

Decided on	February 28, 2008	Court	Intellectual Property High Court, First Division
Case number	2007 (Ne) 10073		
- A case in which it was ruled that the duration of copyright of nine works produced by Charles Chaplin had not expired as they were subject to the provision of Article 3 of the Copyright Act prior to the amendment under Act No. 48 of 1970.			

Reference: Article 3 and Article 6 of the Copyright Act prior to the amendment under Act No. 48 of 1970

In this case, X, the copyright holder for nine cinematographic works produced by Charles Chaplin, including *Sunnyside*, filed an action seeking an injunction to block the reproduction and distribution of digital versatile discs (DVDs) of the nine works and to order the destruction of such DVDs in stock and to claim damages and delay damages against Y<sub>1</sub> and Y<sub>2</sub>. X claimed that its rights of reproduction and distribution were infringed as Y<sub>1</sub> and Y<sub>2</sub> produced and sold duplicate copies of the nine works and as Y<sub>1</sub> produced and distributed duplicated copies of some of the nine works.

The court judgment in the first instance found that the acts of Y<sub>1</sub> and Y<sub>2</sub> violated the rights of reproduction and distribution owned by X since the duration of copyright had yet to expire and approved the injunction blocking reproduction and distribution, the destruction and payment of part of the claimed damages and delay damages. Y<sub>1</sub> and Y<sub>2</sub> filed an appeal against the ruling. This case concerns the judgment in the second instance.

#### 1. Duration of copyright of the nine works

“Under the aforementioned provision in Article 3 of the Copyright Act prior to the amendment (hereinafter referred to as “the Former Act”), the term of protection was determined by life and death of the author. It is obvious that the author mentioned in Article 3 of the Former Act referred to a natural person. The proviso in Article 5 of the Former Act stipulated that the provision of Article 3 in the Former Act should apply in the case where the true name of the author was registered. It is therefore understood that Article 3 of the Former Act provided for the term of protection in the case where the real name of the author as a natural person is made public.”

“Charles Chaplin is registered as author of *Sunnyside*, *The Pilgrim*, *A Woman of Paris*, *The Gold Rush*, *City Lights* and *Modern Times* to the United States Copyright Office. Published images demonstrate that he creatively contributed to the creation of the cinematographic works listed above as a whole. It is hence recognized that the true

name of the author has been made public as stipulated in Article 3 of the Former Act.” “With respect to *The Great Dictator*, *Monsieur Verdoux* and *Limelight*, it is reasonable to confirm that the true name of the author has been made public as stipulated in Article 3 of the Former Act given that the published images show that he creatively contributed to the creation of these works as a whole.”

“Generally, a cinematographic work is a comprehensive work created after many different persons engage in script writing, production, direction, staging, acting, filming, art direction, music direction, recording, editing and others. In the technical aspect of cinematographic production, it is clear from the evidence that multiple actors excluding Chaplin and filming, recording and other personnel other than Chaplin were involved in the nine works concerned with this case. However, in the aspect of expression of thoughts and sentiments as the essence of the works, it is unavoidable to acknowledge that these nine works were indeed created by Chaplin. In this respect, it is impossible to find any evidence demonstrating that there is anyone other than Chaplin who creatively contributed to the creation of these cinematographic works as a whole. Therefore, it is unreasonable to determine that Chaplin was merely one of the authors of the nine works in question.”

To determine the term of protection, the court presented four arguments as follows. First, the term of protection of the copyright of the nine works under the provision of Article 3 of the Former Act would last 38 years from January 1, 1978 until December 31, 2015, as Charles Chaplin died on December 25, 1977. Second, to compare the term of protection pursuant to the Former Act and the duration of copyright under Article 54, paragraph (1) of the Copyright Act after the amendment in 1970, the term pursuant to the Former Act is longer. The duration of the copyright would therefore last until December 31, 2015 in accordance with Article 7 of the supplementary provisions to the Copyright Act. Third, for *Sunnyside*, *The Pilgrim*, *A Woman of Paris*, *The Gold Rush*, *City Lights*, *Modern Times* and *The Great Dictator*, the duration of copyright would last until the date of expiration of the term of protection under the Former Act in accordance with Article 3 of the supplementary provisions to the Copyright Act, as the said date of expiration was later than the date of expiration of the period stipulated in Article 54, paragraph (1) of the Act after the amendment in 2003. And fourth, for *Monsieur Verdoux* and *Limelight*, the duration of copyright would last until the date of expiration of the period stipulated in Article 54, paragraph (1) of the Copyright Act because Article 3 of the supplementary provisions to the Act does not apply given that the term of protection under the Former Act

would end earlier than the aforesaid date. Subsequently, the court judged: “Without consideration of the number of war-time days to be added under Article 15(c) of the peace treaty with Japan and under the Act on Special Provisions concerning Copyrights of Allied Powers and Nationals Thereof on the basis thereof, the duration of copyright has not expired for any of the nine works in question.”

## 2. Absence of damages incurred by X

“Y’s argue that no damages arise in this case from the sale, etc. of the movies that are in the public domain after expiration of the duration of copyright. However, as confirmed above, the duration of copyright for the nine works in question has not expired. The argument of Y’s is therefore groundless.”

“Y’s introduced their interpretation of the Former Act and the Act after the amendment in 1970. Moreover, there is no sign that they sought the comments or advice of any specialist on the explanations in the letter of warning from X. It is found that there was at least negligence on the part of the appellants as they failed to fulfill their duty of care.”

2007 (Ne) 10073 Appeal Case Seeking Injunction, etc. against Copyright Infringement  
(Court of Prior Instance: Tokyo District Court 2006 (Wa) 15552)

Judgment rendered on February 28, 2008, Date of conclusion of oral argument:  
December 12, 2007

#### Judgment

Appellant: Yugen Kaisha Art Station

Appellant: Kabushiki Kaisha Cosmo Coordinate

Appellee: Roy Export Company Establishment

#### Main text

This appeal shall be dismissed.

The appeal costs shall be borne by the appellants.

#### Facts and reasons

No. 1 Judicial decision sought by the parties

##### 1. Appellants

The judgment in prior instance with respect to the part for which the appellants lost the case shall be revoked.

The appellee's claims shall be dismissed.

The court costs for the first and second instances shall be borne by the appellee.

##### 2. Appellee

The same as the main text.

#### No. 2 Background

1. The appellee, who holds copyrights for the movies specified in 1 to 9 of the attached Film List (collectively referred to as the "Nine Films"), alleged that the appellants' act of reproducing and selling DVDs specified in 1 to 9 of the attached Product List (1) (the "DVDs") and the act of the appellant, Yugen Kaisha Art Station, of reproducing and distributing the DVDs specified in 1 to 4 of the attached Product List (2) (the "Rental DVDs") constitute infringement of the reproduction right and distribution right of the appellee. The appellee sought an injunction against the reproduction and distribution of the DVDs and the Rental DVDs, demanded destruction of the stock, etc. of the DVDs and the Rental DVDs, and claimed payment of 94,171,000 yen as damages for distribution, etc. of the DVDs as well as delay damages accrued thereon. On the other hand, the appellants alleged that the copyrights for the Nine Films had already expired,

that no damage was caused to the appellee, and that the amount for damages should be estimated to be extremely small.

In the judgment in prior instance, the court held that the copyrights for the Nine Films had not expired yet and that the appellants' act constitutes infringement of the reproduction right and the distribution right of the appellee. The court accepted the appellee's claims for an injunction against the reproduction and distribution of the DVDs and the Rental DVDs, destruction of the products, etc., and payment of 10,538,000 yen as damages and delayed damages accrued thereon. Dissatisfied with this judgment in prior instance, the appellants filed this appeal.

In the following sections, the appellant Yugen Kaisha Art Station shall be referred to as "Appellant Art Station" and the appellant Kabushiki Kaisha Cosmo Coordinate as "Appellant Cosmo Coordinate."

## 2. Presumed facts, etc. and issues

The presumed facts, etc. and issues are the same as "1. Presumed facts, etc. (the evidence was presented at the end except for the facts undisputed by the parties)" and "2. Issues," which were stated in "No. 2 Outline of the case" of the section entitled "Facts and reasons" in the judgment in prior instance. This excludes lines 16 to 18 on page 7 of the judgment in prior instance, which were replaced with the six lines starting from "J. Summary." Therefore, the aforementioned part of the judgment in prior instance shall be hereinafter cited as the "presumed facts, etc. and the issues." The following is the presumed facts, etc. cited with necessary modifications. In the citation, the term "plaintiff" shall be replaced with "appellee," and the term "defendant" with "appellant."  
"(1) Parties concerned, etc.

### A. Appellee

The appellee is a company established by Charles Chaplin in the Principality of Liechtenstein that holds and manages the copyrights for Chaplin's films (the entire import of the oral argument).

### B. Charles Chaplin

Charles Chaplin was a citizen of the United Kingdom and directed the Nine Films. He passed away on December 25, 1977.

### C. Appellants

Appellant Art Station is a company engaged in planning, production, sale, import, export, etc. of video software, music software, game software, computer software, etc. in the course of trade. Appellant Cosmo Coordinate is a company engaged in planning, production, sale, rental, import, and export of films, TV/radio programs, and compact

discs and also in production and investment management, etc. for the related activities.

(2) Registration of the copyrights for the Nine Films and assignment of those copyrights

A. *Sunnyside*

The film titled *Sunnyside* was released in June 1919. In July 1946, upon Chaplin's request for renewal, the copyright for said film was renewed and registered in the United States of America (the 'U.S.') (Exhibit Ko 6).

Based on the agreement (the '1950 Agreement') concluded between Charles Chaplin and Celebrated Films Corporation ('Celebrated') dated March 24, 1950, Chaplin's copyrights, etc. for 14 films, including *Sunnyside* were assigned to Celebrated (Exhibit Ko 1). Based on the assignment certificate signed by Celebrated on January 2, 1954 (Exhibit Ko 2, the '1954 Agreement'), the copyrights for said films, etc. were assigned back to Charles Chaplin.

Subsequently, the copyright for *Sunnyside* was assigned from Charles Chaplin to Roy Export Company SA ('Roy Export SA') based on the agreement concluded between Charles Chaplin and Roy Export SA on December 8, 1955 (the '1955 Agreement') (Exhibit Ko 3), and subsequently transferred from Roy Export SA to the appellee based on the agreement concluded between Roy Export SA and the appellee on December 13, 1956 (the '1956 Agreement') (Exhibit Ko 4).

B. *The Pilgrim*

*The Pilgrim* is a film released in January 1923. In February 1950, upon Chaplin's request for renewal, the copyright for said film was renewed and registered in the U.S. (Exhibit Ko 7).

The copyright for said film was assigned in the same manner as that for *Sunnyside*, sequentially based on the 1950 Agreement, the 1954 Agreement, and the 1955 Agreement, and eventually became vested in the appellee based on the 1956 Agreement (Exhibits Ko 1 to 4).

C. *A Woman of Paris*

*A Woman of Paris* is a film released in October 1923 (Exhibit Ko 8). The copyright for said film was assigned in the same manner as that for *Sunnyside*, sequentially based on the 1950 Agreement, the 1954 Agreement, and the 1955 Agreement, and eventually became vested in the appellee based on the 1956 Agreement (Exhibits Ko 1 to 4).

In March 1951, upon request for renewal by Celebrated as the assignee of the copyright for said film from Charles Chaplin, the copyright for *A Woman of Paris* was renewed and registered in the U.S. (Exhibit Ko 8).

D. *The Gold Rush*

*The Gold Rush* is a film released in August 1925. In October 1925, upon Chaplin's request, the copyright for said film was registered in the U.S. (Exhibit Ko 9).

The copyright for said film was assigned in the same manner as that for *Sunnyside*, sequentially based on the 1950 Agreement, the 1954 Agreement, and the 1955 Agreement, and eventually became vested in the appellee based on the 1956 Agreement (Exhibits Ko 1 to 4).

#### E. *City Lights*

*City Lights* is a film released in February 1931. In March 1931, upon Chaplin's request, the copyright for said film was registered in the U.S. (Exhibit Ko 10).

The copyright for said film was assigned in the same manner as that for *Sunnyside*, sequentially based on the 1950 Agreement, the 1954 Agreement, and the 1955 Agreement, and eventually became vested in the appellee based on the 1956 Agreement (Exhibits Ko 1 to 4).

#### F. *Modern Times*

*Modern Times* is a film released in February 1936. In February 1936, upon Chaplin's request, the copyright for said film was registered in the U.S. (Exhibit Ko 11).

The copyright for said film was assigned in the same manner as that for *Sunnyside*, sequentially based on the 1950 Agreement, the 1954 Agreement, and the 1955 Agreement, and eventually became vested in the appellee based on the 1956 Agreement (Exhibits Ko 1 to 4).

#### G. *The Great Dictator*

*The Great Dictator* is a film released in October 1940 (Exhibit Ko 12). The copyright for said film was assigned in the same manner as that for *Sunnyside*, sequentially based on the 1950 Agreement, the 1954 Agreement, and the 1955 Agreement, and eventually became vested in the appellee based on the 1956 Agreement (Exhibits Ko 1 to 4).

In 1968, which is after the assignment of the copyright to the appellee as mentioned above, upon request of the appellee for renewal, the copyright for *The Great Dictator* was renewed and registered in the U.S. (Exhibit Ko 12).

#### H. *Monsieur Verdoux*

*Monsieur Verdoux* is a film released in October 1947 (Exhibit Ko 13). The copyright for said film was assigned to Charles Chaplin based on the agreement concluded

between The Chaplin Studio Inc. and Charles Chaplin on December 4, 1953 (the '1953 Agreement') and eventually became vested in the appellee after sequentially being subject to the 1955 Agreement and the 1956 Agreement (Exhibits Ko 3 to 5).

In 1975, which is after the assignment of the copyright to the appellee as mentioned above, upon request of the appellee for renewal, the copyright for *Monsieur Verdoux* was renewed and registered in the U.S. (Exhibit Ko 13).

#### I. *Limelight*

*Limelight* is a film released in October 1952 (Exhibit Ko 14). The copyright for said film was eventually vested in the appellee after sequentially being subject to the 1954 Agreement, the 1955 Agreement, and the 1956 Agreement (Exhibits Ko 2 to 4).

In 1980, which is after the assignment of the copyright to the appellee as mentioned above, upon request of the appellee for renewal, the copyright for *Limelight* was renewed and registered in the U.S. (Exhibit Ko 14).

#### J. Summary

According to the evidence (Exhibits Ko 1 to 14, 17-1 to 17-3, 18, 19-1 to 19-3, 20-1 and 20-2, and 21) and the entire import of the oral argument, the appellee obtained the copyrights for the Nine Films in 1956. When the appellee issued a warning, etc. to Appellant Art Station, the appellee presented evidence and explained that the appellee holds the copyrights for the Nine Films and received acknowledgment from the representatives of the appellants.

#### (3) Acts of the appellants

A. Without obtaining the appellee's consent, the appellants produced master tapes by reproducing the original content of the Nine Films in the form of Digital Linear Tape (DLT) and inserting subtitles, reproduced the master tapes to produce the DVDs, and distributed them to bookstores, etc. throughout Japan under the series title *The Chaplin Collection*, with the indication of the name of Appellant Art Station as the seller and the name of Appellant Cosmo Coordinate as the distributor (undisputed, Exhibits Ko 35 to 45, Objects of Observation Ko 1 to 9).

Among the Nine Films, *Sunnyside* and other two films are included in 'チャップリン短編集 vol.2' (Chaplin's short films vol.2) specified in the attached Film List (1), 2. *The Pilgrim* and other two films are included in 'チャップリン短編集 vol.1' (Chaplin's short films vol.1) specified in the attached Film List (1), 1 (Exhibits Ko 37 and 38, Objects of Observation Ko 1 and 2).



B. Without obtaining the appellee's consent, Appellant Art Station reproduced four films out of the aforementioned Nine Films, i.e., *A Woman of Paris*, *City Lights*, *Modern Times*, and *Limelight* in the same manner as the DVDs and produced and distributed the Rental DVDs (Exhibit Ko 35, Photographs 25 to 28)."

(omitted)

No. 4 Court decision

(omitted)

## 2. Duration of the copyrights for the Nine Films

(1) According to the evidence (presented for each film), the following facts can be found.

### A. *Sunnyside*

According to the evidence (Exhibits Ko 6, 15, 33, 38, Otsu 3, Object of Observation Ko 2), *Sunnyside* is a comedy film released in June 1919, criticizing society in a manner unique to Chaplin. The following facts can be found: Chaplin played the leading role in a distinctive style, wearing a mustache, bowler hat, etc.; said film was registered with the U.S. Copyright Office on June 4, 1919, designating "Charles Chaplin" as the author and "First National Exhibitors' Circuit, Inc." as the party seeking a copyright for the original work; at the beginning of said film, the indication "*SUNNYSIDE* Written and Produced by CHARLES CHAPLIN" was presented as the title of the film, announcing that the film was originally written and produced by Chaplin; and since Chaplin was in charge of most of the production process of said film, from planning to completion, Chaplin's thoughts and sentiments are clearly expressed in the film through his own way of acting, film direction, etc.

### B. *The Pilgrim*

According to the evidence (Exhibits Ko 7, 15, 33, 37, Otsu 3, Object of Observation Ko 1), *The Pilgrim* is a comedy film released in January 1923, criticizing society in a manner unique to Chaplin. The following facts can be found: Chaplin played the leading role in a distinctive style, wearing a mustache, bowler hat, etc.; said film was registered with the U.S. Copyright Office on January 24, 1923, designating "Charles Chaplin" as the author and also as the party seeking a copyright for the original work; at the beginning of said film, the indication "*The Pilgrim* Written and Produced by CHARLES CHAPLIN" was presented as the title of the film, announcing that the film was originally written and produced by Chaplin; and since Chaplin was in charge of most of

the production process of said film, from planning to completion, Chaplin's thoughts and sentiments are clearly expressed in the film through his own way of acting, film direction, etc.

#### C. *A Woman of Paris*

According to the evidence (Exhibits Ko 8, 15, 33, 39, Otsu 3, Object of Observation Ko 3), *A Woman of Paris* is a film released in October 1923. The following facts can be found: said film is Chaplin's first non-comedy film; said film was registered with the U.S. Copyright Office on October 17, 1923, designating "Charles Chaplin" as the author and "Regent Film Company" as the party seeking a copyright for the original work; at the beginning of said film, the indication "A WOMAN of PARIS A Drama of Fate Written and Directed by CHARLES CHAPLIN" was presented as the title of the film, announcing that the film was originally written and directed by Chaplin, followed by the notification by Chaplin, under the title "TO THE PUBLIC" that "In order to avoid any misunderstanding, I wish to announce that I do not appear in this picture. It is the first serious drama written and directed by myself," clarifying that Chaplin did not play any role in the film and was involved in the filmmaking solely as a director, etc.; and since Chaplin was in charge of most of the production process of said film, from planning to completion, Chaplin's thoughts and sentiments are clearly expressed in the film through his own style of film direction, etc.

#### D. *The Gold Rush*

According to the evidence (Exhibits Ko 9, 15, 33, 40, Otsu 3, Object of Observation Ko 4), *The Gold Rush* is a comedy film released in August 1925, criticizing society in a manner unique to Chaplin. The following facts can be found: Chaplin played the leading role in a distinctive style, wearing a mustache, bowler hat, etc.; said film was registered with the U.S. Copyright Office on August 16, 1925, designating "Charles Chaplin" as the author and also as the party seeking a copyright for the original work; at the beginning of said film, the indication "CHARLES CHAPLIN GEORGIA HALE ..." was presented, followed by the title "*THE GOLD RUSH*," and ended with the credits "Written and Directed by CHARLES CHAPLIN," announcing that Charles Chaplin made said film as the original writer, lead actor, and director; and since Chaplin was in charge of most of the production process of said film, from planning to completion, Chaplin's thoughts and sentiments are clearly expressed in the film through his own style of acting, film direction, etc.

#### E. *City Lights*

According to the evidence (Exhibits Ko 10, 15, 33, 35, 41, Otsu 3, Object of Observation Ko 5), *City Lights* is a comedy film released in February 1931, criticizing

society in a manner unique to Chaplin. The following facts can be found: Chaplin played the leading role in a distinctive style, wearing a mustache, bowler hat, etc. without using any words, but using only music and imitative sounds to express everything in the film; said film was registered with the U.S. Copyright Office on March 9, 1931, designating "Charles Chaplin" as the author and also as the party seeking a copyright for the original work; as the title of said film, the indication "CHARLES CHAPLIN IN *CITY LIGHTS*" was presented as the title of the film, ending with the credits "A COMEDY ROMANCE IN PANTOMIME WRITTEN AND DIRECTED BY CHARLES CHAPLIN," emphasizing that Charles Chaplin made said film as the original writer, lead actor, and director; and since Chaplin was in charge of most of the production process of said film, from planning to completion, Chaplin's thoughts and sentiments are clearly expressed in the film through his own style of acting, film direction, etc.

#### F. *Modern Times*

According to the evidence (Exhibits Ko 11, 15, 33, 42, Otsu 3, Object of Observation Ko 6), *Modern Times* is a comedy film released in February 1936, criticizing society in a manner unique to Chaplin. The following facts can be found: Chaplin played the leading role in a distinctive style, wearing a mustache, bowler hat, etc.; said film was registered with the U.S. Copyright Office on February 11, 1936, designating "Charles Chaplin" as the author and also as the party seeking a copyright for the original work; at the beginning of said film, the indication "CHARLES CHAPLIN IN *MODERN TIMES*" was presented as the title of the film, end with the credits "Written and Directed by CHARLES CHAPLIN," emphasizing that Charles Chaplin made said film as the original writer, lead actor, and director; and since Chaplin was in charge of most of the production process of said film, from planning to completion, Chaplin's thoughts and sentiments are clearly expressed in the film through his own style of acting, film direction, etc.

#### G. *The Great Dictator*

According to the evidence (Exhibits Ko 12, 15, 33, 35, 43, Otsu 3, Object of Observation Ko 7), *The Great Dictator* is a comedy film released in October 1940, criticizing society in a manner unique to Chaplin. The following facts can be found: Chaplin played the double leading roles in a distinctive style, wearing a mustache, bowler hat, etc.; said film was registered with the U.S. Copyright Office on October 31 1940, designating "Charles Chaplin Film Corporation" as the author and also as the party seeking a copyright for the original work; at the beginning of said film, the indication "CHARLES CHAPLIN with PAULETTE GODDARD in *THE GREAT*

*DICTATOR*" was presented as the title of the film, ending with the credits "WRITTEN and DIRECTED by CHARLES CHAPLIN," emphasizing that Charles Chaplin made said film as the original writer, lead actor, and director; and that, since Chaplin was in charge of most of the production process of said film, from planning to completion, Chaplin's thoughts and sentiments are clearly expressed in the film through his own style of acting, film direction, etc.

#### H. *Monsieur Verdoux*

According to the evidence (Exhibits Ko 13, 15, 33, 35, 44, Otsu 3, Object of Observation Ko 8), *Monsieur Verdoux* is a comedy film released in October 1947, criticizing society in a manner unique to Chaplin. The following facts can be found: Chaplin played the leading role of a comical murderer; said film was registered with the U.S. Copyright Office on October 24, 1947, designating "The Chaplin Studio Inc." as the author and also as the party seeking a copyright for the original work; at the beginning of said film, the indication "CHARLES CHAPLIN IN *MONSIEUR VERDOUX* A Comedy of Murders" was presented as the title of the film, ending with the credits "An Original Story written by CHARLES CHAPLIN Based on an idea by Orson Welles" and "Directed by CHARLES CHAPLIN," emphasizing that Charles Chaplin made said film as the original writer, lead actor, and general director; and that, since Chaplin was in charge of most of the production process of said film, from planning to completion, Chaplin's thoughts and sentiments are clearly expressed in the film through his own style of acting, film direction, etc.

#### I. *Limelight*

According to the evidence (Exhibits Ko 13, 15, 33, 35, 45, Otsu 3, Object of Observation Ko 9), *Limelight* is a melancholic comedy film of Chaplin released in October 1952, describing a relationship between an old clown and a young ballet dancer. The following facts can be found: Chaplin played the role of an old clown in a distinctive style, wearing a mustache, bowler hat, etc.; that, even though said film was released in the U.K., it was registered with the U.S. Copyright Office on October 23, 1952, designating "Celebrated Films Corporation" as the author and also as the party seeking a copyright for the original work; at the beginning of said film, the indications "CHARLES CHAPLIN" was presented as the lead actor and "*Limelight*" as the title, followed by the indications "ORIGINAL STORY and SCREENPLAY by CHARLES CHAPLIN" and "Directed by CHARLES CHAPLIN," emphasizing that Charles Chaplin made said film as the original writer, lead actor, and general director; and since Chaplin was in charge of most of the production process of said film, from planning to completion, Chaplin's thoughts and sentiments are clearly expressed in the film through

his own style of acting, film direction, etc.

(2) All of the Nine Films were released before the enforcement of the 1970 Revised Act (January 1, 1971). While said Act was subsequently enforced, Article 7 of the Supplementary Provisions of said Act specifies that "If the duration of a copyright under the former Act for a work made public before this Act comes into effect is longer than the period under Chapter II, Section 4 of the new Act, the duration of the copyright for that work shall continue to be governed by the provisions previously in force." The court will first examine the issue of the duration of a copyright under the former Act and then under the provisions of Chapter II, Section 4 of the 1970 Revised Act.

Article 22-3 of the former Act specifies that "The author of any work produced by using a moving picture technology or any similar technology may be protected under this Act as the author of a work that falls within the literary, academic, or artistic domain. Regarding the duration of protection, Article 3 to Article 6 shall apply to any work that exhibits originality, while Article 23 shall apply to any work that lacks originality." According to said provision, in the case of a cinematographic work, a person actually engaged in creation should be interpreted to be the author, as is the case with a conventional work that falls within the literary, academic, or artistic domain.

In this provision, "a work that exhibits originality" can be interpreted to refer to a film that exhibits creativity from a psychological or technical perspective. "Work that lacks originality" can be interpreted to refer to a film that exhibits only a little creativity. According to (1) above, all of the Nine Films exhibit originality and can be considered to exhibit high levels of creativity from an intellectual or technical perspective. Therefore, said films can be considered to fall within "a work that exhibits originality" and should therefore be protected for the period specified in Article 3 to Article 6 of the former Act (Article 9 specifies how to calculate the length of period).

(3) Application of Article 3 to Article 6 of the former Act

A. Article 3 to Article 6 of the former Act are provisions concerning the duration of protection. Article 3, paragraph (1) of the former Act specifies that "a copyright for a work that is published or performed shall remain effective while the author is alive and also for a period of 30 years after the death of the author." Article 4 of the former Act specifies that "A copyright for a work published or performed after the author's death shall remain effective for a period of 30 years after its publication or performance." The main text of Article 5 of the former Act specifies that "A copyright for a work published anonymously or pseudonymously shall remain effective for a period of 30 years after its publication or performance." The proviso of said Article specifies that "if the real name of the author is registered within said period, Article 3 shall apply." Article 6 of the

former Act specifies that "A copyright for a work published or performed under the name of a public entity, school, temple, shrine, association or any other organization as the author shall remain effective for a period of 30 years after its publication or performance." The phrase "published or performed" can be interpreted to mean an act of making a work public.

According to the aforementioned provision of Article 3 of the former Act, since it specifies the duration of protection based on the death of the author, it is clear that the term "author" specified in Article 3 of the former Act means a natural person. Since the proviso of Article 5 of the former Act specifies that "if registered under the real name of the author," Article 3 of the former Act shall apply, it can be interpreted that Article 3 of the former Act specifies the duration of protection in cases where a work is made public under the real name of the author, who is a natural person.

On the other hand, as mentioned above, despite Article 6 of the former Act specifying "a work published or performed under the name of a public entity, school, temple, shrine, association or any other organization," in light of the facts that Article 3 of the former Act is applicable to the case where a work is made public under the real name of the author and that Article 5 of the former Act is applicable to the case where a work is made public anonymously or pseudonymously, in other words in a manner that the author cannot be identified, it is reasonable to interpret that Article 6 of the former Act specifies the duration of protection in the case where a work is made public under the name of an organization as the author.

B. Some people interpret that Article 6 of the former Act approves authorship of a judicial person.

However, as mentioned above, Article 6 of the former Act is merely one of the four provisions, i.e., Article 3 to Article 6, of the former Act concerning the duration of protection. It is impossible to consider that the provision concerning the authorship of a judicial person is placed in such a position in the former Act, which does not have any provisions concerning "organization" other than Article 6 of the former Act.

Article 15 of the 1970 Revised Act has a provision concerning a work made by an employee, specifying that "For a work ... that the employee of a corporation or other employer (hereinafter in this Article referred to as a "corporation, etc."), makes in the course of duty at the initiative of the corporation, etc., and which the corporation, etc. makes public as a work of its own authorship, the author is the corporation, etc. so long as it is not stipulated otherwise in a contract, in employment rules, or elsewhere at the time the work is made." Article 4 of the Supplementary Provisions of said Act specifies that "The provisions of Articles 15 and 16 of the new Act do not apply to a work created

before this Act comes into effect."

In view of the facts mentioned above, under the former Act, there is no choice but to adopt the conventional interpretation that the author is a natural person. Article 6 of the former Act cannot be considered to be a provision approving authorship of a judicial person.

C. Article 1 of the former Act specifies that "the author of a work that falls within the categories of writing, speech, drawing, construction, sculpture, model, photograph, musical performance, vocal performance, or any other literary, academic, or artistic domain (including music; hereinafter the same) has an exclusive right to reproduce the work." Article 13 paragraph (1) of the former Act specifies that "the copyright for a jointly authored work shall be jointly owned by the authors." It is simply stated as "the author of a work." Originally, "work" is a creation that falls within the literary, academic, or artistic domain actually authored by a natural person. "Author" is a person who actually authored a work and "authoring" is an act of creating a work. In these respects, the 1970 Revised Act brought about no change.

#### (4) Author of the Nine Films

A. Article 16 of the 1970 Revised Act is a provision concerning cinematographic works specifying that "The author of a cinematographic work is the person that makes a creative contribution to the overall shaping of the work through responsibility for its production, direction, staging, filming, art direction, etc., other than the author of a novel, scenario, musical piece, or other work that is adapted into or reproduced in the cinematographic work." Article 4 of the Supplementary Provisions of said Act specifies that "The provisions of Articles 15 and 16 of the new Act do not apply to a work created before this Act comes into effect."

In general, a cinematographic work is a multifaceted work created through joint efforts by a wide range of people engaging in various types of work, such as script writing, producing, directing, staging, acting, filming, art direction, music production, recording, and editing. A cinematographic work contains individual works created by those people engaged in the film production. However, since they created one integrated piece of work, the person who contributed to the overall creation of a cinematographic work should be interpreted as the author of the cinematographic work and said person should be considered to be the "author" as specified in Article 3 of the former Act.

B. When examining the Nine Films from this perspective, as found in (1) above, Charles Chaplin played multiple roles himself, such as the original writer, scriptwriter, producer, general director, stage director, and lead actor (excluding *A Woman of Paris*). For those films, Chaplin was in charge of most of or a large part of the film production

process, from planning (excluding *Monsieur Verdoux*) to completion. Moreover, it was Chaplin who contributed to the overall creation of said cinematographic works because Chaplin's thoughts and sentiments are clearly expressed in those films through his own way of acting (excluding *A Woman of Paris*), film direction, etc. Thus, Chaplin should be regarded as the "author" as specified in Article 3 of the former Act.

(5) Making a work public under the real name of the author under Article 3 of the former Act

A. As described in (1) A. to F. above, in the cases of *Sunnyside*, *The Pilgrim*, *A Woman of Paris*, *The Gold Rush*, *City Lights*, and *Modern Times*, registrations at the U.S. Copyright Office show that the author of those films is Chaplin. Those films, which were made public, contain the indication that Chaplin contributed to the overall creation thereof. Therefore, these works can be considered to have been made public under the real name of the author under Article 3 of the former Act.

B. As mentioned in (1) G. to I. above, in the cases of *The Great Dictator*, *Monsieur Verdoux*, and *Limelight*, registrations at the U.S. Copyright Office show that the authors of those film are "Charles Chaplin Film Corporation," "The Chaplin Studio Inc.," and "Celebrated Films Corporation," respectively. Since said films are registered under the name of companies as authors, the applicability of Article 6 of the former Act needs to be examined.

As mentioned above, Article 3 to Article 6 of the former Act are provisions concerning the duration of protection. Article 3 of the former Act is applicable to cases where a work is made public under the real name of the author, who is a natural person, while Article 5 of the former Act is applicable to cases where a work is made public anonymously or pseudonymously in a manner that the author cannot be identified. In view of these facts, making a work public under the name of an organization as the author under Article 6 of the former Act, which is placed together with the aforementioned provisions, should be interpreted as applicable to any case other than the case where a work is made public under the real name of the author or the case where a work is made public anonymously or pseudonymously.

In the cases of *The Great Dictator*, *Monsieur Verdoux*, and *Limelight*, since the films made available to the public contain indications that Chaplin contributed to the overall creation thereof, it is reasonable to find that those works were made public under the real name of the author under Article 3 of the former Act.

(6) Allegation of the appellants

A. The appellants pointed out that, under the former Act, opinions were divided over the authorship of a film. Some people believed that a film is a joint work made by those



who were involved in the film production process in a creative manner, while other people believed that a film is a work made solely by a film producer, in other words, a film company, production company, etc. Then, the appellants alleged that, from the viewpoint that people believe that a film is a work made solely by a film producer, the film can be considered to be a work made by an organization, i.e., a film producer, and should therefore be subject to Article 6 of the former Act. This interpretation is examined below.

(A) According to the evidence (Exhibits Otsu 17, 19, and 21), the following facts can be found.

a. The Copyright System Council was established as an advisory organ for the Minister of Education in 1962. According to the report on deliberations submitted by the fourth subcommittee of the Copyright System Council on May 21, 1965, the following two interpretations were presented as an answer to the issue of the authorship of a film: [i] a film is a joint work made by the author of the film script, the author of the music, the director and the producer (a person in charge of planning and directing the overall film production process), in other words those who were involved in the film production in a creative manner, and [ii] a film is a work made solely by a film producer.

b. Subsequently, based on the opinions of members of the manager-level meeting, the aforementioned report was re-examined in consideration of the opinions from relevant parties. Consequently, a report on redeliberations submitted by the fourth subcommittee of the Copyright System Council on March 9, 1966, did not adopt the conventional way of presenting a conclusion, i.e., presenting both of the aforementioned interpretations. Instead, said report presented the interpretation stated in [i] above with a note that the interpretation stated in [ii] also exists, although it is a minority opinion. Said report stated that, in the case of a film, the author of the film script and the author of the music should be regarded as authors of their own works and should not be included in the authors of the cinematographic work, and that the range of people who can be regarded as an author of a cinematographic work should not be specified but should be prescribed only as "those who were involved in the overall creation of a film in a creative manner." Thus, it allows authorship to be determined for each film.

c. The Copyright System Council examined the report submitted by the aforementioned subcommittee, the opinions submitted by relevant organizations in response to the report, the report submitted by a specialized committee, and other relevant information and made a comprehensive evaluation thereof. It then submitted a council report to the Minister of Education on April 20, 1966 to the effect that "the authors of a film should be considered to be 'those who were involved in the overall creation of a film in a

creative manner.' The authors of a film could include the director, producer, cinematographer, and art director. If the actors are considered to have contributed to the overall creation of a film in a creative manner, those actors can also be found to be included as authors of the film. However, no statutory provisions should be established to specify who can be recognized as the authors of a film" (p. 8 of Exhibit Otsu 21). In a written explanation about said document, it is explained that, "while it is reasonable to find a company, etc. to be the author of a work in some cases, it is unreasonable to always consider a film to be a work made by a company or by an employee despite the fact that many people were involved in the film production in a creative manner and that the type of agreement between the film producer and each of those people varies from one person to another" (p. 180 of Exhibit Otsu 19).

d. A bill of the Copyright Act was drafted based on the aforementioned council report and was submitted to the 63rd Diet session. On April 28, 1970, the 1970 Revised Act was enacted.

(b) According to the fact found above, before the enforcement of the 1970 Revised Act, there used to be the following two interpretations regarding the authorship of a cinematographic work: [i] a film is a joint work made by the author of the film script, the author of the music, the director, and the producer, in other words those who were involved in the film production in a creative manner, and [ii] a film is a work made solely by a film producer. The report on deliberations submitted by the aforementioned subcommittee on May 21, 1965 presented the interpretation stated in [ii] above as a minority opinion. In the report on redeliberations submitted by the aforementioned subcommittee on March 9, 1966, the interpretation stated in [ii] was deleted. The council report submitted to the Ministry of Education dated April 20, 1966 adopted the same stance presented in the report on redeliberations submitted to the Minister of Education. The written explanation about said council report stated that it is impossible to adopt the interpretation stated in [ii] above.

Therefore, under the former Act, as pointed out by the appellants, opinions were divided over the authorship of a film. Some people believed that a film is a joint work made by those who were involved in the film production process in a creative manner. Other people believed that a film is a work made solely by a film producer.

(c) However, as mentioned in (3) B. above, since the former Act did not have any provisions concerning a work made by an organization, the conventional interpretation should be adopted, i.e., the interpretation that the author of a cinematographic work should be a natural person.

Article 29, paragraph (1) of the 1970 Revised Act specifies that "If the author of a

cinematographic work (excluding a cinematographic work to which the provisions of Article 15, paragraph (1), the next paragraph, or paragraph (3) of this Article apply) has promised the producer of the cinematographic work that the author will participate in its making, the copyright to that cinematographic work belongs to the producer." Article 5, paragraph (1) of the Supplementary Provisions of said Act specifies that "The ownership of a copyright to a cinematographic work that is provided for in Article 29 of the new Act and that has been created before this Act comes into effect continues to be governed by the provisions previously in force."

(d) Therefore, under the former Act, it is impossible to adopt the interpretation that a film is a work made solely by a film producer such as a film company or a production company. Thus, the aforementioned allegation of the appellants is unacceptable.

B. The appellants alleged that, even if a film is interpreted as a joint work made by those who were involved in the film production in a creative manner, since it is a marketable joint work, it is important that the use of such work not be interfered by multiple authors claiming their rights. The appellants alleged that, under the former Act or the interpretation thereof, the duration of protection should always be limited to 30 to 33 years without exceptions under Article 6 of the former Act, which concerns a copyright for a work made by an organization.

However, as mentioned in (3) B. above, Article 6 of the former Act cannot be interpreted to have approved the authorship of an organization. Even though there is a political agenda that it is necessary to ensure smooth use of a film, which should be considered to be a joint work, it would be illogical and unreasonable to easily resort to the application of Article 6 of the former Act.

Furthermore, the appellants cited the Tokyo District Court judgment concerning the film titled *Shane* and alleged that said film, which was released in 1953, was subject to Article 6 of the former Act and was not subject to the provision concerning the duration of protection after the death of the director of the film.

It is clear to this court that, in the aforementioned judgment, the film *Shane* was subject to Article 6 of the former Act on the grounds that the film can be considered to be a work that was made public under the name of a U.S. company as the author.

However, as found in (4) B. above, in the case of all of the Nine Films, Chaplin contributed to the overall creation of the films and should be regarded as the "author" as specified in Article 3 of the former Act. Furthermore, said films cannot be considered to have been made public under the name of an organization as the author. Thus, this case is different from the case concerning the film *Shane* and cannot be argued from the same perspective.

C. The appellants alleged that, in this case, some films indicated an organization as the author and that, in such case, since the author of the film is an organization, i.e., a film producer, the duration of a copyright should be determined based on the premise that the copyright was granted for a work that was made public under the name of an organization.

According to (1) above, in the cases of *The Great Dictator*, *Monsieur Verdoux*, and *Limelight*, the registrations at the U.S. Copyright Office show that the authors of those films are "Charles Chaplin Film Corporation," "The Chaplin Studio Inc.," and "Celebrated Films Corporation," respectively. According to the evidence (Exhibit Otsu 3, Objects of Observation Ko 7 to 9), although the aforementioned films indicated that the aforementioned companies are the copyright owners, since those films cannot be considered to have been made public under the names of those organizations as the authors as mentioned in (5) B. above, the aforementioned allegation of the appellants is unacceptable.

D. The appellants alleged that the judgment in prior instance found Chaplin to be the film producer and copyright owner of the Nine Films simply because Chaplin is at least one of the authors of those films. The appellants alleged that said judgment is unacceptable.

However as mentioned in (4) B. above, in the Nine Films, Chaplin played multiple roles himself, such as the original writer, scriptwriter, producer, general director, stage director, and lead actor (excluding *A Woman of Paris*). For those films, Chaplin was in charge of most of or a large part of the film production process, from planning (excluding *Monsieur Verdoux*) to completion. Moreover, it was Chaplin who contributed to the overall creation of said cinematographic works because Chaplin's thoughts and sentiments are clearly expressed in those films through his own style of acting (excluding *A Woman of Paris*), film direction, etc.

As mentioned above, in general, a cinematographic work is a multifaceted work created through joint efforts by a wide range of people engaging in various types of work, such as script writing, producing, directing, staging, acting, filming, art direction, music production, recording, and editing. Regarding the Nine Films, from the technical perspective of film production, according to the evidence (Objects of Observation Ko 1 to 9), it is obvious that many actors in addition to Chaplin appeared in the films and that many people other than Chaplin were engaged in various tasks, such as filming and recording. However, from the perspective of the expression of thoughts and sentiments, which determine the fundamental nature of a work, it is inevitable to consider that the Nine Films were made by Chaplin. From said perspective, it would be impossible to

find evidence to prove that there was someone other than Chaplin who contributed to the overall creation of those cinematographic works in a creative manner. Therefore, Chaplin cannot be considered to be merely one of many authors of the Nine Films.

Furthermore, even if there was someone in addition to Chaplin who contributed to the overall creation of the cinematographic works in a creative manner, the appellee is the only copyright owner as mentioned in No. 2, "2. Presumed facts, etc.," "(2) Registration of the copyrights for the Nine Films and assignment of those copyrights" above.

In any case, the aforementioned allegation of the appellants is acceptable.

(7) Duration of copyright protection under the former Act

Article 3 of the former Act specifies that the duration of copyright protection for a work is the total of a period during which the author is alive and a period of 30 years after the death of the author. Article 52, paragraph (1) of the former Act has a supplementary provision specifying that "the duration of 30 years specified in Article 3 to Article 5 should be extended to 38 years for a while except for a copyright for musical performance and vocal performance and a copyright specified in Article 22-7." Regarding the calculation of a length of the duration, Article 9 of the former Act specifies that "If the duration of a copyright is calculated in the case specified in the preceding six Articles, the duration should be considered to start from the year following the year of the author's death or the year of publication or performance."

As mentioned in the section titled "Parties concerned, etc." of the section "Presumed facts, etc." above, since Chaplin died on December 25, 1977, the duration of the copyright for the Nine Films can be considered to be 38 years starting from January 1, 1978, in other words, up until December 31, 2015, under the former Act.

(8) Duration of copyright protection under Article 54, paragraph (1) of the 1970 Revised Act

A. Article 54, paragraph (1) of the 1970 Revised Act specifies that "The copyright to a cinematographic work subsists for fifty years after the work is made public (or for fifty years after the creation of the work, if the work is not made public within the fifty years after its creation)." Since the Nine Films were made public on the dates stated in No. 2, "2. Presumed facts, etc.," "(2) Registration of the copyrights for the Nine Films and assignment of those copyrights" above, the duration of the copyrights for the Nine Films can be calculated under said Article as follows.

[i] <i>Sunnyside</i>	December 31, 1969
[ii] <i>The Pilgrim</i>	December 31, 1973
[iii] <i>A Woman of Paris</i>	December 31, 1973

[iv] <i>The Gold Rush</i>	December 31, 1975
[v] <i>City Lights</i>	December 31, 1981
[vi] <i>Modern Times</i>	December 31, 1986
[vii] <i>The Great Dictator</i>	December 31, 1990
[viii] <i>Monsieur Verdoux</i>	December 31, 1997
[ix] <i>Limelight</i>	December 31, 2002

B. A comparison between the duration of copyright protection specified in the former Act and the duration specified in Article 54, paragraph (1) of the 1970 Revised Act has revealed that the former is longer. Therefore, under Article 7 of the Supplementary Provisions of said Act, the duration of the copyrights for the Nine Films will last until December 31, 2015.

(9) Application of Article 54, paragraph (1) of the Copyright Act after the revision by Act No. 85 of 2003 (the "2003 Revised Act")

A. The copyrights for the Nine Films were still in effect as of January 1, 2004, when the 2003 Revised Act was enforced. Article 2 of the Supplementary Provisions of said Act specifies that "The provisions of Article 54, paragraph (1) of the post-revision Copyright Act (referred to as "the new Act" in the next Article) apply to a cinematographic work for which a copyright under the pre-revision Copyright Act exists at the time this Act comes into effect; and a cinematographic work for which the copyright under the pre-revision Copyright Act has expired as of the time this Act comes into effect continues to be governed by the provisions previously in force." Therefore, Article 54, paragraph (1) of the 2003 Revised Act is applicable to the Nine Films under Article 2 of the Supplementary Provisions of said Act.

B. Article 54 of the 2003 Revised Act specifies that "The copyright to a cinematographic work subsists for seventy years after the work is made public (or for seventy years after the creation of the work, if the work is not made public within the seventy years after its creation)." Therefore, the duration of the copyrights for the Nine Films shall be as follows.

[i] <i>Sunnyside</i>	December 31, 1989
[ii] <i>The Pilgrim</i>	December 31, 1993
[iii] <i>A Woman of Paris</i>	December 31, 1993
[iv] <i>The Gold Rush</i>	December 31, 1995
[v] <i>City Lights</i>	December 31, 2001
[vi] <i>Modern Times</i> "	December 31, 2006
[vii] <i>The Great Dictator</i>	December 31, 2010

[viii] *Monsieur Verdoux* December 31, 2017

[ix] *Limelight* December 31, 2022

C. As mentioned in (8) B. above, the Nine Films shall be subject to the provisions concerning the duration of copyright protection specified in the former Act under Article 7 of the Supplementary Provisions of the 1970 Revised Act. Article 3 of the Supplementary Provisions of the 2003 Revised Act specifies that "Notwithstanding the provisions of Article 54, paragraph (1) of the new Act, if the day on which the copyright expires under the former Copyright Act (Act No. 39 of 1899) is after the day on which the copyright expires under the provisions of Article 54, paragraph (1) of the new Act, the duration of copyright for a cinematographic work that is created before the Copyright Act comes into effect and that is to continue to be governed by the provisions previously in force pursuant to the provisions of Article 7 of the Supplementary Provisions of the 1970 Revised Act, is until the day on which the copyright expires under the former Copyright Act." Accordingly, if the date on which a copyright expires under the former Act comes after the date on which the duration of the copyright expires under Article 54, paragraph (1) of the 2003 Revised Act, the copyright will remain in effect until the expiration date of the duration of the copyright under the former Act, notwithstanding the provisions of said paragraph.

From this viewpoint, the Nine Films are examined below.

(A) In the cases of *Sunnyside*, *The Pilgrim*, *A Woman of Paris*, *The Gold Rush*, *City Lights*, *Modern Times*, and *The Great Dictator*, since the expiration of the duration of the copyright under the former Act (December 31, 2015) is after the expiration date of the duration specified in Article 54, paragraph (1) of the 2003 Revised Act (as specified in [i] to [vii] above), the copyright should be considered to last until the expiration date specified in the former Act under Article 3 of the Supplementary Provisions.

(B) In the cases of *Monsieur Verdoux* and *Limelight*, since the expiration of the duration of the copyright under the former Act (December 31, 2015) is before the expiration date of the duration specified in Article 54, paragraph (1) of the 2003 Revised Act (December 31, 2017 in the case of *Monsieur Verdoux* and December 31, 2022 in the case of *Limelight*), Article 3 of the Supplementary Provisions is not applicable. As mentioned in B. [viii] and [ix], the copyright will last until the duration specified in Article 54, paragraph (1) of said Act expires.

(10) Therefore, it can be found that the duration of the copyrights for the Nine Films have not expired yet without taking into consideration the number of war-time special additional days under Article 15 (c) of the Treaty of Peace with Japan and the provisions of the Act concerning Exceptional Provisions for Copyrights Owned by the Allied

Powers and the Allied Nationals based on the former.

3. Non-occurrence of damage to the appellee

(1) The determination made by this court concerning the damage suffered by the appellee and the amount thereof is the same as the one specified in the section titled "Facts and reasons," more specifically in "No. 3 Court decision concerning the issues," "3. Issue 2 (Occurrence or non-occurrence of damage to the plaintiff and the amount thereof)" in the judgment in prior instance. Therefore, the determination of the court of prior instance presented in the judgment in prior instance is cited herein.

(2) The appellants alleged that, since this is a case about the sale, etc. of films that have been placed in the public domain after the expiration of the duration of the copyrights, no damage has occurred.

However, as mentioned above, the copyrights for the Nine Films have not yet expired, so the aforementioned allegation of the appellants lacks the premise.

(3) The appellants alleged that, even if their interpretation is different from the one adopted by the judgment in prior instance, it would be unreasonable and harsh for the court to determine immediately that the appellants violated the duty of due care (neither predictable nor avoidable) for having failed to correctly identify the owner of the copyrights for the films. It was like forcing the appellants to do the impossible.

A. According to the evidence (Exhibits Ko 17-1, 17-2, 18, 19-1 to 19-3, 20-1, 20-2, 21, 22-1, 22-2, 32-1 and 32-2), the following facts can be found.

(A) On August 31, 2004, the attorneys of the appellee sent a warning to Appellant Art Station and another party to notify that the appellee owns copyrights for 19 films, including the Nine Films contained on the DVD that Appellant Art Station and another party were going to sell and that their act of selling the DVD was illegal. In the warning, the attorneys provided the grounds for the interpretation that the copyrights for the films have not yet expired and demanded that they stop using the aforementioned films. The warning was delivered to Appellant Art Station on September 1, 2004.

(B) In response, Appellant Art Station requested submission of documents that prove that the appellee is the owner of the copyrights and explained Appellant Art Station's interpretation that the copyrights for the films have expired.

(C) Subsequently, the aforementioned attorneys of the appellee sent a written warning to Appellant Art Station by content-certified mail, which was delivered to Appellant Art Station on September 14, 2004. Around the same time, the appellee sent copies of the certificates of assignment, which prove that the appellee owns the copyrights for the films including the Nine Films. Appellant Art Station sent a notice once again to the



effect that, as far as the copyrights for the films are concerned, "we understand that Roy Export Company Establishment is the owner of the copyrights for Chaplin's films as of today" and presented their interpretation therein that the copyrights for the films have already expired.

(D) Furthermore, the aforementioned attorneys of the appellee also sent written warnings to Appellant Art Station by certified mail and registered mail, which were delivered to Appellant Art Station on September 25, 2004. The attorneys also sent a written warning to Appellant Cosmo Coordinate by content-certified mail, which was delivered to Appellant Cosmo Coordinate on August 29, 2005.

B. According to the aforementioned notice and second notice sent from Appellant Art Station, the representatives of the appellants simply stated that the copyrights for the films have expired without providing clear grounds. In light of the written petition dated January 23, 2007, submitted by the representatives of the appellants (Exhibit Otsu 1), it can be presumed that the representatives alleged that there were no cinematographic works like the Nine Films as of the time of the enactment of the former Act, which is applicable only to news films, documentary films, and such types of films that can be produced by a stage director doubling as a camera operator, and also alleged that the copyrights for the Nine Films have expired on the grounds that they should be subject to Article 54, paragraph (1) of the 1970 Revised Act, which specifies that the duration of a copyright for a cinematographic work is 50 years starting from the time when the cinematographic work was made public.

C. Since the appellants interpreted the former Act and the 1970 Revised Act in their own way and failed to gather opinions from experts or conduct any research after receiving warnings from the appellee, it can at least be said that the appellants were negligent in the sense that they violated the duty of due care.

D. The appellants alleged that the authorship of a cinematographic work under the former Act is one of the most controversial issues in the field of copyright law and that there are many academic theories providing different interpretations. The appellants also alleged that, under these circumstances, even after sufficient research, the interpretation presented in the judgment in prior instance is not necessarily reasonable.

However, as mentioned above, the representatives of the appellants failed to conduct any particular research after receiving written warnings from the appellee, overlooked a transitional provision, i.e., Article 7 of the Supplementary Provisions of the 1970 Revised Act, and wrongly presumed that the Nine Films should not be subject to the former Act, but should be subject to Article 54, paragraph (1) of the 1970 Revised Act immediately after the enforcement of said Act, and thereby alleged that the copyrights

for the Nine Films have expired. It is inevitable to consider that the appellants made an error in the basics of legal interpretation. In sum, the appellants were not aware of the issue concerning the authorship of a film because they did not take the application of the former Act into consideration and simply alleged that the copyrights for the Nine Films have expired.

According to Article 7 of the Supplementary Provisions of the 1970 Revised Act, it is obvious that the Nine Films should be subject to the former Act. Although opinions are divided as to who should be recognized as the copyright owners of those films, according to the interpretation of the former Act, in the case of a cinematographic work, a person who was actually engaged in film production should be interpreted to be the author as is the case with a conventional work that falls within the literary, academic, or artistic domain.

Therefore, if the appellants, who received warnings from the appellee, had conducted sufficient research, they would have been able to fully understand that the copyrights for the Nine Films had not expired yet.

Thus, it is obvious that the appellants violated the duty of due care or, at least, committed an act of negligence. Therefore, the aforementioned allegation of the appellants is unacceptable.

4. In consideration of the facts presented, it can be found that all of the allegations of the appellants are groundless. Since it was reasonable for the court of prior instance to accept, based on the copyrights for the Nine Films, the claims for an injunction against the reproduction and distribution of the DVDs and the Rental DVDs, destruction of the products, etc., and partial payment of the damages, this appeal shall be dismissed.

Intellectual Property High Court, First Division

Presiding judge: SHISHIDO Mitsuru

Judge: SHIBATA Yoshiaki

Judge: SHIBUYA Katsumi

(Attachment)

Film List

1. Title: *Sunnyside*  
Released: 1919

Director: Charles Chaplin

2. Title: *The Pilgrim*

Released: 1923

Director: Charles Chaplin

3. Title: *A Woman of Paris*

Released: 1923

Director: Charles Chaplin

4. Title: *The Gold Rush*

Released: 1925

Director: Charles Chaplin

5. Title: *City Lights*

Released: 1931

Director: Charles Chaplin

6. Title: *Modern Times*

Released: 1936

Director: Charles Chaplin

7. Title: *The Great Dictator*

Released: 1940

Director: Charles Chaplin

8. Title: *Monsieur Verdoux*

Released: 1947

Director: Charles Chaplin

9. Title: *Limelight*

Released: 1952

Director: Charles Chaplin

(Attachment)

Product List (1)

1. Title: チャップリン短編集 vol.1 (Short films of Chaplin vol.1)  
Product type: DVD  
Product No.: CCP-008
2. Title: チャップリン短編集 vol.2 (Short films of Chaplin vol.2)  
Product type: DVD  
Product No.: CCP-009
3. Title: *A Woman of Paris*  
Product type: DVD  
Product No.: CCP-001
4. Title: チャップリンの黄金狂時代 (Chaplin's *The Gold Rush*)  
Product type: DVD  
Product No.: CCP-002
5. Title: *City Lights*  
Product type: DVD  
Product No.: CCP-003
6. Title: *Modern Times*  
Product type: DVD  
Product No.: CCP-004
7. Title: *The Great Dictator*  
Product type: DVD  
Product No.: CCP-005
8. Title: チャップリンの殺人狂時代 (Chaplin's *Monsieur Verdoux*)  
Product type: DVD  
Product No.: CCP-006
9. Title: *Limelight*

Product type: DVD  
Product No.: CCP-007

(Attachment)

Product List (2)

1. Title: *A Woman of Paris*  
Product type: DVD  
Product No.: ART-0013

2. Title: *Modern Times*  
Product type: DVD  
Product No.: ART-0015

3. Title: *City Lights*  
Product type: DVD  
Product No.: ART-0014

4. Title: *Limelight*  
Product type: DVD  
Product No.: ART-0066