

Date	February 28, 2012	Court	Intellectual Property High Court, Third Division
Case number	2011 (Ne) 10047		
<p>–A case in which the court partially upheld the demand for return of unjust enrichment made by the plaintiff in the first instance as an additional allegation in the appeal case of the lawsuit seeking damages, with regard to which the court of prior instance had partially upheld the plaintiff’s claim by finding that the defendant in the first instance infringed the copyright (right of adaptation) held by the plaintiff in the first instance while holding that part of the claim for damages for a tort held by the plaintiff in the first instance had expired by prescription.</p>			

References:

Article 27 of the Copyright Act and Article 703 of the Civil Code

The plaintiff in the first instance, which is a corporation of the People’s Republic of China, claimed damages for a tort against the defendant in the first instance, by alleging as follows: (i) the plaintiff in the first instance holds the copyrights of a documentary film series titled “World Natural and Cultural Heritage in the People’s Republic of China” (hereinafter referred to as the “Original Editions”); and (ii) the DVDs titled “World Heritage of China,” which were produced and sold by the defendant in the first instance are a reproduction or adaptation of the abovementioned documentary films.

The court of prior instance held as follows: (i) the copyrights of the Original Editions belong to the plaintiff in the first instance; (ii) the DVDs produced and sold by the defendant in the first instance are based on the Original Editions and maintain the integrity of the essential feature of the expressions used in the Original Editions and thus fall under the adaptation of the Original Editions; (iii) it cannot be found that the defendant in the first instance had been authorized to use the Original Editions; (iv) part of the claim for damages for a tort which was exercised by the plaintiff in the first instance against the defendant in the first instance, had been expired by prescription; and (v) the plaintiff in the first instance’s claim for damages shall be upheld to the extent of 105,000 yen (including 10,000 yen which is a an amount equivalent to the attorney’s fee), and the remaining claims shall be dismissed. In response to this, both the plaintiff in the first instance and the defendant in the first instance filed an appeal, and the plaintiff in the first instance newly and additionally alleged a statement of claim based on the demand for return of unjust enrichment, in the second instance.

This judgment upheld all of the determinations made by the abovementioned court of prior instance and newly ordered the defendant in the first instance to pay, as unjust

enrichment, 10,545,000 yen (10,650,000 yen in total including the amount of compensation for damages for a tort), in regard to the demand for return of unjust enrichment which was newly added by the plaintiff in the first instance in the court of second instance, by finding as follows: The DVDs produced and sold by the defendant in the first instance are based on the Original Editions and maintain the integrity of the essential features of expressions used therein, and thus fall under the adaptation of the Original Editions. Accordingly, the defendant in the first instance, who produced and sold the abovementioned DVDs without obtaining the authorization to use the Original Editions from the plaintiff in the first instance, who is the holder of copyrights of the Original Editions, has gained profits in an amount equivalent to the royalties for the Original Editions and caused loss of the same amount to the plaintiff in the first instance.