

Copyright	Date	March 18, 2021	Court	Intellectual Property High Court, Fourth Division
	Case number	2020 (Ne) 10022		
<p>- A case in which the court determined that the actor of musical performance in the case of an act of musical performance by a teacher at a music school is the operator of the music school and such act of musical performance constitutes the exercise of a musical performance right by the music school operator.</p> <p>- A case in which the court determined that the actor of musical performance in the case of an act of musical performance by a student at a music school is the student.</p>				

Case type: Confirmation of Nonexistence of Obligation

Result: Partial modification of the prior instance judgment

References: Article 2, paragraph (5) and Article 22 of the Copyright Act

Judgment of the prior instance: Tokyo District Court, 2017 (Wa) 20502 and 25300, rendered on February 28, 2020

Summary of the Judgment

No. 1 Main text

1. All the appeals pertaining to the principal claims filed by the Appellants shall be dismissed.

2. The judgment in prior instance shall be modified as follows with respect to the alternative claims of the Appellants.

(1) It is hereby declared that, in the relationships between the Appellants and the Appellee, the Appellee holds no claim pertaining to the use of works (meaning all pieces of music that the Appellee manages as of January 14, 2021), which it possesses by accepting the trust of copyrights transferred for the purpose of collecting royalties for works or the entrustment of such collection from copyright owners, with respect to musical performances by students stated in List of Circumstances of Use of Works 1 attached to this judgment during lessons between a teacher and around 10 or fewer students, which are provided based on contracts for the teaching of music and techniques for musical performance (including singing) that the Appellants have concluded with their students, respectively.

(2) It is hereby declared that, in the relationships between the Appellants stated in Attachment C and the Appellee, the Appellee holds no claim pertaining to the use of works stated in (1) above with respect to musical performances by students stated in List of Circumstances of Use of Works 4 attached to this judgment during lessons, which are provided based on the contracts stated in (1) above that the same Appellants have

concluded with their students, respectively.

(3) All the other alternative claims of the Appellants shall be dismissed.

No. 2 Background

1. In this case, the Appellants (corporations or sole proprietors), which operate music schools for teaching the basics of music and music instrument performance techniques, etc. in classrooms or at students' homes, seek a declaratory judgment against the Appellee, which is a copyright manager, to the effect that, for all pieces of music that the Appellee (defendant in first instance) manages at the time of the conclusion of oral argument of this case (Pieces of Music Managed by the Defendant), the Appellee holds neither a claim for compensation for loss or damage based on infringement of copyrights (musical performance rights), nor a claim for the return of unjust enrichment in the amount equivalent to royalties for works against the Appellants at the time of the conclusion of oral argument of this case with respect to musical performances of the Pieces of Music Managed by the Defendant in the classrooms of the Appellants or the homes of their students during lessons, which are provided based on the contracts for the teaching of music and techniques for musical performance (including singing) that the Appellants have concluded with their students, respectively (Lesson Contracts). The principal claims of the Appellants are to seek a declaratory judgment to the effect that in units of lessons for a prescribed time in which a teacher teaches musical performance techniques, etc. to students, neither the Appellants' obligation to compensate loss or damage nor obligation to return unjust enrichment in relation to the Appellee has been caused to arise due to the provision of those lessons. The alternative claims of the Appellants are to seek a declaratory judgment to the effect that in units of individual acts of musical performance during lessons, neither the Appellants' obligation to compensate loss or damage nor obligation to return unjust enrichment in relation to the Appellee has been caused to arise due to those acts of musical performance.

2. The major issues of this case are as follows:

(1) [i] Whether the actors of exploitation of musical works during lessons at music schools (actors of musical performances) are teachers or students, who actually give musical performances in classrooms, or the Appellants, which engage in business to operate music schools; [ii] whether a musical performance by a person who is found to be the actor of the musical performance fulfills the requirement, "with the purpose of having it ... heard directly by the public," as referred to in Article 22 of the Copyright Act and constitutes an infringement of a musical performance right; and [iii] whether a musical performance of two or less bars of a piece of music constitutes an infringement of a musical performance right (Issues 2 to 4); and

(2) Whether a musical performance right for a musical work is exhausted and becomes unable to be exercised as a result of granting the authorization of reproduction of the musical work in a music score or sound recording (Issue 5) or whether the Appellee's exercise of a claim for compensation for loss or damage based on infringement of musical performance rights or a claim for the return of unjust enrichment against the Appellants constitutes an abuse of right (Issue 7)

3. The court of prior instance (1) determined [i] that for both musical performances by students and those by teachers, the actors thereof are the Appellants, which are music school operators, [ii] that students and teachers give musical performances "with the purpose of having them heard" by students in classrooms, who are "the public," and [iii] that even a musical performance of two or less bars of a piece of music falls under exploitation of a musical work. Then, the court of prior instance (2) rejected both of the allegations of exhaustion of musical performance rights and an abuse of right, etc. and dismissed all the Appellants' claims.

No. 3 Summary of the reasons for the judgment of this court

In this judgment, as summarized below, the court determined that the actor of musical performance in the case of an act of musical performance by a teacher at a music school is the operator of the music school and such act of musical performance constitutes the exercise of a musical performance right by the music school operator, while also determining that the actor of musical performance in the case of an act of musical performance by a student is the student. In conclusion, the court dismissed all of the appeals pertaining to the principal claims filed in units of lessons for a prescribed time; and with regard to the alternative claims filed in units of individual acts of musical performance, the court declared that the Appellee holds no claim against the Appellants pertaining to the use by students of the Pieces of Music Managed by the Defendant, and dismissed all the other alternative claims.

1. Regarding the acts of musical performance by teachers

(1) Issues 2 to 4

The Appellants require teachers' musical performances in line with the main object of the Lesson Contracts as performance of their legal obligation based on an employment or quasi-mandate contract and have teachers give musical performances under their management and control while giving necessary instruction and supervision. Therefore, the actors of musical performances by teachers are the Appellants. Anyone can take lessons provided by the Appellants if he/she concludes a lesson contract with the relevant Appellant. Such music school businesses have been repeatedly and continuously carried out, and in concluding such lesson contract, no attention is focused on the individual

characteristics of a student. Therefore, no personal connection arises from such contract between the Appellant and the student. Therefore, from the perspective of Appellants that are music school operators, all of their students fall under a "non-exclusive group of persons" and thus fall under "the public," irrespective of the number thereof. During lessons, musical performance techniques, etc. are taught by having students hear an assigned piece of music through a musical performance by a teacher or the playback of a sound source. Therefore, it is obvious that such musical performance is given with the purpose of having it heard by the students. Even if specific two bars of an assigned piece of music are played, that musical performance is recognized as a musical performance of the assigned piece of music, and it also expresses the characteristics of the whole piece of music while realizing the essential characteristics thereof. Therefore, such musical performance may also constitute an infringement of a musical performance right, irrespective of the number of bars played.

(2) Issues 5 and 7

The exhaustion of musical performance rights is not found in this case, and the Appellants' allegation of an abuse of right is groundless.

(3) Therefore, the Appellee holds a claim for compensation for loss or damage based on copyright infringement or claim for the return of unjust enrichment against the Appellants with respect to the musical performances of the Pieces of Music Managed by the Defendant by teachers during lessons at music schools (Circumstances of Use 1 to 4).

2. Regarding the acts of musical performance by students

(1) Issues 2 and 3

Students participate in lessons for the purpose of receiving the teaching of music instrument performance techniques, etc. as a performance of the Appellants' obligation based on the Lesson Contracts that they have concluded with the Appellants. Students hold the right to receive teaching and have the obligation to pay lesson fees for the teaching, but they do not assume the obligation to give musical performances at a level higher than a prescribed level or the obligation to improve their own musical performance techniques, etc. in relation to either their teachers or the Appellants. Students perform music for themselves solely for the purpose of improving their own musical performance techniques, etc. and it is left to their voluntary and independent attitude. The Appellants that are music school operators can neither legally nor virtually force their students to give musical performances beyond encouraging them to do so voluntarily. It should be said that the essence of a musical performance by a student at a music school exists in having it heard by a teacher and thereby receiving guidance therefrom. The selection of a piece of music and the provision and installation of instruments, facilities, etc. by the

Appellants are nothing more than the additional acts of preparation and development of an environment based on an individual agreement. Even if those acts constitute certain circumstances to be considered in determining whether teachers are under the management and control of the Appellants, they neither indicate that students, who are the Appellants' customers, are under their management and control nor can be considered as circumstances indicating their direct involvement in musical performances by students themselves. Consequently, even if it can be said that the Appellants conduct certain acts of preparation and development of an environment with respect to the subject and methods of musical performances, it must be said that it is difficult to consider musical performances by students as those given by the Appellants from the perspective of the essence of the musical performances by students, which are given for the purpose of receiving teaching. Therefore, the actors of musical performances by students should be considered to be those students.

(2) Therefore, the Appellants assume neither the obligation to compensate loss or damage based on the infringement of musical performance rights nor the obligation to return unjust enrichment in relation to the Appellee due to musical performances by students, without the need to make determination concerning the remaining points (incidentally, musical performances by students are given through payment of lesson fees by the students themselves with the purpose of having them heard by a teacher of a specific music school operator based on the Lesson Contracts; therefore, they cannot be considered as being given "with the purpose of having them ... heard directly by the public," and it is also considered that there is no room for students to be considered to infringe musical performance rights; in addition, even assuming that the actors of musical performances by students at music schools are music school operators, the other party to the acts of musical performance is a teacher as long as the essence of students' musical performances at music schools exists in having them heard by a teacher and receiving guidance therefrom, and it means that music school operators, who are the actors of such musical performances, give musical performances with the purpose of having them heard by the teacher, who should be equated with themselves; therefore, such musical performances cannot be considered as those given "with the purpose of having them ... heard directly by the public").

Judgment rendered on March 18, 2021

2020 (Ne) 10022, Appeal case of seeking declaratory judgment of non-existence of claims pertaining to the use of works at music schools

(Court of prior instance: Tokyo District Court, 2017 (Wa) 20502, 25300)

Date of conclusion of oral argument: January 14, 2021

Judgment

Indication of the parties: As stated in the List of Parties attached to this judgment

Main text

1. All the appeals pertaining to the principal claims filed by the Appellants shall be dismissed.

2. The judgment in prior instance shall be modified as follows with respect to the alternative claims of the Appellants.

(1) It is hereby declared that, in the relationships between the Appellants and the Appellee, the Appellee holds no claim pertaining to the use of works (meaning all pieces of music that the Appellee manages as of January 14, 2021), which it possesses by accepting the trust of copyrights transferred for the purpose of collecting royalties for works or the entrustment of such collection from copyright owners, with respect to musical performances by students stated in List of Circumstances of Use of Works 1 attached to this judgment during lessons between a teacher and around 10 or fewer students, which are provided based on the contracts for the teaching of music and techniques for musical performance (including singing) that the Appellants have concluded with their students, respectively.

(2) It is hereby declared that, in the relationships between the Appellants stated in Attachment C and the Appellee, the Appellee holds no claim pertaining to the use of works stated in (1) above with respect to musical performances by students stated in List of Circumstances of Use of Works 4 attached to this judgment during lessons, which are provided based on the contracts stated in (1) above that the same Appellants have concluded with their students, respectively.

(3) All the other alternative claims of the Appellants shall be dismissed.

3. The court costs for the first and second instances shall be divided into two parts, of which, one shall be borne by the Appellee and the rest shall be borne by the Appellants.

Facts and reasons

No. 1 Object of the claim

As stated in the List of Claims attached to this judgment.

No. 2 Outline of the case, etc.

(Hereinafter the abbreviations used herein are the same as those used in the judgment in prior instance, unless otherwise specified.)

1. Outline of the case

(1) In this case, the Appellants (corporations or sole proprietors), which operate music schools for teaching the basics of music and music instrument performance techniques and singing techniques (hereinafter referred to as "musical performance techniques, etc.") in classrooms or at students' homes, seek a declaratory judgment against the Appellee, which is a copyright manager registered by the Commissioner for Cultural Affairs under the Copyright Management Business Act (Act No. 131 of 2000), to the effect that, for all pieces of music that the Appellee (the defendant in first instance) manages at the time of the conclusion of oral argument of this case (hereinafter referred to as the "Pieces of Music Managed by the Defendant"), the Appellee holds neither a claim for compensation for loss or damage based on infringement of copyrights (musical performance rights), nor a claim for the return of unjust enrichment in the amount equivalent to royalties for works against the Appellants at the time of the conclusion of oral argument of this case with respect to musical performances or singing (hereinafter simply referred to as "musical performances") of the Pieces of Music Managed by the Defendant in the classrooms of the Appellants or the homes of their students during lessons, which are provided based on the contracts for the teaching of music and techniques for musical performance (including singing) that the Appellants have concluded with their students, respectively (the "Lesson Contracts").

A. Regarding the claims

In this case, the Appellants only seek a declaratory judgment regarding the existence or non-existence of the aforementioned claim for compensation for loss or damage or claim for the return of unjust enrichment, and the Appellants' claim for a declaratory judgment does not include a partial claim to seek a declaratory judgment regarding the specific amount of compensation for loss or damage or return of unjust enrichment subject to the declaration in the case where each of those claims is declared to exist.

The content of the claims is as stated in the List of Claims attached to this judgment and basically consists of as follows.

The principal claims (2 to 5 in the aforementioned List) are the claims of the Appellants, which are music school operators, against the Appellee, to seek a declaratory judgment to the effect that in units of lessons for a prescribed time in which a teacher teaches musical performance techniques, etc. to students (those that are provided by music teachers who are employed or entrusted by the Appellants or those that are provided by the Appellants who are also teachers), neither a claim for compensation for

loss or damage nor a claim for the return of unjust enrichment has been caused to arise due to the provision of those lessons. Regarding Lists of Circumstances of Use of Works 1 to 4, which divide the circumstances of use based on whether or not to play back various kinds of sound recordings thereunder, etc., the claims are further categorized from the perspective of [i] whether the number of students is one or more and [ii] whether the whole of a piece of music is played.

In addition, the alternative claims (6 to 9 in the aforementioned List) are the claims of the Appellants, which are music school operators, against the Appellee, to seek a declaratory judgment to the effect that in units of individual acts of musical performance during lessons, neither a claim for compensation for loss or damage nor a claim for the return of unjust enrichment has been caused to arise due to those acts of musical performance. The individual acts of musical performance involved in the alternative claims are divided into [i] acts of musical performance conducted by a student (students) or a teacher, [ii] acts of playing back a commercially distributed CD or other sound recording and [iii] acts of playing back a sound source from which the sound of the part for one instrument is eliminated (a sound recording of a music instrument performance, from which only the sound of the part for an instrument played by a student(s) is eliminated). Furthermore, the acts mentioned in [i] above are further categorized from the perspective of whether the number of students is one or more as well as the number of bars played.

B. Regarding the statement of claim, etc.

The circumstances of provision of lessons pertaining to the principal claims or the individual acts of musical performance pertaining to the alternative claims, which are disputed in terms of whether these circumstances or acts constitute a cause of occurrence of a claim for compensation for loss or damage or a claim for the return of unjust enrichment, are limited to those stated in Lists of Circumstances of Use of Works 1 to 4 attached to this judgment (the circumstances of provision of lessons or the acts of musical performance stated in the lists are further subdivided into multiple circumstances of provision of lessons or acts of musical performance; however, for those subdivided circumstances or acts, all of them are deemed to have been conducted), and the circumstances and acts in the scope thus limited are the facts not disputed between the parties. As the only ground for the occurrence of the aforementioned claims, the Appellee alleges that the Appellants exercised musical performance rights as the actors of musical performances.

All the Appellants used the relevant works in the circumstances of use stated in List of Circumstances of Use of Works 1 attached to this judgment (Circumstances of Use 1).

The Appellants stated in Attachment A (the Appellants in Attachment A) used the relevant works in the circumstances of use stated in List of Circumstances of Use of Works 2 attached to the same (Circumstances of Use 2). The Appellants stated in Attachment B (the Appellants in Attachment B) used the relevant works in the circumstances of use stated in List of Circumstances of Use of Works 3 attached to the same (Circumstances of Use 3). The Appellants stated in Attachment C (the Appellants in Attachment C) used the relevant works in the circumstances of use stated in List of Circumstances of Use of Works 4 (Circumstances of Use 4).

(2) The judgment in prior instance first found that the Appellants in Attachment C, which operate non-corporate schools, also have an interest in seeking a declaratory judgment, and then determined as follows in relation to all the Appellants: [i] the Appellants, which are music school operators, are the users of the Pieces of Music Managed by the Defendant, which are musical works; [ii] students in a classroom are "the public"; [iii] each of the teachers gives a musical performance "with the purpose of having it ... heard directly by" students, who are "the public" as referred to in Article 22 of the Copyright Act, and each of the students does so "with the purpose of having it ... heard directly by" other students, who are "the public," or by him/herself; [iv] even a musical performance of two or less bars also falls under the exploitation of a musical work. [v] The judgment in prior instance then rejected all the Appellants' allegations of exhaustion of musical performance rights, grounds for denying substantial illegality, and an abuse of right, and found the existence of both the Appellee's claim for compensation for loss or damage based on copyright infringement and claim for the return of unjust enrichment against the Appellants and dismissed all the Appellants' claims.

Dissatisfied with the judgment in prior instance, the Appellants filed this appeal.

2. Basic facts, etc.

The basic facts, etc. are as described in in No. 2, 2.(3) ("Classification of the Plaintiffs, etc.") and No. 2, 3. ("Basic facts") in the "Facts and reasons" section of the judgment in prior instance and therefore cited herein, except for making the following corrections.

(1) The phrase "List of Plaintiff Group 4 attached to this judgment" in lines 1 to 2 on page 5 is altered to "List of Appellant Group 4 attached to this judgment."

(2) The phrase "management of singing schools" in lines 15 to 16 on page 6 is altered to "management of copyrights, etc. pertaining to the exploitation of musical works at singing schools."

(3) The phrase "(including the Pieces of Music Managed by the Defendant; the same applies hereinafter)" is added following "assigned piece of music" in line 21 on page 7.

(4) The word "elementary school children" inline 12 on page 8 is altered to "junior high

school students."

3. Issues

Regarding the "issues," the court agrees with and cites herein the statements in No. 2,

4. ("Issues") of the judgment in prior instance.

(omitted)

No. 3 Judgment of this court

1. Issue 1 (whether the Appellants in Attachment C have an interest in seeking a declaratory judgment)

This court also finds that the Appellants in Attachment C have an interest in seeking a declaratory judgment with regard to their claims in this case. Regarding reasons therefor, the court agrees with and cites herein the statements in No. 4 ("Judgment of this court"), 1. of the judgment in prior instance.

2. Issue 2 (whether musical performances at music schools are given to "the public") and Issue 3 (whether musical performances at music schools are given "with the purpose of having them heard")

(1) Introduction

A. Regarding musical performance rights

(A) Article 22 of the Copyright Act defines a musical performance right by providing that "the author of a work has the exclusive right to give ... musical performance of the work with the purpose of having it ... heard directly by the public" The Copyright Act has no provision defining "musical performance" itself, and it is considered that the content of a "musical performance" is left to an ordinary meaning stated in a dictionary. Therefore, it is natural to consider that the term "musical performance" means "playing music."

Article 2, paragraph (1), item (xvi) of the Copyright Act contains the phrase "musical performance (a musical performance includes singing; the same applies hereinafter)" in the definition of "giving a stage performance." Therefore, the "musical performance" referred to in Article 22 of the same Act includes singing. In addition, Article 2, paragraph (7) of the Copyright Act provides that "In this Act, "stage performance," "musical performance," and "recitation" include the playback of sound or visual recordings of a stage performance, musical performance, or recitation of a work (except when this constitutes a transmission to the public or on-screen presentation), and the communication of a stage performance, musical performance, or recitation of a work by means of telecommunications facilities (except when this constitutes a transmission to the public)." Therefore, musical performance includes the playback of sound recordings and

communication by means of telecommunications facilities (except when this constitutes a transmission to the public).

(B) Although the Copyright Act has no provision defining "the public" that are the listening audience of an act of musical performance, it is obvious that at least "non-exclusive groups of persons" are included in "the public." Article 2, paragraph (5) of the same Act provides that "As used in this Act, "the public" includes exclusive groups made up of many persons." Therefore, "the public" referred to in Article 22 of the same Act means groups of persons consisting of those other than "exclusive groups made up of a few persons" (non-exclusive groups of persons or groups of many persons).

(C) As Article 22 of the Copyright Act defines musical performance as one that is given with the purpose of having it heard "directly," it is obvious that an act of musical performance refers to such act conducted with the purpose of having it heard "directly." Therefore, the Copyright Act requires that, in giving a musical performance, a person who gives the musical performance has the purpose of giving it to the other parties who are in front of him/her (including communication by means of telecommunications facilities).

B. Legislative history of Article 22 of the Copyright Act, etc.

This court also finds as follows: the idea that copyright generally does not extend to intangible reproductions of works in classes at schools or other educational institutions was not adopted in the process of establishing Article 22 of the Copyright Act at the time of the whole amendment of the same Act; in addition, music education provided by music school operators for the purpose of profit is considered as not falling under "social education"; therefore, neither intangible reproductions of works in classes at schools or other educational institutions nor social education-related matters to be considered at that time immediately affects the interpretation of Article 22 of the Copyright Act after the whole amendment of the same Act. Regarding reasons therefor, the court agrees with and cites herein the statements in No. 4, 2.(1)A. to C. of the judgment in prior instance.

C. Regarding standards for determining an actor of exploitation of a work

According to No. 2, 3. (after the correction) of the judgment in prior instance cited herein, in music school businesses operated by the Appellants, teachers who have concluded an employment or quasi-mandate contract with the Appellants teach musical performance techniques, etc. to students who have concluded the Lesson Contracts with the Appellants in classrooms set up by the Appellants, and in the process of such teaching, a teacher or student necessarily gives a musical performance of an assigned piece of music (in the case of Circumstances of Use 2, a commercially distributed CD, etc. is also played back; in the case of Circumstances of Use 3, a sound source from which the sound of the part for one instrument is eliminated is also played back).

In this manner, musical performances by a teacher or student during lessons at the Appellants' music schools are given in the course of and as part of implementation of music school businesses for the purpose of profit. However, in light of the aforementioned content and nature, etc. of music school businesses, the actors of musical performances at music schools should be comprehensively determined not only through physical and natural observation of the acts of musical performance at individual schools but also through observation from social and economic aspects in light of the actual conditions of music school businesses.

From such perspective, when identifying an actor of musical performance at a music school, it is reasonable to determine who it is that gives a musical performance of a relevant musical work in consideration of various factors such as the object and method of the musical performance and the details and extent, etc. of involvement in the musical performance (see the judgment of the First Petty Bench of the Supreme Court, 2009 (Ju) 788, rendered on January 20, 2011, Minshu Vol. 65, No. 1, at 399 [Supreme Court judgment on the Rokuraku II case]).

D. Regarding the phrase "with the purpose of having it ... heard directly by the public"

(A) Regarding the phrase "directly by the public"

As mentioned in A.(B) above, Article 22 of the Copyright Act limits musical performances that constitute exercise of a musical performance right to those given with the purpose of having them heard by "non-exclusive groups of persons or many persons," and provides that a musical performance given with the purpose of having it heard by "exclusive groups made up of a few persons" does not constitute exercise of a musical performance right. In that provision, the word "exclusive" is considered as meaning that a personal connection exists between an actor who exercises a music performance right and the other parties the actor intends to have the music performance heard by, in light of the purport of the same Article that intends to set the scope to which copyright extends to a purposeful area by adjusting protection of copyright owners and convenience for the users of works.

In addition, as mentioned in A.(C) above, Article 22 of the Copyright Act limits musical performances that constitute exercise of a musical performance right to the acts of musical performance conducted with the purpose of having it heard "directly" by the other parties, and it requires that a performer gives a musical performance with the purpose of having it heard by the other parties in front of him/her.

Furthermore, where a person him/herself is an actor of musical performance, he/she can neither fall under a non-exclusive group of persons nor many persons in relation to him/herself, who is the actor of the musical performance. Therefore, "the public" referred

to in Article 22 of the Copyright Act can be considered as referring to a person other than an actor of musical performance even in terms of its context.

(B) Regarding the phrase "with the purpose of having it heard"

Article 22 of the Copyright Act provides "being given 'with the purpose of having it heard'" as a requirement. It is reasonable to consider that this phrase was included in the provisions of the same Article in consideration of the following: even if a musical performance is, by chance, heard by "the public" though it is not supposed to be heard by "the public" (for example, where a person gives a musical performance in his/her home bathroom and the musical performance is heard, by chance, by a passerby who is passing by his/her home), the music performance should not be considered as constituting exercise of a musical performance right; and to the contrary, even if a musical performance is, by chance, not heard by "the public" though it is supposed to be heard by "the public" (for example, where a person gives a musical performance on the main street in downtown and, by chance, nobody passes by him/her), the musical performance should not be excluded from exercise of a musical performance right. Therefore, it is reasonable to consider that the phrase "with the purpose of having it heard" refers to the case where a performer is recognized as having the purpose and intention of having the musical performance heard by "the public" in light of the external and objective circumstances of the musical performance and does not require fulfillment of any other requirement beyond that.

(C) Regarding this case

According to (A) and (B) above, it is considered that a musical performance constitutes exercise of a musical performance right in the case where a performer gives a musical performance [i] to persons in front of him/her who have no personal human connection with him/her or to many persons in front of him/her who have personal connection with him/her, [ii] in the situation where he/she is recognized as having the purpose and intention of having the musical performance heard by the person(s) mentioned in [i] above in light of the external and objective circumstances of the musical performance.

As in Circumstances of Use 1 to 4, for the Appellants' music schools, musical performances were given in classrooms, which persons other than a teacher, students and their custodians were not permitted to enter, or at students' homes. Therefore, persons who were assumed to be within the scope of the other parties by which a musical performance was heard were only the teacher and students who were in the relevant room when a specific act of musical performance was conducted. That is, in this case, it is necessary to discuss whether a teacher or students fall under "the public" at the time when

an act of musical performance was conducted in a certain classroom.

E. On the premise of the aforementioned basic idea, whether an act of musical performance by a teacher and that by a student falls under a musical performance that was given "with the purpose of having it ... heard directly by the public," respectively, is examined below.

(2) Regarding musical performance by a teacher

A. Regarding the essence of an act of musical performance by a teacher

As mentioned in No. 2, 3.(1)A. of the judgment in prior instance cited herein, the Appellants provide lessons for teaching music and musical performance techniques, etc. to students who have concluded the Lesson Contracts, which are contracts on the teaching of music and contracts on the teaching of music instrument performance techniques, etc., by using teachers, with whom the Appellants have concluded an employment or quasi-mandate contract, for the purpose of teaching music and musical performance techniques, etc.

Based on the above, it is reasonable to consider that the essence of an act of musical performance by a teacher at a music school is to have the musical performance heard by students, as performance of the obligation that the teacher assumes based on an employment or quasi-mandate contract in relation to the relevant music school operator and as performance of the obligation that the music school operator assumes based on the Lesson Contracts in relation to students.

B. Regarding the circumstances of musical performance

At the Appellants' music schools (excluding those operated by the Appellants in Attachment C), lessons are provided in classrooms set up by the Appellants, as stated in List of Circumstances of Use of Works 1 attached to this judgment (Circumstances of Use 1). A teacher presents challenges by playing the whole or part of an assigned piece of music, plays an accompaniment for a student's musical performance, and sometimes plays a relevant part of the piece of music as an example to present challenges and give cautions in a student's musical performance. In addition, at the music schools operated by the Appellants in Attachment A, as stated in List of Circumstances of Use of Works 2 attached to this judgment (Circumstances of Use 2), lessons are also provided in classrooms set up by the same Appellants, and in those lessons, in addition to musical performances by a teacher in the same manner as Circumstances of Use 1, a teacher sometimes plays back one or several bars or the whole of a piece of music recorded on a commercially distributed CD or other sound recording by changing the pitch, tempo, and other elements thereof as needed according to the progress of a lesson and the students' proficiency and understanding, in lieu of playing an accompaniment by him/herself. At the music schools

operated by the Appellants in Attachment B, lessons are also provided in classrooms set up by the same Appellants as stated in List of Circumstances of Use of Works 3 attached to this judgment (Circumstances of Use 3), and in those lessons, in addition to musical performances by a teacher in the same manner as Circumstances of Use 1, a teacher sometimes plays back a sound recording in the same manner as in Circumstances of Use 2, except for the point that a sound recording thus played back is from a sound source from which the sound of the part for one instrument is eliminated, in lieu of playing an accompaniment by him/herself. At the music schools operated by the Appellants in Attachment C, lessons are provided at students' homes as stated in List of Circumstances of Use of Works 4 attached to this judgment (Circumstances of Use 4).

C. Regarding the actors of musical performances

(A) It is obvious that the actors of musical performances given by some of the Appellants who are sole proprietors operating music schools and also serve as teachers and by the Appellants in Attachment C that operate non-corporate schools as teachers by themselves are the relevant Appellants that are operators of those music schools.

Based on that, musical performances that teachers who are not music school operators give at the relevant music schools are examined below.

(B) As mentioned in A. above, the Appellants assume the obligation to teach musical performance techniques, etc. based on the Lesson Contracts that they have concluded with their students. For the purpose of performing that obligation, the Appellants conclude an employment or quasi-mandate contract with teachers, and teachers provide lessons to students on behalf of the Appellants as performance of their obligation based on that employment or quasi-mandate contract. As mentioned in B. above, musical performances by a teacher (including playback of sound recordings) are the essential constituent element of such lessons, and it is hardly possible that the Appellants that are music school operators do not know the fact that teachers give musical performances at music schools. Teachers give guidance in such lessons as a natural method of providing music education, and this can be considered as conforming to the main object of the Lesson Contracts. In addition, it is presumptively recognized that from business operation necessity, the Appellants that are music school operators are managing the qualification, ability, etc. of teachers with whom they have concluded a quasi-mandate contract, not to mention teachers with whom they have concluded an employment contract, and are instructing and supervising such teachers so that the teachers provide students with guidance in line with the Appellants' business philosophy and guidance policy. In terms of the nature of this case that requires a determination based only on the facts common to all of the Appellants, no evidence against this has been submitted. Furthermore, it is presumptively

recognized that the music schools at which teachers give musical performances were set up by the Appellants, that sound facilities necessary for musical performances, sound recording players, and other facilities are installed at the expense of the Appellants, and that the Appellants possess and manage those facilities. In the same manner as above, no evidence against this has been submitted.

For the reasons described above, the Appellants can be considered as requiring teachers' musical performances in line with the main object of the Lesson Contracts as performance of their legal obligation based on an employment or quasi-mandate contract and having teachers give musical performances under their management and control while giving necessary instruction and supervision. Therefore, the actors of musical performances by teachers should be considered to be the Appellants from a normative perspective.

(C) In contrast, as mentioned in No. 2, 5.(1)A.(A), the Appellants allege as follows: whether a teacher gives a musical performance (including playback of a sound recording) during a lesson, as well as the content and extent of a musical performance, are left to the discretion of the teacher; therefore, the Appellants neither manage nor control musical performances by teachers; in addition, as performances of pieces of music by teachers at music schools are incomplete or imperfect and also differ every time, music school operators can neither manage nor control such musical performances.

However, teachers teach their students musical performance techniques, etc. based on an employment or quasi-mandate contract that they have concluded with the Appellants as performance of the obligation under such contract. Although teachers have options for the method of performing their obligation, they do not have the freedom not to perform the obligation. Even though teachers have a certain level of discretion in performing their obligation, the fact remains that they assume the obligation to provide lessons necessary for performing the obligation that the Appellants assume in relation to their students under the Lesson Contracts. Therefore, the fact that teachers have a discretion over the progress of a lesson does not affect the aforementioned determination that the actors of musical performances by teachers are the Appellants.

Moreover, teachers give musical performances differently every time in an incomplete or imperfect form not because of the inadequacy of their techniques but for the purpose of teaching their students musical performance techniques, etc. Teachers just act in a suitable manner for performing their obligation under an employment or quasi-mandate contract that they have concluded with the Appellants. Therefore, the degree of completion, degree of perfection or reproducibility of the content of their musical performances only represent what method of musical performance teachers used as a

specific method of performing their obligation based on an employment or quasi-mandate contract that they concluded with the Appellants, and none of them affects the aforementioned determination that the actors of musical performances by teachers are the Appellants.

All the other allegations of the Appellants concerning the actors of musical performances pertaining to their teachers' musical performances are based on a different premise or are groundless. Therefore, those allegations cannot affect the aforementioned determination.

D. Regarding the phrase "with the purpose of having it ... heard directly by the public"

(A) As mentioned in (1)D.(A) above, whether a musical performance constitutes exercise of a musical performance right is determined based on whether a personal connection exists between a performer and the other parties by whom the musical performance is heard or the number of such other parties. In terms of the purport of Article 22 of the Copyright Act that intends to set the scope to which copyright extends as a purposeful area by adjusting protection of copyright owners and convenience for the users of works, a person who gives a musical performance is nothing less than a person who is in a position that is liable for the exercise of a musical performance right, that is, the actor of the musical performance. Based on this, as mentioned in C.(B) above, the actors of musical performances by teachers at music schools are the Appellants, which are music school operators. The parties agree that a teacher does not fall under "the public" in relation to the act of musical performance by him/herself, and it is obvious that a teacher gives a musical performance with the purpose of having it heard by his/her students. Therefore, whether the act of musical performance by a teacher, who is a person who actually gives that musical performance, can be considered as a musical performance given with the purpose of having it heard directly by "the public" should be determined based on whether students, who are the customers of a music school operator, which is considered to be the actor of the musical performance from a normative perspective, can be considered as not falling under "exclusive groups made up of a few persons" from the perspective of the music school operator.

(B) We examine the case on this point. According to No. 2, 3.(1)A. of the judgment in prior instance cited herein, anyone can take lessons of the Appellants if he/she applies for the lessons with the relevant Appellant and concludes a lesson contract therewith. Such music school businesses have been repeatedly and continuously carried out, and in concluding such lesson contract, no attention is focused on individual characteristics of a student. Therefore, when any of the Appellants and its student conclude the Lesson Contract, there is no personal connection between that Appellant and the student, and the

Appellant, as a music school operator, and the student are connected only through that lesson contract as far as lessons at the music school are concerned. Based on this, no personal connection arises from such contract between the Appellant and the student, and it is reasonable to consider that such student continues to have the nature of a person belonging to a non-exclusive group of persons in relation to the Appellant that is a music school operator.

Therefore, it should be said that, from the perspective of the Appellants that are music school operators, all of their students fall under a "non-exclusive group of persons" and thus fall under "the public," irrespective of the number thereof. Even if a music school operator also serves as a teacher, or in the case of a non-corporate music school, the circumstances of conclusion of a lesson contract does not differ from those mentioned above as long as the relevant music school is operated as a business. Therefore, students should also be considered as falling under a "non-exclusive group of persons."

In contrast, as mentioned in No. 2, 5.(1)B.(A) to (E) above, the Appellants allege as follows: [i] whether students fall under an "exclusive group of persons" should be determined also in consideration of the circumstances after the conclusion of lesson contracts, and it should be found based on whether a personal connection has been formed after the Appellants concluded the Lesson Contracts with their students and the students started taking the lesson; [ii] all musical performances by teachers and playback of sound recordings at music schools are characteristic musical performances, and persons who hear musical performances during a lesson are only those who are in a classroom where the lesson is actually provided; therefore, whether a musical performance is given to "the public" should be determined based on the number of persons in a relevant classroom; [iii] there is no listening audience (the public) other than a person who gives a musical performance in the place of lesson; therefore, such musical performance does not fall under a musical performance given to the public; [iv] lessons at music schools are provided in preparation for having students give musical performances at a recital, etc. to have them heard by other persons; therefore, no royalty for works arises with respect to musical performances during lessons.

However, regarding [i] above, the connection between the Appellants in the position of music school operators and their students does not go beyond a relationship between the parties based on the Lesson Contracts, which are contracts for value that were formed while setting a non-exclusive group of persons as the other parties. That nature never changes as long as a teacher and students have contact in lessons at a music school, and this point remains the same even if a music school operator also holds a position as a teacher. Needless to say, it may well be that a teacher forms a trusted personal relationship

with a student and develops a personal connection, such as teaching the student outside the classroom apart from guidance at a music school. However, even if a musical performance is given in such process, it should not be considered as a musical performance at a music school, which is subject to the proceedings in this case, and it thus does not fall under the subject of a judgment of this court. Therefore, the Appellants' allegation mentioned in [i] above is not acceptable.

Moreover, even if the number of students is one, that student falls under "the public" as a non-exclusive group of persons from the perspective of a relevant music school operator. Therefore, the Appellants' allegation mentioned in [ii] above cannot affect the conclusion at all. In addition, as indicated above, "the public," specifically, students, exist with respect to musical performances by a teacher. Therefore, the allegation mentioned in [iii] above is also not acceptable. Then, as it is obvious that musical performances by teachers as the performance of the Lesson Contracts and musical performances by students at a recital, etc. completely differ in the nature, the allegation mentioned in [iv] above is also not acceptable.

(C) Next, when examining an act of giving a musical performance "with the purpose of having it heard," as stated in Circumstances of Use 1 to 4, the circumstances of musical performances at the Appellants' music schools are as follows: [i] on such occasions as when a student plays an assigned piece of music for the first time, a teacher presents challenges by playing the assigned piece of music ahead of the student's performance; [ii] after hearing the musical performance by the teacher, the student plays the assigned piece of music by several bars each in front of the teacher; [iii] after hearing the student's musical performance, the teacher orally explains challenges to the student and gives cautions in giving a musical performance and also plays the relevant parts as an example as needed; [iv] after listening to the teacher's cautions and hearing his/her musical performance, the student plays those parts again; after repeating the aforementioned steps, [v] finally, the student plays the parts of the assigned piece of music which he/she has practiced or the whole of the assigned piece of music (the teacher sometimes plays an accompaniment for the student's musical performance). In the case of Circumstances of Use 2, a commercially distributed CD, etc. is used in lieu of an accompaniment by a teacher, while in the case of Circumstances of Use 3, a sound source from which the sound of the part for one instrument is eliminated is used in lieu of the same.

In such manner, during lessons at the Appellants' music schools, musical performance techniques, etc. are taught through repetition of the step of having a student hear an assigned piece of music played by a teacher or the playback of a sound source and the step in which the student who has heard such musical performance plays the assigned

piece of music for the purpose of having it heard by the teacher. Therefore, it is obvious that musical performances by a teacher or the playback of a sound source are given with the purpose of having them heard by a student, who is the public.

In contrast, as mentioned in No. 2, 5.(1)C.(A) and (C) above, the Appellants allege as follows: [i] if the requirement "with the purpose of having it heard" is substantially construed, a musical performance given "with the purpose of having it heard" refers to a "musical performance given with the purpose of giving a sensual impression to a listener" or a "musical performance given with the purpose of causing a listener to enjoy the value of music as a work"; even if this is not the case, in construing Article 22 of the Copyright Act, whether a musical performance constitutes exercise of a musical performance right should be considered from the perspective of whether it can be substantially considered as an exploitation to which a right should be extended, while also referring to the provisions of Article 30-4 of the same Act that specifies the "case in which it is not a person's purpose to personally enjoy or cause another person to enjoy the thoughts or sentiments expressed in that work" as a limitation on copyright (however, the same Article is not alleged as a defense); [ii] musical performances by a teacher at a music school differ from his/her authentic musical performances, and sound recordings are played back while always adjusting sounds and rhythms; therefore, such musical performances do not fall under musical performances with the purpose of causing listeners to enjoy the value as musical works.

However, as determined in (1)D.(B) above, it is reasonable to consider that the phrase "with the purpose of having it heard" refers to the case where a performer is recognized as having had the purpose and intention of having his/her musical performance heard by "the public" in light of the external and objective circumstances of the musical performance and does not require fulfillment of any other requirement beyond that. In addition, even keeping in mind Article 30-4 of the Copyright Act, which permits imposition of a limitation on copyright in the case where it is not "a person's purpose to personally enjoy or cause another person to enjoy the thoughts or sentiments expressed in that work," the purpose of musical performances at a music school is to acquire musical performance techniques, etc., and acquisition of musical performance techniques, etc. cannot be achieved without reproducing the expressions of thoughts or sentiments that were put into musical works. In addition, it should also be said that musical performances by a teacher are given for the purpose of causing a student to understand the expressions of thoughts or sentiments in relevant musical works. Therefore, it is obvious that such musical performances have the purpose of causing another person to enjoy the thoughts or sentiments expressed in works. Consequently, the allegation mentioned in [i] above is

not acceptable.

Even if there are circumstances such as where musical performances by a teacher at a music school differ from his/her authentic musical performances, the fact remains that such musical performances have the purpose of causing students to enjoy the thoughts or sentiments expressed in works, as mentioned above, and it is hardly possible that a teacher repeats providing lessons without achieving such purpose. Therefore, the allegation mentioned in [ii] above must be considered as unreasonable.

(D) All the other allegations of the Appellants are based on a different premise or are groundless. Therefore, those allegations cannot affect the aforementioned determination. Consequently, musical performances by a teacher should be considered as musical performances given "with the purpose of having them ... heard directly by the public."

E. Summary

For the reasons described above, musical performances by a teacher should be considered, in light of the essence thereof, as being given "with the purpose of having them heard" by students, who fall under "the public" as a non-exclusive group of persons, while music school operators that assume the obligation to teach based on the Lesson Contracts serve as the actors of those acts.

(3) Regarding musical performance by a student

A. Regarding the essence of an act of musical performance by a student

In light of No. 2, 3.(1)A. of the judgment in prior instance cited herein and (2)A. above, the Appellants provide lessons for teaching music and musical performance techniques, etc. to students who have concluded the Lesson Contracts, which are contracts on the teaching of music and contracts on the teaching of music instrument performance techniques, by using teachers, with whom they have concluded an employment or quasi-mandate contract, for the purpose of teaching music and musical performance techniques, etc.

Based on the above, it is reasonable to consider that the essence of an act of musical performance by a student at a music school is to have a teacher hear the musical performance for the purpose of receiving the teaching of music and musical performance techniques, etc. based on the Lesson Contracts. Incidentally, an individual specific lesson contract may include the provision of fully-equipped facilities and environment and the ensuring of musical performances by using instruments, etc. provided by the relevant music school operator. However, these matters cannot be considered as essential for receiving the teaching of music and musical performance techniques, etc. and should be considered as nothing more than the additional acts of preparation and development of an environment based on an individual agreement. Therefore, it should be said that the

essence of a musical performance by a student at a music school exists in having it heard by a teacher and thereby receiving guidance therefrom.

In addition, at a music school, a musical performance by a student is given solely to a teacher for the purpose of seeking guidance therefrom, and cannot be considered as being given to other students. Therefore, it should be said that a student does not give a musical performance with the "purpose of having it heard" by other students, and it is also obvious that the student cannot be considered as giving the musical performance with the "purpose of having it heard" by him/herself (if that is the purpose, a student does not need to give a musical performance at a music school). The Appellee alleges that a student needs to carefully hear his/her own or other students' musical performances to improve his/her musical performance techniques and then makes a reference of documentary evidence (page 58 of Exhibit Otsu 57) and a testimony (page 15 of Witness Q in the prior instance). However, this allegation must be considered as confusing the necessity and benefits of having a student hear his/her own or other students' musical performances and the issue of by whom a musical performance is to be heard as the purpose thereof.

B. Regarding the circumstances of a musical performance

As stated in List of Circumstances of Use of Works 1 attached to this judgment (Circumstances of Use 1), lessons are provided in classrooms set up by the Appellants (however, in the case of List of Circumstances of Use of Works 4 attached to the same (Circumstances of Use 4), lessons are provided at students' homes), and a student repeats the step of playing an assigned piece of music by several bars each in front of a teacher, while sometimes being accompanied by the teacher, the step of receiving explanations about challenges and cautions in giving a musical performance from the teacher, and the step of playing the assigned piece of music repeatedly after hearing relevant guidance and then giving a musical performance to confirm the solution of each of the challenges. A music score used in playing an assigned piece of music (a music score in which an assigned piece of music is written; the same music score is used for all students in a class in the case of a group lesson) is one that the student has purchased in advance.

In addition, as stated in List of Circumstances of Use of Works 2 attached to this judgment (Circumstances of Use 2), at the music schools operated by the Appellants in Attachment A, lessons are also given in classrooms set by the same Appellants. In those lessons, in addition to musical performances by students in the same manner as Circumstances of Use 1, a teacher sometimes plays back one or several bars or the whole of a piece of music recorded in a commercially distributed CD or other sound recording by changing the pitch, tempo, and other elements thereof as needed according to the progress of a lesson and the students' proficiency and understanding, in lieu of playing an

accompaniment by him/herself. As stated in List of Circumstances of Use of Works 3 attached to this judgment (Circumstances of Use 3), at the music schools operated by the Appellants in Attachment B, lessons are also provided in classrooms set by the same Appellants. In those lessons, in addition to musical performances by students in the same manner as Circumstances of Use 1, a teacher sometimes plays back a sound recording in the same manner as in Circumstances of Use 2, except for the point that a sound recording thus played back is a sound source from which the sound of the part for one instrument is eliminated.

C. Regarding the actors of musical performances

(A) According to the above, students participate in lessons for the purpose of receiving the teaching of music instrument performance techniques, etc. as a performance based on the Lesson Contracts that they have concluded with the Appellants. Therefore, students hold the right to receive teaching and have the obligation to pay lesson fees for the teaching. However, they do not assume the obligation to give musical performances at a level higher than a prescribed level or the obligation to improve their own musical performance techniques, etc. in relation to either their teachers or the Appellants. Students perform music for themselves solely for the purpose of improving their own musical performance techniques, etc. and it is left to their voluntary and independent attitude. The Appellants that are music school operators can neither legally nor virtually force their students to give musical performances beyond encouraging them to do so voluntarily.

Certainly, the Pieces of Music Managed by the Defendant are performed by students because assigned pieces of music performed by them are selected from music scores that they have purchased in advance and the Pieces of Music Managed by the Defendant are included in those music scores. In addition, musical performances by students are given in classrooms set by the Appellants, except for the cases of Circumstances of Use 4, and in such classrooms, there are ordinary sound facilities, sound recording players, and other facilities, in addition to instruments that cannot be easily carried, such as pianos and electronic organs, which are installed at the Appellants' expense and are possessed and managed by the Appellants. However, as held in A. above, it should be said that the essence of a musical performance by a student at a music school exists just in having it heard by a teacher and receiving guidance therefrom. The selection of a piece of music and the provision and installation of instruments, facilities, etc. by the Appellants are nothing more than the additional acts of preparation and development of an environment based on an individual agreement. Even if those acts constitute certain circumstances to be considered in determining whether teachers are under the management and control of the Appellants, they neither indicate that students, who are the Appellants' customers, are

under their management and control, nor can they be considered as circumstances indicating their direct involvement in musical performances by students themselves. This is also supported by the fact that musical performances by students that are to be given at music schools are also actually possible at students' homes, as shown in the case of Circumstances of Use 4.

For the reasons described above, even if it can be said that students voluntarily and independently give musical performances solely for the purpose of improving their own musical performance techniques, etc. and that the Appellants conduct certain acts of preparation and development of an environment with respect to the subject and methods of musical performances, it must be said that it is difficult to consider musical performances by students as those given by the Appellants from the perspective of the essence of the musical performances by students, which are given for the purpose of receiving teaching. Therefore, the actors of musical performances by students should be considered to be those students.

(B) In contrast, as mentioned in No. 3, 2. [Defendant's allegations] (1)D.(B) and (C) of the judgment in prior instance cited herein and No. 2, 5.(2)A.(C) above, the Appellee alleges that musical performances by students are also recognized as being attributable to the management and control and interest of the Appellants that are music school operators and that the actors of musical performances by students are also the Appellants in light of the following points: [i] musical performances by students at music schools are given as part of lessons based on the Lesson Contracts that the students have concluded with the Appellants and are not given independently of receipt of the lessons; [ii] they are given under the guidance of a teacher to the extent necessary when they are considered necessary from the perspective of the effect of education; [iii] musical works designated as assigned pieces of music in music scores used for lessons specified by the Lesson Contracts are played under the guidance and instruction of a teacher, in principle; [iv] musical performances by students are given by using sound facilities, sound recording players, etc., sound recordings, instruments, etc. that are under the management of the Appellants; and [v] it is impossible to teach music instrument performance techniques without exploiting musical works in music school businesses, and lesson fees paid based on the Lesson Contracts include the value for exploitation of musical works.

However, it is obvious from the explanation above that it is impossible to consider the actors of students' voluntary musical performances to be music school operators just based on the circumstances alleged by the Appellants in [i] to [iv] above. Incidentally, as mentioned in No. 2, 5.(2)A.(B) above, the Appellee alleges that musical performances by students should be equated with singing by customers at a karaoke bar. However, leaving

aside the legal position of such singing, in relation to singing by customers at a karaoke bar, setting up of a karaoke room and installation of karaoke facilities by the same bar go far beyond the mere acts of preparation and development of an environment for singing in general, and in terms of the essence of the act of singing karaoke, singing at a karaoke bar itself cannot be established without such acts. Therefore, singing by customers at a karaoke bar should be considered as significantly different from this case in terms of its nature.

Furthermore, regarding the circumstances alleged by the Appellee in [v] above, there is no sufficient evidence to find that the value for exploitation of musical works in relation to students' musical performances during lessons is included in lesson fees paid based on the Lesson Contracts. In addition, at any rate, it should be said that music school operators make profits by soliciting students solely owing to the method and content of their teaching. It is hard to say that music school operators make profits directly from their students' performances of musical works.

Therefore, all the aforementioned allegations of the Appellee are not acceptable.

(C) All the other allegations of the Appellee concerning the actors of musical performances by students are based on a different premise or are groundless. Therefore, those allegations cannot affect the aforementioned determination.

D. Summary

As mentioned above, the actors of musical performances by students at music schools are the relevant students; therefore, the Appellants assume neither the obligation to compensate loss or damage based on the infringement of musical performance rights nor the obligation to return unjust enrichment in relation to the Appellee due to musical performances by their students without the need to determine the remaining points (musical performances by students are given through payment of lesson fees by themselves with the purpose of having them heard by a teacher of a specific music school operator based on the Lesson Contracts; therefore, they cannot be considered as being given "with the purpose of having them ... heard directly by the public," and it is also considered that there is no room for students to be considered to infringe musical performance rights).

Incidentally, adding a remark for confirmation, even assuming that the actors of musical performances by students at music schools are music school operators, in such case, as mentioned in A. above, the other party to the acts of music performances is a teacher as long as the essence of musical performances by students at music schools exists in having them heard by a teacher and receiving guidance therefrom, and it means that music school operators, who are the actors of such musical performances, give musical

performances with the purpose of having them heard by the teacher, who should be equated with themselves. Therefore, it should be said that such musical performances cannot be considered as those given "with the purpose of having them ... heard directly by the public" (the parties agree that a teacher does not fall under "the public" in relation to musical performances by students; in addition, musical performance by a student cannot be considered as being given with the purpose of having it heard by other students or by him/herself, as explained in A. above, and such musical performance significantly differs from singing, etc. at a karaoke bar (box), where a customer sings a song with the purpose of having it heard by other persons in the same room or by him/herself, although the actor of the musical performance is also considered to be the operator of the karaoke bar (box)).

3. Regarding Issue 4 (whether a musical performance right extends to a musical performance of two or less bars at a music school)

As mentioned in No. 3, 4. [Plaintiffs' allegations] of the judgment in prior instance cited herein and No. 2, 5.(1)D. above, the Appellants allege as follows: as a musical performance of two or less bars of a piece of music at a music school is too short to identify the piece of music played, and it thus cannot be considered as exerting the personality of the author of the piece of music; therefore, two or less bars of a piece of music does not fall under a work, and such musical performance cannot be considered as constituting exercise of a musical performance right.

However, it is hardly conceivable that any two bars that are taken out of a piece of music do not have copyrightability.

As mentioned above, the purpose of musical performances at music schools is to acquire musical performance techniques, etc., and acquisition of musical performance techniques, etc. cannot be achieved without reproducing the expressions of the thoughts or sentiments expressed in a musical work. Therefore, it cannot be assumed that only parts without copyrightability are repeatedly taught at music schools. Therefore, even if musical performances are given in units of two bars during a lesson, it is presumably recognized as ordinary to play a certain bloc of phrase by two bars each, instead of repeatedly playing only specific two bars. No evidence against this has been submitted. As stated in Circumstances of Use 1 to 4, it is predetermined that a specific assigned piece of music is to be performed in a lesson. Therefore, even if specific two bars of an assigned piece of music are played, it is clear what part of the assigned piece of music they are. Even if two bars of an assigned piece of music are played in various forms in a continuous and overlapping way, that is recognized as a musical performance of the assigned piece of music, and it is reasonable to consider that such musical performance expresses the

characteristics of the whole piece of music while realizing the essential characteristics thereof.

Therefore, the aforementioned allegation of the Appellants is not acceptable, and the act of infringement of a musical performance right arises, irrespective of the number of bars played.

4. Regarding Issue 5 (establishment or non-establishment of exhaustion of musical performance rights)

This court also determines that musical performance rights have yet to be exhausted for pieces of music used by the Appellants during lessons. Regarding reasons therefor, the court agrees with and cites herein the statements in No. 4, 5. of the judgment in prior instance, except for making the following corrections and adding a determination concerning the supplementary allegations of the Appellants in this instance.

(1) Correction of the judgment in prior instance

A. The phrase "in transferring the right" in line 22 on page 69 is altered to "in transferring the right or authorizing exploitation thereof."

B. The sentence from "music school" in line 8 to the end of line 10 on page 70 is altered to "even if a music score or sound source from which the sound of the part for one instrument is eliminated is prepared to be used for lessons at music schools, it cannot be said that it will be used only for musical performances in the forms, to which its musical performance right extends, after being purchased."

(2) Determination concerning the supplementary allegations of the Appellants in this instance

As mentioned in No. 2, 5.(2)E. above, the Appellants allege as follows: [i] a musical performance right is exhausted if the right owner has an opportunity to acquire a value for the musical performance right; music scores placed in a textbook and sound sources from which the sound of the part for one instrument is eliminated are primarily used for lessons at music schools; and before exploiting musical works, the Appellants submitted written applications for exploitation to the Appellee, and the Appellee could know in advance that those pieces of music would be used in lessons as teaching materials at music schools based on the statements in the relevant written application for exploitation by printing (Exhibit Ko 46) and written application for exploitation by recording (Exhibit Ko 47); [ii] it is just that one copyright arises from one creation, and establishment of exhaustion is not precluded by a difference in the type of copyright.

However, as explained in the judgment in prior instance, the ground for exhaustion exists in the promotion of the harmony between protection of safety in transactions of persons who have entered into transactional relationships, including transfer of copyright

and authorization to exploit a work, and protection of the interest of copyright owners who obtain gains through economic exploitation of works. Based on that, the value acquired by a copyright owner upon preparation of a music score or a sound source eliminating the sound of the part for one instrument is the value for exercise of the right of reproduction (Article 21 of the Copyright Act), and the value for exploitation during lessons at music schools is the value for exercise of a musical performance right (Article 22 of the Copyright Act). Therefore, these values are those for exercise of different types of copyrights that completely differ in the method of exercise. As long as those copyrights differ as rights, even if they are for a work created through one act of creation, there is neither reason for evaluating acquisition of the value for exploitation of the work with respect to each type of those copyrights as obtainment of duplicate gains nor reason for evaluating that it is unjust if those copyrights are not concurrently exercised. Moreover, if a musical performance right is found to be exhausted based on an exercise of the right of reproduction with no limitation, a musical work will be performed with almost no limitation if only the right of reproduction is exercised once. It is obvious that this will unjustly harm the economic interest of copyright owners. Even if the scope of exhaustion is determined within the scope in which a copy of a musical work and a performance thereof can be associated with each other, various circumstances are assumed concerning the exercise of a musical performance right, including whether a musical performance is given while using a copy of a musical work and to what extent. It is difficult to predict these circumstances at the stage of exercising the right of reproduction. Therefore, it is hard to say that a copyright owner has had an opportunity to collect the value at the stage of exercising the right of reproduction.

For the reasons described above, even if music scores placed in a textbook and sound sources eliminating the sound of the part for one instrument are suited to be used during lessons at music schools, they are not always used for musical performances only in the circumstances where musical performance rights extend, and even on the premise that they are used during lessons at music schools, it is still difficult to ascertain specific circumstances of exploitation and collect the value therefor. Therefore, it should be considered as lacking a substantial ground to find exhaustion of a musical performance right at the stage of exercise of the right of reproduction. It is obvious that even if a written application for exploitation includes a statement from which a scheduled exploitation at a music school can be understood, it does not immediately give a ground for exhaustion of a musical performance right.

Therefore, the aforementioned allegation of the Appellants is groundless.

5. Regarding Issue 6 (whether there is a ground for denying substantial illegality

pertaining to playback of sound recordings)

This court also determines that the substantial illegality of infringement of a musical performance right is not denied with respect to playback of a sound recording of a musical work at a music school. Regarding reasons therefor, except for altering the term "teachers" in line 13 on page 71 of the judgment in prior instance to "individual teachers," the court agrees with and cites herein the statements in No. 4, 6. of the same.

6. Regarding Issue 7 (whether the Appellee's act constitutes an abuse of right)

This court also determines that the Appellee's collection of royalties for works with respect to musical performances at music schools does not constitute an abuse of right. Regarding reasons therefor, except for making the following corrections and adding a determination concerning the supplementary allegations of the Appellants in this instance, the court agrees with and cites herein the statements in No. 4, 7. of the judgment in prior instance.

(1) Correction of the judgment in prior instance

The phrase "in relation to all the Appellants" is added following the word "the Defendant" in line 23 on page 72, and the phrase "there are reasonable grounds for the Defendant's having failed to exercise the right until Article 14 of the Copyright Act was abolished" in line 11 on page 73 is altered to the phrase "the Defendant's failure to exercise the right until Article 14 of the Copyright Act was abolished cannot be considered unreasonable."

(2) Determination concerning the supplementary allegations of the Appellants in this instance

As mentioned in No. 2, 5.(1)F. above, the Appellants allege as follows: [i] Article 14 of the Supplementary Provisions of the Copyright Act does not restrict copyright owner's rights in relation to "musical performances," which make up a large portion of musical performances given during lessons at music schools, but in relation to "musical performances by playing back sound recordings," which merely fall under complementary teaching materials in lessons at music schools; therefore, existence of Article 14 of the same Act does not serve as a ground for failure to exercise rights in relation to the aforementioned musical performances; [ii] the Appellee has not claimed royalties for works in relation to musical performances by teachers during lessons just because it has not considered that it should collect royalties for copyrights in relation to musical performances given during lessons.

However, in the following Appellants' allegation itself, it is originally impossible to consider that the failure to exercise rights and the effect of lapse of the rights conform to each other: even if the Appellee may be able to start managing musical performance rights

for works exploited by music school operators, it had not exercised rights until 2003, which is more than 17 years before the time of the conclusion of the oral argument of this case, January 2021, and therefore it is unable to claim royalties for the works in and after 2003 as well.

A simple failure to exercise a right may cause not only the completion of prescription but also the lapse of the right in the future only in cases where there are special circumstances in which the exercise of a right by a right owner can never be accepted from the perspective of legal equity and legal justice, such as the case where the right owner had continued to take actions over years that caused a person assuming the obligation to have a high level of confidence that the right owner would not exercise his/her right, as a result, the person assuming the obligation made a significant investment, etc. that the person would have never been able to make if the right owner exercised his/her right. However, in this case, the Appellee started exercising its rights with respect to musical performances given during lessons at music schools: at least against Appellant Yamaha, 17 years before. In addition, there are also no special circumstances based on which the Appellants' confidence regarding non-exercise of rights should be protected.

Therefore, the Appellants' allegation of abuse of right is groundless.

7. Overview

(1) Regarding the principal claims

As determined in 2.(2) and 3. above, regarding an act of musical performance conducted by one teacher in a classroom during a lesson at a music school (including playback of a commercially distributed CD or other sound recording and a sound source from which the sound of the part for one instrument is eliminated), the relevant Appellants that are music school operators are the actors of exploitation, and such musical performance is one that is given "with the purpose of having it heard" by a student that can also be considered as "the public," even if it is only one student, irrespective of whether the whole of a piece of music is sometimes performed and whether two or less bars of a piece of music are played in one musical performance. Therefore, such musical performance constitutes exercise of a musical performance right. As determined in 4. to 6. above (Issues 5 to 7), with respect to exercise of musical performance rights by the Appellants, musical performance rights for pieces of music used in lessons at music schools are not exhausted, and there are no grounds for denying the substantial illegality pertaining to playback of sound recordings of those pieces of music, and the Appellee's collection of royalties for works in relation to relevant musical performances does not constitute an abuse of right. Therefore, all the Circumstances of Use 1 to 4 constitute infringement of musical performance rights.

For the reasons described above, the Appellee holds a claim for compensation for loss or damage based on copyright infringement or claim for the return of unjust enrichment with respect to the musical performances of Pieces of Music Managed by the Defendant by teachers during lessons at music schools (Circumstances of Use 1 to 4).

(2) Regarding the alternative claims

A. Paragraph 6(1)(ii) and (iv) and (2)(ii) and (iv), paragraph 7, paragraph 8, and paragraph 9(ii) and (iv) of the alternative claims

As mentioned in (1) above, as long as an act of musical performance conducted by one teacher in a classroom during a lesson at a music school (including playback of a commercially distributed CD or other sound recording and a sound source from which the sound of the part for one instrument is eliminated) constitutes infringement of a musical performance right, the conclusion also remains unchanged with respect to claims made in units of individual acts of musical performances by teachers during lessons.

B. Paragraph 6(1)(i) and (iii) and (2)(i) and (iii) and paragraph 9(i) and (iii) of the alternative claims

As determined in 2.(3) above, the actor of exploitation for an act of musical performance conducted by a student in a classroom during a lesson at a music school is that student, or at any rate, such musical performance is not given "with the purpose of having it ... heard directly by the public." Therefore, such musical performance does not constitute exercise of a musical performance right, and neither Circumstances of Use 1 nor 4 constitutes infringement of musical performance rights.

For the reasons described above, the Appellee holds neither claim for compensation for loss or damage based on copyright infringement nor claim for the return of unjust enrichment against the Appellants with respect to musical performances of the Pieces of Music Managed by the Defendant (Circumstances of Use 1 and 4) by students during lessons at music schools.

8. Conclusion

Therefore, the Appellants' principal claims are groundless, and the judgment in prior instance that dismissed those claims are reasonable. The appeal pertaining to the principal claims is groundless, and thus it is dismissed. On the other hand, the alternative claims of the Appellants are well-grounded to the extent of Paragraph 2(1) and (2) of the main text but are groundless for others (the claims stated in Paragraph 6(1)(i) and (iii) and (2)(i) and (iii) as well as Paragraph 9(i) and (iii) in the List of Claims attached to this judgment are well-grounded, and other claims are groundless), and the judgment in prior instance that dismissed all the alternative claims is thus not reasonable. Therefore, the judgment in prior instance is modified, and the judgment is rendered as indicated in the main text.

Intellectual Property High Court, Fourth Division

Presiding judge: KANNO Masayuki

Judge: MOTOYOSHI Hiroyuki

Judge: NAKAMURA Kyo

(Attachment)

List of Claims

1. The judgment in prior instance shall be revoked.

(Principal claims)

2. Regarding musical performances stated in List of Circumstances of Use of Works 1 attached to this judgment

(1) Regarding lessons between a teacher and around 10 or fewer multiple students

(i) Regarding the case where the whole of a piece of music is never performed

It is hereby declared that in the relationships between the Appellants and the Appellee, the Appellee holds no claim pertaining to the use of works (meaning all pieces of music that the Appellee (the defendant in first instance) manages as of January 14, 2021; hereinafter referred to as the "Pieces of Music Managed by the Defendant"), which it possesses by accepting the trust of copyrights transferred for the purpose of collecting royalties for works or the entrustment of such collection from copyright owners, with respect to the musical performances stated in List of Circumstances of Use of Works 1 attached to this judgment (limited to the cases where the whole of a piece of music is never performed) during lessons between a teacher and around 10 or fewer multiple students (meaning lessons for 30 to 60 minutes at music schools; the same applies hereinafter), which are provided based on contracts for the teaching of music and techniques for musical performance (including singing; the same applies hereinafter) that the Appellants have concluded with their students (hereinafter referred to as the "Lesson Contracts"), respectively.

(ii) Regarding the case where the whole of a piece of music is sometimes performed

It is hereby declared that in the relationships between the Appellants and the Appellee, the Appellee holds no claim pertaining to the use of the Pieces of Music Managed by the Defendant with respect to the musical performances stated in List of Circumstances of Use of Works 1 attached to this judgment (limited to the cases where the whole of a piece of music is sometimes performed) during lessons between a teacher and around 10 or fewer multiple students, which are provided based on the Lesson Contracts that the Appellants have concluded with their students, respectively.

(2) Regarding lessons between a teacher and a student

(i) Regarding the case where the whole of a piece of music is never performed

It is hereby declared that in the relationships between the Appellants and the Appellee, the Appellee holds no claim pertaining to the use of the Pieces of Music Managed by the Defendant with respect to the musical performances stated in List of Circumstances of Use of Works 1 attached to this judgment (limited to the cases where the whole of a piece

of music is never performed) during lessons between a teacher and a student, which are provided based on the Lesson Contracts that the Appellants have concluded with their students, respectively.

(ii) Regarding the case where the whole of a piece of music is sometimes performed

It is hereby declared that in the relationships between the Appellants and the Appellee, the Appellee holds no claim pertaining to the use of the Pieces of Music Managed by the Defendant with respect to the musical performances stated in List of Circumstances of Use of Works 1 attached to this judgment (limited to the cases where the whole of a piece of music is sometimes performed) during lessons between a teacher and a student, which are provided based on the Lesson Contracts that the Appellants have concluded with their students, respectively.

3. Regarding musical performances and playback of sound recordings stated in List of Circumstances of Use of Works 2 attached to this judgment

(1) Regarding lessons between a teacher and 10 or fewer multiple students

(i) Regarding the case where the whole of a piece of music is never performed nor performed by playback of a sound recording

It is hereby declared that in the relationships between the Appellants stated in Attachment A (hereinafter referred to as "the Appellants in Attachment A") and the Appellee, the Appellee holds no claim pertaining to the use of the Pieces of Music Managed by the Defendant with respect to the musical performances and musical performances by playback of sound recordings stated in List of Circumstances of Use of Works 2 attached to this judgment (limited to the cases where the whole of a piece of music is never performed nor performed by playback of a sound recording) during lessons between a teacher and around 10 or fewer multiple students, which are provided based on the Lesson Contracts that the Appellants in Attachment A have concluded with their students, respectively.

(ii) Regarding the case where the whole of a piece of music is sometimes performed or performed by playback of a sound recording

It is hereby declared that in the relationships between the Appellants in Attachment A and the Appellee, the Appellee holds no claim pertaining to the use of the Pieces of Music Managed by the Defendant with respect to the musical performances and musical performances by playback of sound recordings stated in List of Circumstances of Use of Works 2 attached to this judgment (limited to the cases where the whole of a piece of music is sometimes performed or performed by playback of a sound recording) during lessons between a teacher and around 10 or fewer multiple students, which are provided based on the Lesson Contracts that the Appellants in Attachment A have concluded with

their students, respectively.

(2) Regarding lessons between a teacher and a student

(i) Regarding the case where the whole of a piece of music is never performed nor performed by playback of a sound recording

It is hereby declared that in the relationships between the Appellants in Attachment A and the Appellee, the Appellee holds no claim pertaining to the use of the Pieces of Music Managed by the Defendant with respect to the musical performances and musical performances by playback of sound recordings stated in List of Circumstances of Use of Works 2 attached to this judgment (limited to the cases where the whole of a piece of music is never performed nor performed by playback of a sound recording) during lessons between a teacher and a student, which are provided based on the Lesson Contracts that the Appellants in Attachment A have concluded with their students, respectively.

(ii) Regarding the case where the whole of a piece of music is sometimes performed or performed by playback of a sound recording

It is hereby declared that in the relationships between the Appellants in Attachment A and the Appellee, the Appellee holds no claim pertaining to the use of the Pieces of Music Managed by the Defendant with respect to the musical performances and musical performances by playback of sound recordings stated in List of Circumstances of Use of Works 2 attached to this judgment (limited to the cases where the whole of a piece of music is sometimes performed or performed by playback of a sound recording) during lessons between a teacher and a student, which are provided based on the Lesson Contracts that the Appellants in Attachment A have concluded with their students, respectively.

4. Regarding musical performances and musical performances by playback of sound recordings stated in List of Circumstances of Use of Works 3 attached to this judgment

(1) Regarding lessons between a teacher and around 10 or fewer multiple students

(i) Regarding the case where the whole of a piece of music is never performed nor performed by playback of a sound recording

It is hereby declared that in the relationships between the Appellants stated in Attachment B (hereinafter referred to as "the Appellants in Attachment B") and the Appellee, the Appellee holds no claim pertaining to the use of the Pieces of Music Managed by the Defendant with respect to the musical performances and musical performances by playback of sound recordings stated in List of Circumstances of Use of Works 3 attached to this judgment (limited to the cases where the whole of a piece of music is never performed nor performed by playback of a sound recording) during lessons between a teacher and around 10 or fewer multiple students, which are provided based on

the Lesson Contracts that the Appellants in Attachment B have concluded with their students, respectively.

(ii) Regarding the case where the whole of a piece of music is sometimes performed or performed by playback of a sound recording

It is hereby declared that in the relationships between the Appellants in Attachment B and the Appellee, the Appellee holds no claim pertaining to the use of the Pieces of Music Managed by the Defendant with respect to the musical performances and musical performances by playback of sound recordings stated in List of Circumstances of Use of Works 3 attached to this judgment (limited to the cases where the whole of a piece of music is sometimes performed or performed by playback of a sound recording) during lessons between a teacher and around 10 or fewer multiple students, which are provided based on the Lesson Contracts that the Appellants in Attachment B have concluded with their students, respectively.

(2) Regarding lessons between a teacher and a student

(i) Regarding the case where the whole of a piece of music is never performed nor performed by playback of a sound recording

It is hereby declared that in the relationships between the Appellants in Attachment B and the Appellee, the Appellee holds no claim pertaining to the use of the Pieces of Music Managed by the Defendant with respect to the musical performances and musical performances by playback of sound recordings stated in List of Circumstances of Use of Works 3 attached to this judgment (limited to the cases where the whole of a piece of music is never performed nor performed by playback of a sound recording) during lessons between a teacher and a student, which are provided based on the Lesson Contracts that the Appellants in Attachment B have concluded with their students, respectively.

(ii) Regarding the case where the whole of a piece of music is sometimes performed or performed by playback of a sound recording

It is hereby declared that in the relationships between the Appellants in Attachment B and the Appellee, the Appellee holds no claim pertaining to the use of the Pieces of Music Managed by the Defendant with respect to the musical performances and musical performances by playback of sound recordings stated in List of Circumstances of Use of Works 3 attached to this judgment (limited to the cases where the whole of a piece of music is sometimes performed or performed by playback of a sound recording) during lessons between a teacher and a student, which are provided based on the Lesson Contracts that the Appellants in Attachment B have concluded with their students, respectively.

5. Regarding musical performances stated in List of Circumstances of Use of Works 4

attached to this judgment

(1) Regarding the case where the whole of a piece of music is never performed

It is hereby declared that in the relationships between the Appellants stated in Attachment C (hereinafter referred to as "the Appellants in Attachment C") and the Appellee, the Appellee holds no claim pertaining to the use of the Pieces of Music Managed by the Defendant with respect to the musical performances stated in List of Circumstances of Use of Works 4 attached to this judgment (limited to the cases where the whole of a piece of music is never performed) during lessons, which are provided based on the Lesson Contracts that the Appellants in Attachment C have concluded with their students, respectively.

(2) Regarding the case where the whole of a piece of music is sometimes performed

It is hereby declared that in the relationships between the Appellants in Attachment C and the Appellee, the Appellee holds no claim pertaining to the use of the Pieces of Music Managed by the Defendant with respect to the musical performances stated in List of Circumstances of Use of Works 4 attached to this judgment (limited to the cases where the whole of a piece of music is sometimes performed) during lessons, which are provided based on the Lesson Contracts that the Appellants in Attachment C have concluded with their students, respectively.

(Alternative claims)

6. Regarding musical performances stated in List of Circumstances of Use of Works 1 attached to this judgment

It is hereby declared that in the relationships between the Appellants and the Appellee, the Appellee holds no claim pertaining to the use of the Pieces of Music Managed by the Defendant with respect to the following musical performances during lessons, which are provided based on the Lesson Contracts that the Appellants have concluded with their students, respectively:

(1) the following musical performances stated in List of Circumstances of Use of Works 1 attached to this judgment during lessons between a teacher and around 10 or fewer multiple students:

- (i) musical performances of three or more consecutive bars by a student;
- (ii) musical performances of three or more consecutive bars by a teacher;
- (iii) musical performances of two or less consecutive bars by a student; and
- (iv) musical performances of two or less consecutive bars by a teacher; and

(2) the following musical performances stated in List of Circumstances of Use of Works 1 attached to this judgment during lessons between a teacher and a student:

- (i) musical performances of three or more consecutive bars by a student;

- (ii) musical performances of three or more consecutive bars by a teacher;
- (iii) musical performances of two or less consecutive bars by a student; and
- (iv) musical performances of two or less consecutive bars by a teacher.

7. Regarding musical performances by playback of sound recordings stated in List of Circumstances of Use of Works 2 attached to this judgment

It is hereby declared that in the relationships with the Appellants in Attachment A and the Appellee, the Appellee holds no claim pertaining to the use of the Pieces of Music Managed by the Defendant with respect to the following music performances during lessons, which are provided based on the Lesson Contracts that the Appellants in Attachment A have concluded with their students, respectively:

- (1) musical performances by playback of sound recordings stated in List of Circumstances of Use of Works 2 attached to this judgment during lessons between a teacher and around 10 or fewer multiple students; and
- (2) musical performances by playback of sound recordings stated in List of Circumstances of Use of Works 2 attached to this judgment during lessons between a teacher and a student.

8. Regarding musical performances by playback of sound recordings stated in List of Circumstances of Use of Works 3 attached to this judgment

It is hereby declared that in the relationships with the Appellants in Attachment B and the Appellee, the Appellee holds no claim pertaining to the use of the Pieces of Music Managed by the Defendant with respect to the following music performances during lessons, which are provided based on the Lesson Contracts that the Appellants in Attachment B have concluded with their students, respectively:

- (1) musical performances by playback of sound recordings stated in List of Circumstances of Use of Works 3 attached to this judgment during lessons between a teacher and around 10 or fewer multiple students; and
- (2) musical performances by playback of sound recordings stated in List of Circumstances of Use of Works 3 attached to this judgment during lessons between a teacher and a student.

9. Regarding musical performances stated in List of Circumstances of Use of Works 4 attached to this judgment

It is hereby declared that in the relationships between the Appellants in Attachment C and the Appellee, the Appellee holds no claim pertaining to the use of the Pieces of Music Managed by the Defendant with respect to the following musical performances during lessons, which are provided based on the Lesson Contracts that the Appellants in Attachment C have concluded with their students, respectively:

the following musical performances stated in List of Circumstances of Use of Works 4 attached to this judgment:

- (i) musical performances of three or more consecutive bars by a student;
- (ii) musical performances of three or more consecutive bars by a teacher;
- (iii) musical performances of two or less consecutive bars by a student; and
- (iv) musical performances of two or less consecutive bars by a teacher.

(End)

(Attachment)

List of Circumstances of Use of Works 1

(Use during lessons in which no sound recording is played back)

Musical performances in the following circumstances during lessons (in which no sound recording is played back) at music schools

(Places of lessons)

Classrooms set up by the Appellants which persons other than a teacher, students and their custodians are not permitted to enter

(Members of lessons)

There are private lessons between a student and a teacher in charge and group lessons in which one teacher in charge gives guidance to multiple students. Even in the case of a group lesson, the number of students who receive a lesson is ordinarily from three to five, and the maximum number is 10.

A specific teacher continuously gives guidance to a specific student(s) with the understanding of the characteristics and personality of each student. A teacher for a class is never changed unless there are special circumstances.

(Circumstances of musical performances)

Musical performances given by students and teachers using music scores that they have purchased in advance, which are given in the course of practice and guidance as follows:

on such occasions as when a student plays an assigned piece of music for the first time, a teacher presents challenges by playing the whole or part of the assigned piece of music ahead of the student's performance as needed,

the student plays the assigned piece of music by several bars each that include the challenges thus presented in the piece of music in front of the teacher (the teacher sometimes plays an accompaniment for the student's musical performance),

the teacher who has heard the student's musical performance in his/her direct presence orally explains to the student about challenges and gives cautions regarding giving a musical performance while playing the relevant parts as an example as needed,

after hearing the teacher's guidance, the student plays the assigned piece of music again, and after repeating the aforementioned steps,

the student plays the parts of the assigned piece of music that he/she has practiced (not the whole of the assigned piece of music) or the whole of the assigned piece of music to confirm whether he/she has accomplished each challenge (the teacher sometimes plays an accompaniment for the student's musical performance)

(End)

(Attachment)

List of Circumstances of Use of Works 2

(Use during lessons in which a commercially distributed CD or other sound recording is played back)

Musical performances in the following circumstances during lessons at music schools (in addition to musical performances by students and a teacher, musical performances are given by playing back a commercially distributed CD or other sound recording, which includes the sound of musical performances of all instruments, including the sound of an instrument that students play)

(Places of lessons)

Classrooms set up by the Appellants which persons other than a teacher, students and their custodians are not permitted to enter

(Members of lessons)

There are private lessons between a student and a teacher in charge and group lessons in which one teacher in charge gives guidance to multiple students. Even in the case of a group lesson, the number of students who receive a lesson is ordinarily from three to five, and the maximum number is 10.

A specific teacher continuously gives guidance to a specific student(s) with the understanding of the characteristics and personality of each student. A teacher for a class is never changed unless there are special circumstances.

(Circumstances of musical performances)

1. Musical performances given by students and teachers using music scores that they have purchased in advance, which are given in the course of practice and guidance as follows: on such occasions as when a student plays an assigned piece of music for the first time, a teacher presents challenges by playing the whole or part of the assigned piece of music ahead of the student's performance as needed, the student plays the assigned piece of music by several bars each that include the challenges thus presented in the piece of music in front of the teacher (the teacher sometimes plays an accompaniment for the student's musical performance), the teacher who has heard the student's musical performance in his/her direct presence explains to the student about challenges and gives cautions regarding giving a musical performance while playing the relevant parts as an example as needed, after hearing the teacher's guidance, the student plays the assigned piece of music again, and after repeating the aforementioned steps, the student plays the parts of the assigned piece of music that he/she has practiced (not the whole of the assigned piece of music) or the whole of the assigned piece of music as

a final step to confirm whether he/she has accomplished each challenge (the teacher sometimes plays an accompaniment for the student's musical performance)

2. Musical performances by playback of a commercially distributed CD or other sound recording

Musical performances by playback of a commercially distributed CD or other sound recording, which includes the sound of musical performances of all instruments, including the sound of an instrument that students play,

which are given in units of one to several bars of a piece of music or throughout a piece of music by changing the pitch, tempo, and other elements thereof according to the progress of a lesson and the students' proficiency and understanding

(End)

(Attachment)

List of Circumstances of Use of Works 3

(Use during lessons in which a sound source from which the sound of the part for one instrument is eliminated is played back)

Musical performances in the following circumstances during lessons at music schools (in addition to musical performances by students and a teacher, musical performances are given by playing back a CD or other sound recording of a music instrument performance, from which only the sound of the part for an instrument played by a student(s) is eliminated (a sound source from which the sound of the part for one instrument is eliminated))

(Places of lessons)

Classrooms set up by the Appellants which persons other than a teacher, students and their custodians are not permitted to enter

(Members of lessons)

There are private lessons between a student and a teacher in charge and group lessons in which one teacher in charge gives guidance to multiple students. Even in the case of a group lesson, the number of students who receive a lesson is ordinarily from three to five, and the maximum number is 10.

A specific teacher continuously gives guidance to a specific student(s) with the understanding of the characteristics and personality of each student. A teacher for a class is never changed unless there are special circumstances.

(Circumstances of musical performances)

1. Musical performances given by students and teachers using music scores that they have purchased in advance, which are given in the course of practice and guidance as follows: on such occasions as when a student plays an assigned piece of music for the first time, a teacher presents challenges by playing the whole or part of the assigned piece of music ahead of the student's performance as needed, the student plays the assigned piece of music by several bars each that include the challenges thus presented in the piece of music in front of the teacher (the teacher sometimes plays an accompaniment for the student's musical performance), the teacher who has heard the student's musical performance in his/her direct presence orally explains to the student about challenges and gives cautions regarding giving a musical performance while playing the relevant parts as an example as needed, after hearing the teacher's guidance, the student plays the assigned piece of music again, and after repeating the aforementioned steps, the student plays the parts of the assigned piece of music that he/she has practiced (not

the whole of the assigned piece of music) or the whole of the assigned piece of music to confirm whether he/she has accomplished each challenge (the teacher sometimes plays an accompaniment for the student's musical performance)

2. Musical performances by playback of a sound recording (a sound source from which the sound of the part for one instrument is eliminated)

Musical performances by playing back a CD or other sound recording of a music instrument performance, from which only the sound of the part for an instrument played by a student(s) is eliminated (a sound source from which the sound of the part for one instrument is eliminated),

which are given in units of one to several bars of a piece of music or throughout a piece of music by changing the pitch, tempo, and other elements thereof according to the progress of a lesson and the students' proficiency and understanding

for the purpose of using the sound recording as a partner for students' musical performances in lieu of an accompaniment by a teacher

(End)

(Attachment)

List of Circumstances of Use of Works 4

(Use during lessons at non-corporate schools in which no sound recording is played back)

Musical performances in the following circumstances during lessons at music schools (no sound recording is played back)

(Places of lessons)

Student's homes that are places which persons other than a teacher, a student and his/her custodians are not permitted to enter

(Members of lessons)

A specific teacher continuously gives guidance to a specific individual student with the understanding of the characteristics and personality of the student.

(Circumstances of musical performances)

Musical performances given by a student and a teacher using music scores that they have purchased in advance, which are given in the course of practice and guidance as follows:

under the situation in which no musical performance is given by playing back a sound recording,

on such occasions as when a student plays an assigned piece of music for the first time, a teacher presents challenges by playing the whole or part of the assigned piece of music ahead of the student's performance as needed and the student plays the assigned piece of music by several bars each that include the challenges thus presented in the piece of music in front of the teacher (the teacher sometimes plays an accompaniment for the student's musical performance),

the teacher who has heard the student's musical performance in his/her direct presence explains to the student about challenges and gives cautions regarding giving a musical performance while playing the relevant parts as an example as needed,

after hearing the teacher's guidance, the student plays the assigned piece of music again, and after repeating the aforementioned steps,

the student plays the parts of the assigned piece of music that he/she has practiced (not the whole of the assigned piece of music) or the whole of the assigned piece of music to confirm whether he/she has accomplished each challenge (the teacher sometimes plays an accompaniment for the student's musical performance)

(End)

(Attachment A) (omitted)

(Attachment B) (omitted)

(Attachment C) (omitted)

(Attachment) (omitted)

(Attachment)

List of the Parties

*1

Appellants: Yamaha Music Foundation

(others omitted herein)

Appellee: Japanese Society for Rights of Authors, Composers and Publishers

(End)