

Date	September 15, 2016	Court	Tokyo District Court, 46th Civil Division
Case number	2015 (Wa) 17928		
– A case in which the court partly dismissed the plaintiff's claim for the disclosure of identification information of senders against the defendant companies that operate an internet website for posting short text messages.			

Reference:

Number of related rights, etc.:

Summary of the Judgment

In this case, the plaintiff alleged infringement of his or her copyright (right of reproduction, right to transmit to the public, etc.) and moral rights of author (right of attribution, right of integrity, etc.) on the grounds that, on an internet website for posting short text messages, the photograph that was the plaintiff's work (the "Photograph") was [i] used by a person whose name is unknown as a profile image of Account 1 without the plaintiff's permission and then displayed on the timeline and tweets (posted messages) of that account, [ii] used by a person whose name is unknown as part of a tweet with an image without the plaintiff's permission and displayed on the timeline of Account 2; and [iii] displayed on the timelines of Accounts 3 to 5 held by persons whose names are unknown, as a result of their retweeting of the tweet mentioned in [ii] (the "Retweeting"). Based on this allegation, the plaintiff demanded 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 Senders (the "Provider Liability Limitation Act"), with regard to the acts mentioned in [i] to [iii], that the defendants, i.e., a US corporation operating this website and its Japanese subsidiary, disclose the identification information of senders as of the time when the abovementioned persons whose names are unknown logged in to their respective accounts, including the IP addresses, etc. used for their latest login as of the noon of the day on which a judgment of this case becomes final and binding. The plaintiff alternatively demanded the disclosure of identification information of senders at the time of the posting of these tweets. The parties agree that the acts of setting a profile image with the Photograph and displaying the Photograph on the timeline mentioned in [i] and the act of posting the tweet mentioned in [ii] constitute infringement of the plaintiff's right to transmit to the public.

The major issues of the case are: (1) whether the Japanese subsidiary possesses the demanded identification information of senders; (2) whether it is obvious that the

display of the Photograph on the tweets mentioned in [i] and the timelines mentioned in [i] and [ii] infringes the plaintiff's copyright, etc.; (3) whether it is obvious that the Retweeting infringes the plaintiff's copyright, etc.; and (4) whether the demanded IP addresses, etc. used for the latest login as of the date of finalization of the judgment fall within the scope of identification information of senders.

In this judgment, the court, holding as summarized below, upheld the plaintiff's claim against the defendant US corporation with regard to the email addresses which were involved in the undisputed infringement of the plaintiff's right to transmit to the public and which the corporation has admitted to possessing, while dismissing all the other claims of the plaintiff.

On Issue (1), it is not found that the defendant Japanese subsidiary possesses information concerning identification of users or has authority to disclose identification information of senders.

On Issue (3), the image of the Photograph was displayed on the timelines of Accounts 3 to 5 because, as a result of the Retweeting, inline links to the linked URLs were automatically added to the URLs of these timelines, and the data of the image file was transmitted directly from the linked URLs to the user terminals such as personal computers. Since the image data of the Photograph was not transmitted to the URLs of said timelines, nor was this data transmitted from these URLs to the user terminals, the Retweeting is not in itself an act of transmitting said image data or making said data available for transmission, and hence it does not constitute transmission to the public. Furthermore, due to such mechanism of retweeting, the Retweeting would not result in reproducing the image file of the Photograph, which means that it does not infringe the plaintiff's right of reproduction, and it would not also result in modifying said image file, which means that it does not infringe the plaintiff's right of integrity, either. Moreover, since the persons who did the Retweeting cannot be deemed to have made available or presented the Photograph to the public, the Retweeting does not infringe the plaintiff's right of attribution. The plaintiff's allegation on Issue (2), which also involves the issue of inline links, is also unacceptable.

On Issue (4), in light of the wording of Article 4, paragraph (1) of the Provider Liability Limitation Act, it cannot be understood that any information contributing to identifying the sender of infringing information would be subject to disclosure, but it should rather be considered that information which does not "pertain to infringement of said right" is excluded from the scope of disclosure. In addition, that paragraph provides that the information subject to disclosure is specified by Order of the Ministry of Internal Affairs and Communications, and following this provision, Order of the

Ministry of Internal Affairs and Communications No. 57 of 2002 was established. Accordingly, it is appropriate to construe that "IP address pertaining to infringing information" referred to in item (iv) of that Order does not include an IP address that is irrelevant to the transmission of the infringing information, and a time stamp that is irrelevant to the transmission of the infringing information cannot be regarded as the "date and time on which the infringing information was transmitted" referred to in item (vii) of that Order. In this case, the IP addresses, etc. used for the latest login, for which the plaintiff demanded disclosure, are obviously irrelevant to the acts of transmitting the allegedly infringing information. Thus, these IP addresses, etc. fall under neither item (iv) nor item (vii) of that Order, and hence, they do not fall within the scope of "identification information of senders" referred to in Article 4, paragraph (1) of the Provider Liability Limitation Act.