

Copyright	Date	October 28, 2021	Court	Intellectual Property High Court, Fourth Division
	Case number	2021 (Ne) 10047		
<p>- A case in which the court ruled that there is a "justifiable ground" as referred to in Article 16 of the Copyright Management Business Act for the refusals by the Appellee, which is a copyright manager, of applications for the exploitation of pieces of music filed by the Appellants.</p>				

Case type: Appeal for Compensation

Result: Appeal dismissed

References: Article 16 of the Copyright Management Business Act and Article 709 of the Civil Code

### Summary of the Judgment

#### 1. Major background

In this case, the Appellants alleged as follows: the Appellants filed applications for the authorization to exploit pieces of music for musical performances at a club with live music (the Club) with the Appellee, which manages pieces of music, but the Appellee refused those applications on the grounds that the Club has yet to complete the liquidation of the amount equivalent to royalties for copyrights for works that the Appellee manages; therefore, the Appellants were forced to suspend live shows that the Appellants had planned to hold at the Club, due to which rehearsals became nullified; the rights as musical performers, freedom to give a musical performance, and moral rights of an author of the Appellants were thus infringed, which caused the Appellants to suffer emotional pain. Based on these allegations, the Appellants demanded the payment of a solatium, etc. based on the claim for compensation for loss or damage based on a tort (incidentally, one of the Appellants alleged multiple torts, but the relevant allegations are omitted because it is not the major issue of this case).

The judgment in prior instance determined that all the claims are groundless without the need to make determinations on the remaining points because none of the Appellee's refusals of the applications for the authorization for exploitation for musical performance filed by the Appellants constitutes a tort, and dismissed all the claims of the Appellants. Then, the Appellants filed appeals against the judgment in prior instance.

#### 2. Determination

The court explained as described below and ruled that the claims of the Appellants are groundless, and dismissed all the appeals.

(1) Regarding the infringed interests

Musicians have the benefit of being able to perform pieces of music managed by the Appellee that they wish to perform through the operation regarding pieces of music managed by the Appellee that is supported by the regulation under Article 16 of the Copyright Management Business Act. As such benefit can be positioned as a moral interest relating to the self-expression or self-realization of musicians that is protected as the freedom of expression, it can be considered as "legally protected interests" referred to in Article 709 of the Civil Code.

Therefore, the act of refusing to grant to a musician the authorization to exploit pieces of music that he/she wishes to perform committed by the Appellee, which manages copyrights, etc. upon entrustment from the authors of the pieces of music, falls under an act that infringes the moral interest in the aforementioned sense and should be considered to constitute a tort unless there is a "justifiable ground" as provided in Article 16 of the Copyright Management Business Act.

(2) Regarding whether there is a "justifiable ground" as referred to in Article 16 of the Copyright Management Business Act

A. Article 16 of the Copyright Management Business Act is considered to have provided that a copyright manager should, in principle, grant the authority to exploit a work, etc. for the following reason: copyright owners, etc. entrust the management of copyrights, etc. to a copyright manager in anticipation of receiving the allocation of a lot of royalties as a result of works, etc. being exploited by many persons, and accordingly, if a copyright manager freely refuses an application filed by a person who exploits a work, it not only goes against the reasonable intentions of entrustors but also inhibits the smooth exploitation of works because many works are not substitutable. In consideration of such purport of the provisions, the existence of a "justifiable ground" referred to in the same Article should be found if the acceptance of an application from a person who exploits a work goes against the reasonable intentions of ordinary entrustors. A possible example is the case where a person who exploits a work would not pay royalties for exploitation in the past or future.

Moreover, the Appellee intensively manages copyrights, etc. for pieces of music upon entrustment from many entrustors based on the purport of the system of copyright management business and entrustors entrust the management on the premise of the intensive management of copyrights, etc. for pieces of music by the Appellee in anticipation that pieces of music will be broadly exploited. As long as that is the case, when examining the reasonable intentions of ordinary entrustors, it is not reasonable to discount the perspectives of the appropriate management of copyrights, etc. for pieces

of music as a whole by the Appellee and the maintenance of trust in the Appellee's overall business as a management body. Therefore, whether there is a "justifiable ground" for refusing an application filed by a person who exploits a work should be determined from the perspective of whether the acceptance of the application for the authorization to exploit the work for musical performance filed by the person goes against the reasonable intentions of ordinary entrustors in consideration of not only the interests and current conditions of individual entrustors but also the appropriate management of copyrights, etc. and the necessity of the maintenance of trust in the business of the management body.

B. In terms of the actual business conditions, etc. of the Club, the managers of the Club can be considered to fall under the actors of musical performances of pieces of music at the Club. The applications for the exploitation of pieces of music managed by the Appellee filed by the Appellants are found to have been filed in response to the call on the Club's website, etc., with which the Club requested performers to file an application for the authorization for exploitation with the Appellee, while formally considering them as the actors of musical performances, on the premise of maintaining the Club's business form as in the past, under the following circumstances: royalties for exploitation in the past have not been liquidated at all though pieces of music managed by the Appellee have been exploited without authorization at the Club for a long period of time, and the managers of the Club have expressed their intention not to follow the Appellee's policy for copyright management and the judgment in first instance on the separate case, which ordered an injunction against the musical performance of pieces of music managed by the Appellee at the Club, etc. Moreover, in light of the Appellants' past musical performances at the Club and objective and external circumstances, such as the fact that the Appellants performed pieces of music managed by the Appellee without authorization at the Club immediately after the judgment in first instance on the separate case was rendered, it should be considered inevitable that the Appellee considered the applications for exploitation filed by the Appellants as those filed by persons who agree with and support the operational attitude of the Club, which has not followed the Appellee's policy for copyright management and has exploited pieces of music managed by the Appellee without authorization for a long period of time. As long as the operational attitude of the Club as mentioned above must be considered as one that causes an obstacle to the stable management of copyrights and collection of royalties, if the Appellee grants the authorization in response to the applications for exploitation filed by the Appellants, who are considered to agree with and support such operational attitude, there is a suspicion that it goes against the reasonable intentions of

ordinary entrustors and could impair trust in the Appellee's business as a management body. Therefore, the Appellee's determinations to refuse the applications for exploitation filed by the Appellants cannot be considered unreasonable unless a special circumstance sufficient to eliminate such suspicion is found. In addition, no circumstance nor evidence sufficient to find a special circumstance as mentioned above can be found in this case.

C. Therefore, it should be said that there is a "justifiable ground" as provided in Article 16 of the Copyright Management Business Act for the Appellee's refusals of the applications for the exploitation of pieces of music managed by the Appellee filed by the Appellants.

Judgment rendered on October 28, 2021

2021 (Ne) 10047 Appeal case of seeking compensation for loss or damage

(Court of prior instance: Tokyo District Court, 2018 (Wa) 36307)

Date of conclusion of oral argument: September 14, 2021

#### Judgment

Appellant: Appellant 1 also known as Ko 1

Appellant: Appellant 2 also known as Ko 2

Appellant: Appellant 3 also known as Ko 3

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

#### Main text

1. All of the appeals shall be dismissed.
2. The Appellants shall bear the appeal costs.

#### Facts and reasons

##### No. 1 Claims

1. The judgment in prior instance shall be revoked.
2. The Appellee shall pay 2,200,210 yen as well as money accrued on 2,200,000 yen and 210 yen out of the aforementioned amount at the rate of 5% per annum for the period from January 1, 2017 and May 12, 2016 to the date of completion of payment, respectively, to Appellant 1.
3. The Appellee shall pay 1,140,000 yen as well as money accrued on 1,100,000 yen and 40,000 yen out of the aforementioned amount at the rate of 5% per annum for the period from January 1, 2017 and April 26, 2016 to the date of completion of payment, respectively, to Appellant 2.
4. The Appellee shall pay 565,000 yen as well as money accrued on 550,000 yen and 15,000 yen out of the aforementioned amount at the rate of 5% per annum for the period from January 1, 2017 and April 22, 2016 to the date of completion of payment, respectively, to Appellant 3.

No. 2 Outline of the case (The abbreviations used herein are the same as those used in the judgment in prior instance, unless otherwise specified.)

1. In this case, the Appellants make the following claims against the Appellee, which is a

copyright manager.

(1) Claims of Appellant 1

A. Appellant 1 alleges as follows: Appellant 1 filed an application for the authorization to exploit pieces of music for musical performance at a club with live music, "Live Bar X.Y.Z→A" (the "Club"), with the Appellee, which manages the pieces of music of Appellant 1, including those written and composed by Appellant 1; however, the Appellee refused to grant the authorization on the grounds that the Club had yet to complete the liquidation of the amount equivalent to royalties for copyrights for works managed by the Appellee; therefore, Appellant 1 was forced to suspend a live show that Appellant 1 had planned to hold at the Club, due to which rehearsals for the live show became nullified; thereby, the rights as a musical performer, freedom to give a musical performance, and moral rights of an author of Appellant 1 were infringed, which caused Appellant 1 to suffer emotional pain; moreover, Appellant 1 suffered loss or damage in the amount equivalent to royalties for pieces of music written and composed by Appellant 1 (210 yen) due to the refusal to grant the authorization to exploit the same pieces of music. Based on these allegations, Appellant 1 claims the payment of 1,100,210 yen, which is the sum of the solatium of 1,000,000 yen, the amount equivalent to royalties for the pieces of music of 210 yen, and the attorney's fees of 100,000 yen, based on the claim for compensation for loss or damage based on a tort, as well as delay damages accrued on 1,100,000 yen and 210 yen out of the aforementioned amount at the rate of 5% per annum as prescribed in the Civil Code (prior to amendment by Act No. 44 of 2017) for the period from January 1, 2017, the date after the tort, and May 12, 2016 (the date on which the Appellee prepared a document to refuse the application for the authorization to exploit the pieces of music for musical performance) to the date of completion of the payment, respectively.

B. Appellant 1 alleges as follows: the Appellee did not permit to reserve the right of lyric writers and composers to exploit their own works in the general conditions of copyright trust contracts (the "General Conditions") and forced them to conduct unfair trade; therefore, Appellant 1 became unable to perform works that he/she wrote and composed at the Club without obtaining the Appellee's permission; thereby, the freedom to give a musical performance and moral rights of an author of Appellant 1 were infringed, which caused Appellant 1 to suffer emotional pain. Based on these allegations, Appellant 1 claims the payment of 550,000 yen, which is the sum of the solatium of 500,000 yen and the attorney's fees of 50,000 yen, based on the claim for compensation for loss or damage based on a tort, as well as delay damages accrued thereon at the rate of 5% per annum as prescribed in the Civil Code for the period from January 1, 2017, the date after the tort, to the date of completion of the payment.

C. Appellant 1 also alleges as follows: as the Appellee adopts an inappropriate and illegal management method wherein it accepts only comprehensive contracts as exploitation authorization contracts for pieces of music managed by the Appellee that are concluded with clubs with live music, etc. and does not accept applications for the authorization for exploitation from individual musical performers, Appellant 1 cannot receive the appropriate allocation of royalties for copyrights for works that Appellant 1 wrote or composed in relation to "Grooving mamagon" (the "Authorized Club"), and the copyright and moral rights of an author of Appellant 1 were infringed, which caused Appellant 1 to suffer emotional pain. Based on these allegations, Appellant 1 claims the payment of 550,000 yen, which is the sum of the solatium of 500,000 yen and the attorney's fees of 50,000 yen, as well as delay damages accrued thereon at the rate of 5% per annum as prescribed in the Civil Code for the period from January 1, 2017, the date after the tort, to the date of completion of the payment.

(2) Claim of Appellant 2

Appellant 2 alleges as follows: Appellant 2 filed with the Appellee an application for the authorization to exploit pieces of music for musical performance at the Club; however, the Appellee refused to grant the authorization on the same grounds as mentioned in (1)A. above; therefore, Appellant 2 was forced to suspend a live show that Appellant 2 had planned to hold, and the freedom to give a musical performance of Appellant 2 was infringed, which caused Appellant 2 to suffer emotional pain; moreover, Appellant 2 suffered loss or damage in the amount equivalent to expenses for having rented studios to do practice for the live show to be held at the Club. Based on these allegations, Appellant 2 claims the payment of 1,140,000 yen, which is the sum of the solatium of 1,000,000 yen, the expenses for having rented the studios of 40,000 yen, and the attorney's fees of 100,000 yen, based on the claim for compensation for loss or damage based on a tort, as well as delay damages accrued on 1,100,000 yen and 40,000 yen out of the aforementioned amount at the rate of 5% per annum as prescribed in the Civil Code for the period from January 1, 2017, the date after the tort, and April 26, 2016 (the date on which the Appellee prepared a document to refuse the application for the authorization to exploit pieces of music for musical performance) to the date of completion of the payment, respectively.

(3) Claim of Appellant 3

Appellant 3 alleges as follows: Appellant 3 filed with the Appellee an application for the authorization to exploit pieces of music for musical performance at the Club; however, the Appellee refused to grant the authorization on the same grounds as mentioned in (1)A. above; therefore, Appellant 3 was forced to change pieces of music that Appellant 3 had

planned to perform in a live show, and the freedom to give a musical performance of Appellant 3 was infringed, which caused Appellant 3 to suffer emotional pain; moreover, Appellant 3 suffered loss or damage in the amount equivalent to expenses for having rented studios to do practice for the live show to be held at the Club. Based on these allegations, Appellant 3 claims the payment of 565,000 yen, which is the sum of the solatium of 500,000 yen, the expenses for having rented the studios of 15,000 yen, and the attorney's fees of 50,000 yen, based on the claim for compensation for loss or damage based on a tort, as well as delay damages accrued on 550,000 yen and 15,000 yen out of the aforementioned amount at the rate of 5% per annum as prescribed in the Civil Code for the period from January 1, 2017, the date after the tort, and April 22, 2016 (the date on which the Appellee prepared a document to refuse the application for the authorization to exploit pieces of music for musical performance) to the date of completion of the payment, respectively.

2. The judgment in prior instance determined as follows: none of the Appellee's refusals of the applications for the authorization to exploit pieces of music for musical performance filed by the Appellants constitute a tort, and the trade method under the General Conditions does not constitute a tort in relation to Appellant 1; in addition, the management of pieces of music by the Appellee does not constitute a tort in relation to Appellant 1; therefore, all the claims are groundless without the need to make determinations on the remaining points. Based on this determination, the judgment in prior instance dismissed all the claims of the Appellants. The Appellants filed appeals against the judgment in prior instance.

3. The "Basic facts," "Issues," "Parties' allegations on the issues" are as described in No. 2, 2. and 3. and No. 3 in the "Facts and reasons" section of the judgment in prior instance and therefore are cited herein, except for adding the Appellants' allegations in this instance as stated in 4. below and correcting the judgment in prior instance as follows.

(Corrections of the judgment in prior instance)

(1) The date "10" in line 22 on page 4 is altered to "11."

(2) The phrase "12 pieces of music managed by the Defendant, including ..." in line 14 on page 5 is altered to "12 pieces of music in total comprising nine pieces of music managed by the Defendant, including ..., and three pieces of music written and composed by Appellant 1 that are not managed by the Appellee," the phrase ", Exhibit Ko 34, and Appellant 1" is added following the word "Exhibit Ko 2" in line 15 on the same page, and the date "25" in line 26 on the same page is altered to "26."

(3) The date "8" in lines 15 and 18 on page 6 is altered to "10."

(4) The phrase "the Two Pieces of Music" in line 15 on page 7 is altered to "12 pieces of



music managed by the Appellee, including the Two Pieces of Music," and the sentence from the beginning of line 16 to the end of line 19 on the same page is altered as follows. "D. Appellant 1 transferred copyrights for 11 pieces of music, including the Three Pieces of Music, to a music publisher, Blasty, (hereinafter referred to as "Blasty") based on a contract concerning copyrights mentioned in (7) below (incidentally, the parties dispute whether this transfer of copyrights falls under "authentic transfer" or "transfer by trust"), and Blasty transferred copyrights for 11 pieces of music, including the Three Pieces of Music, to the Appellee by trust based on an agreement made in the same contract (which is subjected to the application of the General Conditions mentioned in (8) below).

The Appellee paid 268 yen (after the deduction of fees), which is the sum of royalties for the Two Pieces of Music entrusted, to Blasty as a payment for June 2017. (Exhibit Ko 33 and Exhibit Otsu 26)"

(5) The word "returns" in line 17 on page 8 is altered to "belongs."

(6) The phrase "(excluding music publishers)" is added after the "entrustor" in line 6 on page 9.

(7) The word "trustee" in line 7 on page 18 is altered to "entrustor."

(8) The word "Defendant" in lines 15 and 16 on page 25 is altered to "Appellant 1," respectively.

(9) The word "Plaintiff 2" in line 25 on page 28 and in line 1 on page 29 is altered to "Appellant 3," respectively.

(10) The date "15" in line 26 on page 29 is altered to "9."

(omitted)

### No. 3 Judgment of this court

This court also determines that all the claims of the Appellants are groundless for the following reasons.

#### 1. Facts found

According to evidence (Exhibits Ko 16, 23, 34, 35, 38, and 39, Exhibits Otsu 8, 9, 11, 18, 19, 21, 23, 27 to 31, and 33, Appellant 1, Appellant 2, and Appellant 3) and the entire import of oral arguments, in addition to the basic facts as mentioned above (No. 2, 2. of the judgment in prior instance cited herein (after the correction)), the following facts are found.

#### (1) Form of business, etc. at the Club

A. The Club is a club with live music that was opened mainly by P and Q (hereinafter referred to as "P, etc.") in May 2009. The name of the Club, "X.Y. Z.→A," is the name of

a band in which P joins.

For the purpose of providing musicians with a place for musical performance, P, etc. decided not to collect any charge for the place from performers and to ensure that performers acquire all charges for live shows paid by audiences. However, for the purpose of maintaining the operation of the Club, P, etc. have adopted since the latter half of 2010 a system wherein, separately from payment of a charge for a live show, audiences purchase a ticket for drinking and eating for 1,000 yen and can eat and drink to the extent of that amount without paying additional charges.

B. Sound facilities and musical instruments at the Club are secondhand equipment provided by P's musical associates, who agree with the Club's business policy, without compensation, and performers could freely use those sound facilities and musical instruments. P and the members of a band to which P joins provided sound facilities to the Club, and Appellant 2 and Appellant 3 provided guitar amplifiers to the Club.

C. Performers decided the pieces of music they would perform in live shows at the Club and the amount of a music charge. When the Club's staff members received data, such as the title and advertising phrase of a live show and photographs, from a performer, they posted them on the Club's website together with other information, including the scheduled date of the live show and the amount of the music charge. In addition, they also placed and distributed flyers, on which the schedule of live shows is printed, at the Club.

(2) Development of an action on a separate case, etc.

A. Although pieces of music managed by the Appellee had been performed at the Club, P, etc. had not concluded an exploitation authorization contract for the pieces of music with the Appellee. Where a performer exploited pieces of music managed by the Appellee at the Club, the Club received a "report on the exploitation of pieces of music at a social venue" entered by the performer after the end of a live show, collected 140 yen per piece of music managed by the Appellee that was performed in the live show from the charges for the live show received from audiences, stored the collected amount, and delivered the remaining amount to the performer.

B. On February 7, 2012, the Appellee filed a petition for conciliation against P, etc. with the Hachioji Summary Court to seek the payment of the amount equivalent to royalties for pieces of music managed by the Appellant in relation to exploitation at the Club in and after February 2010. While the aforementioned conciliation was pending, on November 26, 2013, Q took the procedure of depositing royalties for copyrights for the period on and after June 11, 2012 as the manager of the Club.

The aforementioned conciliation fell through on April 15, 2013.

C. On October 31, 2013, the Appellee filed an action with the Tokyo District Court to

seek an injunction against musical performance at the Club and compensation for loss or damage or return of unjust enrichment (the action on the separate case) against P, etc.

The Tokyo District Court determined that P, etc. fall under the actors of musical performances in relation to the exploitation of pieces of music managed by the Appellee at the Club and rendered a judgment ordering P, etc. to suspend musical performances at the Club and pay damages in the amount equivalent to royalties for the period until February 10, 2016, the date of conclusion of oral argument, 2,124,412 yen, etc. (the judgment in first instance on the separate case) on March 25, 2016.

Incidentally, the judgment in first instance on the separate case determined that the deposit procedure taken by Q on November 26, 2013 does not fall under the performance of the main purport.

D. P, etc. and the Appellee filed an appeal against the part against themselves in the judgment in first instance on the separate case, respectively. On October 29, 2016, the Intellectual Property High Court rendered a judgment maintaining the determination in the judgment in first instance on the separate case concerning an injunction against musical performances at the Club and ordering P, etc. to pay damages in the amount equivalent to royalties for the period until September 12, 2016, the date of conclusion of oral argument, 4,965,101 yen, etc.

(3) The Appellants' past performances at the Club, etc.

A.(A) Appellant 1 is a person who conducts musical performance activities with a focus on singing while playing the acoustic guitar. With his/her spouse, S, Appellant 1 performed in the birthday live show of R, with whom Appellant 1 had formed a band, "Goseiki," which was held at the Club in January 2014. This led Appellant 1, R and S to conduct live show activities together, and they subsequently came to conduct activities under the name of "Hachioji Transfer." Appellant 1 performed in around 21 live shows at the Club as a member of the same band or a soloist during the period from 2014 to 2016.

(B) Appellant 2 performed in at least 39 live shows at the Club, including joint performances with P. Those live shows include a "solo guitar" live show, which was hastily held for the purpose of "filling up the schedule that could not be filled up."

Incidentally, in the action on the separate case, P submitted a written statement to the effect that Appellant 2 is a "start-up staff member" of the Club.

(C) Appellant 3 performed in at least 32 live shows at the Club, including joint performances with P and R. In addition, Appellant 3 also performed with Appellant 2 at the Club.

B. Since September 24, 2010, the Appellee had dispatched its employees to live shows held at the Club as audiences and thereby conducted the investigation of the actual

conditions, including the titles of live shows, pieces of music performed, and hours of musical performances, and had also investigated flyers advertising the monthly schedule of the Club as well as the Club's website.

(4) Applications for exploitation in question and the refusals thereof

A. At the Club, live shows were held on April 6 and 10 and May 8, 2016, and pieces of music managed by the Appellee were performed without obtaining the authorization to exploit them from the Appellee. Appellant 1 performed pieces of music, including pieces of music managed by the Appellee, in the live show on April 6, 2016, and Appellants 2 and 3 did the same in the live show on April 10, 2016, respectively.

The Appellee had conducted the investigation of the actual conditions of the live musical performances on the aforementioned dates and had figured out the titles of the live shows and the number of pieces of music managed by the Appellee that were performed at the live shows, etc.

B. The Appellee has a policy not to newly grant the authorization to exploit a piece of music managed by the Appellee for musical performance to a club with live music where a piece of music managed by the Appellee has been performed as part of business without obtaining the authorization to exploit it unless the club liquidates royalties for the past exploitation. In addition, the Appellee also has the following policy: if a piece of music managed by the Appellee has been exploited without authorization at a club with live music and the liquidation of royalties for the piece of music has yet to be completed, even if a third party files an application for the exploitation of a piece of music managed by the Appellee at the club, the Appellee does not grant the authorization to exploit the piece of music as long as the piece of music is exploited as part of the business of the club.

C.(A) On April 8, 2016, the Club sent emails to performers who had reserved the Club for a live musical performance and persons who had given a live musical performance at the Club, and requested them to refer to the Club's website for the details of the litigation with the Appellee and guided them to file an application for exploitation with the Appellee by themselves if they perform pieces of music managed by the Appellee. In addition, around the same time, similar guidance was posted on the Club's website, and the following text was also posted thereon: "The court made a determination to the effect that 'the Club is giving musical performances (singing) of JASRAC's pieces of music by managing and controlling performers' live musical performances' and that 'the Club must not use JASRAC's pieces of music for business by means of having performers play musical instruments (sing).' ... We consider that this judgment is merely the determination of the court of first instance (a pass point) and that the content of this judgment is fundamentally unreasonable. We will continue to take actions so that our allegations are

accepted."

(B) On May 1, 2016, Appellant 1 filed with the Appellee an application for the authorization to exploit 12 pieces of music in total, specifically, nine pieces of music managed by the Appellee, including three pieces of music that were written and composed by Appellant 1 and are managed by the Appellee (the "Three Pieces of Music"), and three pieces of music written and composed by Appellant 1, for musical performance in a live show scheduled to be held at the Club on June 9, 2016 ("Application for Exploitation 1"). However, the Appellee stated as follows in a document dated May 12, 2016 and refused to accept the same application: "we cannot accept your application for the authorization to exploit the pieces of music for musical performance in consideration of the current situation where the Club has yet to complete the liquidation of the amount equivalent to royalties."

(C) On April 22, 2016, Appellant 2 filed with the Appellee an application for the authorization to exploit 10 pieces of music managed by the Appellee for musical performance in a live show scheduled to be held at the Club on July 15, 2016 (Application for Exploitation 2). However, the Appellee stated as follows in a document dated April 26, 2016 and refused to accept the same application: "we cannot accept your application for the authorization to exploit the pieces of music for musical performance in consideration of the current situation where the Club has yet to complete the liquidation of the amount equivalent to royalties."

(D) On April 21, 2016, Appellant 3 filed with the Appellee an application for the authorization to exploit nine pieces of music managed by the Appellee for musical performance in a live show scheduled to be held at the Club on July 9, 2016 (Application for Exploitation 3). However, the Appellee stated as follows in a document dated April 22, 2016 and refused to accept the same application: "we cannot accept your application for the authorization to exploit the pieces of music for musical performance in consideration of the current situation where the Club has yet to complete the liquidation of the amount equivalent to royalties."

## 2. Regarding Issue 1(1) (illegality of the Refusal of Application for Exploitation 1)

### (1) Regarding the content of infringement of the rights of Appellant 1

As an author who wrote or composed a piece of music (hereinafter merely referred to as the "author of a piece of music") has the exclusive right to perform the piece of music, which is a work, for the purpose of having it heard directly by the public (Article 22 of the Copyright Act), a third party other than the author may not perform the piece of music without obtaining the authorization for exploitation from the copyright owner (Article 63, paragraph (1) of the same Act) and cannot naturally enjoy benefits from performing the

piece of music, except for the case where the piece of music is performed for non-commercial purposes (Article 38, paragraph (1) of the same Act).

On the other hand, the author of a piece of music may entrust the management of the piece of music to a copyright manager for the purpose of receiving the appropriate management of the work and the simple and prompt allocation of royalties therefor. The Appellee is a general incorporated association that was registered as a copyright manager under Article 3 of the Copyright Management Business Act (the basic facts mentioned in (1)D. above) and manages copyrights, etc. for many pieces of music upon entrustment from copyright owners, etc. (the fact noticeable to this court), and a copyright manager is supposed to be prohibited from refusing to grant the authorization to exploit a work without justifiable grounds (Article 16 of the Copyright Management Business Act). Therefore, musicians have the benefit of being able to perform pieces of music managed by the Appellee which they wish to perform through such operation supported by legal regulation regarding pieces of music managed by the Appellee. As such benefit can be positioned as a moral interest relating to the self-expression or self-realization of musicians that is protected as the freedom of expression, it can be considered as "legally protected interests" referred to in Article 709 of the Civil Code. Consequently, the act of refusing to grant a musician the authorization to exploit pieces of music that he/she wishes to perform committed by the Appellee, which manages copyrights, etc. upon entrustment from the authors of the pieces of music, falls under an act that infringes the moral interest in the aforementioned sense and should be considered to constitute a tort unless there is a "justifiable ground" as provided in Article 16 of the Copyright Management Business Act.

Therefore, whether there is a "justifiable ground" as provided in Article 16 of the Copyright Management Business Act for the Refusal of Application for Exploitation 1 by the Appellee is considered below.

(2) Regarding whether there is a "justifiable ground" for the Refusal of Application for Exploitation 1

A. Article 16 of the Copyright Management Business Act provides that "a copyright manager must not refuse to grant the authorization to exploit a work, etc. it manages without justifiable grounds." The same Article is considered to have provided that a copyright manager should, in principle, grant the authorization to exploit a work, etc., for the following reason: copyright owners, etc. entrust the management of copyrights, etc. to a copyright manager in anticipation of receiving the allocation of a lot of royalties as a result of works, etc. being exploited by many persons; therefore, if a copyright manager freely refuses applications filed by persons who exploit a work, it not only goes against

the reasonable intentions of entrustors but also inhibits the smooth exploitation of works because many works are not substitutable. In consideration of such purport of the provisions, the existence of a "justifiable ground" as referred to in the same Article should be found if the acceptance of an application filed by a person who exploits a work goes against the reasonable intentions of ordinary entrustors. For example, a possible case is the case where a person who exploits a work would not pay royalties for exploitation in the past or future.

Moreover, the Appellee intensively manages copyrights, etc. for pieces of music upon entrustment from many entrustors based on the purport of the system of the copyright management business and entrustors entrust the management of copyrights, etc. on the premise of the intensive management of copyrights, etc. for pieces of music by the Appellee in anticipation that pieces of music will be broadly exploited. As long as that is the case, when examining the reasonable intentions of ordinary entrustors, it is not reasonable to discount the perspectives of the appropriate management of copyrights, etc. for pieces of music as a whole by the Appellee and the maintenance of trust in the Appellee's overall business as a management body. Therefore, whether there is a "justifiable ground" for refusing an application filed by a person who exploits a work should be determined from the perspective of whether the acceptance of the application for the authorization to exploit the work for musical performance filed by the person goes against the reasonable intentions of ordinary entrustors in consideration of not only the interests and current conditions of individual entrustors but also the appropriate management of copyrights, etc. and the necessity of the maintenance of trust in the business of the management body.

B. When examining the Refusal of Application for Exploitation 1 from such perspectives, according to the facts found as mentioned above, the following can be said: the Club is a club with live music that was opened mainly by P, etc., and it had adopted the operation system wherein it does not collect any charge for the place from performers and performers acquire almost all charges for live shows paid by audiences (the facts found as mentioned in 1(1)A. above); however, performers give musical performances by using sound facilities and musical instruments installed at the Club (the facts found as mentioned in 1.(1)B. above); the Club had adopted a mechanism wherein the Club staff members post information about the scheduled dates, etc. of live shows on the Club's website and place and distribute flyers at the Club (the facts found as mentioned in 1.(1)C. above); and eating and drinking charges paid by audiences at the Club separately from charges for live shows become the earnings of the Club (the facts found as mentioned in 1.(1)A. above). Given these, P, etc., who are the managers of the Club, can be considered

to fall under the actors of musical performances of pieces of music at the Club.

According to the facts found as mentioned above, P, etc. had collected 140 yen per piece of music managed by the Appellee which was performed in a live show from charges for the live show received from audiences, and stored the collected amount since May 2009, when they opened the Club. However, they had not paid royalties to the Appellee and had had performers perform pieces of music managed by the Appellee without authorization (the facts found as mentioned in 1.(2) above), and even after being ordered to suspend giving musical performances and pay the amount equivalent to royalties of 2,124,412 yen in the judgment in first instance on the separate case, P, etc. not only had performers, including the Appellants, perform pieces of music managed by the Appellee at the Club without obtaining the authorization for exploitation from the Appellee (the facts found as mentioned in 1.(2)C. and (4)A. above) but also indicated their dissatisfaction with the Appellee's policy for copyright management and the judgment in first instance on the separate case. In addition, on the Club's website or by email, P, etc. also called on performers, etc. who had reserved the Club for a live musical performance to file an application by themselves for the authorization to exploit pieces of music managed by the Appellee for musical performance if they perform a piece of music managed by the Appellee (the facts found as mentioned in 1.(4)C.(A) above). In response to this call, the applications for the authorization to exploit nine pieces of music managed by the Appellee, including the Three Pieces of Music, were filed (Application for Exploitation 1) (the facts found as mentioned in 1.(4)C.(B) above).

In this manner, royalties for exploitation in the past had not been liquidated at all though pieces of music managed by the Appellee had been used without authorization at the Club for a long period of time, and P, etc. had expressed their intention not to follow the Appellee's policy for copyright management and the judgment in first instance on the separate case. Under such circumstances, Application for Exploitation 1 is found to have been filed in response to the call on the Club's website, etc., with which the Club requested performers to file an application for the authorization for exploitation with the Appellee, while formally considering them as the actors of musical performances, on the premise of maintaining the Club's business form as in the past. In addition, according to the facts found as mentioned above, Appellant 1 performed pieces of music managed by the Appellee in around 21 live shows at the Club and is thus found to have also performed pieces of music managed by the Appellee without authorization at the Club immediately after the judgment in first instance on the separate case was rendered (the facts found as mentioned in 1.(3)A.(A) and (4)A. above). Consequently, in light of such objective and external circumstances, it should be considered inevitable that the Appellee considered



Application for Exploitation 1 filed by Appellant 1 as one filed by a person who agrees with and supports the operational attitude of the Club, which has not followed the Appellee's policy for copyright management and has exploited pieces of music managed by the Appellee without authorization for a long period of time. As long as the operational attitude of the Club as mentioned above must be considered as one that causes an obstacle to the stable management of copyrights and collection of royalties, if the Appellee grants the authorization in response to Application for Exploitation 1, which is considered to have been filed based on agreement with and support of such operational attitude, there is a suspicion that it goes against the reasonable intentions of ordinary entrustors and could impair trust in the Appellee's business as a management body. Therefore, the Appellee's determination to refuse Application for Exploitation 1 cannot be considered unreasonable unless a special circumstance sufficient to eliminate such suspicion is found. In addition, no circumstance nor evidence sufficient to find a special circumstance as mentioned above can be found in this case.

Therefore, it should be said that there is a "justifiable ground" as provided in Article 16 of the Copyright Management Business Act for the Refusal of Application for Exploitation 1.

C. In response to this, in prior instance, Appellant 1 made allegations as described in No. 3, 1. of the judgment in prior instance cited herein. However, all the allegations are groundless in light of the explanations made in B. above. For confirmation, the following points are added as supplements.

(A) Appellant 1 alleges as follows: as the Appellee is merely a formal right holder, it has the obligation to confirm the intentions of the entrustor of a work and beneficiaries, who are substantial right holders, before refusing an application for exploitation; as the Three Pieces of Music written and composed by Appellee 1 were included in the pieces of music subject to Application for Exploitation 1, ordinary entrustors are expected to wish for the granting of the authorization; nevertheless, the Appellee failed to confirm the intentions of Appellant 1 and Blasty.

However, first, as described in No. 2, 2.(6)D. of the judgment in first instance cited herein (after correction), the Appellee received the transfer by trust of copyrights for the Three Pieces of Music from Blasty, which had obtained the relevant authority based on the Copyright Contract, and is thus both formally and substantially the owner of copyrights for the Three Pieces of Music. Therefore, the aforementioned allegation of Appellant 1 that the Appellee is a "formal right holder" is not reasonable in the first place.

In addition, even leaving aside this point, as the Appellee intensively manages copyrights, etc. for many pieces of music upon entrustment from copyright owners, etc.

and entrustors entrust pieces of music on the premise of such actual conditions of management, whether there is a "justifiable ground" for refusing an application filed by a person who exploits a piece of music should be determined from the perspective of whether the acceptance of the application for the authorization to exploit the piece of music filed by the person goes against the reasonable intentions of ordinary entrustors in consideration of not only the interests and current conditions of individual entrustors but also the appropriate management of copyrights, etc. and the necessity of the maintenance of trust in the business of the management body, as explained in A. above. In this case, as explained in B. above, it is found that there is a "justifiable ground" for refusing the same application in light of the reasonable intentions of ordinary entrustors, and this conclusion is not affected by whether the Three Pieces of Music are included in Application for Exploitation 1. Therefore, the Appellee, which is the trustee, cannot be considered to have had the obligation to confirm the intention of Blasty, which is both the entrustor and beneficiary, with regard to the Three Pieces of Music, let alone the obligation to confirm the intention of Appellee 1, who is not even the beneficiary of the Three Pieces of Music under the General Conditions.

(B) Appellant 1 alleges as follows: Application for Exploitation 1 is not the one that was filed in response to the call of P, etc. for the purpose of altering the situation of the action on the separate case to the advantage of Appellant 1; Appellant 1 does not have a close relationship with P, etc., and the Club is merely one of the clubs with live music where Appellant 1 gives live musical performances; in addition, Appellant 1 performed pieces of music managed by the Appellee at the Club on April 6, 2016 after he/she deposited 140 yen per piece of music; therefore, he/she was not involved in copyright infringement.

However, as indicated above, Application for Exploitation 1 was filed after P, etc. indicated dissatisfaction with the Appellee's policy for copyright management and the judgment in first instance on the separate case and announced, on the Club's website, to performers, etc. who had reserved the Club for live musical performances that performers are requested to file an application for exploitation with the Appellee if they perform a piece of music managed by the Appellee. In addition, taking into account the fact that Appellant 1 had performed in 21 live shows at the Club and also performed pieces of music managed by the Appellee without authorization immediately after the judgment in first instance on the separate case was rendered, it is inevitable that the same application is externally and objectively considered as one filed by a person who agrees with and supports the operation of the Club, which has used pieces of music managed by the Appellee without authorization for a long period of time, setting aside the subjective intention of Appellant 1. Incidentally, even by the detailed examination of all pieces of

evidence of this case, it cannot be found that Appellant 1 deposited royalties for the musical performance of pieces of music managed by the Appellee before holding a live musical performance at the Club on April 6, 2016 (even if Appellant 1 handed royalties for pieces of music managed by the Appellee to the managers of the Club, the royalties, needless to say, do not fall under deposits).

D. Moreover, Appellant 1 makes the following allegations, respectively, in this instance. However, all the allegations are groundless (incidentally, parts that duplicate B. and C. above are not explained).

(A) As described in No. 2, 4.(1)A.(A) above, Appellant 1 alleges as follows: the Appellee refused Application for Exploitation 1 only on the grounds that the Club had yet to liquidate royalties, without examining whether there is a "justifiable ground," under the policy of not accepting any application for the authorization for exploitation for musical performance from a third party who plans to give a musical performance at a club with live music with which the Appellee is disputing; such refusal is a private sanction for collecting royalties and falls under the abuse of a superior position prohibited under Article 19 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade.

Certainly, the Appellee has a policy not to newly grant the authorization to exploit a piece of music managed by the Appellee for musical performance to a club with live music where a piece of music managed by the Appellee has been performed as part of business without obtaining the authorization to exploit it unless the club liquidates royalties for the past exploitation. In addition, the Appellee also adopts the following policy: if a piece of music managed by the Appellee has been exploited without authorization at a club with live music and the liquidation of royalties for the piece of music has yet to be completed, even if a third party files an application for the exploitation of a piece of music managed by the Appellee at the club, the Appellee does not grant the authorization to exploit the piece of music as long as the piece of music is exploited as part of the business of the club (the facts found as mentioned in 1.(4)B. above). However, a determination concerning whether there is a "justifiable ground" for having refused an application for the authorization to exploit a piece of music for musical performance should be considered as an ex-post legal determination based on circumstances at the time when the application was filed and is not bound by the reasons indicated at the time of refusal of the application. In this case, an action pertaining to copyright infringement, etc. was pending between P, etc. and the Appellee at the time when the aforementioned application was filed, and the Appellee had dispatched its employees to the live shows held at the Club as audiences and thereby conducted the investigation of the actual

conditions, including the titles of live shows, pieces of music performed, and hours of musical performances, since September 24, 2010. In addition, the Appellee is also found to have ascertained Appellant 1's past performances at the Club and the background to the filing of the application in question, etc. through investigation of the Club's website, etc. (the facts found as mentioned in 1.(2), (3)A. and B., and (4)A. above). In light of these circumstances, the fact remains that there is a "justifiable ground" for the Refusal of Application for Exploitation 1, irrespective of the reasons actually indicated at the time of the refusal. As long as there is a "justifiable ground" for the Refusal of Application for Exploitation 1, the aforementioned allegation of Appellant 1 that the refusal is a private sanction and falls under the abuse of a superior position must be considered unreasonable.

Incidentally, as described in No. 2, 4.(1)A.(B) above, Appellant 1 also alleges as follows: although the judgment in the action on the separate case had not become final and binding at the time when the Appellee refused Application for Exploitation 1 filed by Appellant 1, the Appellee refused the application for the authorization to exploit pieces of music managed by the Appellee for musical performance filed by Appellant 1 based on a definite determination that the managers of the Club had not liquidated the amount equivalent to royalties for pieces of music managed by the Appellee; such refusal by the Appellee falls under the abuse of a superior position and also goes against the duty of loyalty as an entrustee under the General Conditions. However, an obligee may take a measure on the premise of the existence of a right and obligation relationship with an obligor before a judgment becomes final and binding if he/she has a factual legal ground (if absence of a claim becomes clear as a result of a judgment becoming final and binding, the obligee should, needless to say, compensate loss or damage caused by the measure). There is no circumstance where the measure taken by the Appellee obviously lacks a factual legal ground (in the action on the separate case, a judgment against P, etc. subsequently became final and binding). Therefore, the measure taken by the Appellee neither falls under the abuse of a superior position nor goes against the duty of loyalty in relation to a beneficiary.

(B) In addition, as described in No. 2, 4.(1)B. above, Appellant 1 alleges as follows: Appellant 1 requested the granting of the authorization to exploit musical works for musical performance with an offer to pay royalties for pieces of music managed by the Appellee; therefore, the refusal to grant the authorization by the Appellee, which is an entrustee, goes against the duty of loyalty under the Trust Act.

However, as explained in A. above, as long as the Appellee intensively manages copyrights, etc. for pieces of music upon entrustment from many entrustors and entrustors entrust pieces of music on the premise of the intensive management thereof by the

Appellee in anticipation that pieces of music will be broadly exploited, it is not reasonable to discount the perspectives of the appropriate management of copyrights, etc. for pieces of music as a whole by the Appellee and the maintenance of trust in the Appellee's overall business as a management body. In light of the background to and the timing, etc. of the filing of Application for Exploitation 1, even if Appellant 1 requests the granting of the authorization to exploit pieces of music managed by the Appellee for musical performance with an offer to pay royalties, the granting of the authority must be considered as one that approves the operational attitude of the Club and could result in causing an obstacle to the stable management of copyrights and collection of royalties, and it goes against the reasonable intentions of ordinary entrustors and could impair trust in the Appellee's business as a management body (incidentally, under the circumstances as those in this case, it is considered highly likely that trust in the reliability of payment also becomes tenuous). The aforementioned allegation of Appellant 1 is considered to mean that the refusal of Application for Exploitation 1 while placing emphasis on the current conditions of an individual entrustor who is also a beneficiary goes against the duty of loyalty under the Trust Act in relation to the entrustor of a specific piece of music who is also a beneficiary. This allegation must be considered as one that does not see the actual conditions of the intensive management of copyrights, etc. for many pieces of music by the Appellee and is thus unreasonable.

E. In addition to the above, Appellant 1 also makes various allegations in prior instance and this instance, but all of them are unreasonable or his/her unique points of view, and are thus not acceptable.

(3) Regarding the infringement of the freedom to give a musical performance and the moral rights of an author

The allegations of Appellant 1 concerning the aforementioned point are groundless, as described in No. 4, 2, 2-1.(2) and (3) of the judgment in prior instance, and therefore, the relevant part is cited herein.

(4) Regarding the infringement of rights for the Three Pieces of Music

The allegations of Appellant 1 concerning this point are groundless as described in No. 4, 2., 2-1.(4) of the judgment in prior instance, except for making the following correction to the sentence from the beginning of line 22 on page 41 to line 17 on page 42 of the judgment in prior instance, and therefore, the relevant part is cited herein.

(Correction of the judgment in prior instance)

"However, even if the Copyright Contract has the nature of trust, copyrights for pieces of music written and composed by Appellant 1, including the Three Pieces of Music, were transferred to Blasty under the Copyright Contract and were furthermore transferred by

trust to the Appellee under the General Conditions based on an agreement made in the Copyright Transfer Contract. Therefore, Appellant 1 is merely a beneficiary of royalties that the Appellee allocates to Blasty, which is an entrustor and beneficiary, under the General Conditions. Neither the Copyright Transfer Contract nor the General Conditions include any provision that gives a basis for the right to force the Appellee to grant Appellant 1 the authorization to use Appellant 1's own pieces of music as alleged by Appellant 1."

(5) Summary

For the reasons described above, it should be said that there is a "justifiable ground" as provided in Article 16 of the Copyright Management Business Act for the Appellee's refusal of Application for Exploitation 1 filed by Appellant 1. Therefore, the Refusal of Application for Exploitation 1 does not constitute a tort.

Therefore, the claim for compensation for loss or damage based on a tort as described in No. 1 alleged by Appellant 1 is groundless without the need to make determinations on the remaining points.

3. Regarding Issue 1 (2) (illegality of the content of the General Conditions, etc.)

(1) Appellant 1 alleges that he/she could not perform even the Three Pieces of Music that he/she wrote and composed due to the Refusal of Application for Exploitation 1 because the Appellee does not permit Appellant 1 to reserve the right to use his/her own works under the General Conditions and forces him/her to conduct unfair trade, which constitutes a tort against Appellant 1. However, there are no grounds for this allegation as described in No. 4, 2., 2-2.(1) and (2) of the judgment in prior instance, and therefore, the relevant part is cited herein.

(2) As described in No. 2, 4.(2)A. above, Appellant 1 alleges that the General Conditions are illegal provisions that are in violation of Article 19 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade and go against public policy by taking into account the fact that the General Conditions do not permit an original copyright owner and a music publisher that has received transfer by trust from the same person to exploit his/her works.

The aforementioned allegation of Appellant 1 lacks a specific allegation concerning whether the General Conditions fall under "unfair trade practices" as provided in the items of Article 2, paragraph (9) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade and only abstractly states that the General Conditions fall under "unfair trade practices." Even leaving aside this point, the General Conditions are related to the relationship between Blasty and the Appellee, and there is no trade relationship based on the General Conditions between Appellant 1 and the Appellee. In

addition, Appellant 1 him/herself is not a music publisher. Therefore, Appellant 1 is originally not qualified to make such allegation. Certainly, regarding a music publisher, the General Conditions do not provide that an entrustor may reserve the scope of management entrustment when transferring his/her copyright by trust. However, a lyric writer or composer of a piece of music is originally able to entrust the management of copyright for the piece of music to the Appellee without involving a music publisher. Therefore, the allegation of Appellant 1 is not reasonable at any rate.

#### 4. Regarding Issue 1 (3) (illegality of the management of works, etc.)

(1) Appellant 1 alleges as follows: as the Appellee adopts an inappropriate and illegal management method under exploitation authorization contracts that it concludes with clubs with live music, etc., wherein it does not accept applications for the authorization for exploitation from individual musical performers but only concludes comprehensive exploitation authorization contracts, it has failed to ascertain the actual status of exploitation of works, and therefore, royalties for copyrights have not been allocated to Appellant 1, and the copyrights and moral rights of an author of Appellant 1 have been infringed. However, there are no grounds for this allegation as described in No. 4, 2., 2-3 of the judgment in prior instance, except for making the following corrections of the judgment in prior instance, and therefore, the relevant part is cited herein.

(Corrections of the judgment in prior instance)

A. The sentence from "Plaintiff 1" in line 19 on page 44 to "Copyright Contract" in line 20 on the same page is altered to "even on the premise of the allegation of Appellant 1 that the Copyright Contract has the nature of trust, copyrights for the Two Pieces of Music were transferred by trust to Blasty by Appellant 1 based on the Copyright Contract."

B. The sentence from "the Authorized Club" in line 26 on page 44 to the end of line 2 on page 45 is altered as follows.

"... the following facts are found: on November 9, 2016, the Appellee received the submission of a report on the exploitation of pieces of music at a social venue, including the fact that the Two Pieces of Music were exploited in the Musical Performance in October, from the Authorized Club: on February 7, 2017, the Appellee received the submission of a report on the exploitation of pieces of music at a social venue, including the fact that the Two Pieces of Music were also exploited in a live musical performance held on January 19, 2017, from the Authorized Club; on June 23, 2017, the Appellee paid 268 yen, the amount after deducting fees from royalties for the Two Pieces of Music for those two musical performances, to Blasty.

In response, on the premise that the Appellee collected royalties for the Musical Performance in October from the Authorized Club immediately after it received the

submission of the report on the exploitation of pieces of music at a social venue from the Authorized Club, Appellee 1 alleges that according to the copyright royalty allocation rules, the payment made on June 23, 2017 is related to the live musical performance held on January 29, 2017 and that royalties for the Two Pieces of Music (Appellant 1 alleges that the subject royalties are those for the Three Pieces of Music, but pieces of music exploited in the Musical Performance in October were the Two Pieces of Music) have not been paid to Appellant 1. However, although the aforementioned allegation of Appellant 1 is on the premise that the Authorized Club paid royalties for the Musical Performance in October immediately after the Appellee received the submission of the report on the exploitation of pieces of music at a social venue, no evidence sufficient to find such fact can be found even by the detailed examination of the all pieces of evidence of this case. Therefore, the allegation must be considered to lack a premise and is groundless at any rate."

C. The sentence from "Plaintiff 1" in line 4 on page 45 to "has lost copyrights for the Two Pieces of Music" in line 5 on the same page is altered to "even if the Copyright Contract has the nature of trust, Appellant 1 transferred the copyrights for the Two Pieces of Music by trust to Blasty based on the same contract and has lost the copyrights for the Two Pieces of Music."

(2) As described in No. 2, 4.(3)B. above, Appellant 1 alleges as follows: the management method wherein the Appellee does not accept individual applications for exploitation for musical performance at a club with live music filed by third parties if it concludes a comprehensive exploitation authorization contract with the club with live music goes against the duty of loyalty to Appellant 1, who is the original copyright owner, and Blasty under the Trust Act, and it infringes the substantial rights for copyrights or beneficial interests therein that are reserved to the original copyright owner and is in violation of Article 19 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade.

However, it is easily conceivable that a great cost is required for the Appellee, which intensively manages copyrights, etc. upon entrustment from authors, etc. under law on the premise that many pieces of music are broadly exploited, to grant the authorization and collect a royalty whenever it receives an application for the authorization to exploit a piece of music managed by the Appellee for musical performance from an individual club with live music, etc., and such cost imposes a burden on beneficiaries, etc. at any rate. Therefore, it should be considered rather reasonable for the Appellee to grant the comprehensive authorization to exploit pieces of music managed by the Appellee to clubs with live music, etc. and collect royalties according to the scale of the clubs, etc. and the



hours of use, and such practice does not go against the duty of loyalty that becomes an issue in terms of the relationship with beneficiaries. Moreover, even on the premise of the allegations of Appellant 1, Appellant 1 transferred copyrights for the Two Pieces of Music by trust to Blasty based on the Copyright Contract and has lost the copyrights, and in relationship with the Appellee, Blasty is a beneficiary under the General Conditions. Therefore, neither violation of the duty of loyalty nor infringement of copyrights or beneficial interests becomes an issue between Appellant 1 and the Appellee. Consequently, the aforementioned allegation of Appellant 1 must be considered unreasonable at any rate. Furthermore, it is not the case that there is a trade relationship between Appellant 1 and the Appellee. Therefore, the aforementioned allegation of Appellant 1 that the Appellee's method of managing works is in violation of Article 19 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade lacks a premise.

(3) Incidentally, Appellant 1 alleges that the judgment in prior instance omitted to make a determination concerning the refusal to accept an application for the authorization for musical performance dated August 29, 2016 filed by the Authorized Club, although this refusal is raised by Appellant 1 as the issue. However, the judgment in prior instance cited herein determined as follows in No. 4, 2., 2-3.(1): the Appellee gave guidance about an authorization contract that is not based on the system of comprehensive exploitation authorization contract in relation to the Club, and it individually granted the authorization for exploitation when Appellant 1 held an alternative live show pertaining to Application for Exploitation 1 at the Authorized Club; as the Authorized Club subsequently concluded a comprehensive exploitation authorization contract with the Appellee, the Appellee just notified that Appellant 1 is no longer required to file an application for the authorization for musical performance. Therefore, the judgment in prior instance does not omit to make a determination.

#### 5. Regarding Issue 2 (claim of Appellant 2)

(1) Appellant 2 alleges that the freedom to give a musical performance of Appellant 2 was infringed by the Refusal of Application for Exploitation 2 in the same manner as the Refusal of Application for Exploitation 1.

As mentioned in 2.(1) above, the act of refusing to grant the authorization to exploit pieces of music that a musician wishes to perform committed by the Appellee, which manages copyrights, etc. upon entrustment from the authors of pieces of music, can be considered to be the act that infringes the moral interests relating to the self-expression or self-realization of musicians unless there is a "justifiable ground" as provided in Article 16 of the Copyright Management Business Act.

Therefore, when considering whether there is a "justifiable ground" as provided in

Article 16 of the Copyright Management Business Act for the Refusal of Application for Exploitation 2 by the Appellee, it should be said that whether there is a "justifiable ground" as provided in the same Act is to be determined from the perspective of whether the acceptance of an application for the authorization for exploitation for musical performance from a person who exploits a piece of music goes against the reasonable intentions of ordinary entrustors in consideration of not only the interests and current conditions of individual entrustors but also the appropriate management of copyrights, etc. and the necessity of the maintenance of trust in the business of the management body, as mentioned in 2.(2)A. above.

In terms of the actual business conditions of the Club, P, etc., the managers of the Club are the actors of musical performances of pieces of music at the Club, as mentioned in 2.(2)B. above. In addition, according to the facts found as mentioned above, Application for Exploitation 2 is found to have been filed in response to the call on the Club's website, etc., with which the Club requested performers to file an application for the authorization for exploitation with the Appellee, while formally considering them as the actors of musical performances, on the premise of maintaining the Club's business form as in the past (the facts found as mentioned in 1.(4)C.(A) and (C) above) under the following circumstances: royalties for exploitation in the past have not been liquidated at all though pieces of music managed by the Appellee have been exploited without authorization at the Club for a long period of time (the facts found as mentioned in 1.(2) above), and P, etc. have expressed their intention not to follow the Appellee's policy for copyright management and the judgment in first instance on the separate case. Furthermore, according to the facts found as mentioned above, Appellant 2 has performed in at least 39 live shows at the Club (the facts found as mentioned in 1.(3)A.(B) above) and performed pieces of music managed by the Appellee without authorization at the Club immediately after the judgment in first instance on the separate case was rendered (the facts found as mentioned in 1.(4)A. above). In addition, it is also found that a written statement to the effect that Appellant 2 is a "start-up staff member" of the Club was submitted in the action on the separate case (the facts found as mentioned in 1.(3)A.(B) above). Therefore, in light of such objective and external circumstances, it should be considered inevitable that the Appellee considered Application for Exploitation 2 filed by Appellant 2 as one filed by a person who agrees with and supports the operational attitude of the Club, which has not followed the Appellee's policy for copyright management and has exploited pieces of music managed by the Appellee without authorization for a long period of time. As long as the operational attitude of the Club as mentioned above must be considered as one that causes an obstacle to the stable management of copyrights and

collection of royalties, if the Appellee grants the authorization for exploitation in response to Application for Exploitation 2, which is considered to have been filed based on agreement with and support of such operational attitude, there is a suspicion that it goes against the reasonable intentions of ordinary entrustors and could impair trust in the Appellee's business as a management body. Therefore, the Appellee's determination to refuse Application for Exploitation 2 cannot be considered unreasonable unless a special circumstance sufficient to eliminate such suspicion is found. In addition, no circumstance nor evidence sufficient to find a special circumstance as mentioned above can be found in this case.

Therefore, it should be said that there is a "justifiable ground" as provided in Article 16 of the Copyright Management Business Act for the Refusal of Application for Exploitation 2.

(2) In response to this, Appellant 2 alleges as follows: Application for Exploitation 2 is not the one that was filed in response to the call of P, etc. for the purpose of altering the situation of the action on the separate case to the advantage of Appellant 2; Appellant 2 does not have a close relationship with P, etc.; in addition, Appellant 2 performed pieces of music managed by the Appellee at the Club on April 10, 2016 after he/she deposited 140 yen per piece of music; therefore, he/she was not involved in copyright infringement. In the same manner as explained in 2.(2)C.(B) above, in light of the Appellant 2's past performances at the Club, etc., as well as the background to and the timing of the filing of Application for Exploitation 2, it is inevitable that the same application is externally and objectively considered as one filed by a person who agrees with and supports the operation of the Club, which has used pieces of music managed by the Appellee without authorization for a long period of time, setting aside the subjective intention of Appellant 2. Incidentally, even by the detailed examination of all pieces of evidence of this case, it cannot be found that Appellant 2 deposited royalties for the musical performance of pieces of music managed by the Appellee before holding a live musical performance at the Club on April 10, 2016 (even if Appellant 2 handed royalties for pieces of music managed by the Appellee to the managers of the Club, the royalties, needless to say, do not fall under deposits). Therefore, the aforementioned allegation of Appellant 2 is groundless.

Determinations concerning other allegations of Appellant 2 in prior instance and this instance are as shown in 2.(2)D. and 2.(3) above (however, the part pertaining to the infringement of the "freedom to give a musical performance"), except for the part concerning circumstances peculiar to Appellant 1.

(3) For the reasons described above, it should be said that there is a "justifiable ground"

as provided in Article 16 of the Copyright Management Business Act for the Appellee's refusal of Application for Exploitation 2 filed by Appellant 2. Therefore, the Refusal of Application for Exploitation 2 does not constitute a tort.

Therefore, Appellant 2's claim for compensation for loss or damage based on a tort is groundless without the need to make determinations on the remaining points.

#### 6. Regarding Issue 3 (claim of Appellant 3)

(1) Appellant 3 alleges that the freedom to give a musical performance of Appellant 3 was infringed by the Refusal of Application for Exploitation 3 in the same manner as the Refusal of Application for Exploitation 1.

As mentioned in 2.(1) above, the act of refusing to grant the authorization to exploit pieces of music that a musician wishes to perform committed by the Appellee, which manages copyrights, etc. upon entrustment from the authors of pieces of music, can be considered to be the act that infringes the moral interests relating to the self-expression or self-realization of musicians unless there is a "justifiable ground" as provided in Article 16 of the Copyright Management Business Act.

Therefore, when considering whether there is a "justifiable ground" as provided in Article 16 of the Copyright Management Business Act for the Refusal of Application for Exploitation 3 by the Appellee, it should be said that whether there is a "justifiable ground" as provided in the same Act is to be determined from the perspective of whether the acceptance of an application for the authorization for exploitation for musical performance from a person who exploits a piece of music goes against the reasonable intentions of ordinary entrustors in consideration of not only the interests and current conditions of individual entrustors but also the appropriate management of copyrights, etc. and the necessity of the maintenance of trust in the business of the management body, as mentioned in 2.(2)A. above.

In terms of the actual business conditions of the Club, P, etc., the managers of the Club, can be considered as the actors of musical performances of pieces of music at the Club, as mentioned in 2.(2)B. above. In addition, according to the facts found as mentioned above, Application for Exploitation 3 is found to have been filed in response to the call on the Club's website, etc., with which the Club requested performers to file an application for the authorization for exploitation with the Appellee, while formally considering them as the actors of musical performances, on the premise of maintaining the Club's business form as in the past (the facts found as mentioned in 1.(4)C.(A) and (C) above) under the following circumstances: royalties for exploitation in the past have not been liquidated at all though pieces of music managed by the Appellee have been exploited without authorization at the Club for a long period of time (the facts found as

mentioned in 1.(2) above), and P, etc. have expressed their intention not to follow the Appellee's policy for copyright management and the judgment in first instance on the separate case. Furthermore, according to the facts found as mentioned above, Appellant 3 has performed in at least 32 live shows at the Club (the facts found as mentioned in 1.(3)A.(C) above) and is also found to have performed pieces of music managed by the Appellee without authorization at the Club immediately after the judgment in first instance on the separate case was rendered (the facts found as mentioned in 1.(4)A. above). Therefore, in light of such objective and external circumstances, it should be considered inevitable that the Appellee considered Application for Exploitation 3 filed by Appellant 3 as one filed by a person who agrees with and supports the operational attitude of the Club, which has not followed the Appellee's policy for copyright management and has exploited pieces of music managed by the Appellee without authorization for a long period of time. As long as the operational attitude of the Club as mentioned above must be considered as one that causes an obstacle to the stable management of copyrights and collection of royalties, if the Appellee grants the authorization for exploitation in response to Application for Exploitation 3, which is considered to have been filed based on agreement with and support of such operational attitude, there is a suspicion that it goes against the reasonable intentions of ordinary entrustors and could impair trust in the Appellee's business as a management body. Therefore, the Appellee's determination to refuse Application for Exploitation 3 cannot be considered unreasonable unless a special circumstance sufficient to eliminate such suspicion is found. In addition, no circumstance nor evidence sufficient to find a special circumstance as mentioned above can be found in this case.

Therefore, it should be said that there is a "justifiable ground" as provided in Article 16 of the Copyright Management Business Act for the Refusal of Application for Exploitation 3.

(2) In response to this, Appellant 3 alleges as follows: Application for Exploitation 3 is not the one that was filed in response to the call of P, etc. for the purpose of altering the situation of the action on the separate case to the advantage of Appellant 3; Appellant 3 does not have a close relationship with P, etc.; in addition, Appellant 3 performed pieces of music managed by the Appellee at the Club on April 10, 2016 after he/she deposited 140 yen per piece of music; therefore, he/she was not involved in copyright infringement. However, in the same manner as explained in 2.(2)C.(B) above, in light of Appellant 3's past performances at the Club, etc., as well as the background to and the timing of the filing of Application for Exploitation 3, it is inevitable that the same application is externally and objectively considered as one filed by a person who agrees with and

supports the operation of the Club, which has used pieces of music managed by the Appellee without authorization for a long period of time, setting aside the subjective intention of Appellant 3. Incidentally, even by the detailed examination of all pieces of evidence of this case, it cannot be found that Appellant 3 deposited royalties for the musical performance of pieces of music managed by the Appellee before holding a live musical performance at the Club on April 10, 2016 (even if Appellant 3 handed royalties for pieces of music managed by the Appellee to the managers of the Club, the royalties, needless to say, do not fall under deposits). Therefore, the aforementioned allegation of Appellant 3 is groundless.

Determinations concerning other allegations of Appellant 3 in prior instance and this instance are as shown in 2.(2)D. and 2.(3) above (however, the part pertaining to the infringement of the "freedom to give a musical performance"), except for the part concerning circumstances peculiar to Appellant 1.

(3) For the reasons described above, it should be said that there is a "justifiable ground" as provided in Article 16 of the Copyright Management Business Act for the Appellee's refusal of Application for Exploitation 3 filed by Appellant 3. Therefore, the Refusal of Application for Exploitation 3 does not constitute a tort.

Therefore, Appellant 3's claim for compensation for loss or damage based on a tort is groundless without the need to make determinations on the remaining points.

#### 7. Conclusion

For the reasons described above, all the claims of the Appellants are groundless and should thus be dismissed.

Therefore, the determination in the judgment in prior instance to the same effect is reasonable, and all the appeals are groundless and should thus be dismissed.

Accordingly, the judgment shall be rendered in the form of the main text.

Intellectual Property High Court, Fourth Division

Presiding judge: KANNO Masayuki

Judge: NAKAMURA Kyo

Judge: OKAYAMA Tadahiro