

Date	March 14, 2013	Court	Tokyo District Court, 47th Civil Division
Case number	2011 (Wa) 33071		
– A case in which the court partially accepted the plaintiff's claim for damages by holding that the act of reproducing and distributing the book authored by Defendant 1 and published by Defendant 2 constitutes infringement of the copyright and moral rights of the plaintiff concerning the plaintiff's work.			

This is a case where the plaintiff alleged that the book authored by Defendant 1 and published by Defendant 2 ("Defendants' Book") should be regarded as a reproduction or an adaptation of the plaintiff's work ("Plaintiff's Book") and that the act of reproducing and distributing the Defendants' Book constitutes infringement of the copyright and moral rights of the plaintiff concerning the plaintiff's work and demanded that Defendant 1 and Defendant 2 stop reproducing and distributing the Defendants' Book and dispose of it and pay damages.

In the judgment, the court partially accepted the plaintiff's claims by holding as follows: (i) While Chapter 3 of the Defendants' Book was written based on the Plaintiff's Book, the statements contained in the Defendants' Book may be considered to be a reproduction or an adaptation of the statements contained in the Plaintiff's Book only if the statements contained in the Plaintiff's Book that are identical with the statements contained in the Defendants' Book consist of creative expressions of ideas or emotions and if the statements contained in the Defendants' Book are identical with the statements contained in the Plaintiff's Book or deemed to be identical in terms of the essential characteristics of expressions to such an extent that the readers can directly perceive the essential characteristics of the expressions presented in an existing work. The court examined the statements contained in the Defendants' Book that are pointed out by the plaintiff and found that some of the statements may be regarded as a reproduction or an adaptation of the statements contained in the Plaintiff's Book. Since it may not be recognized that Defendant 1 obtained a license from the plaintiff either explicitly or implicitly, the court found that Defendant 1 infringed the plaintiff's copyright for the Plaintiff's Book (copyright or adaptation right) and that Defendant 2 infringed the plaintiff's copyright for the Plaintiff's Book (the right of transfer and the right of transfer that arises under Article 28 of the Copyright Act) and (ii) Since Defendant 1 and Defendant 2 failed to obtain the plaintiff's consent prior to the publication of the Defendants' Book and failed to indicate the plaintiff's name as the author's name on the Defendants' Book, Defendant 1 and Defendant 2 should be regarded to have infringed the plaintiff's right to indicate name. Furthermore, in view of

the facts that Defendant 1 wrote some statements contained in the Defendants' Book by modifying superficial forms of the expressions presented in the plaintiff's work while maintaining the essential characteristics of those expressions and that Defendant 2 distributed the Defendants' Book with said statements included in Chapter 3, Defendant 1 and Defendant 2 may be considered to have infringed the plaintiff's right to maintain integrity.