

Copyright	Date	February 21, 2022	Court	Intellectual Property High Court, Second Division
	Case number	2020 (Ne) 10005		

- A case in which, regarding the Appellant's demands for disclosure of identification information of the sender against the Appellee, which is a foreign corporation that has provided content delivery network services for a website, as posts infringing the copyright of the Appellant were made in the form of uploading images of works (cartoons) on said website, the court found international jurisdiction, and partially modified the judgment in prior instance, which dismissed all of the Appellant's demands for disclosure since it is possible for the Appellant to identify the person who made the posts and demand compensation for damages, etc., in consideration of circumstances found based on evidence, including the fact that the Appellee has arbitrarily disclosed to the Appellant the email address, IP address, and time stamp, by ruling that it cannot be found that said arbitrary disclosure enabled the Appellant to identify the person who made the posts and said arbitrary disclosure did not have an impact on the determination that the Appellant has reasonable grounds to receive the disclosure of the name and address, and upheld the Appellant's demand for disclosure to the aforementioned extent.

Case type: Disclosure of Identification Information of the Sender

Results: Partial modification of the prior instance judgment

References: Article 4, paragraph (1) of the Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Sender (before Article 4 was amended to Article 5 through the amendment by Act No. 27 of 2021)

Judgment in prior instance: Tokyo District Court, 2018 (Wa) 11982, rendered on January 22, 2020

Summary of the Judgment

1. The Appellant is the copyright holder of works (the "Works") that are cartoons. The Appellee is a company established in accordance with laws of the State of California, U.S.A., and provides users with content delivery network services (the "Appellee's Services") to store users' data on the internet as cache and deliver them using the Appellee's servers that are dispersed throughout the world.

In this case, the Appellant alleged that images of the Works were uploaded (the "Posts") on a website established by a user of the Appellee's Services (the "Website")

and the copyright (right to transmit to the public and right to make available for transmission) of the Appellant was infringed, and demanded, based on Article 4, paragraph (1) of the Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Sender (the "Provider Liability Limitation Act"), that the Appellee disclose [i] the name, address, email address, and IP address of a person who manages the telecommunication facility which is connected to the specified URL for connection and was used for communication on the day and time of posting of each of the Posts ("Sender Information 1") and [ii] the name, address, email address, IP address, and time stamp out of information related to the account used by the sender of the Posts ("Sender Information 2").

2. In the judgment in prior instance, the court found jurisdiction as specified in Article 3-3, item (v) of the Code of Civil Procedure and then, determined that it cannot be found that the Appellee has Sender Information 1 and that, concerning Sender Information 2, the email address, IP address, and time stamp were arbitrarily disclosed to the Appellant by the Appellee and, in consideration of circumstances found based on the evidence, including said fact, it is possible for the Appellant to identify the person (the "Sender") who made the Posts and demand compensation for damages, etc., and therefore that the Appellant has no reasonable grounds to receive the disclosure of any of Sender Information 2. Based on the above, the court of prior instance dismissed all of the Appellant's demands. Dissatisfied with this judgment, the Appellant filed an appeal.

3. In this judgment, the court maintained the judgment in prior instance concerning the international jurisdiction and Sender Information 1, and at the same time, it determined as outlined below and upheld the Appellant's demand for disclosure to the extent of the name and address that have not yet been disclosed by the Appellee.

(1) Based on the fact that a person who had an account on the Appellee's Services and managed the Website was found to be the Sender, the Appellant has reasonable grounds to receive the disclosure of Sender Information 2 from the Appellee in order to exercise the right to demand compensation for damages from the Sender.

However, it is found that the Appellee arbitrarily disclosed to the Appellant the email address, IP address, and time stamp out of Sender Information 2 and it cannot be said that there are reasonable grounds to demand disclosure thereof again. On the other hand, it is not found that the Sender was identified by said arbitrary disclosure and the arbitrary disclosure does not have an impact on the determination that the Appellant has reasonable grounds to receive the disclosure of the name and address out of Sender Information 2.

Therefore, the Appellant has reasonable grounds to request the disclosure from the Appellee to the aforementioned extent of the name and address.

(2) The Appellee alleged that the Appellant has identified the counterpart from which compensation for damages is sought. However, it is not found that there are any circumstances where the Appellant has identified the Sender based on the aforementioned arbitrary disclosure.

In this regard, the circumstances that are found based on evidence where persons related to the Website have been arrested and prosecuted are only general circumstances related to the management of the Website or those related to a violation of the Copyright Act by acts apart from the Posts and do not concretely support that the Sender is included among the aforementioned persons related to the Website.

In addition, it should be said that the information specified in items (i) through (viii) of the Ministerial Order Specifying Identification Information of the Senders under Article 4, Paragraph (1), of the Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Sender is specified as information that is to be reasonably disclosed from typical and general perspectives as long as the other requirements specified in Article 4, paragraph (1) of the Provider Liability Limitation Act are met. It is not interpreted that if part of the information is arbitrarily selected and disclosed out of the information specified in each of the aforementioned items by the related service provider as set forth in Article 4, paragraph (1) of the Provider Liability Limitation Act, the necessity of disclosure of the remaining information is immediately lost.

(3) The Appellant alleged that since the Sender was not identified by the aforementioned arbitrary disclosure, the Appellant has just cause to receive the disclosure of the IP addresses upon logins after the time that was determined to be subject to the arbitrary disclosure from the Appellee. However, it cannot be said that there are reasonable grounds for the Appellant to demand that the Appellee disclose information such as the IP address upon a login on a date later than the times of the Posts.

Judgment rendered on February 21, 2022

2020 (Ne) 10005, Appeal case of seeking disclosure of identification information of the senders

(Court of prior instance: Tokyo District Court, 2018 (Wa) 11982)

Date of conclusion of oral argument: January 24, 2022

Judgment

Appellant (First-instance Plaintiff): X

Appellee (First-instance Defendant): Cloudflare, Inc.

Main text

1. The judgment in prior instance shall be modified as follows.
2. The Appellee shall disclose the "1. Name" and "2. Address" among the information stated in the Attachment, List of Identification Information of Senders 2, to the Appellant.
3. The remaining claims of the Appellant shall be dismissed.
4. Court costs in the first and second instances shall be divided into four and the Appellee shall bear one-fourth of the costs and the Appellant shall bear the remaining costs.
5. The additional time frame for final appeal and for petition for acceptance of final appeal against this judgment shall be thirty days.

Facts and reasons

The abbreviation of terms and the meanings of abbreviations are subject to the judgment in prior instance. In addition, "the Defendant's Services" as used in the cited part of the judgment in prior instance is deemed to be replaced with "the Appellee's Services."

No. 1 Object of the appeal

1. The judgment in prior instance shall be rescinded.
2. The Appellee shall disclose "1. Name" and "2. Address" in the Attachments, Lists of Identification Information of Senders 1 and 2, to the Appellant.
3. The Appellee shall bear the court costs for both the first and second instances.

No. 2 Outline of the case

1. Outline of the case

- (1) The Appellant is the copyright holder of works in question (the "Works"), which are

cartoons.

The Appellee is a company established in accordance with laws of the State of California, U.S.A., and provides users with content delivery network services (the "Appellee's Services") to store users' data on websites (the "Original Websites") as caches and delivers them using the Appellee's servers that are located throughout the world.

(2) In this case, the Appellant alleged that the Works were uploaded (the "Posting of the Works") on a website named "Manga-mura (Manga Village)" (the "Website") that was established by a user of the Appellee's Services, and the copyright (right to transmit to the public and right to make available for transmission) of the Appellant was thus infringed. Based on Article 4, paragraph (1) of the Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Sender (the "Provider Liability Limitation Act"), the Appellant demanded that the Appellee disclose the information stated in the Attachment, List of Identification Information of Senders 1, ("Sender Information 1") and the information stated in the Attachment, List of Identification Information of Senders 2, ("Sender Information 2").

(3) In the prior instance, the court determined that it cannot be found that the Appellee has Sender Information 1. Concerning Sender Information 2, as the email addresses, IP addresses, and time stamps were voluntarily disclosed to the Appellant by the Appellee, in consideration of circumstances found based on the evidence, including said fact, the court also determined that it is possible for the Appellant to identify the persons (the "Senders") who conducted the Posting of the Works and demand compensation for damages, etc., and therefore that the Appellant has no reasonable grounds to receive the disclosure of any of Sender Information 2. Based on the above, the court of prior instance dismissed all of the Appellant's claims.

Dissatisfied with the judgment in prior instance, the Appellant filed an appeal.

2. The basic facts, issues, and allegations of the parties related to the issues are altered as follows, and the supplementary allegations of the Appellant in this instance as stated in 3. below are added. The remaining parts are as stated in 2. and 3. in "No. 2 Outline of the case" and in "No. 3 Allegations of the parties" in the "Facts and reasons" section in the judgment in prior instance and they are therefore cited.

(1) The phrase from "the Senders" in line 3 until the end of line 4, page 3 of the judgment in prior instance is altered to "was disclosed as a website where users were able to widely browse cartoons by using the Appellee's Services at the time of the Posting of the Works. (The entire import of oral arguments)" and the following is added as a new

line after the above phrase.

"(4) Voluntary disclosure by the Appellee

The Appellant demanded that the Appellee disclose the Sender Information on April 16, 2018 and filed this litigation with the Tokyo District Court.

In response to this, the Appellee informed the Appellant that the Website was closed as of August 7, 2018 and that the Appellee does not hold Sender Information 1. The Appellee also disclosed email addresses, IP addresses until July 25, 2018, and time stamps related thereto (hereinafter collectively referred to as the "Logs") as a response to the demand for disclosure of Sender Information 2 (Exhibits Otsu 4 and 5)."

(2) The phrase "is connected" in line 23, page 3 of the judgment in prior instance is altered to "was connected".

No. 3 Judgment of this court

This court determines that the claim of the Appellant has grounds to the extent of demanding disclosure of the names and addresses among Sender Information 2. The grounds are as stated below, including the determination concerning the supplementary allegation of the Appellant in this instance as stated in No. 2, 3. above.

1. Issue 1 (Whether the court has international jurisdiction)

On page 8 of the judgment in prior instance, the phrase "the Original Websites" as used in line 10 is altered to "the content of the Original Websites"; the phrase "uses" in line 18 is altered to "used"; the phrase "can be viewed" in line 20 is altered to "could be viewed"; the phrase "is stored" in line 21 is altered to "was stored"; the phrase "falls under" in lines 24 and 25 is altered to "falls under ... and"; and the phrase "uses" in line 26 is altered to "used", respectively. The remaining parts of the judgment in prior instance are as stated in 1. of "No. 4 Judgment of this court" in the "Facts and reasons" section in the judgment in prior instance and they are therefore cited.

2. Issue 2 (Whether the right infringement is obvious)

According to the facts stated in 2. (2) and (3), "No. 2 Outline of the case" in the "Facts and reasons" section in the judgment in prior instance that were altered and cited and the evidence (Exhibits Ko 5 and 6), it is found that the Senders conducted the Posting of the Works without reasonable grounds immediately after release of the digital version of the Works and placed them in a state where a third party would be able to freely view the Works. Therefore, it is obvious that the Senders infringed the Appellant's right to transmit to the public and right to make transmittable.

3. Issue 4 (Whether the Appellee has Sender Information 1)

(1) Based on all articles of the evidence in this case, it cannot be found that the Appellee has Sender Information 1. As stated in 2. (4), "No. 2 Outline of the case" in the "Facts and reasons" section in the judgment in prior instance that was altered and cited (the part added in this instance), the following allegations of the Appellee have been consistent: the Appellee informed the Appellant that the Appellee did not have Sender Information 1 as of August 7, 2018, and, at the same time, the Appellee voluntarily disclosed the Logs to the Appellant (according to the entire import of oral arguments, it was found that the Logs were of considerable volume), and since then, the Appellee has no Sender Information 1 because the Website was closed. Taking into account the characteristics of the Appellee's Services in addition to the Appellee's allegations above, the allegation of the Appellee that it does not hold Sender Information 1 due to the reasons above cannot immediately be determined to be unreasonable.

On the other hand, the Appellant alleged that he/she demanded that the Appellee preserve logs related to the Posting of the Works as of May 9, 2018. However, even if there are said circumstances, this does not have an impact on the aforementioned determination immediately.

(2) Consequently, without the need to make determinations on the remaining issues, the part requesting disclosure of Sender Information 1 among the Appellant's claims is groundless.

4. Issue 3 (Whether there are reasonable grounds to receive disclosure of identification information of the senders)

(1) In addition to the findings and determinations in 2. above, based on the evidence (Exhibit Ko 11, Exhibits Ko 12-1 and 12-2, Exhibit Ko 13, and Exhibits Otsu 4 and 5) and the entire import of oral arguments, persons who had an account on the Appellee's Services and operated the Website can be presumed to be the Senders. There are no circumstances to overturn this presumption. Therefore, it is found that the Appellant has reasonable grounds to receive disclosure of Sender Information 2 in order to execute the rights to claim payment of compensation for damages, etc. against the Senders.

According to 2. (4) of "No. 2 Outline of the case" in the "Facts and reasons" section in the judgment in prior instance that was altered and cited (the part added in this instance), the evidence (Exhibits Otsu 4 and 5), and the entire import of oral arguments, the Logs are found to be the information stated in items 3 through 5 of the Attachment, List of Identification Information of Senders 2, and have already been disclosed to the Appellant. Therefore, it is determined that there are no reasonable grounds for the Appellant to claim that the Appellee disclose them again. On the other hand, it is not found that the Senders were identified by disclosure of the Logs and the disclosure does

not have an impact on the determination that the Appellant has reasonable grounds to receive the disclosure of the information (names and addresses) stated in items 1 and 2 in said List 2.

Therefore, the Appellant has reasonable grounds to request the disclosure to the Appellee to the extent of the information in items 1 and 2 of said List 2.

(2) The Appellee alleged that the Appellant has identified the counterpart from which compensation for damages is sought.

First, however, as mentioned above, it is not found that there are circumstances where the Appellant identified the Senders based on the disclosure of the Logs. Instead, according to the entire import of oral arguments, it seems that the Senders could not be identified based on the Logs even by a specialized investigation organization.

In this regard, concerning the circumstances where persons related to this case were arrested and prosecuted (Exhibits Otsu 9 through 17), they are only general circumstances related to the operators of the Website or those related to a violation of the Copyright Act by acts separate from the Posting of the Works and do not concretely support that the Senders are included among the aforementioned persons related to this case.

The evidence related to the statements of the Appellant's counsel (Exhibits Otsu 7 and 8) are also insufficient to find that the Appellant identified the Senders.

In addition, provisions of items (i) through (viii) of the Ministerial Order Specifying Identification Information of the Senders under Article 4, Paragraph (1), of the Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Sender list and specify the information contributing to identifying the senders of infringing information as specified in Article 4, paragraph (1) of the Provider Liability Limitation Act. It should be said that the information specified in said items is specified as information that is to be reasonably disclosed from typical and general perspectives as long as the other requirements specified in Article 4, paragraph (1) of the Provider Liability Limitation Act are met. Even if part of the information is voluntarily selected and disclosed out of the information specified in the aforementioned items by the related service provider as set forth in said paragraph, it is not interpreted that the necessity of disclosure of the remaining information is immediately lost (both the Provider Liability Limitation Act and the aforementioned Ministerial Order have no provisions that it is enough when the relevant service provider discloses the information specified in the aforementioned items to the extent necessary.).

Consequently, the aforementioned allegation of the Appellee cannot be adopted.

(3) The Appellant alleged that since the Senders were not identified by the Logs, the Appellant also has just cause to receive the disclosure of the IP addresses upon logins after July 26, 2018 from the Appellee. However, it cannot be said that there are reasonable grounds for the Appellant to demand that the Appellee disclose information such as IP addresses upon logins on a date later than the time of the Posting of the Works although the Appellee had already disclosed to the Appellant the Logs that constitute the information stated in items 3 through 5 of the List of Identification Information of Senders 2.

5. Issue 5 (Whether the Appellee falls under a provider of disclosure-related services)

According to the facts indicated in 2. (2) and (3) of "No. 2 Outline of the case" in the "Facts and reasons" section in the judgment in prior instance that were altered and cited, and the findings and determinations in 2. and 4. (1) above, it is reasonable to deem that the Appellee falls under the category of a provider of disclosure-related services as defined in Article 4, paragraph (1) of the Provider Liability Limitation Act.

No. 4 Conclusion

Consequently, the claims of the Appellant in the principal action have grounds to the extent of demanding that the Appellee disclose the names and addresses among Sender Information 2, and the remaining part is groundless. However, the judgment in prior instance that dismissed all of the claims of the Appellant in the principal action is unreasonable. Therefore, the judgment in prior instance shall be modified to the aforementioned extent and the judgment is rendered as indicated in the main text.

Intellectual Property High Court, Second Division

Presiding judge: HONDA Tomonari

Judge: NAKAJIMA Tomohiro

Judge: KATSUMATA Kumiko

Attachment

List of Identification Information of Senders 1

The following information on the person who was managing the telecommunication facility connected to the URL for connection stated in the Attachment, List of Posted Articles, on the day and time of the posting of each of the articles as stated in said List

Descriptions

1. Name
2. Address
3. Email address
4. IP address

Attachment

List of Identification Information of Senders 2

List of Identification Information of Senders

The following information among information related to the accounts used by senders of the posted articles stated in the Attachment, List of Posted Articles

1. Names
2. Addresses
3. Email addresses
4. All IP addresses held by the Appellee among IP addresses upon logins to the aforementioned accounts
5. Date and time (Japan Standard Time) when the aforementioned posting information was sent to the specified telecommunication facility used by the Appellee from telecommunication facilities for which IP addresses as defined in the preceding paragraph are assigned.

URL for connection: <http://> [omitted hereinafter]

2. Posting date and time: 2018/02/21 13:54:05



URL for connection: <http://> [omitted hereinafter]

3. Posting date and time: 2018/02/21 09:06:29

