

Copyright	Date	June 29, 2022	Court	Intellectual Property High Court, Second Division
	Case number	2022 (Ne) 10005		
<p>- A case in which the court determined that acts of the Appellants to provide advertisements on a website where bootleg manga were posted and pay advertising fees fall under acts of aiding and abetting infringement of the Appellee's right to transmit to the public on said website and that the Appellants were at least negligent concerning said acts, and the court determined damages based on Article 114, paragraph (1) of the Copyright Act.</p>				

Case type: Claim for compensation

Result: Appeal dismissed

References: Article 719, paragraphs (1) and (2) of the Civil Code, Article 709 of the Civil Code, and Article 114, paragraph (1) of the Copyright Act

Judgment in prior instance: Tokyo District Court, 2021 (Wa) 1333, rendered on December 21, 2021

Summary of the Judgment

1. The Appellee (the first-instance Plaintiff) is a manga artist and both of the Appellants, P and Q, (the first-instance Defendants) are stock companies including an advertising agency to handle online advertisement for their business purposes.

In this case, concerning the fact that a manga (the manga of the first-instance Plaintiff (the Appellee); hereinafter referred to as the "Plaintiff's Manga"), for which the Appellee has the copyright, was uploaded on a website under the name of "Mangamura" (hereinafter referred to as the "Website") and the Appellee's right to transmit to the public was infringed, the Appellee alleged against the Appellants that a series of acts of the Appellants (hereinafter referred to as the "Acts") to provide advertisements on the Website and pay advertising fees to the administrative operator of the Website fall under accessoryship for the infringement. Based on this allegation, the Appellee demanded that the Appellants jointly and severally pay compensation for damages of 11 million yen and delay damages accrued thereon based on the tort (Article 719, paragraphs (1) and (2), and Article 709 of the Civil Code).

2. The judgment in prior instance granted all claims of the Appellee. Dissatisfied with this judgment, the Appellants filed an appeal. Concerning said 11 million yen, the Appellee alleged in prior instance that it was exclusively a total sum of decreases in sales of 10 million yen and legal fees of one million yen. However, in the second instance, the Appellee selectively added an allegation that said 10 million yen is part of

the damages pursuant to Article 114, paragraph (1) of the Copyright Act of 211,258,200 yen (hereinafter referred to as the "Partial Claim").

3. In this judgment, in the same way as the judgment in prior instance, the court determined that the Acts that are found to have been performed jointly by Appellants fall under accessoryship for infringement of the right to transmit to the public concerning the Plaintiff's Manga on the Website and the Appellants were at least negligent concerning the Acts. Based on the additional allegation of the Appellee, the court determined that the damage to the Appellee based on Article 114, paragraph (1) of the Copyright Act exceeded the amount of the Partial Claim and dismissed all appeals by the Appellants. The outline of the judgment is as stated below.

(1) Whether the Acts fall under accessoryship

Based on the actual operation status of the Website where advertising revenue is almost the only financial resource, acts to post advertisements on the Website and pay advertising fees to the administrative operator side fall under acts to assist or facilitate the act of the administrative operator of the Website to post manga on the Website without obtaining approvals of the copyright holders generally by way of providing almost the sole financial resource for operating the Website. There are no circumstances to understand the Acts that are found to have been performed jointly by the Appellants in a way different from the above.

(2) Negligence of the Appellants (The Appellee alleged that, as of May 2017 at the latest, the Appellants had intent or negligence.)

When Appellant P intended to start to distribute advertisements on the Website using an ad network that it operated, the Appellant P received a presentation of the Website's title and URL, examined whether or not to make registration based on information including the title and URL, approved to make registration, and manually configured the settings for distribution of advertisements. However, there were the following circumstances: up to 2017, it had become a big problem that advertising revenue was a financial resource of illegal websites, etc.; concerning the Website, as of April 2017, it was explained that viewers could read manga without registration and without charge and it could be understood at a glance that a massive number of manga were posted; there were multiple tweets pointing out its illegality; and as of May 10, 2017 at the latest, it was easy for viewers to understand that Japanese works were posted on the assumption that their copyrights are not protected. Based on these circumstances, in May 2017 at the latest, the Appellants could have easily assumed that many manga posted on the Website were posted without obtaining approvals of the copyright holders, and the advertising revenue was almost the only financial resource of the Website, and

therefore, the acts of the Appellants to provide advertisements on the Website and pay advertising fees were nothing but acts to support copyright infringement. Based on the above, as of May 2017, the Appellants were under a duty of care to check with the administrative operator of the Website in relation to the presence of consent agreements with the copyright holders and to take appropriate measures or to refuse registration on the ad network of the Website without the need to even implement said check (if said registration had been completed, the duty of care to take actions such as canceling the agreement related thereto). The fact that the Appellants neglected the duty of care as of said month and, subsequently, continued to perform the Acts without careful consideration, is supported by the subsequent behavior, etc. of the Appellants. The Appellants' allegation that there was no foreseeability or possibility to avoid the results and there was no violation of the duty of care, cannot be accepted.

(3) Damages defined in Article 114, paragraph (1) of the Copyright Act

In light of the viewing method of manga on the Website and the fact that page views (PV) per visitor were found to be 10.69, and in consideration of the fact that when a person visits the Website, it is fully possible for the person to view multiple volumes per visit, or on the other hand, the person may stop viewing after test reading in the middle of one manga, and other circumstances comprehensively, it is reasonable to find that the volume of "copies transmitted and received" per comic book on average is at least approximately 50% of the visitors to the Website (approximately 5% of PV, one book per two visits).

Based on the above, in light of the fact that it is reasonable to deem that the Plaintiff's Manga had approximately two times more visitors than average, in addition to the number of visitors to the Website and the number of manga viewable on the Website during the period when the Plaintiff's Manga was posted, the amount of damages to the Appellee is calculated based on the number of volumes of the Plaintiff's Manga that were posted and other factors, and it is found to exceed the amount of the Appellee's Partial Claim of 11 million yen, including the legal fees.

Judgment rendered on June 29, 2022

2022 (Ne) 10005, Case of appeal for seeking compensation for damages

(Court of prior instance: Tokyo District Court, 2021 (Wa) 1333)

Date of conclusion of oral argument: May 16, 2022

Judgment

Appellant: mmlabo co., ltd.

(hereinafter referred to as "Appellant mmlabo")

Appellant: Global Net Corp.

(Hereinafter referred to as "Appellant Global Net")

Appellee: Y

Main text

1. All of the Appeals shall be dismissed.
2. The Appellants shall bear the cost of the appeal.

Facts and reasons

The abbreviation of terms and the meanings of the abbreviations are subject to the judgment in prior instance except for those altered in this judgment. In addition, the term "Attachment" in the cited part in the judgment in prior instance is altered to "Attachment to the judgment in prior instance".

No. 1 Object of the appeal

1. The judgment in prior instance shall be rescinded.
2. All the Appellee's claims shall be dismissed.
3. The Appellee shall bear the court costs for both the first instance and second instance.

No. 2 Outline of the case

1. Outline of the case

(1) The Appellee (the first-instance Plaintiff) is a manga artist and the copyright holder of manga (the Plaintiff's Manga) as stated in the Attachment to the judgment in prior instance "List of the Plaintiff's Works."

The Appellants (the first-instance Defendants) are stock companies whose business purposes include the advertising agency business to handle internet advertisements.

(2) In this case, the Appellee alleged that at least part of the Plaintiff's Manga was uploaded on the website called "Manga-mura [Manga Village]" (hereinafter referred to

as the "Website") and the Appellee's right to transmit to the public was infringed and that the series of acts of the Appellants (hereinafter referred to as the "Acts" in some cases) that the Appellants provided advertisements to the Website and paid advertising fees (advertising costs) to the administrative operator of the Website fall under accessoryship for the aforementioned infringement. Based on these allegations, the Appellee made the claims to demand that the Appellants jointly and severally pay compensation for damages of 11 million yen and delay damages accrued thereon at the rate of 5% per annum as prescribed by the Civil Code before amendment by Act No. 44 of 2017 for the period from November 18, 2017, which is the last day when the aforementioned upload was implemented, until the completion of the payment, based on the tort (Article 719, paragraphs (1) and (2), and Article 709 of the Civil Code).

(3) The judgment in prior instance granted all claims of the Appellee. Dissatisfied with this judgment, the Appellants filed an appeal.

(4) Concerning the compensation for damages of 11 million yen as defined in (2) above, the Appellee alleged in the prior instance that it was exclusively the sum total of decreases in sales of 10 million yen and legal fees of one million yen. However, in this instance, the Appellee selectively added an allegation that 10 million yen out of the aforementioned amount was part of the damages of 211,258,200 yen pursuant to Article 114, paragraph (1) of the Copyright Act (partial claim).

2. Basic facts

The basic facts are altered as follows. The remaining part is as stated in 1. in "No. 2 Outline of the case" in the "Facts and reasons" section of the judgment in prior instance and therefore they are cited (in cases of indicating evidence through this judgment, it includes branch numbers unless otherwise mentioned.).

(1) The phrase "であり、被告エムエムラボの親会社[and the parent company of Defendant mmlabo]" in line 23, page 2 of the judgment in prior instance is deleted; and the phrase from "本店事務所の[of the head office]" in line 25 through the end of line 26, page 2 is altered to "登記簿上の本店所在地は、控訴人エムエムラボの登記簿上の支店所在地と同一である（なお、控訴人らは、株主を共通にするという限度で、控訴人らが一定の関連性を有することを認めている。）。[the location of the head office on the register ... is identical to the location of the branch office on the register of Appellant mmlabo (the Appellants admitted that they have a relationship to the extent that they have common shareholders.)]".

(2) The term "漫画サイト[Manga website]" in line 4, page 3 of the judgment in prior instance is altered to "マンガサイト[Manga website]"; the phrase "DL 不要！ [No DL required!]" in said line is altered to "DL 不要！！ [No DL required!!]"; the part from

the phrase "本件ウェブサイトが[the Website]" in lines 5 and 6 on said page through "試算もされている。[is also estimated.]" in line 8 on said page is altered to "NHK「クローズアップ現代」のウェブサイトにおける平成30年4月18日付けの紹介記事では、本件ウェブサイトが有する蔵書数は5万冊以上で、同年3月の本件ウェブサイトへの月間訪問者数は延べ1億7000万人を突破したとされ、また、令和元年9月24日付けの朝日新聞デジタルの報道では、一般社団法人コンテンツ海外流通促進機構（以下「CODA」という。）の集計によると平成29年9月から平成30年2月までの間に延べ約6億2000万人が本件ウェブサイトを閲覧したとされている。[According to an article on the website of NHK 'Close Up Gendai' dated April 18, 2018, the number of books that the Website stocks is more than 50,000 and it is reported that the number of visitors per month to the Website exceeded 170 million in total in March 2018. According to the reporting on Asahi Shimbun Digital dated September 24, 2019, based on the tally by the Content Overseas Distribution Association (hereinafter referred to as 'CODA'), approximately 620 million visitors in total browsed the Website for the period from September 2017 through February 2018.]", respectively.

(3) The phrase "5月6日[May 6]" in line 13, page 3 of the judgment in prior instance is altered to "6月24日[June 24]"; and after the phrase "原告漫画1のうち[from among Plaintiff's Manga 1]" in line 14 on said page, the phrase "少なくとも[at least]" is inserted.

(4) The following are added as new lines after the end of line 17, page 3 of the judgment in prior instance.

"The aforementioned posts were made without obtaining the approval of the Appellee and infringed the Appellee's right to transmit to the public.

(4) Provision, etc. of advertisements to the Website by the Appellants

A. Concerning the Website, Kabushiki Kaisha Eeru (hereinafter referred to as 'Eeru') was a contact window for handling advertisements (media representatives) to serve as an intermediate with sponsors.

B. Appellant mmlabo concluded an agreement with Eeru concerning the provision of advertisements on the Website in April 2017 at the latest, and started to pay advertisement posting fees related to the Website, from among the advertising fees obtained by soliciting sponsors, to Eeru in May 2017 and after at the latest. (Exhibit Otsu 1)

C. (A) Appellant mmlabo operated a pay-per-click ad network 'MEDIAD II' (it is also called 'MEDIAD 2' or 'メディアドII'; an ad network refers to an advertisement delivery network that is created by an advertising agency by collecting advertising media (media,

such as a website, etc.) and that is used to deliver and display advertisements with various kinds of advertisement media (see Exhibits Ko 6 and 7 and Exhibit Otsu 13.) at least from 2017 to 2018. In order to use the ad network, an administrative operator (hereinafter it may be simply referred to as an 'operator') of a website who solicits posting advertisements on its website, is required to apply for 'MEDIAD II,' to be registered as a member, and then to receive compensation for posting advertisements on the website from Appellant mmlabo. (Exhibits Ko 3, 13, and 14 and Exhibits Otsu 1, 3, and 4)

(B) In 'MEDIAD II,' the following procedures are implemented: [i] the name of the website, URL, etc. to post advertisements are input and advertisement media (media) are registered (media registration); [ii] the name, image size, and other information related to an ad post of the registered media are input and the ad post is registered; [iii] after review by the operation team of 'MEDIAD II' of Appellant mmlabo, the configuration of advertisement delivery (meaning to determine which advertisements to post on the registered ad post) is completed manually; and [iv] an advertisement posting tag is obtained (meaning to obtain a program (JavaScript) to display advertisements on the ad post of the media and to extract it in a CSV file). (Exhibit Ko 22)

(C) 'MEDIAD II' was used to provide advertisements to the Website. Upon media registration ((B) [i] above) of the Website, the title and URL of the Website were presented to Appellant mmlabo."

3. Issues and allegations of the parties on the issues

The issues and allegations of the parties on the issues are altered as follows, and supplementary allegations and additional allegations of the parties in this instance are added as stated in 4. below. The remaining parts are as stated in 2. and 3. in "No. 2 Outline of the case" in the "Facts and reasons" section of the judgment in prior instance and therefore they are cited.

(1) The part from the beginning to the end of line 20, page 3 of the judgment in prior instance is altered to "ア 本件行為の幫助行為該当性等（争点 1 - 1） [A. Whether the Acts fall under accessoryship (Issue 1-1)]"; and the phrase "損害との因果関係[a causal relationship between ... and the damages]" in line 21 on said page is altered to "損害との間の一般的な因果関係[a general causal relationship between ... and the damages]", respectively.

(2) The part from the beginning to the end of line 25, page 3 of the judgment in prior instance is altered to "(1) 争点 1 - 1（本件行為の幫助行為該当性等） [(1) Issue 1-1 (Whether the Acts fall under accessoryship)]"; the part from "被告ら [the

Defendants]" in line 1, page 4 to "については[concerning]" in line 2 on said page is altered to "控訴人らは、控訴人グローバルネットが親会社、控訴人エムエムラボが子会社という関係にあり、また、仮に親子会社の関係にはなかったとしても、一体的に経営を行っていたところ（以下、被控訴人の主張において、控訴人らの関係について親会社、子会社などと主張する箇所も同様の趣旨をいうものである。）、控訴人らの本件行為は[the Appellants are in the relationship where Appellant Global Net is the parent company and Appellant mmlabo is its subsidiary, and even if there is no relationship of a parent company and a subsidiary company, they engaged in management integrally (hereinafter the part in the Appellee's allegation referring to a parent company and a subsidiary company, etc. with regard to the relationship between the Appellants also has the same import). The Acts of the Appellants]"; the phrase "掲載行為に関し、幫助による共同不法行為が成立する[concerning the act of posting ..., a joint tort by an accessoryship is established]" in lines 2 and 3 on said page is altered to "掲載行為の幫助行為に当たる[fall under accessoryship to the act of posting ...]"; the term "A" in line 5 on said page is altered to "A"; the phrase "株式会社エール（以下「エール」という。）[Kabushiki Kaisha Eeru (hereinafter referred to as 'Eeru)]" in lines 16 and 17 on said page is altered to "エール[Eeru]"; and the term "管理者[administrator]" in line 22 on said page is altered to "運営者[operator]", respectively.

(3) The part from "被告らが[the Defendants]" in line 7, page 5 of the judgment in prior instance to "ウェブサイトの[of the Website]" in line 9 on said page is altered to "本件ウェブサイト広告を提供して本件ウェブサイトの運営者に広告料(広告費)を支払うとの控訴人らの一連の行為（本件行為）が、本件ウェブサイトにおける[the series of the Appellants' acts (the Acts) to provide advertisements to the Website and to pay advertising fees (advertising costs) to the Website's operator ... on the Website]"; and the phrase "原告漫画が[the Plaintiff's Manga]" in line 12 on said page is altered to "原告漫画の一部については、[regarding part of the Plaintiff's Manga]", respectively.

(4) The phrase "損害との因果関係[a causal relationship with the damages]" in line 16, page 6 of the judgment in prior instance is altered to "損害との間の一般的な因果関係[a general causal relationship with the damages]".

(5) The term "管理者[administrator]" in line 23, page 7 of the judgment in prior instance is altered to "運営者[operator]"; the term "本件ウェブサイト管理者[the Website's administrator]" in line 14, page 8 is altered to "本件ウェブサイトの運営者[the Website's operator]"; the term "第三者[a third party]" in line 22 on said page is altered to "政府[the government]"; and the term "管理者[administrator]" in line 8, page

9 is altered to "運営者[operator]", respectively; and after the term "広告配信サービス[advertisement delivery service]" in line 11 on said page, "(MEDIAD II)" is added.

(omitted)

No. 3 Judgment of this court

1. This court determines that all the claims of the Appellee should be granted. The grounds are as stated below.

2. Issue 1 (Whether the Appellants are responsible for the joint tort)

(1) Facts found in this case

The facts found in this case are altered as follows. The remaining part is as stated in 1. (1) in "No. 3 Judgment of this court" in the "Facts and reasons" section of the judgment in prior instance (hereinafter simply referred to as "No. 3 of the judgment in prior instance") and therefore they are cited.

A. The phrase "5万冊以上の[more than 50,000]" in lines 8 and 9, page 12 of the judgment in prior instance is altered to "大量の[a large amount of]"; the phrase "開設当時の[at the time of establishment]" in lines 9 and 10 on said page is altered to "平成28年2月29日当時の[as of February 29, 2016]"; the term "無料コミック漫画-[Free manga -]" in said line is altered to "漫画村-無料コミック漫画-[Manga-mura - Free manga -]"; the phrase "スクロールするだけで[only by scrolling]" in lines 11 and 12 on said page is altered to "スクロールだけで[only by scrolling]"; the phrase "マンガを[manga]" in said line is altered to "マンガ[manga]"; and the term "下さい。[please]" in line 13 on said page is altered to "下さい[please]"; the phrase "甲4 [Exhibit Ko 4]" in line 16 on said page is altered to "甲4、8 [Exhibits Ko 4 and 8]"; the term "ビューサイト[view site]" in lines 20 and 21 on said page is altered to "ビューワースイト[viewers' site]", respectively; and the following are added as new lines after the end of line 25 on said page.

"In this regard, at least as of May 10, 2017, the Website posted the statements: [i] under the title, 'About Manga-mura,' that 'Manga-mura is a web-type clone site that collects and stores images uploaded on the internet. They cannot be viewed if the storage site becomes undisclosed. The site can be used at no charge.'; and [ii] under the title, 'Isn't Manga-mura illegal?,' that 'Manga-mura is a Vietnamese company and Vietnam is not a signatory to the Universal Copyright Convention and therefore, Japanese works are not protected.' (Exhibit Ko 38)

In addition, as of April 2017, there were multiple tweets pointing out the illegality of the Website on Twitter, including the following: 'Is Manga-mura dangerous? Is

Manga-mura illegal?'; 'Manga-mura may be illegal, but I think they can be viewed at Manga-mura.'; 'Manga-mura is an illegal website.'; 'Manga-mura is an illegal site, but it is excellent.'; 'A website that is called Manga-mura is completely in violation.'; 'Lawless bookshelves, Manga-mura'; 'The administrator of Manga-mura will be arrested soon.'; 'Manga-mura is an illegal site where manga are uploaded for free. As a manga lover, I cannot accept it, but I viewed all volumes... Please forgive me.' (Exhibit Ko 39)"

B. The part from "平成30年[in 2018]" to "ウェブサイトでは[on the website]" in line 26, page 12 of the judgment in prior instance is altered to "NHK「クローズアップ現代」のウェブサイトにおける平成30年4月18日付けの紹介記事では、本件ウェブサイトについて、新作を含め5万冊以上の作品が無料で読めること [According to an article on the website of NHK 'Close Up Gendai' dated April 18, 2018, more than 50,000 books, including new releases, can be browsed on the Website]"; the part from "月間閲覧数が[the number of viewers per month]" in line 2, page 13 to the end of line 5 on said page is altered to "月間訪問者数が延べ1億7000万人を突破したこと、本件ウェブサイトの運営者は莫大な広告収入を稼いできたと思われることなどが報道された。また、令和元年9月24日付けの朝日新聞デジタルの報道では、本件ウェブサイトの運営者とみられる容疑者が逮捕されたとの記事において、平成29年5月には出版社が福岡など複数の県警に著作権法違反の疑いにより容疑者不詳で刑事告訴していたこと、本件ウェブサイトは人気コミックや漫画雑誌などを無断で掲載し、その総数は5万～7万点とみられること、CODAの集計によると平成29年9月から平成30年2月までの間に延べ約6億2000万人が本件ウェブサイトを閲覧し、うち日本国内からの接続が9割以上を占めていたこと、被害額は約3200億円に上ると試算されていることなどが報道された。(甲5、8) [It was reported that the number of visitors per month ... exceeded 170 million in total and the operator of the Website seemed to have earned an enormous amount of advertising revenue. In addition, according to the news on Asahi Shimbun Digital dated September 24, 2019, in an article stating that a suspect who seems to be the operator of the Website was arrested, the following were reported: in May 2017, a publisher filed criminal complaints against an unknown suspect due to a suspected violation of the Copyright Act at multiple prefectural police offices, including Fukuoka; the Website posted popular comics and manga magazines without approval and the total number of those comics and magazines seems to be approximately 50 to 70 thousand; based on the tally by CODA, approximately 620 million visitors in total browsed the Website for the period from September 2017 through February 2018 and access from Japan accounted for more than 90 percent; and

the amount of damages is estimated to be approximately more than 320 billion yen. (Exhibits Ko 5 and 8)]", respectively.

C. The phrase "情報提供サイト（同年4月15日付けの記事） [informational website (an article dated April 15, 2018)]" in line 9, page 13 of the judgment in prior instance is altered to "ニュースサイト（「ねとらぼ」）の記事（平成30年4月15日付け） [an article on the news site ('Netorabo') (dated April 15, 2018)]"; and the phrase "みられること、同月14日付けの記事で[it seems that ... in an article dated April 14, 2018]" in lines 10 and 11 on said page is altered to "みられることが記載され、また、本件ウェブサイトに関与する広告代理店の元従業員に対する取材をしたとする同サイトの記事（同月17日付け）においては[it is stated that it seems ... and in an article on said website stating that it interviewed a former employee of an advertising agency engaged in the Website (dated April 17, 2018)]", respectively; and after the phrase including "仕組みとなっていること[there is a structure ...]" in line 16 on said page, the phrase "、当該元従業員が働いていた会社（A社）のグループにはいくつもの関連会社や子会社があり、日によって「A社の田中です」、「B社の鈴木です」、「C社の山中です」などと偽名を名乗ることになっていたこと、A社、B社及びC社の間にはバーチャルオフィスに登録された幾つものペーパーカンパニーが挟まれていて、金の流れや会社の実態が表面化しにくいような構造が巧妙に作られていたこと[; in the group of the company (Company A) where said former employee used to work, there were many affiliated companies and subsidiary companies and their employees were required to use false names from day-to-day, such as "I am Tanaka of Company A," "I am Suzuki of Company B," "I am Yamanaka of Company C," etc.; there were many paper companies that were registered on a virtual office between Company A, Company B, and Company C, and a structure to prevent the money flow and actual conditions of companies from being revealed was established in a skillful manner]" is added.

D. The part from the beginning of line 18, page 13 of the judgment in prior instance to the end of line 2, page 14 is altered as follows.

"B. Activities, etc. of the government and groups related to the advertisement business against websites for bootleg manga

(A) Circumstances up to 2017

a. In a news article in Yahoo! Japan dated April 7, 2014, it was pointed out that advertisements of general companies posted on illegal websites on the internet, such as those collecting child pornography images, had become an income source of the website administrator. The news article also introduced the following: many advertisement delivery companies prohibit the posting of advertisements on illegal websites in their

internal rules; those companies search whether any illegal information is posted on websites where they posted advertisements by using terms often used on illegal websites; however, according to a person in charge from the Japan Internet Advertising Association, administrators often hide illegal information in a skillful manner and there are cases where illegal sites cannot be identified. (Exhibit Otsu 12)

b. In a document titled 'Activities for the Manga-Anime Guardians Project by the Ministry of Economy, Trade and Industry,' which was created by the Media Content Industry Division, Commerce and Information Policy Bureau, Ministry of Economy, Trade and Industry in April 2015 (Exhibit Ko 48), as measures by the 'Manga-Anime Guardians (MAG) PROJECT' (which is a project to consistently and strategically engage in three issues: to 'eliminate' bootleg manga effectively, to establish a structure to 'lead' manga fans from bootleg manga sites to regular manga sites at the same time, and to conduct 'dissemination and awareness-raising activities' targeting viewers, etc. in and outside Japan, and which is promoted by the Manga-Anime Guardians Project Council and the Ministry of Economy, Trade and Industry (secretariat: CODA) together), it is stated that, in fiscal 2014, a massive elimination of bootleg manga (the number of target websites: 356; the number of bootleg manga eliminated: 711,697; elimination percentage: 68%) was conducted and that, also in fiscal 2015, the Council would continue to implement a massive elimination of bootleg manga, etc. while expanding participant companies, and the government would intensively make efforts, focusing on surrounding measures, such as restrictions on posting of advertisements, in particular, through CODA.

c. In an internet article dated March 1, 2016, concerning a case where works of popular manga were published on a bootleg website before their official release, it was reported that the Defendant, who was accused of violation of the Copyright Act, was convicted. (Exhibit Ko 49)

d. In a document titled 'Explanatory Materials for the Survey on Online Copyright Infringement Measures Abroad' dated December 15, 2016, which was created by Mitsubishi Research Institute, Inc. as commissioned by the Agency for Cultural Affairs (Exhibit Ko 50), it was pointed out that, as the objective of the survey, bootlegs of music, animations, movies, manga, games, etc. are distributed worldwide on the internet and damages from online copyright infringement became more and more serious. As one of the methods surveyed through interviews in seven countries, U.S.A., Canada, Australia, U.K, France, Germany, and Sweden, 'funding source measures,' including 'suspension of posting and delivering of advertisements,' were pointed out.

(B) Circumstances in 2017

a. In an article of ITmedia NEWS dated May 3, 2017, it was reported that a website, 'Free Books,' which was established in 2016, from which books that seemed to be uploaded illegally without the approval of copyright holders could be downloaded at no charge, and which had been pointed out to be highly illegal, was closed and that it became a topic because the characteristics and illegality of said website had been pointed out in a SNS, 'Hatena Tokumei Diary,' on May 1, 2017. (Exhibit Ko 40)

b. In the article of ITmedia Business Online dated October 31, 2017, the following were reported: the operator of a leech site, 'Haruka Yumenoato,' where links from which illegally uploaded manga and magazines can be downloaded are compiled, was arrested on said day; according to the Association of Copyright for Computer Software, said website was one of the largest leech sites in Japan and was closed in July 2017 after being investigated; however, based on the investigation by said association, the estimated amount of damages reached approximately 73.1 billion yen for one year until June 2017. Said website was included in the customers of the Appellants. (Exhibits Ko 28 and 41)

c. JIAA had continued initiatives to eliminate illegal and unjust websites on the internet from websites on which advertisements are posted in cooperation between the public and private sectors. In 2017, JIAA established a special sub-committee to handle said issues, including brand safety, and then published the JIAA Statement dated December 12, 2017. The JIAA Statement pointed out the fact that, in the current internet advertisement market, 'brand safety' (safety of a sponsor's brand by securing the quality of the websites on which its advertisements are posted) appeared as a new issue, as well as the possibility that illegal or unjust websites might be included in websites on which advertisements are posted. Additionally the following were stated: in order to protect brands from said risks and to ensure safety, all companies involved in online advertisements should consider what they can do from their standpoints and make efforts: for example, companies providing ad spots, such as a media, etc., would need to establish a system to check whether content and pages are against public policy; companies delivering advertisements, such as companies providing ad networks or SSP, etc., would need to create a structure not to deliver advertisements to websites that may damage brands, such as by eliminating unjust websites, etc.; and JIAA would carry out activities for brand safety and then prevent advertising costs from being paid to illegal websites posting advertisements, and thereby maintain the soundness of the online advertisement market (SSP (Supply-Side Platform) refers to a tool supporting advertising sales of media (see Exhibit Otsu 13)). (Exhibits Ko 26 and 42)

(C) Circumstances in and after 2017

a. Due to the appearance of bootleg websites (including the Website) for which administrative operators were difficult to identify and even making a request to delete infringing content would be impossible, the rights of copyright holders, etc. came to be damaged significantly. Facing such fact, the Ministerial Meeting Concerning Measures Against Crime, Intellectual Property Strategy Headquarters, announced, on April 13, 2018, a policy to implement blocking against particularly malicious bootleg websites, including the Website, as temporary and urgent measures until the legal system would be developed. In response to the announcement of the policy, in the article of Newsweek Japan on the same date, it was reported that based on the rapid expansion of websites for bootleg manga and animation, the Abe administration (at that time) would deliberate on a system to enable the private sectors to voluntarily block particularly malicious websites for the period until the legal system would be developed, as emergency measures by the government. (Exhibit Ko 34 and Exhibit Otsu 18)

b. The document titled 'JIAA's Responses to Posting of Advertisements on Bootleg Websites' dated June 8, 2018, which was issued by the Chairperson of JIAA, states as follows: JIAA had considered it necessary to promptly enhance measures against the situation where bootleg websites, which were broadly recognized as social problems, were being operated with advertising revenue from online advertisements as their financial resource, and it had been further promoting the enhancement of activities; after the announcement of the JIAA Statement ((B) c. above) stating countermeasures to be taken by online advertisement companies who were JIAA members, JIAA had been surveying the involvement of member companies in illegal acts, their awareness of the issues, progress of countermeasures, etc. concerning posting of advertisements on bootleg websites; based on the actual status confirmed through the survey, JIAA would examine the necessity of improvements, problems, effective countermeasures, etc.; and if any fact against the behavioral charter and advertisement ethics guidelines that were specified by JIAA was detected with regard to member companies, responses would be made against the relevant companies fairly based on the internal rules. (Exhibit Ko 25)

In addition, in the document titled 'Enhancement of Measures against Bootleg Websites,' which was issued on the same date by the Japan Advertisers Association, Japan Advertising Agencies Association, and JIAA, it is stated that illegal websites that infringe copyrights were posting advertisements and the advertising revenue had become a financial resource of their operation; and, concerning measures against bootleg websites, CODA started to provide a list of malicious copyright infringing websites, etc. in February 2018, and it was determined to use the list and establish new

opportunities for discussions to share information regularly towards the enhancement of more substantial countermeasures. (Exhibit Ko 24)"

E. The phrase "平成30年4月[in April 2018]" in line 4, page 14 of the judgment in prior instance is altered to "平成30年4月17日頃[around April 17, 2018]".

F. The part from the phrase "(被告エムエムラボ)から「親会社」[(Defendant mmlabo" to "parent company)" in line 7, page 14 of the judgment in prior instance is deleted; after the term "広告代理店[advertising agency]" in lines 9 and 10 on said page, the term "(メディアレップ) [(media representatives)]" is added, respectively; the term "(子会社) [(subsidiary company)]" from the beginning of line 15 to the end of line 20 on said page and in line 21 on said page is all deleted; the phrase "アドネットワークにより[by the ad network]" in line 22 on said page is altered to "アドネットワークである「MEDIAD II」を利用して[using an ad network 'MEDIAD II']"; the term "(親会社) [(parent company)]" in line 24 on said page is deleted; and the following is added as a new line after the end of line 26 on said page.

"The Appellants transacted with the operator of the Website through Eeru and agreements related to the use of 'MEDIAD II' were also concluded between the Appellants and Eeru. In this regard, under the MEDIAD II Terms of Service as of February 15, 2016 (Exhibit Otsu 3), the following were stipulated: [i] after agreeing with said terms of service, a website operator is to apply for registration with the services related to 'MEDIAD II' and Appellant mmlabo will examine the details of the application; an agreement on said terms of service is to be established as of the date of notification of the approval; and the operator's registration of membership with said services is deemed to be completed (Article 1); [ii] the Appellant can refuse or stop the delivery of advertisements that do not meet the advertising standards specified by the Appellant and is not liable for damages to the relevant operator (Article 3, paragraph (3)); and [iii] if a website operated by said operator has infringed or is likely to infringe a third party's intellectual property rights, such as a trademark right, design right, copyright, etc., the Appellant may not be able to approve the application or if the Appellant determines that the website falls under this case even after granting the approval, the agreement may be canceled in accordance with the provisions of the terms of service (Article 4, paragraph (1) and Article 3, paragraph (2)). (Exhibit Otsu 3)"

G. The phrase "被告グローバルネットは[Defendant Global Net]" in line 2, page 15 of the judgment of prior instance is altered to "控訴人エムエムラボの従業員は [Employees of Appellant mmlabo]"; after the phrase "取引先からの[by a customer]" in said line, the phrase "「MEDIAD II」に係る[related to 'MEDIAD II']" is added; the phrase "掲載には[posting]" in line 4 on said page is altered to "掲載は[posting]";

after the phrase "回答をしていた。[replied.]" in said line, the phrase "上記問合せ及び回答に係る各メールには、「漫画村」という名称が明記されており、また、各メールのCC（共有する宛先）には、控訴人グローバルネットの共有アドレスとみられる「共有 グローバルネット」という名称のアドレスが含まれていた。[in each email related to the aforementioned inquiry and reply, the name "Manga-mura" is clearly indicated and in the CC (the addresses with which information is shared) to each email, addresses with the name 'Shared Global Net' that are deemed to be shared addresses of Appellant Global Net were included]" is added; the term "被告グローバルネット[Defendant Global Net]" in lines 5 and 8 on said page is all altered to "控訴人グローバルネットの従業員[employees of Appellant Global Net]"; the part from the beginning of line 10 on said page to the end of line 12 is deleted; and the following are added as new lines after the end of line 14 on said page.

"(C) Other circumstances related to the Appellants' businesses

a. Around February 2018, Appellant Global Net received inquiries from the police concerning services it had provided. (Exhibit Ko 29)

b. On February 2, 2018, Appellant mmlabo's employee C (hereinafter referred to as 'C') received emails from customers, at the address including the domain name of the Appellant, including such statements as 'You are not posting advertisements on bootleg websites (websites for illegally uploading content and websites providing links to illegally uploaded content), such as Manga-mura, that have recently been in the news, are you?' and 'We have been very strictly warned by publishers and, therefore, please do not post advertisements on them.' In response to the above, C transferred the aforementioned email to the Appellant's employees from an address including the domain name of the Appellant, as an employee of Appellant Global Net, while adding 'In addition, the following is a media for which delivery is prohibited. 'You are not posting advertisements on bootleg websites (websites for illegally uploading content and websites providing links to illegally uploaded content), such as Manga-mura, that have recently been in the news, are you?' The advertisements are only for women, and therefore, I think there is no problem, but please handle with care.' (Exhibit Ko 33)

c. On April 6 and April 7, 2018, in emails related to a request for approval from an employee of Appellant Global Net to D, concerning the application status related to 'MEDIAD II' in said month, specific 'media names' and 'vehicle names' were indicated regardless of being a new media or continued media. (Exhibits Ko 30-1 to 3)

d. On April 13, 2018, as an employee of Appellant Global Net, C transferred an email received from DMM.com Co., Ltd. to other employees of the Appellant. The email was about the additional websites on which advertisements shall not be posted (NG

websites) and the request for suspension of advertisements when they are posted on those NG websites. C requested other employees to take measures for not delivering advertisements to NG websites. (Exhibit Ko 35)

e. On April 15, 2018, an article posted on a SNS, 'Hatena Tokumei Diary,' stated that persons related to an ad network which had delivered advertisements on illegal websites compiled advertising companies that posted advertisements on illegal websites, and pointed out that Appellant mmlabo had delivered advertisements on the Website and other illegal websites until recently. (Exhibit Ko 15)

f. On April 16, 2018, in response to an inquiry from a customer concerning its advertising status on websites (including the Website) that the customer considered to be illegal websites, a responsible person of Appellant Global Net exchanged emails internally concerning the matters inquired about. At this time, the Appellant's other responsible persons who were asked to check said matters replied to the inquiry about the 'percentage of illegal websites among overall acquisition (the reply of 'approximately NN percent' is acceptable)' that 'as of April, the percentage of five websites related to MEDIAD II: approximately 65%' and 'It is the number of media and CV only for MEDIAD II. The number of affiliates is not added.' (said 'five websites' refers to the top five websites with the highest impression among the websites, on which the customer posted advertisements as of said month and which fall under illegal websites, and websites named 'Manga-mura Girls' and 'Manga-mura Z' were included.) (Exhibit Ko 14)

g. The document that was created around May 2018 by Appellant Global Net concerning the details related to the Website contained an apology for causing trouble since advertisements were delivered to the Website through the advertisement delivery service of the Appellant and a group corporation of the Appellant, Appellant mmlabo, and it stated that an internal survey on the Website was started on April 13, 2018 and explained future actions to be taken, etc. (Exhibit Otsu 1)

h. Appellant Global Net was a member of JIAA; however, as of July 17, 2018, it submitted a notice of withdrawal (Exhibit Otsu 2) to JIAA and, on July 31, 2018, it was deleted from the list of regular members of the JIAA website. In the aforementioned notice, there was a statement that 'we made every effort to change our internal structure and systems for two and half months after we caused trouble; however, we determined that it would be difficult for us to fulfill the requirements for your membership.' (Exhibit Ko 26 and Exhibit Otsu 2)

i. Regarding the bootleg website, 'Dojin Antenna,' as of October 8, 2018, advertisements were still delivered through 'MEDIAD II.' (Exhibits Ko 36, 37-1 and 2)"

H. The phrase "約 2 0 0 0 万部 [approximately 20 million copies]" in line 18, page 15 of the judgment in prior instance is altered to "第 1 巻から第 3 6 巻までの累計発行部数で 2 0 0 0 万部弱（なお、最終巻である第 3 8 巻は同年 5 月 1 7 日に発行された。）であり [in terms of the accumulated number of copies issued from Volume 1 through Volume 36, slightly less than 20 million copies (the last volume, Volume 38, was issued on May 17, 2018)"]; the part from "令和 2 年 [in 2020]" in line 19 on said page to the end of line 20 is altered to "令和 2 年 1 月 2 9 日までの間に 3 7 0 万部を突破しており、令和 3 年 7 月 8 日までには原告漫画の累計発行部数は 2 6 0 0 万部を突破した。（甲 1 8、1 9、乙 7、1 5） [during the period until January 29, 2020, it exceeded 3.7 million copies, and by July 8, 2021, the accumulated number of copies of the Plaintiff's Manga issued exceeded 26 million copies (Exhibits Ko 18 and 19 and Exhibits Otsu 7 and 15)"]; and the phrase "およそ 1 0 9 億 4 9 4 0 万円 [approximately 10,949.4 million yen]" in line 22 on said page is altered to "約 1 2 0 億 1 2 0 0 万円（4 6 2 × 2 6 0 0 万） [approximately 12,012 million yen (462 × 26 million yen)]", respectively; after the end of line 23 on said page, the phrase "（甲 2 0 の 1 ・ 2、乙 7） [(Exhibits Ko 20-1 and 2, and Exhibit Otsu 7)]" is added; the part from the beginning to the end of line 25 on said page is altered to "8 % ~ 1 0 % 程度となっていたところ、原告漫画については 1 0 % が適用されており（甲 4 7）、これによると、被控訴人は、原告漫画 1 冊当たり 4 6 . 2 円の利益を得られた。 [approximately 8% to 10%. Concerning the Plaintiff's Manga, 10% was applied (Exhibit Ko 47). Based on this fact, the Appellee could have received a profit of 46.2 yen per copy of the Plaintiff's Manga]."

(2) Determination on Issue 1 (Whether the Appellants are responsible for the joint tort)

Based on the basic facts and the facts found in this case that are cited by altering the judgment in prior instance respectively as stated in No. 2, 2. above and (1) above, the determination on the issue is made below.

A. Issue 1-1 (Whether the Acts fall under accessoryship)

The judgment in prior instance is altered as stated in (A) below and the determination on the supplementary allegations of the Appellants in this case is added as stated in (B) below, and the remaining parts are as stated in No. 3, 1. (2) A. of the judgment in prior instance and therefore they are cited.

(A) Correction of the judgment in prior instance related to the citation

a. The part from the beginning of line 1, page 16 of the judgment in prior instance to the end of line 2 on said page is altered to "争点 1 - 1（本件行為の幫助行為該当性等）及び争点 1 - 2（控訴人らの行為と被控訴人の損害との間の一般的な因果関係の有無）について [Issue 1-1 (Whether the Acts fall under accessoryship) and

Issue 1-2 (Whether there is a general causal relationship between the acts of the Appellants and the damages to the Appellee)]".

b. From the phrase "前記認定のとおり [As it is found above]" in line 3, page 16 of the judgment in prior instance to the phrase "このような[said]" in line 7 on said page is altered to "控訴人らの本件行為が、本件ウェブサイトにおける[... the Acts of the Appellants ... on the Website]".

c. The phrase "1億7000万にも上る[reached as much as 170 million]" in line 15, page 16 of the judgment in prior instance is altered to "延べ1億7000万人を突破する[exceeded a total of 170 million]".

d. The phrase "広告費による [with advertising costs]" in line 22, page 16 of the judgment in prior instance is deleted; the phrase "支払っていた行為は[payment]" in line 25 on said page is altered to "支払うという行為は、一般的に[payment generally]"; and the phrase "原告漫画の[of the Plaintiff's Manga]" in line 2, page 17 is deleted.

e. The part from the beginning of line 5, page 17 of the judgment in prior instance to the end of line 22 is altered as follows.

"(D) Looking at the Acts of the Appellants, the Appellants are originally stock companies whose purpose is the advertising agency business to handle internet advertisements. The representative of Appellant mmlabo, D, is a director of Appellant Global Net. The location of the head office on the register of Appellant Global Net is the same as the location of the branch office on the register of Appellant mmlabo. The Appellants admitted that they have a relationship to the extent that they have common shareholders. In the document created by Appellant Global Net (Exhibit Otsu 1), there is a statement that Appellant mmlabo is a group corporation of Appellant Global Net. In addition, even if Appellant Global Net receives a request to post an advertisement, the advertisement is posted using 'MEDIAD II' that was operated by Appellant mmlabo. When an employee of Appellant mmlabo handles an inquiry from a customer related to 'MEDIAD II,' other persons related to Appellant Global Net are customarily included in the CC of email correspondence and a single employee uses an email address as an employee of Appellant mmlabo and an email address as an employee of Appellant Global Net depending on cases. Based on the aforementioned circumstances, it should be said both objectively and subjectively that the Appellants have been conducting the Acts jointly.

In addition, as pointed out in (C) above, there are no circumstances to understand that the Acts are different from acts that are generally deemed to be accessoryship of the infringement of the right to transmit to the public.

Therefore, it should be said that the Acts conducted jointly by the Appellants fall under the accessoryship of the infringement of the right to transmit to the public concerning the Plaintiff's Manga.

In addition, as a result of accessoryship, or the Acts conducted jointly by the Appellants, the Plaintiff's Manga were viewed using the Website. Then, it is found that damages, etc. due to decreases in sales of the Plaintiff's Manga were caused, and therefore, it should be said that there is a corresponding causal relationship between the Acts of the Appellants and the damages to the Appellee."

f. The part from the term "原告漫画 1 [Plaintiff's Manga 1]" in line 26, page 17 through the end of line 2, page 18 of the judgment in prior instance is altered to "原告漫画 1の一部がアップロードされていた以上、それについての幫助行為は成立し得ないと主張する。[alleged that as long as part of Plaintiff's Manga 1 had been uploaded, no accessoryship can be established in relation to that.]" and the phrase "同月以降 [after said month]" in line 3 on said page is altered to "同月以降も[also after said month]", respectively; at the end of line 7 on said page, the phrase "また、原告漫画 1の一部が本件ウェブサイト初めてアップロードされたのは、平成29年4月21日であるところ、控訴人らは、遅くとも同月までにはエールとの間で本件ウェブサイトへの広告の提供に係る契約を締結するに至ったもので、本件行為は当該契約の履行としてされたものであるから、上記契約の締結日が同日以前であった場合はもちろん、それが同日より後であったとしても、本件行為は、原告漫画のうち同月にアップロードされたものに係る公衆送信権の侵害状態をも前提としたものとみるのが相当である。[In addition, it was on April 21, 2017 when part of Plaintiff's Manga 1 was uploaded on the Website for the first time. The Appellants concluded an agreement on the provision of advertisements to the Website with Eeru by the end of said month at the latest. The Acts were conducted as performance of the agreement. Therefore, even if the conclusion date of the aforementioned agreement was after said date, not to mention the case where it was before said date, it is reasonable to consider that the Acts were conducted also based on the premise of the situation where the right to transmit to the public would be infringed in relation to the portions of the Plaintiff's Manga that were uploaded in said month.]" is added; the phrase "いえ[cannot be deemed to be]" in line 13, page 18 is altered to "認められず[cannot be found to be]"; after the phrase "本件ウェブサイトとは[with the Website]" in line 23 on said page, the phrase "直接の[directly]" is added; and the phrase "原告漫画の売上減少という[decreases in sales of the Plaintiff's Manga]" in line 6, page 19 is deleted.

(B) Determination on the supplementary allegations of the Appellants in this case

a. The Appellants alleged that the Acts do not directly cause or encourage the operator of the Website to infringe the copyright and, therefore, they do not fall under accessoryship. As stated in No. 3, 1. (2) A. of the judgment in prior instance that is altered and then cited, in consideration of the actual situation of the Website where the revenue from the advertising fees is almost the only financial resource, it is reasonable to consider that the Acts directly cause or encourage the operator of the Website to continue posting the Plaintiff's Manga that had been uploaded and to further add targets to be uploaded. Therefore, the aforementioned allegation of the Appellants cannot be accepted.

Concerning the above, the Appellants also alleged that the scope of application of accessoryship had become too wide and was unjust. However, it is only an allegation based on the premise that the scope of accessoryship is expanded in general terms while ignoring the aforementioned actual situation of the Website. In addition, the responsibility for a tort is not immediately questioned for accessoryship because a certain act objectively falls under accessoryship, and therefore, the aforementioned allegation of the Appellants do not affect the findings and determination above either.

b. The Appellants alleged, concerning the Plaintiff's Manga that had been uploaded, that the Acts do not facilitate infringement of the right to transmit to the public; however, as stated in No. 3, 1. (2) (A) of the judgment in prior instance that is altered and then cited, the aforementioned allegation cannot be accepted either. In addition, the allegation of the Appellants to the effect that considering the Acts as accessoryship means considering the operation of the Website itself as infringement of the right to transmit to the public, and the allegation of the Appellants to the effect that it is not consistent with the understanding of accessoryship that was found by the judgment of the Supreme Court in 2001, also contain errors in understanding the circumstances that serve as the premise for making determinations in this case, and therefore, they cannot be accepted.

c. The Appellants alleged that the advertising fees paid by the Appellants account for a small percentage of the advertising revenue of the operator of the Website. However, setting aside the point whether the percentage that serves as the premise of said allegation can be admitted immediately based on the evidence, the following should be taken into account, in addition to the actual situation of the Website where the revenue from the advertising fees is almost the only financial resource as mentioned above: in light of said actual situation, it should be said that the provision of advertisements to the Website itself, regardless of the amount of advertising fees to be paid to the operator of the Website, eventually facilitated the infringement of the copyright by said operator

(according to Exhibit Ko 7 and the entire import of oral arguments, the advertising fees paid to the operator of the Website, is not simply determined by the number of advertisements posted, or the volume of advertisements, but the fact that users viewed the posted advertisements of goods and purchased said goods has an impact on the amount of payment; and it thus seems that the degree of provision of advertisements and the amount of paid advertising fees do not directly correspond to each other; in addition, it is easily assumed that the more commission fees, etc. are deducted by an advertising agency from the advertising fees paid by the sponsor, the less advertising fees are paid to the operator of an website). Also, in light of the subjective mode of the Appellants that is found and determined in B. below, the aforementioned circumstances alleged by the Appellants are only problems related to compensation between joint tortfeasors and they are not circumstances supporting that the Appellants are not responsible for the tort against the Appellee.

d. None of the other circumstances alleged by the Appellants affect the aforementioned findings and determination.

B. Issue 1-3 (Whether there is intention or negligence of the Appellants)

The judgment in prior instance is altered as stated in (A) below and the determination on the supplementary allegations of the Appellants in this case is added as stated in (B) below, and the remaining parts are as indicated in No. 3, 1. (2) B. of the judgment in prior instance and therefore they are cited.

(A) Correction of the judgment in prior instance related to the citation

a. The part from the beginning of line 10, page 19 of the judgment in prior instance to the end of line 1, page 21 is altered as follows.

"(A) First, it can be pointed out that, [i] during the period leading to 2017, it became a big issue that advertising revenue had become an income source for illegal websites; many advertisement delivery companies took measures to investigate by a specific method whether any illegal information was posted on websites where they posted advertisements; it is confirmed that, as joint activities of the public and private sectors, measures to eliminate bootleg websites would be taken continuously and restrictions on posting of advertisements would be a focus for accompanying measures. Under such situation, [ii] the Website was a website where manga could be read without any registration and with no charge up until April 2017; it could be identified at a glance that a large amount of manga was posted on the Website to the extent of requiring search banners; and there were many tweets pointing out its illegality on Twitter. In addition, [iii] as of May 10, 2017 at the latest, the Website was under conditions where it was easy for viewers to understand that Japanese works were posted on the premise that

their copyrights were not protected, etc.

Upon starting the delivery of advertisements on the Website using 'MEDIAD II,' Appellant mmlabo received a presentation of the Website's title and URL, its operation team examined whether or not to make registration based on the information including the title and URL, approved the registration, and manually configured the settings for the delivery of advertisements. Based on the circumstances in [i] through [iii] above, up until May 2017 at the latest, the Appellants could have easily assumed that many manga posted on the Website were posted without obtaining the approval of the copyright holders; the revenue from advertising fees was almost the only financial resource of the Website where manga that were illegally posted in the aforementioned manner could be viewed without charge; and therefore, the acts of the Appellants to provide advertisements to the Website and to pay advertising fees were nothing but acts to support copyright infringement by the operator of the Website.

Based on the above, as of May 2017 at the latest, the Appellants were under a duty of care to check with the operator of the Website in relation to the presence of consent agreements with the copyright holders and to take appropriate measures or to refuse registration of the Website on the 'MEDIAD II' without the need to even implement said check (if said registration of the Website on the 'MEDIAD II' had been completed, the duty of care to take actions such as canceling the agreement related thereto). Despite such a duty, the Appellants conducted the Acts and they are found to have negligence at least in this regard.

Concerning the above, the following circumstances also support the fact that the Appellants neglected the duty of care as mentioned above as of May 2017, and subsequently, conducted the Acts continuously without careful consideration: Appellant Global Net was a member of JIAA, which promoted activities against bootleg websites; according to the terms of service of 'MEDIAD II,' it is stipulated that if the Website infringes the copyright of a third party, an agreement related to the use of the MEDIAD II may be canceled; subsequently, it was reported that the operator of an illegal website, 'Haruka Yumeno Ato,' which was related to customers of the Appellants, was arrested on October 31, 2017, and the illegality of the Website was more focused socially; and, on February 2, 2018, the Appellants received inquiries from customers by mentioning that the Website was an illegal website for bootleg manga; however, despite these circumstances, it cannot be seen that the Appellants examined the appropriateness of providing advertisements using 'MEDIAD II' to the Website; rather, the Appellants clearly indicated the name of 'Manga-mura' and replied to customers that it was possible to post advertisements on the Website on March 2, 2018; on March 23, 2018, the

Appellants indicated that they had the Website as one of the reasons for the high effects of advertisements; and eventually, after the government announced its policy of blocking by indicating the name of the Website on April 13, 2018, the Appellant started to examine the suspension of the delivery to the Website for the first time."

b. The phrase "している[is transacting]" in line 5, page 21 of the judgment in prior instance is altered to "していた[was transacting]"; the phrase "規約に置いて取引先に注意義務を課している[imposed the duty of care on customers by establishing ... in the terms of service]" in lines 7 and 8 on said page is altered to "MED I A D II利用規約（乙3）に定めて取引先に注意義務を課していた[imposed the duty of care on customers by stipulating ... in the MEDIAD II Terms of Service (Exhibit Otsu 3)]"; the phrases "困難である[it is difficult]" in lines 10 and 11 on said page is altered to "困難であった[it was difficult]"; and the phrase "ことを踏まえると[in consideration of the fact that]" in line 19 on said page is altered to "ことなど既に指摘した諸事情を踏まえると[in consideration of circumstances that have been pointed out, such as]", respectively; the phrase "、外形上[from an appearance]" in line 20 on said page is deleted; the phrase "予見する[foresee]" in said line is altered to "推測する[assume]"; and the phrase "認識されている昨今の[current ... that are found]" in line 2, page 22 is altered to "既に認識されていた当時の[at that time that were found]", respectively.

(B) Determination on the supplementary allegations of the Appellants in this case

The Appellants alleged that, as of May 2017, they could not foresee the infringement of the right to transmit to the public on the Website. However, in light of what were found and explained in No. 3, 1. (2) B. of the judgment in prior instance that is altered and then cited, said allegation cannot be accepted. In this regard, the Appellants' allegation that, at that time, bootleg websites had not become a social problem yet lacks the premise (concerning Exhibit Otsu 9 stating that there is no article on bootleg websites, including the Website, on the internet as of 2017, its search conditions, etc. cannot necessarily be confirmed and, in light of the articles, etc. on the internet as found above, Exhibit Otsu 9 does not affect the findings and determination above). In addition, according to the findings and determination above, the fact that the Appellee did not request suspending the posting of advertisements does not mitigate the duty of care of the Appellants. Both the allegation that it was apparently difficult to determine whether there was copyright infringement and the allegation pointing out that Eeru collectively managed ad posts of media ignored specific circumstances related to the Website and are not reasonable. Furthermore, the allegation that it was impossible to survey the copyright infringement due to their operation mode does not immediately mitigate the Appellants' duty of care in general. In particular, in consideration of specific

circumstances related to the Website, it does not at all fall under the circumstances to find that the Appellants did not violate the duty of care in this case.

None of the allegation that the Appellants stopped the Acts on April 13, 2018 and after, the allegation that the Appellants had no possibility to avoid the results, and other allegations of the Appellants affects the findings and determination above.

C. Summary

Based on A. and B. above, the Appellants aided and abetted infringement of the Appellee's copyright (right to transmit to the public) on the Website, and therefore are jointly liable for the tort.

3. Issue 2 (Amount of damages to the Appellee)

(1) Allegation based on Article 114, paragraph (1) of the Copyright Act (additional allegation in this case)

A. (A) Concerning the calculation of damages based on Article 114, paragraph (1) of the Copyright Act, the Appellee alleged 1PV per manga book based on the fact that one manga book could be viewed by 1PV; on the other hand, the Appellants alleged that since a PV may be counted whenever a page is switched, the figure obtained by dividing PV by the number of pages of the Plaintiff's Manga, should be considered to be the volume transmitted to the public.

In examining the above, according to the evidence (Exhibit Ko 51) and the entire import of oral arguments, it is found that all pages of one manga book can be viewed without switching web pages on the Website, and therefore, it is found that even if all pages of one manga book are viewed, it was counted as 1PV in some cases. Consequently, the aforementioned allegation of the Appellants cannot be accepted.

On the other hand, however, according to the evidence (Exhibits Ko 4, 10, and 11), it seems that viewers of the Website needed to switch web pages several times before starting to view specific manga. Therefore, the aforementioned allegation of the Appellee cannot be accepted immediately either.

In addition to the aforementioned circumstances, according to the evidence (Exhibit Otsu 17) and the entire import of oral arguments, and based on the fact that it is found that the PV per visitor to the Website was 10.69PV (in Exhibit Otsu 17, it is stated that the number of impressions per month of advertisements can be calculated by multiplying PV by the number of visitors per month and the number of ad posts per page; and therefore, PV is based on web pages on which advertisements are displayed), it is reasonable to consider as follows: visitors are considered to visit the Website due to the attractiveness of the Website where manga can be viewed free of charge in principle; if a visitor visits the Website, in particular, in cases of serial manga, such as

the Plaintiff's Manga, it is quite conceivable that multiple volumes are viewed during one visit; on the other hand, it is also conceivable that a viewer stops viewing after previewing it to the middle; and the details are not clear of how individual visitors used the Website and it is impossible to identify them due to the characteristics of the case; in consideration of the allegations, etc. of both parties concerning damages based on Article 114, paragraph (1) of the Copyright Act comprehensively, the average volume of "copies transmitted and received" per manga book is found to be at least no less than 50% of the number of the Website's visitors (in other words, the volume of "copies transmitted and received" is deemed to be approximately 5% of PV and one manga book per two visits).

(B) According to the evidence (Exhibits Ko 5 and 8) and the entire import of oral arguments, for the period from April 2017 to April 17, 2018 (the date when the Website was closed), the number of the Website's visitors is found to be at least 100 million in total per month. In addition, according to the evidence (Exhibit Ko 5 and Exhibit Otsu 23) and the entire import of oral arguments, the number of manga that could have been viewed on the Website is found to be approximately 50,000 to 70,000 books. Therefore, the intermediate value, 60,000 books, is used for calculation. It is reasonable to consider that there were 1,666 visitors per month (100 million / 60,000; below the decimal point is rounded off; hereinafter the same applies) in average per volume of manga that was posted on the Website.

Then, in addition to the point indicated in (A) above, based on the number of issues of the Plaintiff's Manga and the evidence (Exhibits Ko 1, 45, and 47, and Exhibit Otsu 15), it is reasonable to consider that the Plaintiff's Manga had visitors approximately two times more than said average as alleged by the Appellee. In consideration of above, it is found eventually that the number of "copies transmitted and received" per volume of the Plaintiff's Manga is no less than 1,666 books per month ($1,666 \times 0.5 \times 2$).

B. (A) As stated in (3) B. in No. 2, 1. "Facts and reasons" section of the judgment in prior instance that is altered and then cited, concerning Plaintiff's Manga 1, at least Volume 1, Volume 6 through Volume 15, and Volume 24 were posted from April 21, 2017 through June 24, 2017 and Plaintiff's Manga 2 was posted by November 18, 2017. According to Exhibit Ko 10 related to the screen of the Website on June 26, 2017, more specifically, the aforementioned posting of volumes of Plaintiff's Manga 1 was found to be implemented in the following order.

- a. April 21, 2017: Volume 6 of Plaintiff's Manga 1
- b. April 22, 2017: Volumes 7 and 8 of Plaintiff's Manga 1
- c. April 23, 2017: Volumes 9 and 10 of Plaintiff's Manga 1

- d. April 24, 2017: Volume 11 of Plaintiff's Manga 1
- e. April 30, 2017: Volumes 12 and 13 of Plaintiff's Manga 1
- f. May 1, 2017: Volumes 14 and 15 of Plaintiff's Manga 1
- g. May 6, 2017: Volume 24 of Plaintiff's Manga 1
- h. June 24, 2017: Volume 1 of Plaintiff's Manga 1

(B) In addition to the posting conditions described in (A) above, in consideration of the following facts, it is reasonable to assume that Volume 2 through Volume 5 and Volume 16 through Volume 23 of Plaintiff's Manga 1 were posted on the Website by June 26, 2017 at the latest, and Volume 25 through Volume 38 of Plaintiff's Manga 1 were posted on the Website by November 18, 2017 at the latest, and there are no circumstances to overturn this assumption: Exhibit Ko 10 that is found to be related to the screen of the Website as of June 26, 2017 is the first page of the webpage on which Plaintiff's Manga 1 was posted; there are signs that seem to indicate that viewers can go to the next page (page 2), under the posting of images of the cover pages of the aforementioned volumes, including Volume 24 of Plaintiff's Manga 1 (12 volumes in total); it seems that there were other pages on which Plaintiff's Manga 1 was posted; in Exhibit Ko 38 related to the display of the Website on May 10, 2017, there is a statement that if the manga is interrupted or missing, measures will be taken if possible, within three days after a report is made; and all volumes of Plaintiff's Manga 2 were posted (according to the evidence (Exhibits Otsu 15 and 16) and the entire import of oral arguments, Plaintiff's Manga 2 is a sequel to Plaintiff's Manga 1.).

(C) Based on the above, the numbers of volumes of the Plaintiff's Manga posted on the Website are outlined below.

- a. April 21, 2017: one volume
- b. April 22, 2017: 3 volumes
- c. April 23, 2017: 5 volumes
- d. April 24, 2017 through April 29, 2017: 6 volumes
- e. April 30, 2017: 8 volumes
- f. May 1, 2017 through May 5, 2017: 10 volumes
- g. May 6, 2017 through June 23, 2017: 11 volumes
- h. June 24, 2017 through June 25, 2017: 12 volumes
- i. June 26, 2017 through November 17, 2017: 24 volumes
- j. November 18, 2017 through April 17, 2018: 53 volumes

C. On the other hand, as stated in No. 3, 1. (1) E. of the judgment in prior instance that is altered and then cited, the Appellee could have received profits of 46.2 yen per book of the Plaintiff's Manga (the Appellants do not particularly dispute that said amount is

to be deemed as "the amount of profit per unit" as defined in Article 114, paragraph (1) of the Copyright Act).

D. Based on A. through C. above, the profits that the Appellee could have received in relation to the viewing of the Plaintiff's Manga on the Website are calculated as follows (= Number of volumes of the Plaintiff's Manga posted on the Website × Number of copies transmitted and received per volume per month (1,666 books) × Profits of the Appellee per book of the Plaintiff's Manga (46.2 yen) × Number of months; even based on the time of establishment of the Appellants' negligence related to the Acts that has been determined based on the Appellee's allegation concerning Issue 1-3 as the premise, in light of the mode of violation of the duty of care that has been found and explained and the points that have been found and explained concerning Issues 1-1 and 1-2, when calculating damages related to the Acts, it is reasonable to include the Plaintiff's Manga that were uploaded in April 2017 in the basis of the calculation).

(A) April 21, 2017

$$1 \times 1,666 \times 46.2 \times 1/30 = 2,565 \text{ yen}$$

(B) April 22, 2017

$$3 \times 1,666 \times 46.2 \times 1/30 = 7,696 \text{ yen}$$

(C) April 23, 2017

$$5 \times 1,666 \times 46.2 \times 1/30 = 12,828 \text{ yen}$$

(D) April 24, 2017 through April 29, 2017

$$6 \times 1,666 \times 46.2 \times 6/30 = 92,363 \text{ yen}$$

(E) April 30, 2017

$$8 \times 1,666 \times 46.2 \times 1/30 = 20,525 \text{ yen}$$

(F) May 1, 2017 through May 5, 2017

$$10 \times 1,666 \times 46.2 \times 5/31 = 124,143 \text{ yen}$$

(G) May 6, 2017 through June 23, 2017

$$11 \times 1,666 \times 46.2 \times (1 + 18/30) = 1,354,657 \text{ yen}$$

(H) June 24, 2017 through June 25, 2017

$$12 \times 1,666 \times 46.2 \times 2/30 = 61,575 \text{ yen}$$

(I) June 26, 2017 through November 17, 2017

$$24 \times 1,666 \times 46.2 \times (4 + 6/31 + 17/30) = 8,793,358 \text{ yen}$$

(J) November 18, 2017 through April 17, 2018

$$53 \times 1,666 \times 46.2 \times 5 = 20,396,838 \text{ yen}$$

(K) Total

30,866,548 yen (when said amount is divided by the amount of profits of the Appellee per book of the Plaintiff's Manga, 46.2 yen, the result is 668,107 copies; in

light of the number of issued copies of the Plaintiff's Manga (the period related to the issuance includes the period when the Plaintiff's Manga were posted on the Website), the aforementioned amount is not considered to be excessive.)

E. It is reasonable to find the legal fees of 3,080,000 yen, approximately 10% of the aforementioned amount of damages.

F. Based on the above, the Appellee's claim to seek payment of 11 million yen, which is the total sum of 10 million yen from among the amount of damages based on Article 114, paragraph (1) of the Copyright Act and one million yen of legal fees, has grounds. It is found that the damages exceeding the aforementioned amount had been caused before November 18, 2017, which the Appellee considers to be the start date of delay damages. Therefore, the incidental claim of the Appellee to seek payment of delay damages from said date has grounds.

No. 4 Conclusion

Consequently, without the need to make determinations on the remaining issues, the judgment in prior instance that granted all the Appellee's claims is reasonable and there are no grounds for the Appeal. Therefore, they are dismissed 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