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judgedate

1984.01.20

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caseid

1983(O)171

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reporter

Minshu Vol. 38, No. 1

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casetitle

Judgment regarding whether or not an act exploiting an aspect of an original of an artistic work as an intangible object infringes its ownership

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casename

Case to seek elimination of infringement of ownership of a calligraphic piece of work

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caseresult

Judgment of the Second Petty Bench, dismissed

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court_second

Tokyo High Court, Judgment of November 29, 1982

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summary_judge

Even if a person who is not the owner of the original of an artistic work exploits an aspect as an artistic work, which is an intangible object, of the original without infringing the owner's exclusive control function over the original as a tangible object, such act cannot be said to infringe the ownership of the original.

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references

Article 206 of the Civil Code; Article 2, paragraph (1), item (i), and Article 45, paragraph (1) of the Copyright Act

Civil Code
(Content of Ownership)
Article 206　An owner has the rights to freely use, obtain profit from and dispose of the Thing owned, subject to the restrictions prescribed by laws and regulations.

Copyright Act
(Definitions)
Article 2　(1) In this Act, the meaning of the terms set forth in each of the following items is as prescribed in that item:
(i) "work" means a production in which thoughts or sentiments are creatively expressed and which falls within the literary, academic, artistic or musical domain;
(Exhibition of an artistic work, etc. by the owner of the original)
Article 45　(1) The owner of the original copy of an artistic work or photographic work or a person authorized thereby may publicly exhibit that work.

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maintext

The final appeal is dismissed.
The cost of the final appeal shall be borne by the appellant of final appeal.

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reason

Reasons for final appeal filed by the counsels for the final appeal, NAKAMURA Minoru and KUMAKURA Yoshio
An original of an artistic work is a tangible object, and at the same time, embodies an artistic work, which is an intangible object. Since ownership is a right over a tangible object, it is appropriate to understand that ownership of an original of an artistic work has only an exclusive control function over an aspect of the original as a tangible object and does not have a direct and exclusive control function over the artistic work itself, which is an intangible object. Furthermore, exclusive control function over an artistic

work belongs exclusively to the copyright holder only during the term of protection of the work. Thus, during the term of protection of a work, ownership and copyright coexists at the same time. With regard to this point, the argument of the counsels for the final appeal alleges that part of the functions of ownership is separated and becomes part of the functions of copyright during the term of protection, and upon the expiration of the term of protection, copyright expires, and at the same time, the separated part of the functions returns to functions of ownership. However, it is inevitable to say that the argument does not understand that ownership and copyright have control functions over different objects as aforementioned. After expiration of copyright, the right of reproduction, etc. over a work that belonged to the copyright holder does not return to the owner as alleged in the argument of the counsels for the final appeal, but the work comes into the public domain, and anyone is able to exploit the work freely as long as the moral rights of the author are not infringed. Therefore, when copyright expires, ownership cannot be construed to obtain an exclusive control function over an aspect as an intangible object in order to have such function be protected as part of ownership and in the same way as copyright. It should be said that even if a third party exploits an aspect of an original as a work without infringing the exclusive control function over the original of the artistic work as a tangible object after expiration of copyright, such act does not infringe the ownership of the original.

A manuscript itself, which is an original of a literary work, such as a novel, etc., in general, does not have proprietary value in the same way as an original of an artistic work. This is just because, in the case of an artistic work, since its artistic value cannot be truly enjoyed unless the original is provided, the original itself is traded, but on the other hand, in the case of a literary work, since the content of its expression can be received not necessarily exclusively by the original but even by copies, understandably, copies as publications are traded. In the same way as an original of an artistic work, even in the case of an original of a literary work, the original has an aspect as a tangible object and an aspect as an intangible object, and there is no essential difference between two types of originals. With regard to this point, the argument of the counsels for the final appeal alleges that, only in the case of an original of an artistic work, upon expiration of copyright, ownership of the original grants an exclusive control function over an aspect as an intangible object; however, there are no reasons to accept this argument. Moreover, the provisions of Article 45, paragraph (1) and Article 47 of the Copyright Act on the relationship between a copyright holder and an owner in the case where ownership of an original of an artistic work is assigned are prescribed merely for adjustment of rights belonging to a copyright holder (a right of exhibition and a right of

reproduction) and ownership, and it can be understood that they have no intention of allowing ownership to obtain an exclusive control function over an aspect as an intangible object. Meanwhile, the argument of the counsels for the final appeal alleges that even after the expiration of the term of protection, if a third party publishes copies of an artistic work, the number of persons who seek authorization to exploit the original of an artistic work by paying a consideration to the owner of the original will reduce, and therefore the owner of the original would be deprived of opportunities to derive profit from the original to the extent of such reduction and incur economic disadvantage; it is difficult to deny this argument. However, in the case where the publication of copies by a third party is conducted without infringing exclusive control over the original as a tangible object, such publication of copies is merely exploitation of an aspect as a work, which came into the public domain. Even if the owner of the original incurs the above economic disadvantage, that is merely a factual result of the third party being able to exploit the work freely, and the disadvantage is not generated by the third party's illegal infringement of the owner's function to exploit and derive profit from the original as alleged in the argument of the counsels for the final appeal. It can be understood that, in short, the judgment in prior instance stands on the same position as the above holding, and therefore it held that the appellant's function to exploit and derive profit from the original is not physically obstructed by the appellee's publication of copies, and that such publication of copies cannot be said to be illegal just because it is an act that results in a decline in economic value of another person's right. Furthermore, it should be understood that museums and art museums collect fees for viewing and taking pictures of originals of works with regard to which copyrights have expired or require authorization for shooting pictures based on their ownership of the originals as tangible objects. Therefore, the fact that they collect fees, etc. cannot become the ground for ownership obtaining a function to control an aspect as an intangible object. It may seem as if such fact represents a fact that the owner exclusively holds a right to authorize reproduction, etc. of a work, which is an intangible object, but that is merely an effect caused by the owner's ownership of an original as a tangible object, which embodies a work, which is an intangible object. If, as alleged in the argument of the counsels for final appeal, the owner of an original were to, as a custom, hold the right to authorize reproduction, etc. of a work based on his/her ownership, the meaning of the term of protection of works being established in the Copyright Act would be totally lost. Even if such custom exists, such custom cannot be affirmed as a rule of law as alleged in the argument of the counsels of the final appeal.

This Court will examine this case from the above point of view. The facts that duly

became final and binding in the judgment in prior instance are as follows: (1) The appellant owns "Ganshinkei-jisho-kenchu-kokushincho (Yan Zhenqing's appointment letter written by himself in the Jianzhong period)" (hereinafter referred to as "Jisho-kokushincho") of Yan Zhenqing, who was a famous calligrapher in the Tang dynasty of China; (2) on August 30, 1980, the appellees published "Wakan-bokuho-senshu Vol. 24 'Ganshinkei-kaisho-to-oju-rinsho' (Japanese and Chinese calligraphy anthology Vol. 24 'Yan Zhenqing's regular script and Wang Shu's emulation writing')" (hereinafter referred to as the "Publication"); and (3) part I of the Publication is a reproduction of Jisho-kokushincho. According to the above facts, it should be said that, as an original of an artistic work, which is a calligraphic piece of work, Jisho-kokushincho has an aspect as a tangible object and an aspect as an artistic work, which is an intangible object. It is apparent that copyright no longer exists with regard to Jisho-kokushincho, and therefore the appellant is claiming ownership of Jisho-kokushincho only. Meanwhile, the appellant acknowledges the fact that the appellees were assigned a photographic plate from the successor of the person who shot a picture of Jisho-kokushincho with authorization from the former owner of Jisho-kokushincho, and produced the Publication using the photographic plate. Examining this case in light of the above holding, it is inevitable to say that the above act of the appellees is just using a photographic plate with regard to which the appellees duly obtained ownership and does not infringe the appellant's exclusive control over Jisho-kokushincho by, for example, physically using Jisho-kokushincho owned by the appellant, and therefore the above act does not infringe the appellant's ownership of Jisho-kokushincho in any way. The determination by the court of prior instance that goes along the above conclusion can be affirmed as justifiable. The judgment in prior instance does not contain illegality as was alleged in the argument of the counsels for the final appeal, and therefore the argument cannot be accepted.

Accordingly, pursuant to Article 401, Article 95, and Article 89 of the Code of Civil Procedure, the judgment has been rendered as set forth in the main text by the unanimous consent of the justices.

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presiding

Justice MIYAZAKI Goichi

Justice KINOSHITA Tadayoshi

Justice SHIONO Yasuyoshi

Justice OHASHI Susumu

Justice MAKI Keiji

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note_other

(This translation is provisional and subject to revision.)