

Date	December 26, 2012	Court	Tokyo District Court, 29th Civil Division
Case number	2009 (Wa) 26053		
<p>– A case wherein existence of infringement of copyright, etc. for replicas and original Buddhist paintings was disputed, and the court dismissed the plaintiffs' claim in respect of replicas on such grounds as lack of creativeness, and partially upheld the plaintiffs' claim in respect of some of the original paintings by finding a copyright infringement, etc.</p>			

(Summary)

The plaintiffs are heirs of P, a Buddhist artist. The defendant is a Buddhist artist who operates a museum in Yamanashi Prefecture.

In this court case, the plaintiffs alleged that a total of 31 pieces of Buddhist paintings created by the defendant ("Defendant's Exhibit 1 Paintings" and "Defendant's Exhibit 2 Paintings") are reproductions or adaptations of ten pieces of replicas of ancient Buddhist paintings or mandala paintings ("Plaintiffs' Exhibit 1 Paintings") and 15 pieces of original Buddhist paintings ("Plaintiffs' Exhibit 2 Paintings") produced by P, and therefore that the sale, distribution and display of the defendant's paintings and production of books, brochures, line drawings for coloring, and website pictures using them constitute infringement of copyright for the plaintiffs' paintings acquired by the plaintiffs by way of inheritance (i.e., right of reproduction, right of ownership transfer, right of exhibition, or right of the original author in the exploitation of a derivative work under Article 28 of the Copyright Act). Based on these allegations, the plaintiffs sought the following: [i] an injunction against sale, etc. of the defendant's paintings and production of books, etc. using the defendant's paintings, and destruction of such books, pursuant to Article 112 of the Copyright Act; [ii] a payment of 9,224,500 yen each, plus delay damages accrued thereon, as compensation of damages due to tort liability for infringement of copyright and moral rights of author; and [iii] publication of a public apology as a measure to protect moral interests after the death of P (Article 60, Article 116, paragraph (1), and Article 115 of the Copyright Act).

The major issues in respect to the replicas are [i] whether Plaintiffs' Exhibit 1 Paintings are subject matters of copyright and [ii] whether Defendant's Exhibit 1 Paintings are reproductions or adaptations; and the major issues in respect to the original paintings are [iii] whether Plaintiffs' Exhibit 2 Paintings are subject matters of copyright, [iv] whether Defendant's Exhibit 2 Paintings were created based on Plaintiffs' Exhibit 2 Paintings, [v] whether Defendant's Exhibit 2 Paintings are reproductions or adaptations, and [vi] whether there is a comprehensive license.

In this judgment, with regard to Plaintiffs' Exhibit 1 Paintings, the court held that it is expected as a matter of course, by their nature as replicas, that such paintings enable a viewer thereof to directly perceive essential features in the expressions of their originals, and, Plaintiffs' Exhibit 1 Paintings can be subject matters of copyright as derivative works of their originals only if they can be assessed to also generate new creative expressions different from their originals. Based on this, the court denied that nine out of ten pieces of Plaintiffs' Exhibit 1 Paintings are subject matters of copyright, as they were merely created by alteration of the present status of their originals within the scope naturally expected as the normal condition at the time of initial creation, and therefore no addition of new creative expressions by P can be found. Meanwhile, with regard to the remaining one piece of Plaintiffs' Exhibit 1 Paintings, although the court determined that it is a subject matter of copyright, it denied that the corresponding Defendant's Exhibit 1 Painting is a reproduction or adaptation, as it was substantially different in terms of expression in respect to the copyrightable portion of the remaining one piece of Plaintiffs' Exhibit 1 Paintings.

Next, with regard to Plaintiffs' Exhibit 2 Paintings, the court determined that they are subject matters of copyright and that Defendant's Exhibit 2 Paintings were based on Plaintiffs' Exhibit 2 Paintings. And, only with respect to one piece of Defendant's Exhibit 2 Paintings, the court found that it is an adaptation of the corresponding Plaintiffs' Exhibit 2 Painting as it is a different work which enables a viewer thereof to directly perceive the essential features of the corresponding Plaintiffs' Exhibit 2 Painting. Further, the court held that, although the defendant alleges that P had manifested his/her intention to license the defendant to conduct the reproductions and adaptations of all of his/her works and not to exercise his/her property rights of copyright and moral rights of author while the defendant was learning Buddhist art from him/her, it cannot immediately find, from evidence, a fact that the defendant learned Buddhist art from P, and even supposing that it is the case, such fact is not sufficient to recognize that P's words to the defendant can be regarded as a manifestation of P's intention of granting comprehensive license of copyright, etc. Based on this, for the piece of Defendant's Exhibit 2 Paintings for which the infringement of right of adaptation is found (the "Defendant's Infringing Painting"), the court ordered an injunction against exhibition, removal of the portion showing the Defendant's Infringing Painting from books, and payment of damages suffered by the plaintiffs (i.e., [i] 89,483 yen for each of the plaintiffs as the amount corresponding to the amount of money which each plaintiff would receive through the exercise of his/her copyright (Article 114, paragraph (3) of the Copyright Act), [ii] 30,000 yen

each as solatium for the three of the plaintiffs who are P's children, and [iii] 20,000 yen or 10,000 yen as attorneys' fees for each of the plaintiffs). However, the court dismissed the demand for measures to restore honor, etc. under Article 116, paragraph (1) and Article 115 of the Copyright Act, holding that it was not deemed necessary to order the defendant to publicize a public apology as asserted by the plaintiffs in addition to compensation of damages for copyright infringement.