

Date	September 30, 2013	Court	Intellectual Property High Court, Third Division
Case number	2013 (Ne) 10027		
<p>– A case in which the court recognized that some of the statements in the appellants' book, a non-fiction work authored by Appellant 1 and published by Appellant 2 with regard to the so-called JAL airplane accident, may be regarded as reproductions or adaptations of the statements included in the appellee's book, which is a memoir written by the appellee, who is a surviving family member of a victim of said accident. The court issued an injunction against the reproduction and distribution of the appellants' book by the appellants and ordered the destruction thereof and the payment of damages to the appellee in compensation for the infringement of the appellee's copyright and moral rights of author.</p>			

References: Article 2, paragraph (1), item (i) and item (xv), Article 19, Article 20, Article 21, Article 27, Article 112, and Article 114, paragraph (3) of the Copyright Act, Article 709 and Article 719 of the Civil Code

In this case, the appellee (plaintiff in the first instance) alleged that some parts of the book (the appellants' book) authored by Appellant 1 (defendant in the first instance) and published by Appellant 2 (defendant in the first instance) may be regarded as reproductions or adaptations of the book authored by the appellee (the appellee's book) and that the appellants thereby infringed the appellee's copyright and moral rights of author. Based on this allegation, the appellee sought an injunction to stop the appellants' reproduction and distribution of the appellants' book. The appellee further demanded the destruction thereof and a payment of 5.18 million yen as damages as well as delay damages accrued thereon.

In the judgment of the prior instance, while the appellee alleged that 26 statements in the appellants' book may be regarded as reproductions or adaptations of the statements included in the appellee's book, the court recognized that 17 out of the 26 statements may be regarded as reproductions or adaptations of the corresponding statements included in the appellee's book. Based on this recognition, the court issued an injunction that the appellants shall stop the reproduction and distribution of the appellants' book, which inseparably contains a chapter including statements that were recognized as reproductions or adaptations, ordered the destruction thereof and the joint and several payment to the appellee of 581,416 yen as damages as well as delay damages accrued thereon. The court dismissed any other claims of the appellee. Dissatisfied with the judgment, the appellants filed this appeal.

In this judgment, the court held as follows. The court found that 14 out of the 17

statements in the appellants' book that the court of the prior instance recognized as reproductions or adaptations of statements from the appellee's book, may still be regarded as reproductions or adaptations from the appellee's book. The court therefore dismissed part of the appellants' appeal that pertains to the injunction issued by the court of the prior instance against the reproduction and distribution of the appellants' book that inseparably contains a chapter including those statements that the court of the prior instance recognized as reproductions or adaptations and pertains to the order of destruction thereof given by the court of the prior instance. Then, the court modified the judgment of the prior instance and ordered that the appellants shall jointly and severally pay 577,720 yen and the delay damages accrued thereon.

1. Regarding the 14 out of 17 statements in the appellants' book that the court of the prior instance recognized as reproductions adaptations of the statements from the appellee's book, it may be found that the 14 statements in the appellants' book maintain the identity of fundamental characteristics of the expressions presented in the corresponding statements included in the appellee's book and that any person who reads said statements in the appellants' book may be able to directly perceive the fundamental characteristics of the expressions presented in the corresponding statements included in the appellee's book.

In each part of the appellee's book where the aforementioned identity was found, the appellee expresses his/her feelings, such as surprise, confusion, anger, or sadness that he/she felt at that time. The appellee's personality and uniqueness is expressed in the manner of describing his/her emotions, the selection of facts to present in the book, and the manner in which the story was presented, which can be recognized to constitute intellectual creations. Furthermore, since it may be recognized that such statements in the appellants' book that were alleged to be reproductions or adaptations have been created based on the corresponding statements included in the appellee's book, the aforementioned 14 statements in the appellants' book may be regarded to be reproductions or adaptations of the corresponding statements in the appellee's book.

On the other hand, the other three statements in the appellants' book may not be regarded to be the creative expression of ideas or emotions of the appellee because such parts of the statements that are considered to be identical with the corresponding statements in the appellee's book may not be regarded to be creative in terms of the manner of expression or should be regarded merely as an objective statement of a fact.

2. There is no sufficient evidence to prove that Appellant 1 obtained authorization from the appellee for use of reproductions, adaptations, etc.

3. On these grounds, in view of the facts that Appellant 1 authored Chapter 3 of the

appellants' book that inseparably contains the aforementioned 14 statements and that Appellant 2 distributed the appellants' book, it may be found that the appellants infringed the copyright of the appellee and that the appellants' act constitutes infringement of the appellee's moral rights of author (the right to determine the indication of the author's name and the right to maintain integrity). It may be regarded that the appellants were negligent in infringing the aforementioned copyright and moral rights of author.