

Date	September 28, 2012	Court	Tokyo District Court, 29th Civil Division
Case number	2011 (Wa) 9722		
<p>– A case wherein, in relation to a footage (the "Work") of the religious activities of the plaintiff, a religious corporation, the court upheld the entirety of a claim for injunction under the Copyright Act and a part of a claim for damages, by holding that the Work is a cinematographic work, that the ownership in copyright belongs to the plaintiff, and that the defendant's acts of reproduction of the Work by means of DVDs and distribution thereof are not considered as quotation under Article 32 of the Copyright Act.</p>			

This is a case wherein the plaintiff, a religious corporation, sought an injunction under Article 112, paragraph (1) of the Copyright Act and compensation of tort damages from the defendant, who reproduced the Work which is a footage of the plaintiff's religious activities by means of DVDs and distributed them.

The major issues in this case are [i] whether the Work is a subject matter of copyright; [ii] the ownership in copyright in the Work; and [iii] whether the defendant's acts of reproduction and distribution of the Work can be considered as quotation within the meaning of Article 32, paragraph (1) of the Copyright Act.

In this judgment, the court held as follows for the abovementioned issues, and upheld the entirety of the plaintiff's claim for injunction under the Copyright Act and a part of the claim for damages.

First, with regard to Issue [i], the court determined that the Work is a cinematographic work as it is a creative expression which is expressed through a process producing visual or audio-visual effects similar to those of cinematography, and is fixed in an object. With regard to Issue [ii], the court determined that P is an author, as it was P who determined the title, theme, participants and entire structure, and therefore creatively contributed to the creation of the Work as a whole. The court further held that, as it is appropriate to consider the plaintiff as the person who intended to make the Work and to whom the legal rights and obligations in relation to production thereof belongs, it should be considered that the plaintiff is the maker of the Work and that P had promised the plaintiff to participate in the production of the Work. Based on these findings, the court concluded that the ownership in copyright in the Work belongs to the plaintiff. Further, with regard to Issue [iii], the court determined that the defendant's acts of reproduction and distribution could not be considered as use within the extent deemed reasonable from a common sense standpoint in light of the purposes of explanation, criticism and counterargument, and also that such acts

could not be regarded to be consistent with the fair practice. Based on these, the court determined that the defendant's acts could not be regarded as justified acts which satisfy the requirement of quotation under Article 32, paragraph (1) of the Copyright Act.