

Copyright	Date	March 23, 2023	Court	Intellectual Property High Court, Fourth Division
	Case number	2022 (Ne) 10102		
- A case in which it is obvious that a copyright related to the posting of an image is infringed, and disclosure of the name, address, and telephone number of the one with the same user ID as that of the poster who logged in before posting can be requested on the basis of Article 5 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.				

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

Result: Reversal of prior instance judgment

References: Article 5, paragraph (1), (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 Revision by Act No. 27 of 2021), Article 5 of the "Regulation 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 2, paragraph (1), item [i], Article 32, paragraph 1 of the Copyright Act

Judgment of the prior instance: 2022 (Wa) 5572 Judgment, Tokyo District Court

Summary of the Judgment

1 Summary of the case

This case is one in which X (Appellant/Plaintiff) asserted that the image posted by a person unknown (the Sender) on Twitter by tweet (the tweet) at 23-hours, 24-minutes on November 25, 2021 was created on the basis of the sentences (Plaintiff's Sentences) for which X has the copyright or was created on the basis of the photos (Plaintiff's Photos) for which X has the copyright, and it is obvious that X's copyright (right of reproduction and right to transmit the public) related to the Plaintiff's Sentences and Plaintiff's Photos was infringed by the posting of the tweet and made a request for disclosure of the identification information of the Sender (name, address, and telephone number, the Identification Information of the Sender) related to the person who posted the tweet against Y (Defendant / Appellee), who is the Internet service provider related to the login (the login 1) made on 8-hours, 02-minutes, 27-seconds on the same day disclosed by Twitter, 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).

The judgment in prior instance dismissed X's request by stating that the login 2 was

made at 14-hours, 29-minutes, 34-seconds on the same day before the tweet, and the login 1 was made further before that and thus, it is difficult to appreciate the login 1 to be closely related to the post of the tweet to the same degree as the login 2, which is the login for posting the tweet and the like, and X filed the appeal.

Note that the Amendment Act described above was enforced after the judgment in prior instance, and the court made determination on the premise that the amendment act would be applied.

2 Whether the identification information of the Sender falls under the "Specified Identification Information of the Sender" (the main clause of Article 5, paragraph (1) of the Amendment Act)

(1) Regarding transmission of the login information for which disclosure of the Identification Information of the Sender is approved, in view that the main clause of Article 5 of the "Regulation 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 the "Amendment Regulation") has wording with allowance such that it has "reasonable relevance" with the transmission of infringement information, on the premise that there is a high level of probability that the transmission related to the login information and the transmission related to the infringement information are made by the same sender and on the basis of a storage condition of communication records held by the specified telecommunications service provider who received the request for disclosure, presence/absence of the "reasonable relevance" should be determined by comprehensively considering circumstances such as a degree of temporal proximity and the like between the transmission related to the infringement information and the stored login information, and the relevance should not be immediately denied by such reasons that a certain temporal interval exists between the transmission of the infringement information and the transmission of the login information and that the transmission of the login information was not made immediately close to the transmission of the infringement information.

(2) In light of the circumstances that the login 1 was made approximately 6 hours before the login 2 and approximately 15 hours before the tweet, and the temporal interval itself cannot be considered to be large, that the IP address related to the login 2 is a so-called variation-type address, by which identification of the sender is difficult, and that it is considered to be difficult to secure the high level of probability that the transmission related to the login information and the transmission related to the infringement information were made by the same sender and the like, it is not

reasonable to give emphasis on the temporal interval in this case, while there is the circumstance in this case that it is obvious that the identity of the person who posted the tweet and the identity of the person who made the login 1 are the same.

Then, the communication of the login 1 has reasonable relevance with the tweet, and it is reasonable to interpret that the communication falls under infringement-related communication (Article 5, paragraph (3) of the Amendment Act), and the identification information of the sender falls under the specified identification information of the sender (Article 5, paragraph (1) of the Amendment Act).

2 Whether it is obvious that X's right was infringed by the post of the tweet

The Plaintiff's Sentences cannot be found in view of expressions, orders, and the like thereof that anyone could have written the similar expressions, and the Plaintiff's Photos are found to have X's individualities in selection, composition of the subject, poses of himself/herself, and the like and thus, the copyrightability was approved as creative expression of X's own idea or emotions.

Y asserted that the posting of each of the images falls under the legal quotation in Article 32, paragraph (1) of the Copyright Act, but it cannot be helped to consider that the tweet as a whole digs up and publishes the past of X out of mere curiosity to infringe X's privacy and is not found to have justifiable purposes, and even on the premise of the purposes asserted by Y, no necessity is found to post the image 1, which is the entire Plaintiff's Sentences and the image 2 and thus, in any case, it cannot be considered to be performed within a legal range of the purpose of quotation.