

Date	January 31, 2012	Court	Intellectual Property High Court, Third Division
Case number	2011 (Ne) 10011		
<p>– A case in which, with regard to the service of making it possible to reproduce or view outside Japan the broadcast programs, etc. shown in Japan by using an apparatus with a master/slave function through Internet communication, the court upheld the claims for an injunction against reproduction of the broadcast programs, etc. and for the disposal of the apparatus, as well as the claim for damages, by holding that the service provider is the party who performs reproduction of the broadcast programs, etc. and thus the service provider infringed the copyright and neighboring right of the broadcasting organizations.</p>			

References:

Article 21, Article 98 and Article 114-5 of the Copyright Act

This is the second judgment of the court of second instance on the case which had been remanded by the Supreme Court after it quashed the judgment rendered by the Intellectual Property High Court.

In this case, the appellees, who are broadcasting organizations, filed an action seeking an injunction against the reproduction of the broadcast programs, etc., the disposal of the apparatus used in the appellant's service, and compensation for damages by alleging as follows: the appellant's act of installing the master units in Japan and inputting the broadcast waves of the television broadcasts therein and thereby making it possible to reproduce or view television programs broadcasted in Japan by means of the slave units installed outside Japan, in its service of lending or transferring two hard disk recorders with a master/slave function through Internet communication as a set, fell under the scope of reproduction of sounds or images of television broadcasts or broadcasts on which the appellees hold the copyright or neighboring right respectively, and thus infringed the copyright (Article 21 of the Copyright Act) and neighboring right (Article 98 of the Copyright Act).

The judgment in first instance upheld the claims for the injunction against the reproduction of the abovementioned broadcast programs, etc. and the disposal of the apparatus used in the service provided by the appellant, and part of the claim for damages, by finding that the appellant was performing the act of reproduction of the appellees' broadcast programs, etc., in the service it provided. In contrast, the judgment in second instance before the case was remanded by the Supreme Court, dismissed all of the claims made by the appellees, by holding that the appellant's service was nothing more than providing the users with an environment or conditions,

etc. making it easy for them to perform the act of reproduction for legal personal use under their free will, and that the appellant could not be deemed to be performing the act of reproduction of the appellees' broadcast programs, etc. However, with regard to the petition for acceptance of the final appeal filed, the Supreme Court quashed the abovementioned judgment in the second instance and remanded this case to the Intellectual Property High Court to have it make further examination as to matters including the status of management of the master units, by holding as follows: in terms of the service of making it possible to acquire reproductions of broadcast programs, etc., where the person who provides such service (hereinafter referred to as the "service provider"), under the person's management and control, inputs the broadcasts received by the television antenna into an apparatus that functions to perform reproduction (hereinafter referred to as "reproduction apparatus"), so that the reproduction apparatus, upon receiving a command of recording, automatically reproduces broadcast programs, etc., it is appropriate to construe that the service provider is the party who performs reproduction, even if the command of recording is issued by the user of the service.

This court after the case was remanded by the Supreme Court, made a determination that the party who performs reproduction of the broadcast programs, etc. is the appellant, by holding as follows: taking into consideration various factors, such as the details and extent of the appellant's involvement in performing reproduction in the service, the appellant itself, or by having dealers, etc. or housing service providers, etc. serve in assistance, or jointly with such entities, installed and managed the master units; and, under its management and control, was continuously creating a situation where it inputs the broadcast programs, etc. received by the television antenna into the master unit which is a reproduction apparatus, so that the aforementioned master unit, upon receiving a command of recording from the users of the service in question, automatically reproduces broadcast programs, etc. Based on such holding, this court upheld part of the claim for damages by the appellees, pursuant to Article 114-5 of the Copyright Act, in addition to the claims for the injunction against the reproduction of the appellees' broadcast programs, etc. and the disposal of the apparatuses used in the appellant's service.