

Date	January 31, 2012	Court	Intellectual Property High Court, Third Division
Case number	2011 (Ne) 10009		
<p>– The defendant (a company) is found negligent in that it did not suspend the act of infringement of copyright and neighboring right on the grounds that it could at least have been able to be aware of the possibility that the service in question may be found to be illegal on or after the time when it received the delivery of the warning letter, at the latest.</p> <p>– Estimation of the amount of damages pursuant to Article 114, paragraph (2) of the Copyright Act</p> <p>– The plaintiffs’ demand for an injunction against the defendant's act of making transmittable the broadcasts in question based on the neighboring right (right to make transmittable) and demand for an injunction against the defendant's act of public transmission of the broadcast programs in question based on the copyright (right of public transmission) may be admitted.</p>			

References: Article 23, paragraph (1), Article 99-2, Article 112, paragraph (1) and Article 114, paragraphs (2) and (3) of the Copyright Act, and Article 709 of the Civil Code

1. Background

The plaintiffs (appellants) are broadcast organizations performing terrestrial television broadcasts and the defendant (appellee) was providing a service called “Maneki TV” which enabled persons who have entered into an agreement with the defendant (hereinafter such persons shall be referred to as the “users”) to view television programs through the Internet (hereinafter such service shall be referred to as the “Service”). In the Service, a base station which is a device constituting an apparatus called “Location Free” made by Sony was used and the users who possessed a dedicated monitor or personal computer, etc. with constant Internet access could view television programs through the Internet.

In this case, the plaintiffs made the following claims against the defendant, by alleging that the Service infringed the right to make transmittable (neighboring right; Article 99-2 of the Copyright Act) held by the plaintiffs as broadcast organizations in regard to the broadcasts in question and the right of public transmission (copyright; Article 23, paragraph (1) of the Copyright Act) held by the plaintiffs as the copyright holders in regard to the broadcast programs in question: (i) an injunction against the act of making transmittable the broadcasts in question and the act of public transmission of the broadcast programs in question in the abovementioned Service,

pursuant to Article 112, paragraph (1) of the Copyright Act; and (ii) payment of damages for infringement of copyright and neighboring right and the delay damages accrued thereon, pursuant to Article 709 of the Civil Code and Article 114, paragraph (2) of the Copyright Act and other relevant provisions.

This is the second judgment of the court of second instance for the case which was remanded to the Intellectual Property High Court by the Supreme Court after it quashed the judgment in second instance before such remandment (judgment of the Intellectual Property High Court 2008 (Ne) No.10059).

2. Summary of the Court Decision

(1) Conclusion

This court revoked the judgment in first instance, and upheld the injunction against the act of making transmittable the broadcasts in question and the act of public transmission of the broadcast programs in question and awarded damages sustained as a result of the infringement of copyright and neighboring right, ranging from 206,517 yen to 509,204 yen.

(2) Summary of the reasons

After examining the facts in this case, regarding which the defendant pointed out that the finding thereof contained errors, this court determined that the party who performs the act of making transmittable the broadcasts in question is the defendant. Moreover, the court found that the defendant could have at least been aware that the Service may be found illegal, on or after November 4, 2004 (i.e. the day on which the defendant received the delivery of a warning letter), at the latest, and that the defendant was negligent in that it did not suspend the act of infringement of copyright and neighboring right. Based on such findings, the court estimated the amount of damages pursuant to Article 114, paragraph (2) of the Copyright Act, and thereby awarded the amount of damages as mentioned in (1) above, and upheld the plaintiffs' demands, i.e. the demand for an injunction against the act of making transmittable the broadcasts in question based on the neighboring right (right to make transmittable) and demand for an injunction against the public transmission of the broadcast programs in question based on the copyright (right of public transmission).