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<tr><td>Date</td><td>May 9, 2012</td><td rowspan="2">Court</td><td rowspan="2">Intellectual Property High Court, Fourth Division</td></tr>
<tr><td>Case number</td><td>2012 (Ne) 10013</td></tr>
<tr><td colspan="4">– A case in which, on the basis of the finding that the act of importing and distributing the DVDs, made by copying the films released in 1950, constituted infringement of the film company's copyright for the films, the court determined the amount of damages payable to the copyright holder equivalent to the amount of royalties to be 1,080,000 yen on the premise that there had been at least negligence on the part of the person who imported and distributed the DVDs.</td></tr>
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References:
Article 709 of the Civil Code, Articles 3 and 6 of the Former Copyright Act (prior to the revision by Act No. 48 of 1970), Article 113, paragraph (1), item (i) of the Copyright Act

In this case, X (the plaintiff in the first instance/appellee in the second instance/appellant of final appeal) alleges that Y (the defendant in the first instance/appellant in the second instance/appellee of final appeal) infringed X's copyright for Films 1 to 3, released in 1950, by importing and distributing the DVDs of these films, and accordingly, X (i) sought an injunction to stop the manufacturing, import and distribution of the DVDs and demand destruction of the DVDs and masters thereof under Article 112 of the Copyright Act, and (ii) claims payment of 13,500,000 yen as damages under Article 709 of the Civil Code and Article 114, paragraph (3) of the Copyright Act, with delay damages accrued thereon as calculated at a rate of 5% per annum under the Civil Code for the period from May 21, 2008, the day following the date of service of the letter of complaint, until the completion of payment.

The court of first instance upheld X's claim (i), and partially upheld its claim (ii) to the extent to claim 1,080,000 yen with delay damages accrued thereon as calculated at a rate of 5% per annum for the period from May 21, 2008, until the completion of payment. Dissatisfied with this, Y appealed to the higher court. The court of second instance dismissed Y's appeal regarding X's claim (i), while revoking the judgment in first instance with respect to X's claim (ii) and dismissing this claim on the grounds of lack of negligence on the part of Y. Dissatisfied with this, X appealed to the final appellate court. The Supreme Court accepted X's final appeal, and quashed the judgment in prior instance regarding X's claim (ii), holding that even if Y mistakenly believed that the copyright for the Films had expired, it should inevitably be said that there had been at least negligence on the part of Y for having conducted the abovementioned acts, and remanded the case to the court of prior instance (Intellectual

Property High Court) "for examination on damage, etc."

Y has not filed a final appeal or petition for acceptance of final appeal against the judgment in second instance before remand, and thus the judgment regarding X's claim (i) has become final and binding upon rendition of the judgment by the Supreme Court. Accordingly, the subject matter of examination by this court in the remanded case was the judgment in first instance regarding X's claim (ii) (to the extent that X is dissatisfied with the amount of damages awarded by the judgment in first instance). Furthermore, the Supreme Court quashed the judgment in second instance before remand based on the finding that there had been at least negligence on the part of Y for having imported and distributed the DVDs, and such finding was binding on this court. Against such background, this court examined the case and dismissed Y's appeal regarding X's claim (ii), holding as follows.

> "The directors of the Films are found to have demonstrated their individuality in the respective films, and they can be considered to have been involved in the production of the films to a considerable degree in the capacity of director and contributed to the creation of the films as a whole.
>
> No written agreements were executed between the directors of the Films and X for the transfer of the copyright…However, in light of the fact that when X received royalties for licensing the use of the Films, it paid additional fees to the directors, and when X granted a license for the broadcast of the Films, it notified the directors to that effect via the Directors Guide of Japan, it can be presumed that X treated the directors as the authors of the Films (or included in the group of authors), and by the time when the Films were released, at the latest, the directors had transferred their copyright to X or Shintoho (a film company)…
>
> Consequently, it is found that at the time when the Films were released, at the latest, Shintoho owned the copyright for Films 1 and 3 and X owned the copyright for Film 2, both independently.
>
> As a result of Shintoho having transferred its copyright for Films 1 and 3 to X on April 20, 1963, it is found that X now owns the copyright for all of the Films independently.
>
> In consideration that the directors held the status of author of the Films, the period of protection of the Films has not yet expired."
>
> "Y's act of importing and distributing the DVDs, made by copying the Films, is deemed to constitute infringement of X's copyright (Article 113, paragraph (1), item (i) of the Copyright Act), and it should be said that there was at least negligence on the part of Y as mentioned above. Accordingly, X is found to have

sustained damage equivalent to the amount of royalties for its copyright.

Consequently, Y is liable to pay X damages for copyright infringement."

"The DVDs are priced at 1,800 yen per copy. The amount of royalty per copy is equivalent to about 20% of the retail price. Y has admitted that it imported 1,000 copies for each title (3,000 copies in total)…Consequently, the amount of royalties for the Films is calculated as 1,080,000 yen by the following formula:

(Formula) 1,800 yen $\times$ 0.2 $\times$ 3,000 copies = 1,080,000 yen