Copyright	Date	November 2, 2022	Court	Intellectual Property High Court, Second Division
	Case number	2022 (Ne) 10044		
- A case in which disclosure of identification information of the sender was demanded, and the court determined that the act of attaching screenshots of the Appellant's tweets when posting tweets using Twitter constitutes legitimate "quotation" (Article 32, paragraph (1) of the Copyright Act). - A case in which disclosure of identification information of the sender was demanded, and the court found that the violation of the right due to defamation is obvious.				

Case type: Disclosure of Identification Information of the Senders
Result: Partial reversal of the prior instance judgment
References: Article 21, Article 23, paragraph (1), Article 28, and Article 32, paragraph (1) of the Copyright Act, 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
Judgment of prior instance: Tokyo District Court, 2021 (Wa) 6266, rendered on March 30, 2022

Summary of the Judgment

1. In this case, the Appellants allege that it is obvious that because of the posting of Tweets 1 and 2 on Twitter (information service whereby users can post messages, etc. called tweets using the internet) by an unidentified person, Appellant A's copyright and Appellant B's right of the original author regarding the Appellant's Profile Image contained in Posted Image 1 or 2 attached to these tweets have been violated and Appellant A's right to honor has also been violated, and based on this allegation, the Appellants demand the Appellee, an internet service provider, to disclose identification information of the sender pursuant to 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") prior to the amendment by Act No. 27 of 2021.

Posted Images 1 and 2 are created by taking screenshots of the respective tweets posted by Appellant A, and the Appellant's Profile Image was attached to these tweets as the icon representing the poster. The Appellant's Profile Image has been used by

Appellant A on his/her own account as his/her profile image. Appellant A created it by affixing an illustration to the part of the face of the photograph of Appellant A taken by Appellant B.

2. The court of prior instance dismissed the Appellants' claims, ruling that the Appellee's facilities cannot be found to have been used for the posting of Tweets 1 and 2, which constitute violating information, because the information demanded by the Appellants is information as of seven hours after or 48 days after the posting of Tweet 1 and three months before or 45 days before the posting of Tweet 2, and therefore that the Appellee does not fall within the category of "provider of disclosure-related services" prescribed in Article 4, paragraph (1) of the Provider Liability Limitation Act. The Appellants filed appeals against the judgment in prior instance.

3. In this judgment, the court determined that the use of the Appellant's Profile Image constitutes "quotation" and therefore it is legitimate, and thus denied the obviousness of the violation of the rights relating to the copyright. On the other hand, the court found that it is obvious that the rights have been violated due to defamation and determined that the requirement prescribed in Article 4, paragraph (1) of the Provider Liability Limitation Act is satisfied. In conclusion, the court upheld Appellant A's claim against the Appellee and dismissed Appellant B's claim. The reasons for this conclusion are as summarized below.

(i) Concerning violation of copyright

The method of presenting Appellant A's tweets as they are without editing them in order to critique Appellant A's conduct can be regarded as ensuring objectivity. As this method enables readers of Tweet 1 or 2 to understand the person who posted the tweets that are subject to the critique and the content of these tweets, it can be deemed to be conducive to examining whether the critique is valid. In addition, the Appellant's Profile Image is affixed to the tweets as an icon. The Appellant's Profile Image is not used in Tweets 1 and 2 beyond the purpose of presenting Appellant A's tweets as they are. In that case, the act of taking screenshots of Appellant A's tweets, including the icon image, and presenting them can be considered to constitute the use within a scope that is justified for the purpose of critique.

In light of the fact that the technique of capturing an image and sharing it is commonly employed when sharing information, it is appropriate to find that the use of the Appellant's Profile Image in Tweets 1 and 2 is consistent with fair practices.

Consequently, it cannot be said that it is obvious that the Appellants' copyright has been violated due to the use of the Appellant's Profile Image in Tweets 1 and 2.

(ii) Concerning defamation

It is appropriate to find that the texts, "捏造したところで信用の問題で誰も信じないとは思いますけど[Even if you fabricate a DM, nobody would believe it due to the problem of credibility]" and "あんたと違って[unlike you]", express the poster's opinion that Appellant A is not trusted to the extent that nobody would believe him/her, and they constitute expression of an opinion or comment. However, there is no evidence showing that these texts are based on truth.

The text, "ツイート文章を改竄して捏造妄想作話する[falsify a text of a tweet, and fabricate and create a delusional story]" constitutes expression of an opinion or critique, but it attacks the personality of Appellant A to a level of personal abuse and goes beyond the bounds of an opinion or critique.

Consequently, it can be said that it is obvious that Appellant A's right to honor has been violated by Tweets 1 and 2.

(iii) Concerning "identification information of the sender pertaining to the violation of the rights" referred to in Article 4, paragraph (1) of the Provider Liability Limitation Act

If certain information is found to be information concerning the person who sent any violating information, it is appropriate to consider that identification information of the sender that is identified from the IP address at the time of the login after sending the violating information and identification information of the sender that is identified from the IP address at the time of the login before the login made immediately before sending the violating information could fall within the scope of "identification information of the sender pertaining to the violation of the rights" referred to in Article 4, paragraph (1) of the Provider Liability Limitation Act.

Judgment rendered on November 2, 2022
2022 (Ne) 10044, Appeal case of seeking disclosure of the identification information of the sender based on the copyright infringement, etc.
(Court of prior instance: Tokyo District Court, 2021 (Wa) 6266)
Date of conclusion of oral argument: September 5, 2022

Judgment

Appellant (First-instance Plaintiff): X1
(hereinafter referred to as "Appellant X1")

Appellant (First-instance Plaintiff): X2
(hereinafter referred to as "Appellant X2"; Appellant X1 and Appellant X2 are collectively referred to as the "Appellants.")

Appellee (First-instance Defendant): TOKAI Communications Corporation

Main text

1. The part of the judgment in prior instance that dismissed the claim of Appellant X1 against the Appellee shall be rescinded.
2. The Appellee shall disclose to Appellant X1 the name, address, email address, and phone number related to the subscriber to whom the Appellee assigned IP addresses (IP addresses are omitted) as of 00:56:35 on June 30, 2020, and as of 16:49:52 on August 16, 2020.
3. The expanded claims of Appellant X1 in this instance shall be dismissed.
4. The appeal of Appellant X2 shall be dismissed.
5. The expanded claims of Appellant X2 in this instance shall be dismissed.
6. The court costs that arose between Appellant X1 and the Appellee in both the first and second instances shall be borne by the Appellee; and all the court costs that arose between Appellant X2 and the Appellee in this instance shall be borne by Appellant X2.

Facts and reasons

Abbreviations of terms as used herein and the meaning of the abbreviations shall be subject to the judgment in prior instance except for those added in this judgment, and the term "Plaintiff" as used in the judgment in prior instance shall be deemed to be replaced with "Appellant" and the term "Defendant TOKAI" shall be deemed to be replaced with "Appellee" as necessary. In addition, the term "Attachment" in the cited

part in the judgment in prior instance are all 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. The Appellee shall disclose to the Appellants the identification information of the sender indicated in the Attachment "List of identification information of the sender" (the Appellants demanded in the prior instance to disclose information (name, address, phone number, and email address) related to the subscriber to whom the sender's IP addresses listed in Attachment "List of IP addresses" were assigned around the dates and times as listed in said list; however, the subject of the disclosure was changed as stated in Attachment "List of identification information of the sender" in this instance).

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

In this case, the Appellants alleged that it is obvious that the articles stated in 1. and 2. of the Attachment to the judgment in prior instance "List of posted articles" (including Posted Image 1 or 2 indicated in 3. of said Attachment) were posted using Twitter (information service whereby users can post messages, etc. called tweets using the internet) by an unidentified person, due to which the copyright of Appellant X1 and the rights of the original author of Appellant X2 related to the Appellant's Profile Image indicated in 2. of the Attachment to the judgment in prior instance "List of the Appellant's images" that is contained in Posted Image 1 or 2 have been infringed and the right to honor of Appellant X1 has also been violated. Based on this allegation, the Appellants demanded that the Appellee, who is an internet service provider, disclose the identification information of the sender to whom the sender's IP addresses were assigned around the dates and times stated in Attachment "List of IP addresses" pursuant to 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 prior to the amendment by Act No. 27 of 2021 (the "Provider Liability Limitation Act").

The judgment in prior instance determined that the Appellee does not fall under a "provider of disclosure-related services" as defined in Article 4, paragraph (1) of the Provider Liability Limitation Act and dismissed the Appellants' demands. Dissatisfied with the judgment in prior instance, the Appellants filed an appeal and expanded the demands to disclose the information stated in Attachment "List of identification information of the sender" (hereinafter referred to as the "Identification Information of

the Sender") in this instance.
2. The basic facts, issues, and allegations of the parties related to the issues are altered as follows, and the supplementary allegations and additional allegations of the parties in this instance are added as stated in 3. below. 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 related to the issues" in the "Facts and reasons" section in the judgment in prior instance, and they are therefore cited.
(1) The phrase "被告らは、いずれも[both of the Defendants]" in line 4, page 3 of the judgment in prior instance is altered to "被控訴人は、[the Appellee]"; and the phrase "を正方形にトリミングしたもの（甲２）[trimmed … in a square shape (Exhibit Ko 2)]" is inserted after the phrase "本件原告画像[the Plaintiff's Image]" in line 13, page 3.
(2) The term "前者を[the former]" in line 25, page 3 of the judgment in prior instance is altered to "その投稿画像部分を含め、前者を[including the part of the posted image, the former]".
(3) The section from line 12 through line 14, page 4 of the judgment in prior instance is altered as follows.
"(4) Possession of identification information of the sender by the Appellee

The Appellee possesses the information including the name, address, email address, and phone number of the subscriber to whom the sender's IP address was assigned as stated in Attachment "List of IP addresses" at each date and time stated in said list from among the Identification Information of the Sender."
(4) The term "被告ら[the Defendants]" in line 21, page 4 of the judgment in prior instance is altered to "被控訴人[the Appellee]".
(5) The phrase "前記前提事実(2)イ[(2) B. in Basic facts above]" in line 10, page 5 of the judgment in prior instance is altered to "前記前提事実(2)ア[(2) A. in Basic facts above]".
(6) The term "画像[image]" in line 8 and line 24, page 6 and in line 1, page 7 of the judgment in prior instance is deleted and the phrase "当該画像[said image]" in line 25, page 6 is altered to "その画像[the image]".
(7) The section from line 1 through line 3, page 8 of the judgment in prior instance is altered to "The Appellants have not permitted posters of Tweets to post tweets containing the Appellant's Profile Image."
(8) The phrase "スクリーンショット画像[screenshot image]" in line 26, page 9 of the judgment in prior instance is altered to "スクリーンショット[screenshot]".
(9) The phrase "同ツイートをスクリーンショットに撮影して[by taking a

photograph of said tweet as a screenshot]" in lines 1 to 2, page 12 of the judgment in prior instance is altered to "同ツイートのスクリーンショットを撮影して[by taking a screenshot of said tweet]".

(10) The term "公共性[public nature]" in line 17, page 13 of the judgment in prior instance is altered to "公益性[public interest]".

(11) The section from line 22, page 15 through line 1, page 16 of the judgment in prior instance is deleted.

(12) After the phrase "特定電気通信役務提供者の損害賠償責任の制限及び発信者情報の開示に関する法律第四条第一項の発信者情報を定める省令[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]" in line 6 through line 8, page 16 of the judgment in prior instance, the phrase "令和４年総務省令第３９号による廃止前の[before abolishment by the Order of the Ministry of Internal Affairs and Communications No. 39 of 2022]" is added.

(13) The section from the beginning of line 4, page 17 through the end of line 12, page 18 of the judgment in prior instance and the section from the term "また、[In addition,]" in line 16, page 18 through the end of line 20, page 18 are deleted; the number "(4)" in line 13, page 18 is altered to "(2)"; the term "被告ら[the Defendants]" in lines 23, 24, and 26, page 18 is altered to "被控訴人[the Appellee]", respectively, and the term "いずれも[none of]" in said line is deleted.

(14) The term "令和（２０２０）年[2020]" in line 9 and lines 10 and 11, page 20 of the judgment in prior instance is altered to "令和２（２０２０）年[2020]", respectively.

(15) The section from line 5 through line 26, page 21 of the judgment in prior instance is deleted.

(16) The term "被告ら[the Defendants]" in line 1, page 22 of the judgment in prior instance is altered to "被控訴人[the Appellee]"; the section from the beginning of line 20, page 22 through the end of line 13, page 23 and the section from "、被告らは[; the Defendants]" in line 15, page 23 through "それぞれ[respectively]" in line 16, page 23 are deleted; and the phrase "本件ツイート１[Tweet 1]" in line 14, page 23 is altered to "本件各ツイート[the Tweets]".

(17) The section from the beginning of line 11, page 24 through the end of line 19, page 25 of the judgment in prior instance is deleted; the term "エ[D.]" at the beginning of line 20, page 25 is altered to "イ[B.]"; and the phrase "前記アないしウの[in A. through C. above]" in said line and the section from the beginning of line 21, page 25

through the end of line 22, page 25 is deleted.
(18) The term "被告ら[the Defendants]" in line 26, page 25 and in line 2, page 26 of the judgment in prior instance is altered to "被控訴人[the Appellee]", respectively.

(omitted)

No. 3 Judgment of this court
1. Issue 1-1 (Whether the violation of the right by the post of Tweet 1 is obvious)
(1) "Whether the violation of the right is obvious"

The identification information of the sender is information related to the sender's privacy, freedom of expression, and secrecy of communications; it should not be disclosed to a third party unless there are legitimate reasons; and it is impossible to recover the state before disclosure once it is disclosed. Therefore, Article 4, paragraph (1), item (i) of the Provider Liability Limitation Act stipulates strict requirements for the demand of disclosure of identification information of the sender (see 2009 (Ju) 609, the judgment of the Third Petty Bench of the Supreme Court on April 13, 2010, Minshu Vol. 64, No. 3, at 758). In light of the above, in order to say that the circumstances fall under "if it is obvious that the rights of a person demanding the disclosure have been violated by the distribution of the violating information" as provided for by said item, it is construed that allegation and proof are required regarding the absence of circumstances suggesting existence of reasons for rejecting the illegality in addition to the fact that the rights of the demander are violated by the distribution of the violating information.
(2) Tweet 1

According to the evidence (Exhibits Ko 3 and 4), Tweet 1 retweeted the tweet that was posted by Appellant X1 at 3:01 pm on June 29, 2020 by attaching the following texts under the Account of user "A" at 5:45 pm on said date: "X1' san (X1")," "Can you stop making my friend into a bad person by fabricating DM images?," "Even if you fabricate a DM, nobody would believe it due to the problem of credibility," and "My friend is not a person to send such a disgusting DM. Unlike you." Additionally, Posted Image 1 where said tweet by Appellant X1 and 2 pieces of tweets that were posted as replies thereto were captured as a screenshot. Posted Image 1 includes 3 pieces of tweets posted by Appellant X1 and the Appellant's Profile Image was posted as an icon for each tweet. Therefore, the Appellant's Profile Image was posted at 3 sites in Posted Image 1.
(3) Copyright infringement

A. According to the evidence (Exhibits Ko 1 through 3, 5, 13, 37, and 38), Appellant Image 1 was found to be created by adding drawings to the part of the face of Appellant X1, subject of the photograph taken by Appellant X2 (the Appellant's Photograph). In addition, it can be said that the personality of Appellant X2, who took the photograph, can be seen in the Appellant's Photograph in the selection of the subject of shooting and shooting site, etc. Moreover, it can also be said that the personality of Appellant X1 can be seen in the shape and position, etc. of the eyes and mouth in the picture drawn on part of the face of the Appellant's Image. Based on the above, the copyrightability can be found in both the Appellant's Photograph and the Appellant's Image, which was created by processing said photograph. In addition, the Appellant's Profile Image is a copy of the Appellant's Image where mainly the lower part was cut off and the upper part of the object of shooting remained, and therefore, it is found that Appellant X1 has the copyright and Appellant X2 has the right of the original author.

B. In this case, the poster of Tweet 1 posted Tweet 1 under the Account without obtaining the permission of the Appellants (Exhibits Ko 5 and 13). It can be said that the Appellant's Profile Image was copied on the Twitter's server and was made transmittable by this act of posting Tweet 1.

C. The Appellee alleged that the use of the Appellant's Profile Image as mentioned in B. above falls under "quotation" and is legitimate. Therefore, it is examined below. In order for the use to fall under a legitimate "quotation," the use must [i] be consistent with fair practices, and [ii] be within a scope that is justified for the purpose of news reporting, critique, study, or other place in which the work is quoted (Article 32, paragraph (1) of the Copyright Act).

D. (A) Looking at this case, in Tweet 1, Posted Image 1 was posted along with texts "X1' san," and "Can you stop making my friend into a bad person by fabricating DM images?" Since "X1' " is the maiden name of Appellant X1 (Exhibit Ko 81), said tweet is presumed to be posted along with Posted Image 1 as an image that Appellant X1 fabricated in order to criticize the act that Appellant X1 "fabricated a DM image." The objective of attaching Posted Image 1 is found to be a criticism of Appellant X1 tweeting by "fabricating DM images."

(B) Presenting tweets by Appellant X1 as they are without editing them in order to criticize a conduct of Appellant X1 can be regarded as a method that can ensure objectivity. As this method enables readers of Tweet 1 to understand who posted the tweets that are subject to the criticism and the content of these tweets accurately, it can be deemed to be conducive to examining whether the criticism is valid. In addition, the Appellant's Profile Image is affixed to the tweets as an icon. The Appellant's Profile

Image is not used in Tweet 1 beyond the purpose of presenting tweets by Appellant X1 as they are. In that case, the act of taking screenshots of tweets by Appellant X1, including the icon image, and presenting them can be considered to constitute the use within a scope that is justified for the purpose of critique.

(C) Next, according to the evidence (Exhibit Otsu 12), in light of the fact that the technique of capturing an image and sharing it is commonly employed when sharing information, it is appropriate to find that the use of the Appellant's Profile Image in Tweet 1 is consistent with fair practices.

E. (A) The Appellants alleged that the volume of Posted Image 1 is equivalent to the volume of the main text of Tweet 1 and they are not in a subordinate-superior relationship, and therefore that the use of Posted Image 1 does not fall under a quotation. However, even if it is construed that a subordinate-superior relationship is required in order to find that the use falls under a "quotation," the existence of the subordinate-superior relationship is not determined only by the volume, but it should be determined by comprehensively considering the volume and content. In this case, a comparison should be made between the volumes of the main text of Tweet 1 and the Appellant's Profile Image, not Posted Image 1. It can be said that Posted Image 1 is used as an item with the nature of providing a supplementary explanation of the content of the main text of Tweet 1. Therefore, the aforementioned allegation of the Appellants cannot be accepted.

(B) The Appellants alleged that making a post by using a screenshot, but not by quote-retweet is against the policy of Twitter, Inc. and it is against fair practices. However, the legality of a quotation was not immediately determined by the policy of Twitter's management originally and there are no circumstances where a post of a screenshot violates the terms of service of Twitter (Exhibits Ko 41 and Otsu 13 and 14). If quote-retweet alone is used as a means to show a tweet that is a target of criticism, when the original tweet is changed or deleted, the content that is displayed in the quote-retweet is also changed or deleted. Therefore, readers may no longer be able to examine the validity of criticism. However, if a screenshot is attached, said case may be avoided. Actually, comparing the tweet of Appellant X1 that Tweet 1 quote-retweeted and Posted Image 1 as of August 7, 2020, it is found that the username of Appellant X1 was changed in the aforementioned quote-retweet and that the tweet by Appellant X1, which was criticized by Tweet 1, is not displayed as it was when Tweet 1 was posted (Exhibit Ko 3). Therefore, if a quote-retweet alone is used, the tweet by Appellant X1 at the time when Tweet 1 was posted can no longer serve as a reference. Based on the above, it should be said that quotation by using a screenshot is necessary in light of the objective

of the quotation, i.e., criticism, and it cannot be said that quotation by using a screenshot is against fair practices even in light of the remaining circumstances that appeared in this case. Therefore, the aforementioned allegation of the Appellants cannot be accepted.
(C) The Appellants alleged that the use of the Appellant's Profile Image in Tweet 1 is not "within a scope that is justified for the purpose of the quotation" based on the fact that Tweet 1 was made with the aim of defaming Appellant X1 and the objective of the quotation itself was not legitimate; the objective of making the post could have been achieved by quotation by using the function of quote-retweet; even if the Appellant's Profile Image is blacked out, the objective of making the post could have been achieved. However, as stated in D. above, the objective of the quotation in this case is a criticism. Setting aside whether the content of Tweet 1 falls under defamation or dishonor, in light of the objective of the quotation to criticize the act of Appellant X1, it can be said that the use in question was within a legitimate scope. In addition, as stated in (B) above, quotation by using a screenshot is necessary in light of the objective of the quotation. If tweet by Appellant X1, who is the subject of criticism, including the icon image is quoted without modification, it enables readers to accurately identify the poster and content of the tweet that is subject to criticism. Therefore, even in consideration of the aforementioned matters pointed out by the Appellants, it is reasonable to find that the Appellant's Profile Image in Tweet 1 was used "within a scope that is justified for the purpose of the quotation."

Based on the above, none of the aforementioned allegations of the Appellants can be accepted.

F. Consequently, it cannot be said that it is obvious that the Appellants' copyright was infringed due to the use of the Appellant's Profile Image in Tweet 1.

(4) Defamation of Appellant X1

A. Whether the meaning and details of an article decrease a person's social evaluation should be determined based on the common attention of general readers and the way they read the article in question as a standard (see 1954 (O) 634, the judgment of the Second Petty Bench of the Supreme Court of July 20, 1956, Minshu Vol. 10, No. 8, at 1059). This also applies to the decision as to whether the posted article on Twitter falls under defamation.

In addition, defamation includes not only that by the indication of facts, but also that by the indication of opinions and comments. If it is understood that some expression explicitly or implicitly alleges a specific matter related to other persons for which its existence can be determined by evidence, etc., it is reasonable to construe that said expression indicates the fact of the aforementioned specific matter (see 1994 (O)

978, the judgment of the Third Petty Bench of the Supreme Court of September 9, 1997, Minshu Vol. 51, No. 8, at 3804). It should be said that criticism, argument, etc. related to the value, right and wrong, superiority or inferiority of a matter that cannot adapt to the aforementioned proof by evidence, etc. belong to the indication of opinions or comments (see 2003 (Ju) 1793 and 1794, the judgment of the First Petty Bench of the Supreme Court of July 15, 2004, Minshu Vol. 58, No. 5, at 1615). In addition, the fact that it should be determined based on the common attention of general readers and the way they read the article in question as a standard also applies to the aforementioned distinction (see the forecited judgment of the Third Petty Bench of the Supreme Court of September 9, 1997).

B. Looking at this case, based on the common attention of general readers and the way they read the article in question as a standard, the text of "Can you stop making my friend into a bad person by fabricating a DM image?" in Tweet 1 means that Appellant X1 is a malicious person who "makes a friend into a bad person" by even "fabricating" an image and it is found to decrease the social reputation of Appellant X1.

In addition, based on the common attention of general readers and the way they read the article in question as a standard, it is reasonable to find that the aforementioned text and the texts of "Even if you fabricate a DM, nobody would believe it due to the problem of credibility" and "Unlike you" in Tweet 1 fall under the indication of the poster's opinions, based on the assumption of the fact that Appellant X1 fabricated the DM image, that Appellant X1 is not trusted to the extent that no one would believe him/her even if Appellant X1 posted a tweet with the content as if the friend were a bad person. Whether Appellant X1 is trusted or not is related to a matter that cannot adapt to the proof by evidence, etc., and therefore, it is reasonable to consider that it is not the indication of facts, but indication of opinions or comments.

C. (A) In cases of a defamation due to expression of an opinion or comment based on a fact, if the act is related to the fact of public interest and the objective of the act is to further the public interest and the fact serving as a presumption of the opinion or comment is proved to be true, the act lacks illegality unless it deviates from the scope of an opinion or comment, such as causing personal abuse, etc. (see 1980 (O) 1188, the judgment of the Second Petty Bench of the Supreme Court of April 24, 1987, Minshu Vol. 41, No. 3, at 490; 1985 (O) 1274, the judgment of the First Petty Bench of the Supreme Court of December 21, 1989, Minshu Vol. 43, No. 12, at 2252).

(B) As stated in B. above, Tweet 1 is on the assumption that Appellant X1 fabricated a DM image. When observing the image quoted in a tweet of Appellant X1 (a DM that seems to be captured as a screenshot and then the sender's name, etc. were blacked out)

and Posted Image 1 containing said image, which are quoted in Tweet 1, there is no statement to suggest the reason why the poster of Tweet 1 determined that Appellant X1 fabricated the DM image. According to the evidence (Exhibits Ko 89 and 90 and Otsu 17-5 and 17-6), it is found in the Account that there were tweets posted with Posted Image 1 and images captured as a screenshot of a tweet "… you should not make irresponsible comments because you have not drawn many original pictures ... ." under a user name that is different from Appellant X1 and from the Account, and with texts, such as "This is the case where my friend suffered damages!," as replies to Tweet 2. Part of the DM image contained in Posted Image 1 was blacked out so that the sender could not be identified. The content is "I think you should not make irresponsible comments because you have not drawn many original pictures ... ." It is different in a sort from the content of the tweet made under said different username. Therefore, it cannot be found that Appellant X1 fabricated the DM image based on this evidence. Then, concerning Tweet 1, the important part of the fact that serves as an assumption of the opinion or comment cannot be said to be proved to be true.

Consequently, it is reasonable to find concerning the defamation of Appellant X1 by Tweet 1 that there are no circumstances suggesting the existence of reasons to reject the illegality, and therefore, it is obvious that the right to the protection of honor of Appellant X1 was violated by Tweet 1.

(5) Based on the above, it is found to be obvious that Tweet 1 violated the rights of Appellant X1; however, it is not found to be obvious that Tweet 1 violated the rights of Appellant X2.

2. Issue 1-2 (Whether the right infringement by the post of Tweet 2 is obvious)

(1) Tweet 2

According to the evidence (Exhibits Ko 10 and 11), Tweet 2 was posted under the Account with the username "A " at 9:33 pm on September 30, 2020 with texts "for your information, when you get involved with X1' (X1) san," "you will receive cryptic and disgusting replies," and "you must be careful because X1' (X1) will fabricate tweet text and create delusional stories!" and with Posted Image 2, where a tweet posted at 1:56 pm on August 1, 2020 by Appellant X1 was captured as a screenshot. In Posted Image 2, the Appellant's Profile Image was posted at one site as an icon attached to the aforementioned tweet of Appellant X1.

(2) Infringement of the copyright

A. As stated in 1. (3) A. above, it is found that Appellant X1 has the copyright and Appellant X2 has the right of the original author of the Appellant's Profile Image. The poster of Tweet 2 posted Tweet 2 under the Account without obtaining the permission

of the Appellants (Exhibits Ko 5 and 13). It can be said that the Appellant's Profile Image was copied on the Twitter's server and was made transmittable by this act.

B. Looking at the texts and Posted Image 2 in Tweet 2 as mentioned in (1) above, in Tweet 2, the poster tells readers that readers must be careful about getting involved (it is presumed to mean interacting, such as having a conversation on Twitter) with Appellant X1, otherwise they "will receive cryptic and disgusting replies" from Appellant X1. It is understood that Posted Image 2 was used as an example of a "cryptic and disgusting reply." Therefore, it is at any rate found that the Appellant's Profile Image contained in Posted Image 2 was used for the purpose of news reporting or critique. In addition, in the use method, a tweet of Appellant X1 was captured as a screenshot, including part of the icon, without making a modification, and it was displayed. Therefore, as is the case in (1) D. above, it is found to be use within a scope that is justified for the purpose of news reporting or critique and conforms to fair practices.

C. Then, it cannot be said that it is obvious that the Appellants' copyright has been infringed due to the use of the Appellant's Profile Image in Tweets 2.

(3) Defamation

A. The content of Tweet 2 is as stated in (1) above. Based on the common attention of general readers and the way they read the article in question as a standard, the texts concerning Appellant X1, such as "cryptic and disgusting replies" and "you must be careful because X1' (X1) will fabricate tweet text and create delusional stories!," mean that Appellant X1 is a person who makes cryptic and disgusting replies (it is presumed to mean a reply with very bad or inconsequential content), fabricates texts of tweets posted by other persons, or states delusions that are different from the truth. Therefore, it is reasonable to find that Tweet 2 deteriorates the social reputation of Appellant X1.

B. Tweet 2 states subjective opinions based on the fact that the content of the tweet by Appellant X1 as shown in Posted Image 2 attached to Tweet 2 is a "cryptic and disgusting reply" that readers must be careful of because Appellant X1 is a person who makes fabrications, has paranoid ideas, and creates stories. They are related to the matters that cannot adapt to the proof by evidence, etc. and therefore, it is reasonable to deem it not to be the indication of facts, but the indication of opinions or comments.

C. It can be said that the opinion or comment that Appellant X1 is a person who fabricates, has paranoid ideas, and creates stories is an attack on the personality of Appellant X1 to a level of personal abuse and that it goes beyond the bounds of an opinion or critique. Then, without the need to examine the remaining issues, it cannot be found that Tweet 2 has reasons to reject illegality.

D. Consequently, concerning the defamation of Appellant X1 by Tweet 2, it is reasonable to find that there are no circumstances suggesting the existence of reasons to reject illegality, and therefore, it is obvious that the right to the protection of honor of Appellant X1 was violated by Tweet 2.

(4) Based on the above, it is found to be obvious that Tweet 2 violated the rights of Appellant X1; however, it is not found to be obvious that Tweet 2 violated the rights of Appellant X2.

3. Issue 2 (Whether the Identification Information of the Sender falls under "identification information of the sender pertaining to the violation of the rights")

(1) Appellant X1 demanded disclosure of information related to the subscriber to whom IP addresses (IP addresses are omitted) were assigned by the Appellee for the period from 00:56:35 on June 30, 2020 through 16:49:52 on August 16, 2020. As stated in 1. (2) and 2. (1) above, Tweet 1 was posted at 5:45 pm on June 29, 2020 and Tweet 2 was posted at 9:33 pm on September 30, 2020. Therefore, said Tweets were not posted for the period for which the aforementioned disclosure was demanded and the Identification Information of the Sender is not information related to the logins from which Tweets were posted. Then, whether information related to the IP address used at a login other than the logins from which the Tweets that are violating information were posted falls under the "identification information of the sender pertaining to the violation of the rights" as set forth in Article 4, paragraph (1) of the Provider Liability Limitation Act becomes a question. Information that the Appellee has identified is not the IP addresses when the relevant pieces of violating information were posted, but the identification information of the sender related to the IP addresses at logins. There is no dispute that this can be included in the "identification information of the sender pertaining to the violation of the rights."

The aforementioned question is examined below. The distribution of information by the specified telecommunications (Article 2, item (i) of the Provider Liability Limitation Act) has the following characteristics that are different from other means of information distribution: it can easily violate the rights of others; the damages may expand endlessly since it is highly transmissible; and if information is transmitted anonymously, even a perpetrator cannot be identified and recovery from the damages is difficult. Based on the above, the purport of Article 4 of said Act is construed to make it possible to identify a perpetrator to provide relief to the right of victims by allowing a person, whose rights were violated by the distribution of information through specified telecommunications, to demand disclosure of identification information of the sender against a specified telecommunications service provider that uses the specified

telecommunications facilities that are used for the specified telecommunications, under strict requirements that give consideration to privacy of the sender of the information, freedom of expression, and secrecy of communications (see the forecited judgment of the Third Petty Bench of the Supreme Court of April 13, 2010). Based on the above, it is not reasonable to expand the scope of "identification information of the sender pertaining to the violation of the rights" without reasons; however, if it is limited to information that can be identified based on the IP address at the login when the violating information was posted, in cases where the login when the information in question was posted cannot be identified, such as due to multiple logins having been made at the same time, etc., it cannot relieve the rights of victims and it results in going against the purport of the aforementioned Act. In addition, Article 4, paragraph (1) of the Provider Liability Limitation Act stipulates not "identification information of the sender of the violating information," but "identification information of the sender pertaining to the violation of the rights," which slightly provides room. According to the evidence (Exhibits Ko 83 and 85), the amendment 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 by Act No. 27 of 2021 is found to be implemented, concerning the "identification information of the sender pertaining to the violation of the rights" as set forth in Article 4, paragraph (1) of the Provider Liability Limitation Act, based on the assumption that information that is identified from the IP address assigned after the violating information was transmitted is included in the "identification information of the sender." It is construed throughout before and after the amendment that the "identification information of the sender pertaining to the violation of the rights" is not limited only to the information when the violating information was transmitted. In addition, even if it is construed in this way, if the sender is found to be an identical person to the person who distributed the violating information, when the identification information of the sender is disclosed, it results in the disclosure of information of the person who distributed the violating information. Therefore, it can be said that there are reasons for the person demanding disclosure to receive the relevant disclosure and it cannot be said that it is unfair to the sender. In particular, in the case of Twitter in this case, information is posted after the sender logs into the assigned account and in the state of login. Therefore, it is essential to log in when sending violating information (the entire import of oral arguments). It is considered to be normal that information related to the login under the same account is the same as the information of the sender related to a login that is made before or after the login when the violating information was transmitted. In light of the above, it is not reasonable to

construe the "identification information of the sender of the violating information" by limiting it to the identification information of the sender that is identified from the IP address upon the login when the violating information was posted. If it is found to be information concerning the person who sent any violating information, it is appropriate to consider that identification information of the sender that is identified from the IP address at the time of a login after sending the violating information and identification information of the sender that is identified from the IP address at the time of a login before the login made immediately before sending the violating information could also fall within the scope of "identification information of the sender pertaining to the violation of the rights" as set forth in Article 4, paragraph (1) of the Provider Liability Limitation Act.

(2) Examining the issue based on the above, all Tweets were posted under the Account in this case. Looking at the content of tweets under the Account (Exhibits Ko 3, 10, 89, and 91 and Otsu 17-1, 17-2, and 17-6), the Account is presumed to be managed by an individual. In light of the content of the posts under the Account and the login status of the Account (Exhibits Ko 39, 40, and 80), there are no circumstances suggesting that the Tweets were posted by a person other than the manager of the Account.

Based on the above, it can be said that the Identification Information of the Sender is identification information of the sender that can be identified from the IP address upon a login after Tweet 1 was transmitted or identification information of the sender that is identified from the IP address at a login before the login which was immediately before transmitting Tweet 2, but falls under the "identification information of the sender of violating information."

4. Issue 3 (Whether the Appellee falls under a "provider of disclosure-related services")

Next, whether the Appellee falls under a "provider of disclosure-related services" is examined. As stated in 3. above, in the same way as the "identification information of the sender pertaining to the violation of the rights" as set forth in Article 4, paragraph (1) of the Provider Liability Limitation Act is construed to mean the identification information of the sender who sent any violating information, it is reasonable to construe to be sufficient that "the provider of disclosure-related services" as set forth in said paragraph is a provider of disclosure-related services that holds identification information of the sender who sent any violating information, which is the aforementioned "identification information of the sender pertaining to the violation of the rights."

In addition, as stated in No. 2, 2. (4) in "Facts and reasons" in the judgment in prior instance that is cited after alternation, the Appellee holds information related to the

subscriber to which the sender's IP address stated in Attachment "List of IP addresses" at the times indicated in [i] and [ii] of said list that are times when the Account was logged in. The person who logged into the Account and the person who posted Tweets are presumed to be an identical person. Therefore, the aforementioned information falls under the identification information of the sender pertaining to the violation of the rights. Then, the Appellee falls under the "provider of disclosure-related services" as set forth in Article 4, paragraph (1) of the Provider Liability Limitation Act.

5. Issue 4 (Whether there are reasonable grounds to receive disclosure of the Identification Information of the Sender)

(1) According to the evidence (Exhibits Ko 5 and 13), since Appellant X1 is scheduled to demand that the posters of Tweets pay compensation for damages, etc. based on the tort, it should be said that Appellant X1 has reasonable grounds to receive disclosure of the name, address, email address, and phone number of the manager of the Account that is presumed to be the poster of the Tweets.

The Appellee alleged that if the name and address are disclosed, the Appellant X1 can demand that the aforementioned poster pay compensation for damages, and therefore, there are no reasonable grounds to receive disclosure of the phone number and email address. However, the form of execution of the rights is not limited to filing an appeal. As a previous step thereto, making contact via telephone or email and implementing negotiation is a form of legitimate execution of rights. For this reason, it can be said that Appellant X1 has reasonable grounds to demand disclosure of the phone number and email address of the Poster. Therefore, the aforementioned allegation of the Appellee cannot be accepted.

(2) However, it is not necessary to disclose all the information related to the subscriber to whom the Appellee assigned the IP addresses (IP addresses are omitted) for the period from 00:56:35 on June 30, 2020 through 16:49:52 on August 16, 2020, in order for Appellant X1 to exercise the rights related to the violation of the rights by Tweets. It is sufficient only to find the disclosure of information related to the subscriber to which the aforementioned IP addresses were assigned at the beginning and end of the aforementioned period when it was obvious that the Appellee possessed the information.

No. 4 Conclusion

Consequently, claims of Appellant X1 have grounds to the extent of demanding disclosure of the name, address, email address, and phone number of the subscriber to which the sender's IP addresses as stated in Attachment "List of IP addresses" were assigned on the dates and times stated in said Attachment. Therefore, the judgment in prior instance that dismissed claims of Appellant X1 against the Appellee, which should

have been granted, was inappropriate. Since the appeal of Appellant X1 has grounds, the part of the judgment in prior instance where claims of Appellant X1 against the Appellee was dismissed shall be rescinded, and the claims of Appellant X1 against the Appellee in the court of prior instance shall be granted. Expanded claims of Appellant X1 in this instance are groundless and therefore shall be dismissed. The judgment in prior instance that dismissed Appellant X2's claims by ruling as being groundless is reasonable. Appellant X2's appeal is groundless, and therefore, it shall be dismissed. In addition, Appellant X2's expanded claims in this instance are groundless and shall be dismissed, and the judgment is rendered as indicated in the main text.

Intellectual Property High Court, Second Division
Presiding judge HONDA Tomonari
Judge: ASAI Ken
Judge KATSUMATA Kumiko

Attachment

List of identification information of the sender

The following information related to the subscriber to which the Appellee assigned the sender's IP address as stated in Attachment "List of IP addresses" used upon making a login to the account stated in Attachment "List of accounts," for the period from the start date [i] until the end date [ii] from among login dates and times as stated in said list.

1. Name
2. Address
3. Email address
4. Phone number

Attachment

List of accounts

User ID: A'

User name: A

URL: https:// omitted hereinafter

Attachment

List of IP addresses

[i] At 00:56:35 on June 30, 2020 (Japan time (JST))

Sender's IP address (omitted)

[ii] At 16:49:52 on August 16, 2020 (Japan time (JST))

Sender's IP address (omitted)