

Copyright	Date	March 23, 2023	Court	Intellectual Property High Court, Fourth Division
	Case number	2022 (Ne) 10092		
<p>- A case in which, concerning the posting of photographs on Twitter, the court held that it is clear that there was infringement of the right of attribution, and that, pursuant to Article 5 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 Appellant may demand for disclosure of the name or company name, address, and e-mail address of the person who, after the posting of photographs, made a login using the same User ID as the one used by the person who posted the photographs.</p>				

Case type: Disclosure of Identification Information of the Senders, Copyright

Result: Reversal of prior instance judgment

References: Article 5, paragraph (1) or (3) 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 (after the revision pursuant to Act No. 27 of 2021); Article 5 of the Regulations for Enforcement 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; Article 19 of the Copyright Act

Judgment of the prior instance: Tokyo District Court Judgment 2022 (Wa) 9828

Summary of the Judgment

1. Outline of the case

In the present case, X (Appellant/Plaintiff) argued that the photographs posted by an unidentified person on Twitter are reproductions of the Photographs, for which X has copyright, so that it is clear that said act (Tweet) was an act of infringement of X's copyright (the right of reproduction and the right to transmit to the public) and moral rights of an author (the right to integrity and the right of attribution), thereby demanding against Y (Defendant/Appellee), who is the intermediate provider pertaining to the most recent login (Login) as disclosed by Twitter, Inc., 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 (before the revision pursuant to Act No. 27 of 2021), for disclosure of the identification information of the sender (name or company name, address, and e-mail address; "Sender's Information") pertaining to the person who made the Tweet.

In the judgment of the prior instance, the prior court determined that the

information which X demands be disclosed pertains to a login made approximately four months after the Tweet, so that it cannot be acknowledged that the login is so closely related to the transmission of infringing information as to be considered the same as the login information prior to the infringement, and dismissed the demand made by X, who then appealed to the court of second instance. While the aforementioned revision to the Act was enforced after the Appellant filed an appeal, there is no dispute over the application of the revised Act to the present case.

2. Whether or not the Sender's Information falls under the "specified information of the sender" (the main sentence of Article 5, paragraph (1) of the revised Act)

(1) Concerning the transmission of the login information with regard to which disclosure of the identification information of the sender is approved, the main sentence of Article 5 of the Regulations for Enforcement 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 (hereinafter referred to as "Regulations for Revision") is written in a way that gives room for interpretation of a wider scope of information by indicating that there must be a "considerable relationship" with the transmission of the infringing information. Given the foregoing, whether or not there is a "considerable relationship" is preconditioned on the high probability that the transmission pertaining to said login was by the same person as the sender of the transmission pertaining to said infringing information. With such precondition in place, the circumstances as to the storing of communication records held by the specified telecommunications service provider, to whom the disclosure is requested, must be taken into account upon comprehensively considering various factors such as the closeness in time between the transmission pertaining to the infringing information and the stored login information, in order to determine the "considerable relationship". The fact that there is a certain interval in time between the transmission of infringing information and the transmission of login information, and the fact that the transmission of login information is not the most recent one before the transmission of infringing information should not be considered grounds for immediately denying the relevance between the two.

(2) There is a certain interval between the time and date of the Login (February 10, 2022) and the time when the Tweet was posted (October 10, 2021). However, in a case such as this one, it is difficult for X him/herself to determine whether or not there exists information that pertains to the IP address and the like, with respect to the timing that is more recent than the one pertaining to the information to be disclosed. Furthermore, there are no circumstances, in the judgment of the court of the prior

instance, which suggest that Y or the court made any remarks on this point. As such, it is not reasonable to place emphasis on the circumstances described above. On the other hand, the present case has the circumstance that the person who posted the Tweet is clearly the same person as the person who performed the Login.

In that case, it is reasonable to interpret that the communication of the Login has a considerable level of relevance to the Tweet and falls under the infringement-related communication (Article 5, paragraph (3) of the revised Act). Accordingly, the Sender's Information falls under the specified information of the sender (Article 5, paragraph (1) of the revised Act).

2. Whether or not it is clear that the Tweet infringed on X's right

The Photographs show watermarks which indicate that they are X's works. In the Posted Images, the watermark is either cut out or minimized into an unreadable size, and there is no indication of X's name or the like in the Tweet.

In that case, it should be said that the Tweet clearly infringes on X's right of attribution.