

Copyright	Date	March 14, 2024	Court	Tokyo District Court, 40th Civil Division
	Case number	2023 (Wa) 70030		
- A case in which the court determined that so-called UNCHOKE communication is not found to fall under the infringement of rights set forth in Article 5, paragraph (1) of the Provider Liability Limitation Act.				

Summary of the Judgment

In this case, the Plaintiff alleged against the Defendant that unidentified persons (hereinafter referred to as the "Senders") used BitTorrent-compatible software (hereinafter referred to as "BitTorrent"), which is a file-sharing software, and infringed the Plaintiff's right to make a work available for transmission in relation to videos listed in the Attachment to the Judgment, "List of Works," (hereinafter referred to as the "Video"). Based on this allegation, the Plaintiff requested disclosure of information listed in the Attachment, "List of Identification Information of the Senders," based on Article 5, 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 Senders (hereinafter referred to as the "Provider Liability Limitation Act").

Prior to filing this case, the Plaintiff asked a research company (hereinafter referred to as the "Research Company") to conduct research concerning copyright infringement related to the Video (hereinafter referred to as the "Research"), and the Research Company conducted the Research by using a copyright infringement detection system (hereinafter referred to as the "Software"). After receiving a list of IP addresses, etc. from a tracker server, the Software makes connections to the users listed in said list, confirms that said users respond to it (Handshake), and then, moves to UNCHOKE. At the time of UNCHOKE, the Senders set up files related to the Video so that they could be transmitted to the public automatically through a BitTorrent network and report that the relevant status is maintained.

In this judgment, the court determined, as summarized below, that so-called UNCHOKE communication is not found to fall under the infringement of rights set forth in Article 5, paragraph (1) of the Provider Liability Limitation Act.

The infringement of the right to make a work available for transmission is roughly classified into the information recording / input type set forth in Article 2, paragraph (1), item (ix)-5, (a) of the Copyright Act and the device connection type set forth in (b)

of said item. UNCHOKE communication is only to confirm that a peer has part of the file. Therefore, it is not communication to download or upload data related to the Video (information recording / input type) nor communication related to the first notification to a tracker related to the Video (device connection type). Then, UNCHOKE communication does not constitute an infringement of the right to make a work available for transmission and does not directly infringe the right by the distribution of information.

Consequently, UNCHOKE communication is not found to fall under the infringement of rights set forth in Article 5, paragraph (1) of the Provider Liability Limitation Act.

Based on the above, the court dismissed all the Plaintiff's claims.