

Copyright	Date	July 10, 2024	Court	Intellectual Property High Court, Second Division
	Case number	2023 (Ne) 10108		

- A case in which the court found that a reproduction of a copyrighted video was created and made available for transmission on a BitTorrent network, a peer-to-peer file sharing protocol, and it upheld the copyright holder's demand for disclosure of sender identification information, on the grounds that the sender identification information concerning the "handshake communications" implemented to confirm that each peer can download the file falls within the scope of "sender identification information, relative to violating the person's rights" under Article 5, paragraph (1) of the Act on the Limitation of Liability of Specified Telecommunications Service Providers for Damages and the Right to Demand Disclosure of Sender Identification Information.

Case type: Disclosure of Identification Information of Senders

Result: Reversal of prior instance judgment, granted

References: Article 2, paragraph (1), item (ix)-5 of the Copyright Act, Article 5, paragraph (1) of the Act on the Limitation of Liability of Specified Telecommunications Service Providers for Damages and the Right to Demand Disclosure of Sender Identification Information

Judgment in prior instance: Tokyo District Court, 2022 (Wa) 25488, rendered on October 26, 2023

### Summary of the Judgment

1. This is a case in which X demanded that Y, a telecommunications service provider, disclose sender identification information (the "Sender Identification Information") pursuant to Article 5, paragraph (1) of the Act on the Limitation of Liability of Specified Telecommunications Service Providers for Damages and the Right to Demand Disclosure of Sender Identification Information (hereinafter referred to as the "Provider Liability Limitation Act"), by alleging that X's right of reproduction and right to make available for transmission regarding a video in question (the "Video") were obviously violated because unknown senders (the "Senders") made a reproduction of the Video (the "Reproduction File") and made it available for transmission on a BitTorrent network.

2. In the judgment in prior instance, the court dismissed the X's claim in its entirety, holding that it is found that "it is obvious that the rights of the person demanding the

disclosure have been violated" (Article 5, paragraph (1), item (i) of the Provider Liability Limitation Act) with respect to X, but it cannot be found that the Sender Identification Information falls within the scope of "sender identification information, relative to violating the person's rights" (the main sentence of the same paragraph). Dissatisfied with this, X appealed against the judgment in prior instance.

3. In this judgment, the court held as follows in summary, revoking the judgment in prior instance and granting X's claim.

(1) Whether the violation of the rights is obvious

A specific file to be distributed on a BitTorrent network is divided into small data (pieces) and possessed by multiple terminal devices (peers). A user who wishes to acquire the specific file first acquires the corresponding torrent file (which contains information on the locations of the pieces, etc.), and then loads it onto their terminal device to participate in the BitTorrent network as a peer. Then, the user implements peer-to-peer handshake communications to confirm that other peers possess pieces, and sends a request to and receives the pieces from those other peers, while possessing their own pieces in their terminal device in a manner transmittable to other peers.

Under such mechanism for sharing a specific file wherein peers transmit or exchange pieces with each other and finally acquire all pieces (hereinafter the "Mechanism"), each participant is found to recognize the Mechanism when using it, and can be considered, both subjectively and objectively, to reproduce and make available for transmission the specific file as a whole, jointly with other participants.

Since the Senders implemented handshake communications to inform that the pieces of the file can be uploaded (sent UNCHOKe messages), it is presumed that the Senders, by the Times of Sending at the latest, had recorded at least some pieces of the Reproduction File on their own peers and had made these pieces available to be provided on the internet in response to requests from other peers. There is no evidence to the contrary.

Therefore, as there are no justifiable causes, it must be said that the violation of X's right of reproduction and right to make available for transmission obviously occurred. This finding is not affected by the volume of the pieces possessed by the Senders or the fact that the communications implemented at the Times of Sending were UNCHOKe messages.

(2) Whether the Sender Identification Information is "sender identification information, relative to violating the person's rights"

The pieces of the Reproduction File downloaded by the Senders by the Times of

Sending by following the procedures of the Mechanism and provided onto the internet under the Mechanism can be the violating information.

Sender identification information is information that contributes to the identification of the sender (Article 2, item (vi) of the Provider Liability Limitation Act). The UNCHOKE messages sent at the Times of Sending strongly suggest that the persons who sent these messages downloaded the violating information and made it available on the internet. Accordingly, it is reasonable to find that the Sender Identification Information, which is information for identifying the senders of the UNCHOKE messages, is not the sender identification information concerning the communication of the violating information itself, but it is information that contributes to the identification of the senders of the violating information and falls within the scope of "sender identification information, relative to violating the person's rights." This interpretation is acceptable in light of the purpose of the same Act, i.e., making it possible to identify the perpetrator and thereby providing relief for the victim, and the fact that the UNCHOKE messages are closely associated with the violating information.

Y disputes this point. However, the main sentence of Article 5, paragraph (1) of the Provider Liability Limitation Act stipulates the term as "sender identification information, 'relative to' violating the person's rights." In the wording of this Act as amended by Act No. 27 of 2021, no reason can be found for adopting the strictly narrow interpretation that the amended Act allows disclosure to be demanded only with regard to the sender identification information concerning the communication of the violating information itself, except for a violation-related telecommunication relating to log-in, etc. Such interpretation cannot also be found to be consistent with the purpose of the amended Act. Therefore, Y's argument cannot be accepted.

Judgment rendered on July 10, 2024

2023 (Ne) 10108 Appeal case of seeking disclosure of identification information of the senders (Court of prior instance: Tokyo District Court, 2022 (Wa) 25488)

Date of conclusion of oral argument: April 24, 2024

### Judgment

Appellant: Prestige Limited

Appellee: SoftBank Corp.

### Main text

1. The judgment in prior instance shall be revoked.
2. The Appellee shall disclose the information items stated in Attachment 1 "List of the Sender Identification Information" to the Appellant.
3. The Appellee shall bear the court costs throughout the first and second instances.

### Facts and reasons

(Abbreviations used in this judgment follow those in the judgment in prior instance unless otherwise specified.)

No. 1 Object of the claim

Same as paragraphs 1 and 2 of the main text.

No. 2 Outline of the case

1. Summary of the case

(1) This is a case in which the Appellant (the Plaintiff in the first instance; hereinafter referred to as the "Plaintiff"), which owns copyright to the video work stated in Attachment 3 "List of the Video Work" (the "Video Work"), demanded that the Appellee (the Defendant in the first instance; hereinafter referred to as the "Defendant"), a telecommunications service provider, disclose the information items stated in Attachment 1 "List of the Sender Identification Information" held by the Defendant (the "Sender Identification Information") pursuant to Article 5, paragraph (1) of the Act on the Limitation of Liability of Specified Telecommunications Service Providers for Damages and the Right to Demand Disclosure of Sender Identification Information (hereinafter referred to as the "Provider Liability Limitation Act"), by alleging that the Plaintiff's right to make available for transmission regarding the Video Work was obviously violated because unknown senders (the "Senders") made a video file created by reproducing the Video Work available for transmission by using BitTorrent, which is a peer-to-peer (P2P) file sharing protocol, and that there are other legitimate grounds

for the Plaintiff to receive disclosure of the Sender Identification Information for claiming damages.

(2) The court of prior instance dismissed the Plaintiff's claim, holding that it is found that the Plaintiff's copyright (the right of reproduction and the right to transmit to the public) regarding the Video Work was obviously violated by the Senders' acts, but while the communications at the times of sending stated in Attachment 2 "List of the Sending Terminal Devices" (hereinafter referred to as the "Times of Sending") were related to handshake communications for confirming whether downloading is possible, the handshake communications themselves are not communications that result in the copyright violation, and therefore it cannot be said that the Sender Identification Information falls within the scope of "sender identification information, relative to violating the person's rights" (the main sentence of Article 5, paragraph (1) of the Provider Liability Limitation Act).

Dissatisfied with this, the Plaintiff appealed against the judgment in prior instance. 2. The basic facts are as described in No. 2, 1. in the "Facts and reasons" section of the judgment in prior instance (page 2, line 4 to page 4, line 10 of the judgment in prior instance), except for making the following corrections, and therefore they are cited herein.

(1) The following is added as a new line after the end of page 3, line 3:

"Between the time when a user connects to other users who have other pieces of the file and the time when the user starts downloading the pieces, as shown in Attachment 4 'Process of Downloading with BitTorrent,' a series of communications from HANDSHAKE, in which the users confirm with each other that they are peers, to UNCHOKER, in which those other users inform that the file (pieces) is downloadable, (collectively referred to as a "handshake") are performed automatically, almost simultaneously, in the Host Communication Phase (Exhibit Ko 10)."

(2) The phrase "(this confirmation of responses is hereinafter referred to as a 'handshake')" in page 3, lines 24 and 25 is deleted.

(3) The term "(UNCHOKER)" is added after the term "handshake" in page 4, line 1.

3. The issues and the parties' arguments regarding the issues are as described in No. 2, 2. and 3. in the "Facts and reasons" section of the judgment in prior instance (page 4, line 11 to page 5, line 20 of the judgment in prior instance), except for adding the parties' arguments made in this instance as stated in 4. below, and therefore they are cited herein.

### No. 3 Judgment of this court

1. This court determines that the Plaintiff's claim is well-grounded.

The grounds for the determination are as follows.

2. Regarding Issue 1 (whether the violation of the rights is obvious)

(1) It is found that the Plaintiff's copyright (the right of reproduction and the right to transmit to the public) regarding the Video Work was obviously violated by the Senders' acts. The grounds therefor are as described in No. 3, 1. in the "Facts and reasons" section of the judgment in prior instance (page 5, line 22 to page 6, line 15 of the judgment in prior instance), except for adding the determinations on the Defendant's arguments made in this instance as stated below, and therefore they are cited herein.

(2) The Defendant argues [i] that in order to say that the Plaintiff's abovementioned rights were obviously infringed, the pieces held by the Senders need to have reached a volume that allows the essential features of the expression of the Video Work to be directly perceived, and [ii] that at the Times of Sending, the Senders merely implemented handshake communications, and it cannot be said that they made the Video Work available for transmission.

(3) Thus, we will first examine the mechanism of sharing a specific file by using BitTorrent.

According to Basic facts (3) (p. 2, line 15 to p. 3, line 12 of the judgment in prior instance), evidence (Exhibits Ko 3, 5, 8, and 10), and the entire import of oral arguments, the mechanism (hereinafter the "Mechanism") is found to be as follows. A specific file to be distributed on a BitTorrent network is divided into small data (pieces) and possessed by multiple users' terminal devices (peers) in a distributed manner. A user who wishes to acquire the specific file first acquires a torrent file corresponding to the specific file (which contains information on the locations of the divided pieces, etc.), and then loads it onto their terminal device to participate in the BitTorrent network as a peer. The user provides information, including their internet protocol (IP) address and port number, and receives information, including the IP addresses and port numbers, of other peers that possess pieces of the specific file. Then, the user implements handshake communications with those other peers to confirm that they possess the pieces, and sends a request to and receives the pieces from those other peers, while possessing their own pieces in their terminal device in a manner transmittable to other peers if being requested to do so by other peers. By transmitting or exchanging pieces between peers in this way, the user finally acquires all pieces, and achieves the sharing of the specific file.

Under the Mechanism, each participant is found to recognize the Mechanism when using it, and can be considered, both subjectively and objectively, to reproduce and make available for transmission, through the action stated in either Article 2, paragraph

(1), item (ix)-5, (a) or (b) of the Copyright Act, the specific file as a whole, by jointly disseminating (transmitting and exchanging) pieces on the internet with other participants.

(4) According to Basic facts (4) (p. 3, line 13 to p. 4, line 4 of the judgment in prior instance) and evidence (Exhibits Ko 3 through 9), the detection system used in the investigation conducted in the present case received, from a torrent file, information on other peers with which pieces of the video file created by reproducing the Video Work (identified based on the hash value) are shared, and then implemented handshake communications with those other peers. As a result, a fact is found that the peers at the IP addresses and port numbers stated in Attachment 2 "List of the Sending Terminal Devices" relating to the Senders sent UNCHOKe messages to inform that pieces of the file can be uploaded at the times of sending stated in that list (the "Times of Sending").

In light of this fact, it is presumed that the Senders, by the Times of Sending at the latest, had recorded at least some pieces of the video file created by reproducing the Video Work on the terminal devices they possess (peers), and had made these pieces available to be provided on the internet in response to requests from other peers, through participation in the Mechanism. There is no evidence to the contrary.

(5) Accordingly, the Senders are found to have reproduced and made available for transmission the Video Work jointly with the participants relating to other peers stated in the torrent file referred to in (4) above.

Therefore, as there are no facts that constitute justifiable causes, it must be said it is obvious that, by the Times of Sending at the latest, there had been a state where "the copyright (the right of reproduction and the right to make available for transmission) owned by the Plaintiff in relation to the Video Work had been violated due to the dissemination of information through specified telecommunications" as a result of the Senders' acts (see Article 5, paragraph (1), item (i) of the Provider Liability Limitation Act).

This finding is not affected by the volume of the pieces possessed by the Senders or the fact that the communications implemented at the Times of Sending were communications of UNCHOKe messages. Therefore, the Defendant's abovementioned argument cannot be accepted.

3. Regarding Issue 2 (whether the Sender Identification Information falls under the category of "sender identification information, relative to violating the person's rights" [the main sentence of Article 5, paragraph (1) of the Provider Liability Limitation Act])

(1) As mentioned in 2. above, it can be said that persons who downloaded pieces of the file relating to the Video Work and at the same time made them available to be provided

on the internet to other peers, under the Mechanism, are those that violated, jointly with other participants, the right of reproduction and the right to make available for transmission owned by the Plaintiff in relation to the Video Work through dissemination of information through specified telecommunications. In this case, the pieces of the video file created by reproducing the Video Work downloaded by the Senders by the Times of Sending by following the procedures of the Mechanism and provided onto the internet under the Mechanism constitute the violating information. Meanwhile, sender identification information is information that contributes to the identification of the sender who dispatches violating information (Article 2, item (vi) of the Provider Liability Limitation Act). The UNCHOKE messages sent by the peers of the Senders at the Times of Sending strongly suggest that the persons who sent these messages downloaded the violating information and made it available on the internet. Accordingly, it is reasonable to find that the information for identifying the senders of the UNCHOKE messages (Sender Identification Information) is not the sender identification information concerning the communication of the violating information itself, but it is information that contributes to the identification of the sender of the violating information and still falls within the scope of "sender identification information, relative to violating the person's rights" referred to in the main sentence of Article 5, paragraph (1) of the Provider Liability Limitation Act. Moreover, in light of the purpose of the Provider Liability Limitation Act, i.e., making it possible to identify the perpetrator and thereby providing relief for the victim, and the fact that the UNCHOKE messages are closely associated with the violating information, it is acceptable to consider the sender identification information relating to the sending of the UNCHOKE messages to be the same as sender identification information relating to the violating information itself, and to apply the provisions of the main sentence of that paragraph.

(2) Regarding this point, the Defendant argues that the right to demand disclosure of sender identification information under the Provider Liability Limitation Act is approved only if one's rights have been violated as a result that the violating information was actually "disseminated," and that the demand for disclosure is not allowed at the stage of making available for transmission, when there is merely an abstract likelihood of transmission or dissemination.

However, under the Mechanism, the pieces which are the violating information were actually disseminated on the internet, and participants downloaded the pieces and at the same time made them available for transmission. In other words, the Plaintiff's copyright (the right of reproduction and the right to make available for transmission) is



found to have been violated due to the dissemination of the pieces in the present case because those who participated in the Mechanism can be considered to have jointly disseminated the pieces with other participants and thereby reproduced and made available for transmission the video file created by reproducing the Video Work as a whole, and not because there is an abstract likelihood of transmission or dissemination, apart from their participation in the Mechanism. Accordingly, the Defendant's abovementioned argument, which is based on a premise that differs from this, cannot be accepted.

(3) In addition, the Defendant argues that, because pieces are not downloaded or uploaded, and therefore the violating information is not disseminated, in the sending of UNCHOKe messages at the Times of Sending, and acts of recording data, etc. (Article 2, paragraph (1), item (ix)-5 of the Copyright Act) were not conducted at the Times of Sending, it can neither be said that an act of making available for transmission was conducted, nor that the state of making available for transmission continued, and thus the Sender Identification Information does not fall under the category of "sender identification information, relative to violating the person's rights" (the main sentence of Article 5, paragraph (1) of the Provider Liability Limitation Act).

However, the main sentence of that paragraph stipulates the term as "sender identification information, 'relative to' violating the person's rights," and not "sender identification information of the communication of the violating information." Therefore, it should be said that information concerning communication of information that is closely related to the communication of the violating information is not precluded from being construed as "sender identification information, relative to violating the person's rights," as long as it is information that contributes to the identification of the sender who dispatches violating information, even if it is information relating to communication of something other than the violating information. Through amendment by Act No. 27 of 2021 (effective date: October 1, 2022), current Article 5 of the Provider Liability Limitation Act introduced the right to demand disclosure of specified sender identification information, with the prospect of making information such as the IP address used for logging in to a social networking service, etc. subject to disclosure, but there is no change before and after the amendment in the wording in respect to allowing demand for disclosure of "sender identification information, relative to violating the person's rights" "if it is obvious that the rights of the person demanding the disclosure have been violated due to the dissemination of the violating information" (as a result of introduction of new rules for specified sender identification information, different requirements were merely set for specified sender identification information

and other sender identification information). Therefore, no reason can be found in the wording for adopting the strictly narrow interpretation that the amended Act allows disclosure to be demanded only with regard to the sender identification information of the communication of the violating information, with regard to sender identification information of communication other than violation-related telecommunications. Such interpretation cannot also be found to be consistent with the purpose of the amended Act. Therefore, the Defendant's abovementioned argument lacks premise and cannot be accepted.

#### 4. Summary

The Defendant holds the Sender Identification Information as stated in Basic facts (5) of the judgment in prior instance cited above after making corrections (p. 4, lines 5 to 6 of the judgment in prior instance), and according to the examination above, the Plaintiff's claim in the present case is well-grounded. In addition, when the case record for the present case is examined in light of the parties' arguments, no other grounds are found that would affect the finding above.

#### No. 4 Conclusion

Consequently, the judgment in prior instance shall be altered as it is unreasonable, and a judgment shall be rendered as indicated in the main text. The court does not issue a declaration of provisional execution, as it is unreasonable.

Intellectual Property High Court, Second Division

Presiding judge: SHIMIZU Hibiku

Judge: KIKUCHI Eri

Judge: RAI Shinichi

(Attachment 1)

List of the Sender Identification Information

The following information concerning the subscribers who were assigned the IP addresses stated in Attachment 2 "List of the Sending Terminal Devices" by the Appellee at around the times of sending respectively stated in that list:

[i] Name

[ii] Address

[iii] Electronic mail address (limited to those for the subscribers relating to the IP addresses indicated for 9, 17, 30, and 49 in Attachment 2 "List of the Sending Terminal Devices")

(Attachment 2)

List of the Sending Terminal Devices

(Omitted)

(Attachment 3)

List of the Video Work

(Omitted)

(Attachment 4)

### Process of Downloading with BitTorrent

