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judgedate

2001.02.13

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caseid

1999(Ju)955

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reporter

Minshu Vol. 55, No. 1

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casetitle

Judgment on a case where use of a memory card was held to infringe the right of
integrity held by the copyright holder of game software

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casename

Case claiming compensation for damages, etc.

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caseresult

Judgment of the Third Petty bench, dismissed

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court_second

Osaka High Court, Judgment of April 27, 1999

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summary_judge

1. With respect to game software in which the main character's personality is expressed by parameters and the story unfolds with changes in these parameters, use of a certain memory card infringes the right of integrity held by the copyright holder of the game software by modifying the game software, under the factual circumstances described in the judgment, including that the main character's personality is modified by use of the memory card which replaces the parameters with originally impossible high values, resulting in the story of the game software unfolding beyond the scope originally planned.

2. A person who imported and sold a memory card intended exclusively to modify game software and who placed such memory card in circulation with the intention of allowing others to use such memory card, is liable to compensate the copyright holder of the game software for damage based on tort, on the grounds that such use of the memory card by others resulted in an infringement of the right to preserve the integrity of the game software.

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references

(For 1 and 2) Article 20 of the Copyright Act; (For 2) Chapter VII ("Infringement of

Rights”) of the Copyright Act and Articles 709 and 719 of the Civil Code

Copyright Act

Article 20 (1) The author of a work has the right to preserve the integrity of that work and its title, and is not to be made to suffer any alteration, cut, or other modification thereto that is contrary to the author's intention.

(2) The provisions of the preceding paragraph do not apply to the following modifications:

(i) the alteration of a written character or word, or any other modification that is found to be unavoidable from the perspective of school education purposes, when a work is exploited pursuant to the provisions of Article 33, paragraph (1) (including when these apply *mutatis mutandis* pursuant to paragraph (4) of the same Article) or Article 34, paragraph (1);

(ii) the modification of an architectural work by means of extension, rebuilding, repair, or remodeling;

(iii) a modification that is necessary for a work of computer programming that otherwise cannot be used on a particular computer to be compatible with that computer, or for a work of computer programming to be used more effectively on a computer;

(iv) a modification other than ones set forth in the preceding three items, which is found to be unavoidable in light of the nature of the work and the purpose and circumstances of its exploitation.

Civil Code

Article 709 A person who has intentionally or negligently infringed any right of others

shall be liable to compensate any damages resulting in consequence.

Article 719 (1) If more than one person has inflicted damages on others by their joint tortious acts, each of them shall be jointly and severally liable to compensate for those damages. The same shall apply if it cannot be ascertained which of the joint tortfeasors inflicted the damages.

(2) Any abettor or aider shall be deemed to be one of the joint tortfeasors.

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maintext

The appeal shall be dismissed.

The cost of the appeal shall be borne by the appellant.

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reason

1. An outline of the case

In this case, the appellee, who holds an author's moral right over the computer game software "D" (hereinafter referred to as the "Game Software"), claims compensation for mental suffering alleging that the appellant's acts of import and sale of a memory card whose trade name is "X-TERMINATOR for PS Ver. 2E" (hereinafter referred to as the "Memory Card") infringe the appellee's right of integrity.

An outline of the facts related to the case which duly became final and binding in the judgment of prior instance is as described below:

(1) The appellee holds an author's moral right over the Game Software. The Game Software is a love simulation game in which the main character (i.e., the player) of the game becomes a student of a fictitious high school, selects his favorite schoolgirl from

among the characters in the game and, with the aim of receiving a confession of love from this schoolgirl on the graduation day, steps up efforts through studying, incidents, events, etc., he experiences during three years, to develop his capabilities that deserve to receive a confession of love from his favorite schoolgirl.

In the Game Software, the player's capability values are set at default values in the form of nine types of apparent parameters (physical condition, humanities, science, arts, sports, wide knowledge, appearance, willpower and stress) and three types of hidden parameters (levels of thrill, friendship and heartbreak, which indicate the schoolgirl's evaluation of the player; together with the apparent parameters, hereinafter collectively referred to as the "Parameters"). The commands that can be selected by the player are predetermined and the Parameters are set so that the player's choice of command results in some Parameters rising while others falling in a linked manner. Whether or not the player can receive a confession of love from the schoolgirl is determined depending on the values of the Parameters achieved by the player. In the Game Software, the main story is that the player starts from the default capability values and improves his own capabilities with a goal of receiving a confession of love from his favorite schoolgirl. In the process, the Game Software provides settings where the player meets other schoolgirls according to the level of capability values achieved by him. The story unfolds within certain limits under certain conditions.

(2) The appellant imported the Memory Card and sold 522 units of it. The Memory Card contains, in its units of data storage (i.e., blocks 1 through 13), the Parameters used in the Game Software in data form. When executing the program of the Game Software, the player can read the data contained in any block of the Memory Card into the hardware of the game machine and use such data.

(3) Since the Game Software provides a setting where the player starts from low capability values and where the player's choice of command results in some Parameters rising while others falling in a linked manner, even if the player is successful in raising apparent parameters in the most efficient manner, he can, at the most, achieve high values in a small number of specific apparent parameters at a time just before graduation; it is impossible for the player to achieve high values in most of the nine apparent parameters solely by his own manipulations. In addition, the story is supposed to unfold based on the assumption that no schoolgirls appear until the values of the apparent parameters reach a certain level.

In contrast, if the data contained in any of blocks 1 through 11 of the Memory Card is used, most of the apparent parameters other than stress reach extremely high values at a time just after entrance into school and, because these values allow the player to play at a level of achievement satisfactory to his favorite schoolgirl, other schoolgirls who are not originally supposed to appear from just after the entrance into school do appear.

In addition, if the data contained in block 12 or 13 is used, the starting time of the game leaps to a time just before graduation. At the same time, the data contained there results in all apparent parameters other than stress being replaced with high values that are originally impossible, as well as the values of the hidden parameters reaching a level that is necessary to receive a confession of love from the player's favorite schoolgirl, allowing the player to receive a confession of love from his favorite schoolgirl without fail.

2. Regarding section 4 of the reasons for the petition for acceptance of final appeal filed by the counsels for the appeal, YAMAMOTO Norio and YAMAMOTO Tomoko

The images used in the Game Software constitute works as defined in Article 2,

paragraph (1), item (i) of the Copyright Act, since these images are products in which thoughts or sentiments are expressed in a creative way and which falls within the literary, scientific, artistic or musical domain. [Summary 1] Under the factual circumstances described above, it is appropriate to understand that use of the Memory Card infringes the appellee's right of integrity by modifying the Game Software. This is because, while the parameters in the Game Software express the player's personality and the story unfolds with changes in these parameters, use of the Memory Card modifies the player's personality expressed by the parameters set in the Game Software, resulting in the story of the Game Software unfolding beyond the scope originally planned and being so modified.

The ruling by the court of prior instance, which is consistent with the above, is acceptable as legitimate, and the judgment of prior instance has no alleged illegality. The gist of the argument of the petition for appeal is not acceptable, since it merely criticizes the judgment of prior instance from a unique perspective.

3. Regarding section 5 of the reasons for the petition for acceptance of final appeal filed by the counsels for the appeal, YAMAMOTO Norio and YAMAMOTO Tomoko

As described above, use of the Memory Card infringes the appellee's right to preserve the integrity of the Game Software. According to the facts found as described above, the appellant imported and sold the Memory Card which is intended exclusively to modify the Game Software, and many people actually purchased the Memory Card. As long as this is true, the appellant is considered to have placed the Memory Card in circulation, with the expectation that there would be people who will actually use the Memory Card. On the other hand, according to the facts described above, people who actually purchased the Memory Card are presumed to have actually used it. This means that their use of the Memory Card infringed the appellee's right to preserve the

integrity of the Game Software and that, without the appellant's acts described above, the infringement of the appellee's right to preserve the integrity of the Game Software would not have occurred. Therefore, [Summary 2] it is appropriate to understand that the appellant, who imported and sold the Memory Card intended exclusively to modify the Game Software and who placed the Memory Card in circulation with the intention of allowing others to use the same, is liable to compensate the appellee for damage based on tort, on the grounds that such use of the Memory Card by others resulted in an infringement of the appellee's right to preserve the integrity of the Game Software. The ruling of the court of prior instance concerning the point at issue is legitimate in conclusion, and the judgment of prior instance has no alleged illegality. The gist of the argument of the petition for appeal is not acceptable.

Accordingly, the Court unanimously decides as set forth in the main text.

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presiding

Justice OKUDA Masamichi

Justice CHIKUSA Hideo

Justice MOTOHARA Toshifumi

Justice KANATANI Toshihiro

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note_other

(This translation is provisional and subject to revision.)