

Copyright	Date	June 8, 2023	Court	Intellectual Property High Court, Fourth Division
	Case number	2023 (Ne) 10008		
<p>- A case in which First-Instance Defendant created image data of the news articles whose copyright First-Instance Plaintiff claims to have, and stored the image data on a memory device, and moreover, uploaded the image data on Defendant's intranet to make them available for viewing by First-Instance Defendant's Employees, etc., and the Court acknowledged that there was infringement of First-Instance Plaintiff's copyright (the right of reproduction and the right of public transmission), agreed to increase the amount of damage on the ground that the number of articles posted was more than the number found in the judgment in prior instance, and modified the judgment in prior instance.</p>				

References: Article 114, paragraph (3) of the Copyright Act

Summary of the Judgment

1. The Court acknowledged that the number of articles posted on Defendant's intranet before March 2018 is 1,266 instead of the number found in the judgment in prior instance (Issue [1]). For other points of dispute, the Court agreed with the judgment in prior instance and acknowledged that there was a tort of copyright (the right of reproduction and the right of public transmission) infringement by First-Instance Defendant with regard to each of the articles of the present case (Articles) (Issue [2]), and acknowledged that the reasonable amount of money First-Instance Plaintiff should receive for the exercising of copyright pertaining to the Articles shall be JPY 5,000 per article, and that the amount of damage suffered by First-Instance Plaintiff due to the tort by First-Instance Defendant shall be JPY 6,330,000, and the reasonable amount of attorney's fees having legally sufficient cause with the amount of damage shall be 630,000 yen (the amount of damage totaling JPY 6,960,000) (Issue [3]).

2. In regard to the number of articles posted on Defendant's intranet before March 2018, in the present case, 517 articles were stored by First-Instance Defendant before said month. Based on the appearance of the articles being stored, and the content of statements made by First-Instance Defendant's spokesperson, it is acknowledged that 107 of the framed articles from among the 517 articles, and approximately 90% or 370 articles of the remaining 410 articles (a total of 477 articles) had been posted on Defendant's intranet. Furthermore, since it is strongly presumed that other articles, which are categorized under "Others" and which are not among the 517 articles being stored, were also posted, the number of articles posted before said month likely ended up totaling 954, which is twice as many as the number, 477. When the number, 954,

is added to the number of articles posted after April of the same year, the total becomes 1,266.

3. The Articles are given titles which summarize the content of the articles in a manner that is easy to understand, and creative expressions are used for the writing method and the like. As such, the Articles are acknowledged as copyrighted works. It is difficult to promptly acknowledge that First-Instance Defendant did not have the common knowledge that news articles are sometimes granted the status of copyrighted works and thus use of such articles requires the permission of the newspaper publisher. Accordingly, there is at least negligence on the part of First-Instance Defendant.

4. First-Instance Defendant argues about the injustice of granting JPY 5,000 per article as the amount of damage. However, even when First-Instance Defendant's miscellaneous assertions are taken into consideration, it cannot be said that the granting of the above amount of damage is excessive. As such, the court cannot accept the claim made by First-Instance Defendant.