<table>
<tr><td rowspan="2">Copyright</td><td>Date</td><td>April 13, 2023</td><td rowspan="2">Court</td><td rowspan="2">Intellectual Property High Court, Second Division</td></tr>
<tr><td>Case number</td><td>2022 (Ne) 10060</td></tr>
<tr><td colspan="5">- A case in which positiveness of infringement in the request for disclosure of identification information of the sender cannot be found, since attachment of a screen shot of X's tweet when posting a tweet falls under legal "quotation" (Article 32, paragraph (1) of the Copyright Act) or there is a possibility that it falls under the "quotation".</td></tr>
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Case type: Disclosure of Identification Information of the Senders

Result: Reversal of prior instance judgment

References: Article 2, paragraph (1), item (i), Article 21, Article 23, paragraph (1), Article 32, paragraph (1) of the Copyright Act, Article 4, paragraph (1) of 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 Revision by Act No. 27 of 2021

Judgment of the prior instance: Tokyo District Court 2021(Wa)15819 rendered on December 10, 2021

Summary of the Judgment

1 This case is one in which X, who is the poster of the Plaintiff Posts 1 to 4 (each of the Plaintiff Posts) on Twitter, made a request for disclosure of identification information of the sender against the Appellant, who is a specified telecommunications service provider, on the grounds of 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 Revision by Act No. 27 of 2021 by stating that, regarding the Present Posts 1 to 4 (each of the Present Posts) by those unknown, the copyright of X (right of reproduction and right to transmit the public) was infringed by the attachment of the screen shot of each of the Plaintiff Posts.

2 The judgment in prior instance approved all the requests by X after approving copyrightability in each of the Plaintiff Posts and stated that, regarding applicability of "quotation" according to Article 32, paragraph (1) of the Copyright Act, in view of the bylaws of Twitter (present bylaws) providing a method called quote tweet as a procedure of quoting others' contents, duplication of each of the Plaintiff Posts by a screen-shot method, and posting it on Twitter without using the procedure above violates the present bylaws and cannot be found to be consistent with fair practices, it is not found to be legal as quotation, and the infringement of X's copyright is approved

and thus, the Appellant filed an appeal against it. X died after conclusion of oral argument in prior instance, and the Appellee, who is a juridical person for the inherited property, assumed the position.

3 The judgment approved copyrightability in each of the Plaintiff Posts but stated that, regarding applicability of the "quotation", the quoting method of attaching a screen shot on Twitter can be applicable to a fair practice in Article 32, paragraph (1) of the Copyright Act and thus, all the attachment of the screen shot of each of the Plaintiff Posts to each of the Present Posts is applicable to the quotation or is possibly applicable to the quotation in the same paragraph, and it is not sufficient to find that the infringement of the copyright of X related to each of the Plaintiff Posts is obvious, positiveness of the right infringement cannot be found in the request for disclosure of identification information of the sender by the Appellee, and there are no grounds.

The gist of reasons related to applicability of the quotation is as follows.

(1) It is permissible to quote and thereby exploit the others' work in a case the work is consistent with fair practices and 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).

In each of the present posts, the screen shot of each of the Plaintiff Posts is attached as an image, but the bylaws are found to prescribe, in the case of duplication, modification of the contents on Twitter, creation, distribution and the like of secondary works based thereon, the interface and procedures provided by Twitter should be used, and it is found that Twitter provides the method of the quote tweet as the procedure to quote other's content.

However, the bylaws are essentially agreements between Twitter and the users and are not the contents which should be immediately examined to determine whether they are applicable to the quotation on the Copyright Act. Moreover, it is not sufficient to find that the act of tweet by attaching the screen shot of the other tweets violates the present bylaws.

On the other hand, in critique, the quote-tweet function can be used as means for presenting the targeted tweet, but when that function is used, if the original tweet is changed or deleted, the displayed contents themselves are changed or the like in the tweet using that function, and there is a concern that the purpose of the critique cannot be correctly grasped or the validity thereof cannot be examined, while it is interpreted that, in the case of the tweet by attaching the screen shot of the original tweet, such a concern can be avoided. Actually, the act of tweet by attaching the screen shot of the other tweets as above is found to be made in many cases on Twitter.

On the basis of the points described above, the method of quotation by attachment of the screen shot should be treated as being applicable to the fair practices prescribed in Article 32, paragraph (1) of the Copyright Act.

(2) There is a room to find that the Present Post 1 was made with the purpose of introducing and criticizing X, the Present Posts 2 to 4 are found to be made with the purpose of the critique against the Plaintiff Posts 2 to 4, the main text for quotation and the quoted part (screen shot) are clearly discriminated, the scope of each of the quoted Plaintiff Posts can be considered to be within the reasonable range in light of the purpose of the quotation, respectively, the attachment of the screen shot of each of the Plaintiff Posts in each of the Present Posts is applicable or is likely to be applicable to the quotation according to Article 32, paragraph (1) of the Copyright Act, respectively, and it is not sufficient to find that the infringement of the copyright of X related to each of the Plaintiff Posts is obvious.