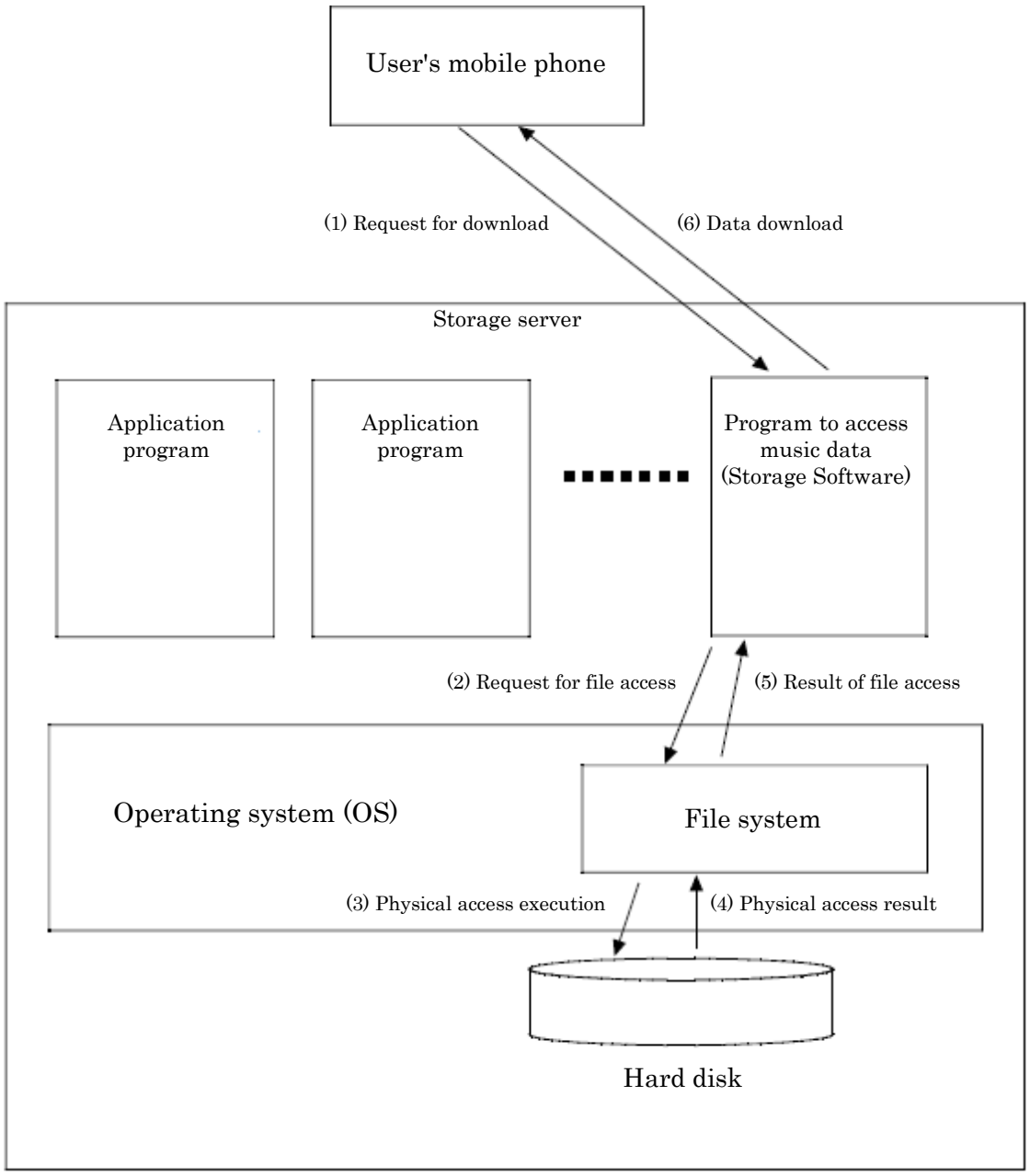
Use of Musical Works in the Service



[Figure 1]


User's computer
MYUTA Music Uploader (User Software)
(1) Request for data upload
(6) Result
Storage server
Application program
Application program
Program to access music data (Storage Software)
(2) Request for file access
(5) Result of file access
Operating system (OS)
File system
(3) Physical access execution
(4) Physical access result
Hard disk

[Figure 2]


User's mobile phone
(1) Request for download
(6) Data download
Storage server
Application program
Application program
Program to access music data (Storage Software)
(2) Request for file access
(5) Result of file access
Operating system (OS)
File system
(3) Physical access execution
(4) Physical access result
Hard disk