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Date of the judgement

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2000.09.07

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Case Number

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1998(Ju)332

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Reporter

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Minshu Vol.54, No.7, at 2481

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Title

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The Possibility of Copyright Protection of Printing Fonts

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Case name

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Claim on the Injunction of Copyright Infringement, and a Counter-Claim

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Result

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Judgment of the First Petty Bench, dismissed

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Court of the Second Instance

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Osaka High Court

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Summary of the judgement

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In order for the printing fonts to qualify for copyright protection by Article 2, paragraph 1, subparagraph 1 of the Copyright Law, the fonts must have originality such as distinctiveness as compared with the existing fonts, and also must have an aesthetic feature which, in itself, serves as an object of artistic appreciation

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## Main text of the judgement

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The appeal shall be dismissed.

The cost of appeal shall be borne by the jokoku appellant.

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## Reasons

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On the grounds of appeal by the representatives for the jokoku appeal, Iwao Hanaoka, Katsuyoshi Shinbo, and Takashi Kizaki:

1. Article 2, paragraph 2, subparagraph 1 of the Copyright Law defines a work to be protected by copyright as a 'creative expression of thought or feeling which falls within the scope of literature, science, art, or music'. It is reasonable to understand that for the printing fonts to qualify for copyright protection, the fonts must have originality such as distinctiveness as compared with the existing fonts, and also must have an artistic feature which, in itself, serves as an object of artistic appreciation. If such a requirement of originality is relaxed for printing fonts, or an artistic feature from a utilitarian point of view is considered to be sufficient, in order to publish novels, articles etc., using these fonts, indication of the name of the author of the printing fonts and his consent will be required, the consent of the author will also be required for copying the work, and it may become impossible to create or improve printing fonts based on similar existing fonts. This will be against the goal of the Copyright Law which aims at the protection of the rights of the authors while taking into account the fair use of the works, and thus contributing to the development of culture. Furthermore, the form of printing fonts are inevitably limited, since they are to enable letters to perform the function of communicating information; if the fonts are to be generally protected by copyright, under the system in which the emergence of copyright does not require examination, registration, or external publicity, copyrights would emerge on numerous fonts which are only slightly different, and this will make the legal relationship complicated and create confusion.

2. In the present case, according to the facts established by the original instance court, the set of printing fonts included in list three attached to the judgment of the first instance court (Gona U) and in list four (Gona M; hereinafter, together with Gona U, 'the Fonts of the Appellant') is based upon various Gothic fonts which have been used as printing fonts previously, and has developed these fonts, and although it is a 'design which has a fresh and graphical sense not found in the existing Gothic fonts', has been created upon the idea of 'fonts with artistic functions inherent in letters which are easy to read, and are straightforward and not eccentric', and therefore, does not largely differ from the design of the existing fonts. Under such

circumstances, the Fonts of the Appellant cannot be regarded to have the originality and atheistic features mentioned above, and therefore, does not qualify as a work as provided by Article 1, paragraph 1, subparagraph 1 of the Copyright Law. Nor can the Fonts of the Appellant, which do not have the originality of an atheistic feature, be regarded as a 'work of applied art' which is protected by the Berne Convention on the Protection of Literary and Artistic Works.

### 3. Conclusion

As explained above, the judgment of the original instance court on the primary claim of the appellant which ruled that the Fonts of the Appellant are not a work to be protected by copyright is justifiable, and the process of the judgment is not unlawful as argued by the appellant. The arguments of the appellant are not acceptable.

Concerning the supplementary claim, the ground for the certiorari has been excluded by the decision on certiorari.

Therefore, the justices unanimously rule as the main text of the judgment.

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Presiding judge

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Justice IJIMA Kazutomo

Justice ENDO Mitsuo

Justice FUJII Masao

Justice OHDE Takao

Justice MACHIDA Akira

(\*Translated by Sir Ernest Satow Chair of Japanese Law, University of London)