

Copyright	Date	December 23, 2024	Court	Intellectual Property High Court, Fourth Division
	Case number	2024(Ne)10054		
<p>- A case in which the copyright holder of subtitles of a movie was found to have granted a license for the reproduction of the subtitles on DVD and Blu-ray goods and for the distribution thereof.</p> <p>- A case in which infringement of the right to integrity was found due to the missing of terms in the subtitles stored on DVDs sold by the Defendants.</p> <p>- A case in which infringement of the right of attribution was found concerning the fact that the name of the subtitle producer was not displayed on some of the Defendants' goods.</p>				

Case type: Compensation for damages

Results: Modification of the prior instance judgment

References: Article 19 through Article 21 and Article 26 of the Copyright Act

The judgment in prior instance: Judgment of the Tokyo District Court, 2022 (Wa) 2227 [Case 1]; Judgment of the Tokyo District Court, 2022 (Wa) 3382 [Case 2]

Summary of the Judgment

1. Summary of the case

X (the Appellant and Appellee; the Plaintiff in each Case) produced subtitles for foreign movies based on an order from A (a business operator that undertook the production of subtitles from Y2 [the Appellant and the Appellee; the Defendant in each Case]). Subsequently, Y1 (the Appellant and the Appellee; the Defendant in each Case), and Y2 and Y3 (the Appellant and the Appellee; the Defendant in Case 2) launched DVD and Blu-ray goods of movies with said subtitles (launched both in box version and individually). X argued as follows, etc.: the license for the subtitles was limited to the screening at a film festival; there are missing terms in the subtitles in the DVD goods; there was no display of X as the subtitle translator on goods sold individually. X requested that Y1, Y2, and Y3 pay compensation for damages on the grounds of infringement of the copyright (reproduction right and distribution right) and the author's moral right (right to integrity and right of attribution).

The court of prior instance determined [i] that an implied license is found for DVD goods and infringement of the copyright is denied; however, a license is not found for Blu-ray goods and infringement of the copyright is established; [ii] that infringement of the right to integrity for DVD goods where part of the subtitles is missing is

established; [iii] that infringement of the right of attribution for goods without display of the name of X is established, and the like, and partially upheld X's claims. Therefore, both parties filed appeals.

This court explained as follows and changed the judgment in prior instance.

2. Infringement of the reproduction right and the distribution right

[i] B, who belongs to A and is the person in charge, placed an order for the translation of subtitles to X on the presumption of the launch of DVDs as well, and X accepted this order; when C, who belongs to A and is the person in charge (B's supervisor), informed X that the DVD-box was launched and the month when the DVDs would be launched, X did not invoice separate royalties other than the royalties related to the screening at the film festival; in the quotation issued by A to Y2, "(VIDEOGRAM + TV)" was stated and, in response to the quotation, Y2 replied that the quotation could be accepted if it is a "translation with all rights"; on the same day, C instructed B to negotiate with X on the condition of "all rights clear," and there is no reason that B did not follow C's instructions, etc. Based on the above, as stated in the testimony of a witness in the court of prior instance, B, it is reasonable to find that B asked X by phone to allow them to use X's translation with "all rights clear," and X accepted it, and that an agreement was reached on the reproduction and distribution of the subtitles for videograms, including Blu-ray.

2. Infringement of the right to integrity

Y1 argued that infringement of the right to integrity is limited to those cases due to wrongful intention. However, the argument that the infringement of the right to integrity can be permitted if it is due to negligence lacks basis under tort law as well.

Y2 argued that the subtitles in question were stored in DVDs, including missing terms; however, since they were not displayed due to entering a chapter, there was no alteration. However, even if the data stored in the DVD is original, if the expression recognized as subtitles by a purchaser, etc. has been altered, infringement of the right to integrity can be found.

Y1 argued that it falls under "modifications that are found to be unavoidable" (Article 20, paragraph (2), item (iv) of the Copyright Act) on the grounds that the missing of the second audio program was caused due to a bug and that what are missing are only 11 characters. However, the alteration itself was overlooked in this case, and even if merely 11 characters are missing, they constitute a group of meaningful parts. The subject of "what is out of control" is no longer unambiguously clear due to the missing part, and therefore, it is not unavoidable.

3. Infringement of the right of attribution

Y1 argued that only when there is the author's manifestation of intention to exercise the right concerning the right of attribution between the parties in a close relationship under an agreement, other relevant persons are bound. However, in cases of foreign movies with subtitles, it is general practice to display the name of the subtitle translator and it is difficult to consider that the First-instance Plaintiff, who is engaging in subtitle translation into Japanese as its business, would daringly desire not to display its name. Based on the purport of the right of attribution, the name is required to be displayed unless the author's intention that the display of the name is not necessary can objectively be found.

Judgment rendered on December 23, 2024

2024 (Ne) 10054, Case of appeal for seeking compensation for damage

(Court of prior instance: Tokyo District Court, 2022 (Wa) 2227 [Case 1]; Tokyo District Court, 2022 (Wa) 3382 [Case 2])

Date of conclusion of oral argument: November 6, 2024

Judgment

Appellant and Appellee (the Plaintiff in Case 1 and Case 2):

X

(hereinafter referred to as the "First-instance Plaintiff")

Appellee and Appellant (the Defendant in Case 1 and Case 2):

Kabushiki Kaisha Stingray

(hereinafter referred to as "First-instance Defendant Stingray")

Appellee and Appellant (the Defendant in Case 1 and Case 2):

FieldWorks Inc.

(hereinafter referred to as "First-instance Defendant FieldWorks")

Appellee and Appellant (the Defendant in Case 2):

HAPPINET CORPORATION

(hereinafter referred to as "First-instance Defendant Happinet")

Main text

1. Based on the appeal by the First-instance Defendants, the judgment in prior instance shall be changed as follows.

(1) First-instance Defendant Stingray and First-instance Defendant FieldWorks shall pay jointly and severally to the First-instance Plaintiff 11,000 yen and the amount accrued thereon at the rate of 5% per annum for the period from April 23, 2010, until the completion of payment.

(2) The First-instance Defendants shall pay jointly and severally to the First-instance Plaintiff 539,000 yen and the amount accrued at the rate of 5% per annum on 77,000 yen of said amount for the period from October 2, 2010, on 154,000 yen of said amount for the period from November 4, 2010, on 231,000 yen of said amount for the period from December 20, 2013, and on 77,000 of said amount for the period from December 2, 2014, until the completion of payment respectively.

- (3) The remaining claims of the First-instance Plaintiff shall be dismissed.
2. The Appeal by the First-instance Plaintiff shall be dismissed.
3. The court costs for Case 1 in the first and second instances shall be divided into 500 parts and First-instance Defendant Stingray and First-instance Defendant FieldWorks shall bear 1/500 of the costs and the First-instance Plaintiff shall bear the rest. The court costs for Case 2 in the first and second instances shall be divided into 50 parts and the First-instance Defendants shall bear 1/50 and the First-instance Plaintiff shall bear the rest.
4. This judgment may be executed provisionally for Paragraph 1., (1) and (2).

Facts and reasons

(Abbreviations are the same as those used in the judgment in prior instance.)

No. 1. Summary of the case

The First-instance Plaintiff is a person engaging in Japanese subtitle translation for foreign movies and produced the Subtitles for the foreign movies titled "Zombie" (hereinafter referred to as the "Movies") based on an order from Shine-Maistaa (the company that undertook the creation of subtitles from First-instance Defendant FieldWorks). Subsequently, the First-instance Defendants sold DVD and Blu-ray goods of the Movies to which the Subtitles are added (hereinafter referred to as the "Goods"). The First-instance Plaintiff argued that the license of the Subtitles is limited to the screening at the YUBARI INTERNATIONAL FANTASTIC FILM FESTIVAL 2010 (hereinafter referred to as the "Film Festival") and demanded as stated in the following table that the First-instance Defendants pay compensation for damages on the grounds of infringement of the copyright (reproduction right and distribution right) and the author's moral right (right to integrity and right of attribution) (hereinafter the claim corresponding to the codes A through D of the following table are indicated as "Claim A," etc.; Claim A is related to Case 1 and Claims B through D are related to Case 2).

	Suspected infringed goods	First-instance Defendant Stingray First-instance Defendant FieldWorks	First-instance Defendant Happinet
A	Goods 1 (DVD-box of Subtitled Movies 1 through 5)	[i] Infringement of the copyright (reproduction right and distribution right) of subtitles, [ii] infringement of the author's moral right (right	(No claim)

		to integrity) due to alteration of subtitle data concerning Subtitle 4 for the Goods	
B	Goods 5 (Blu-ray box of Subtitled Movies 1 through 5)	Same as [i] above.	
C	Goods 2 through 4 and 9 (DVD)	In addition to the same claim as [i] above, [iii] infringement of the author's moral right (right of attribution) since the name as subtitle translator was not displayed.	
D	Goods 6 through 8 (Blu-ray)	Same as [i] and [iii] above.	

No. 2 Judgment sought by parties

1. Claims of the First-instance Plaintiff in the prior instance (see the attachment concerning the legal basis of the claims)

(1) First-instance Defendant Stingray and First-instance Defendant FieldWorks shall respectively pay to the First-instance Plaintiff 4,785,000 yen and the amount accrued thereon at the rate of 5% per annum for the period from April 23, 2010, until the completion of payment.

(2) The First-instance Defendants shall respectively pay to the First-instance Plaintiff 29,938,832 yen and the amount accrued on 28,563,546 yen of said amount at the rate of 5% per annum for the period from December 2, 2014, until the completion of payment.

2. Determination of the court of prior instance and filing of an appeal

The court of prior instance determined that [i] concerning the scope of the license of the Subtitles, an implied license for the DVD goods is found and infringement of the copyright is denied (related to Claims A and C); however, a license for the Blu-ray goods is not found and infringement of the copyright is established (related to Claims B and D); [ii] concerning Subtitle 4 for the Goods, infringement of the right to integrity is established (related to Claim A); [iii] concerning those without display of the name of the First-instance Plaintiff, infringement of the right of attribution is established (related to Claims C and D); and [iv] First-instance Defendant Stingray and First-instance Defendant FieldWorks are not exempt from the obligation to compensate for damages related to the aforementioned infringements, but First-instance Defendant Happinet is liable for compensation for damages only for the infringement of the right

of attribution. Based on these determinations, the court of prior instance upheld part of the claims of the First-instance Plaintiff.

Dissatisfied with the part against their claims, the First-instance Plaintiff and the First-instance Defendants filed an appeal respectively.

[Object of the appeal]

(1) The First-instance Plaintiff

A. The judgment in prior instance shall be changed as follows.

B. The same as 1. (1) and (2) above.

(2) First-instance Defendant Stingray

A. The part of the judgment in prior instance which is against First-instance Defendant Stingray shall be rescinded.

B. The claim of the First-instance Plaintiff related to the part described in the preceding paragraph shall be dismissed.

(3) First-instance Defendant FieldWorks

A. The part of the judgment in prior instance which is against First-instance Defendant FieldWorks shall be rescinded.

B. The claim of the First-instance Plaintiff related to the part described in the preceding paragraph shall be dismissed.

(4) First-instance Defendant Happinet

A. The part of the judgment in prior instance which is against First-instance Defendant Happinet shall be rescinded.

B. The claim of the First-instance Plaintiff related to the part described in the preceding paragraph shall be dismissed.

No. 3. Basic facts

The basic facts are as stated in No. 2, 1. "Facts and reasons" section of the judgment in prior instance (from page 3 and after), and therefore, they are cited.

According to the basic facts, the following facts are found: [i] the First-instance Plaintiff is the author and copyright holder of the Subtitles; [ii] First-instance Defendant Stingray and First-instance Defendant FieldWorks produced and sold Goods 1, and thereby, reproduced and distributed the Subtitles; [iii] First-instance Defendant Stingray and First-instance Defendant Field Works produced the Goods in Case 2 (Goods 2 through 9) and sold them to First-instance Defendant Happinet, and First-instance Defendant Happinet sold them to general consumers and rental business operators, and thereby, First-instance Defendant Stingray and First-instance Defendant FieldWorks reproduced the Subtitles and distributed them to First-instance Defendant Happinet, and First-instance Defendant Happinet distributed them to general consumers and rental

business operators.

No. 4 Issues and arguments of the parties

1. Issues

- (1) Whether the First-instance Plaintiff granted a license for the reproduction and distribution of the Subtitles (Issue 1)
- (2) Whether production of Subtitle 4 for the Goods infringes the right to integrity of the First-instance Plaintiff (Issue 2)
- (3) Whether having not displayed the First-instance Plaintiff's name as a subtitle translator in Goods 2 through 4 and Goods 6 through 9 constitutes an infringement of the right of attribution of the First-instance Plaintiff (Issue 3)
- (4) Whether the extinctive prescription is established (Issue 4)
- (5) Whether First-instance Defendant Happinet is liable for infringement of the right of attribution and infringement of the distribution right and reproduction right (Issue 5)
- (6) Occurrence of damages and the frequency and amount of the damages (Issue 6)

No. 5 Judgment of this court

This court determined as follows: [i] different from the judgment in prior instance, concerning the scope of the license of the Subtitles, a license is found not only for the DVD goods, but also for the Blu-ray goods, and infringements of the copyright are all denied; on the other hand, [ii] concerning infringement of the right to integrity and infringement of the right of attribution, both the establishment of infringements and the scope of the liability (main body of the liability and amount of damages) are determined to be as found by the court of prior instance.

1. Facts found in this case (hereinafter the correspondence between relevant persons in the facts found in this case are via email unless otherwise noted. Branch numbers of documentary evidence include branch numbers unless otherwise noted.)

(1) From the order of the translation until before the launch of Goods 1 (DVD-box)

A. R of Shine-Maistaa placed an order for the translation of Movie 1 to the First-instance Plaintiff on December 9, 2009, while mentioning an idea of selling DVDs at that time, and asked if the First-instance Plaintiff could dictate Italian lines for Commentary (Movie 4) in association with that idea. (Exhibit Ko 19, Exhibits Otsu A4, Otsu B1, and Otsu B12)

In response, the First-instance Plaintiff replied on December 10, 2009, that "We would love to accept your order" for the translation of Movie 1, stated the due date and preferred fees (the translation fees were 17,000 yen per 10 minutes in English and 19,000 yen per 10 minutes in Italian), and also replied that they could not accept the

order for the dictation of the Commentary (since it would be better to ask for it from a native speaker along with the production of the script), but could accept the order for the translation of the Commentary. (Exhibits Otsu A4 and Otsu B12)

R gave a notice to the First-instance Plaintiff on the same day that they would like to place an order for the translation of the Commentary when the DVD would be launched and placed an order for the translation for the 139-minute version (Movie 1). (Exhibit Ko 24)

B. P of Shine-Maistaa reported to Q of First-instance Defendant FieldWorks on December 11, 2009, that they were currently negotiating with the translator, but the translation fee would be "18,000 yen × 14 + 40,000 yen for use for TV" and asked Q to confirm that TV would include all of terrestrial, BS, and CS broadcasting. Q said that the translation fee was accepted and TV would include all of them, and requested to include the internet broadband services as well. (Exhibit Otsu B2)

C. R told the First-instance Plaintiff on December 13, 2009, concerning the launch of DVDs, that they would like to place an order for the translation of the DVD for the 119-minute version (Movie 2) and the DVD for the 127-minute version (Movie 3) as needed, in addition to the main DVD for the 139-minute version (Movie 1). The First-instance Plaintiff replied on the same day to R that "We would love to translate DVDs for the 119-minute version and the 127-minute version as well." (Exhibit Otsu A5)

D. P sent a quotation dated December 22, 2009, to First-instance Defendant FieldWorks on said date. (Exhibits Otsu B3 and Otsu B5) The quotation stated the translation fees for the Movies and spotting costs and had the statement of "(VIDEOGRAM + TV)" for the section of the translation fee for Movie 1 only.

R sent to the First-instance Plaintiff on the same day an Excel file (Exhibit Ko 58-2) titled "Work Table" in which the work unit price (concerning the translation, the unit price is based on the price presented by the First-instance Plaintiff as mentioned in A. above; concerning the spotting, unit price is 4,000 yen per 10 minutes), working hours, and preferred due date of the First-instance Plaintiff, and other information were stated. In that file, concerning the Argento version (Movie 2), under the section of "Production of DVD subtitle data," the following was stated: "Please produce subtitles only for the difference from Movie 1" and "Additional translation fee for approximately 10 minutes in total: 17,000 yen (1.0 min. × @17,000) and subtitles and spotting fees of 48,000 yen (12.0 min. × @4,000)." In addition, there were the following statements: Translation fee for Movie 1: 238,000 yen (14.0 min. × @17,000), translation fee for the Commentary (Movie 4): 228,000 yen (12.0 min. × @19,000), translation fee for the Documentary: 57,000 yen (3.0 min. × @19,000), translation fee for trailer, etc.: 51,000

yen (3.0 min. × @17,000) (the documentary and trailer, etc. correspond to Movie 5). The preferable due date for Movie 4 and Movie 5 was set at the end of February 2010. E. On December 28, 2009, Q replied to P's email described in the first sentence of D. above that "If the translation for the three main movies, including theaters, are under all rights, we accept the quotation." (Exhibits Otsu A6 and Otsu B4 and B9) P instructed R on the same day to negotiate with the First-instance Plaintiff under the condition of "all rights clear." (Exhibits Otsu A6 and Otsu B9)

F. On January 22, 2010, P informed the First-instance Plaintiff and R that a provisional mix DVD-R would be sent via postal mail. In response, the First-instance Plaintiff replied to P that they did not know about the provisional mix and inquired about it to R but received no reply. P then informed the First-instance Plaintiff again that the provisional mix DVD-R was sent and a CD-R for a bonus video would be sent via R the following week. R also again requested that the First-instance Plaintiff check the provisional mix DVD-R after the work for Movie 2 was complete. (Exhibit Ko 25)

G. On January 28, 2010, R notified the First-instance Plaintiff that, concerning Movie 3 (scenes were taken from Movie 1 and there are no additional scenes), they would like to create subtitles using the translation for Movie 1 by the First-instance Plaintiff and that they would like to place an order for the spotting and subtitling for 4,000 yen × 13 = 52,000 yen as fees for the use in other media. The First-instance Plaintiff replied to R on the same day concerning the order for the spotting and subtitling for Movie 3 that "We would love to do the work" and they accepted the fee amount that R offered. (Exhibit Otsu A7)

H. On February 14, 2010, P had correspondence with the First-instance Plaintiff concerning the time when the Commentary (Movie 4) and Romero version of 127 minutes long (Movie 3) would be finished, and sent a message that the "DVD will be launched on April 23. Therefore, we would like to have all translation finished by the end of February." In response, the First-instance Plaintiff replied that the work for Movie 3 would be finished on February 22, 2010. (Exhibit Otsu B21)

I. On March 16, 2010, the First-instance Plaintiff requested that R confirm the scheduled invoicing amount concerning fees for translation and spotting for Subtitled Movie 3 (4,000 yen per 10 minutes, 52,000 yen for 130 minutes) and translation fees for Subtitled Movie 4 (19,000 yen per 10 minutes, 228,000 yen for 120 minutes).

J. On March 31, 2010, the First-instance Plaintiff delivered Subtitle 1 to R. (Exhibit Otsu A2)

(2) After the launch of Goods 1 (DVD-box)

A. On July 13, 2010, P informed the First-instance Plaintiff: "Thank you for your

cooperation on Zombie. It was not a smash hit, but the DVD-boxes are selling pretty well thanks to your cooperation. DVDs will be launched individually in autumn." (Exhibits Otsu A9 and Otsu B14)

B. On September 16, 2010, R forwarded to the First-instance Plaintiff an email from P with a statement that Movies 1 through 3 would be launched individually in October and November, and also sent an email stating that "Concerning the sale of DVDs, please check the following." (The phrase "the following" is assumed to indicate the statement of "Three versions of the Zombie movies will also be launched individually in October and November." in the original message.) (Exhibits Otsu A9 and Otsu B15)

C. On October 20, 2011, R sent an email to the First-instance Plaintiff stating that "It has been determined that the 'Zombie' for which we placed an order for the translation of subtitles to you last year, I think, will be broadcast on WOWWOW. I will inform you of the on-air date when it is determined." On the same day, the First-instance Plaintiff replied to R that "'Zombie' will be broadcast on WOWWOW. I am happy. I am looking forward to hearing from you about the on-air date." (Exhibit Otsu B13)

(3) A separate case (subtitle translation of the movie "Night of the Chicken Dead")

A. On October 24, 2012, R placed an order for the translation of the movie "Night of the Chicken Dead" to the First-instance Plaintiff and added the note, "To be screened at a single theater on Blu-ray. It will be a BD and DVD." The First-instance Plaintiff accepted the order by stating, "I would love to do it." (Exhibit Ko 20)

B. On November 20, 2012, R asked the First-instance Plaintiff, "Can you accept our offer for the translation fee for the main version at 17,000 × 10, including all translation rights?" On the same day, the First-instance Plaintiff replied, "Concerning the Chicken Dead, we accept your offer, 'Translation fee: 17,000 × 10,' including all rights." (Exhibit Ko 21)

2. Issue 1 (Whether the First-instance Plaintiff granted a license for the reproduction and distribution of the Subtitles)

Since there is no agreement that the First-instance Plaintiff grants a license for the reproduction and distribution of the Subtitles, it is necessary to examine the existence of the license based on the facts found in this case as stated in 1. above. In particular, in this case, on December 28, 2009, whether R secured the agreement of "all rights clear" with the First-instance Plaintiff is a concern.

(1) In consideration of the following, it is fully found that the First-instance Plaintiff recognized that the Subtitles would be reproduced on DVDs and distributed: [i] R of Shine-Maistaa sequentially approached the First-instance Plaintiff for the translation of Movies 1 and 4 (1. (1) A. above) and Movies 2 and 3 (1. (1) C. above) on the assumption

that they would be used on DVDs; [ii] in the work table that R sent to the First-instance Plaintiff on December 22, 2009, the unit price and working hours for Movies 1, 2, 4, and 5 were clearly stated, and, in particular, concerning Movie 2, the section for "Production of DVD subtitle data" was established (1. (1) D. above), and Movies 4 and 5 were so-called bonuses for the DVD-box and they were produced on the assumption that they would be sold in the form of DVD due to their nature; [iii] on January 28, 2010, R informed the First-instance Plaintiff that, concerning Movie 3, they would like to produce subtitles using the translation of the First-instance Plaintiff for Movie 1 and they would like to place an order for the spotting and subtitling for 52,000 yen for the use in other media, and the First-instance Plaintiff understood it, including the offered unit price (1. (1) G. above); [iv] on February 14, 2010, R of Shine-Maistaa clearly stated that the DVD would be launched on April 23, 2010, and confirmed the time of the completion of work for Movies 3 and 4 with the First-instance Plaintiff (1. (1) H.); [v] the spotting fee of 52,000 yen that the First-instance Plaintiff invoiced to R on March 16, 2010 was the amount that the First-instance Plaintiff accepted as the spotting fee for Movie 3 as stated in 1. (1) G. above and the translation fee of 228,000 yen for Movie 4 matched the amount stated in the work table that R sent to the First-instance Plaintiff on December 22, 2009 as stated in 1. (1) D. above; [vi] the amount of 691,000 yen that was paid by Shine-Maistaa to the First-instance Plaintiff ((3) D. of the Basic facts section in the judgment in prior instance) matched the total amount of the translation fees for Movies 1, 2, 4, and 5 as stated in the work table that R sent to the First-instance Plaintiff on December 22, 2009 as stated in 1. (1) D. above and the spotting fee for Movie 3 that the First-instance Plaintiff accepted as stated in 1. (1) G. above; and [vii] the First-instance Plaintiff continued the work even after the Film Festival ended on March 1, 2010.

Moreover, the following is fully found: as stated in 1. (2) A. and B. above, on July 13, 2010, the First-instance Plaintiff was told by P that Goods 1 was launched and the DVDs would be launched individually, and was also told the specific months of launch subsequently on September 16, 2010; however, the First-instance Plaintiff did not invoice separate royalties other than the royalties related to the screening at the Film Festival and approved that the aforementioned 691,000 yen included compensation for using the Movies for DVDs, not only recognizing that the Subtitles would be reproduced and distributed as DVDs. The First-instance Plaintiff stated that the First-instance Plaintiff considered that the aforementioned correspondence of P was related to the translation by another person. However, the time when P made the correspondence was the time when no more than six months had elapsed from February

14, 2010, when P confirmed with the First-instance Plaintiff the time of the completion of the work for Movies 3 and 4 for launching them as DVDs. Therefore, it is difficult to believe that the First-instance Plaintiff misunderstood it as one related to the translation by another person, and therefore, the aforementioned statements are unreasonable.

(2) In addition, as stated in 1. (2) C. above, the First-instance Plaintiff did not invoice separate royalties when hearing from R, on October 20, 2011, that the broadcast of "Zombie" on WOWWOW was determined. Therefore, it is obvious that the license of the Subtitles covered not only the DVDs. The First-instance Plaintiff stated that the First-instance Plaintiff believed that the one to be broadcast on WOWWOW was also the translation by another person or that WOWWOW would contact the First-instance Plaintiff concerning the licensing conditions, etc. when the broadcasting date was determined. However, there is no reason that R informed the First-instance Plaintiff about the translation by another person and R said that the broadcast was "determined." It is clear that it was not a stage where the negotiation for licensing would begin from that point and the statements of the First-instance Plaintiff on this point are also unreasonable.

(3) Next, whether the First-instance Plaintiff granted a license for the reproduction and distribution of the Subtitles for Blue-ray goods is examined.

A. In Article 4, [i] of the joint project agreement dated April 17, 2009 between First-instance Defendant Stingray First-instance Defendant FieldWorks (Exhibit Otsu B22), the term "Videogram" is defined as videotapes, such as VHS, beta, etc., and video discs (DVD, LD, etc. that are not interactive, and including Blu-ray). In Article 4, [ii] of said agreement, the term "home-video right" is defined as the right to reproduce a video into a videogram and to distribute it on the assumption of individual viewing. In addition, in an attached table of said agreement, as the rights subject to the business, a wide range of rights are listed, such as the theatrical screening right, non-theatrical screening right, public video right, home-video right (including Blu-ray), commercial video right, terrestrial broadcast right, CAT right, satellite broadcasting right, PPV right, internet VOD right, etc. It is shown that total income related to the home-video right is a certain percentage of the retail price of goods sold before tax. Based on the above, it is obvious that First-instance Defendant Stingray and First-instance Defendant FieldWorks considered the Blu-ray of the Movies was also subject to the business.

For this reason, as stated in 1. (1) D. above, in the quotation attached to an email that P sent to First-instance Defendant FieldWorks on December 22, 2009, "(VIDEOGRAM + TV)" was stated concerning Movie 1. In response, Q, who is the

First-instance Defendant, replied on December 28, 2009, "The quotation can be acceptable without change if the translation for the three main versions are for all rights including the theatrical screening." On the same day, P instructed R to negotiate with the First-instance Plaintiff on the condition of "all rights clear." There is no reason that R did not follow this instruction. As stated in the testimony of a witness in the court of prior instance, R, it is reasonable to find that R asked the First-instance Plaintiff on the same day over the phone to allow them to use the translation of the First-instance Plaintiff under the condition of "all rights clear." It is reasonable to find that the First-instance Plaintiff accepted it and agreed that the Subtitles would be reproduced and distributed in videograms, including Blu-ray. The witness in the court of prior instance, R, testified that the conversation was held over the phone. It is not unreasonable that the conversation was held over the phone in order to make contact without fail in consideration of the possibility that contact by email may not be noticed and overlooked.

In the aforementioned quotation, "(VIDEOGRAM + TV)" was not stated for movies other than Movie 1. However, Movies 1 through 3 are different versions of the same movie and there is nothing inconsistent in considering that they had Movie 1, which is the longest version, represent other movies. In consideration of the scope of the aforementioned joint business of First-instance Defendant Stingray and First-instance Defendant FieldWorks, it is difficult to consider that they acted inefficiently, such as asking for a license only for DVDs for which the launch was determined concretely, but not asking for a license for Blu-ray.

B. As stated in 1. (1) C. above, on December 13, 2009, R told the First-instance Plaintiff concerning the launch of DVDs that they would like to place an order for the translation of Movies 2 and 3 as needed in addition to Movie 1. As stated in 1. (1) D. above, in the Excel file titled "Work Table" that Z sent to the First-instance Plaintiff on December 22, 2009, there is no statement concerning Movie 3. It is considered that, since there was no new portion to be translated in Movie 3, Shine-Maistaa was considering handling it itself (the witness in the court of prior instance, R). It is reasonable to find that the license related to Movie 3 was granted on January 28, 2010, when R officially asked the First-instance Plaintiff to allow Shine-Maistaa to produce subtitles using the translation of the First-instance Plaintiff for Movie 1, and the payment conditions for the spotting were agreed.

C. The First-instance Plaintiff stated in the examination of the parties themselves that there was no phone call from R on December 18, 2009; the First-instance Plaintiff did not recognize the term "all rights clear," and if such term was used, the First-instance Plaintiff would have confirmed it with R. However, in another case in 2012 as stated in

1. (3) above, when R presented conditions "including all rights," the First-instance Plaintiff replied in the text that "we accept ... including all rights." In light of these circumstances, the statements of the First-instance Plaintiff cannot be trusted.

In addition, when the First-instance Plaintiff received an order for translation from Z on May 10, 2018 (after 8 to 9 years had elapsed from the time in 2009 to 2010 when correspondence between relevant persons concerning production of the Subtitles was held), the First-instance Plaintiff stated that since the First-instance Plaintiff studied the Copyright Act and the Act against Delay in Payment of Subcontract Proceeds, Etc. to Subcontractors, the First-instance Plaintiff would invoice the copyright transfer fee or royalties in addition to the translation fee for works in the future, and listed trailers for theaters, advertisements for terrestrial television broadcasts, internet distribution advertisements, videograms (DVD, etc.) were listed as an intended use. (Exhibit Otsu A14) Therefore, it is presumed that the First-instance Plaintiff had the recognition that issues concerning previous works were resolved and the First-instance Plaintiff recognized the concept of a videogram.

D. The First-instance Plaintiff argued that a license for which a counterpart is not identified is not deemed to be a specified license and that it is meaningless to grant a license to Shine-Maistaa that does not actually produce DVDs, etc.

However, concerning projects via Shine-Maistaa, even if DVDs are launched by a client of Shine-Maistaa, who is other than First-instance Defendant FieldWorks, the First-instance Plaintiff does not prepare a written agreement (the First-instance Plaintiff), and it should be deemed that the First-instance Plaintiff left the counterpart of the license entirely to Shine-Maistaa. Therefore, the argument of the First-instance Plaintiff cannot be accepted.

(4) As stated above, the First-instance Plaintiff is deemed to have granted a license for the reproduction and distribution of the Subtitles and the First-instance Plaintiff's claims based on the infringement of the reproduction right and distribution right are groundless without the need to make determinations on the remaining points.

3. Issue 2 (Whether production of Subtitle 4 for the Goods infringes the right to integrity of the First-instance Plaintiff)

The determination of this instance on the arguments of First-instance Defendant Stingray and First-instance Defendant FieldWorks is added as stated in the following, but other details are as explained in No. 3. 4. (1), (3), (4) of the "Facts and reasons" section in the judgment in prior instance (pages 41 and 42), and therefore, they are cited (the explanation in No. 3. 4. (2) is not appropriate in light of the argument of First-instance Defendant Stingray in No. 4. 3. (2) above [the second paragraph starting from

"In addition,]", and therefore, it is not cited.).

(1) First-instance Defendant Stingray argued that infringement of the right to integrity is limited to those cases due to wrongful intention. However, the right to integrity is established with the purport of protecting the moral interest in maintaining the integrity of works and in ensuring that works are not altered without authorization. The argument that the infringement can be permitted if it is due to negligence lacks basis under the tort law, and therefore, such argument cannot be accepted.

(2) First-instance Defendant FieldWorks argued as follows: in cases of entering a chapter in the common part of moving images in Movie 2 and Movie 4, it is set as the second chapter separately from a chapter for appreciating the main audio program of the main version (Subtitled Movie 2) and the subtitles of the main version (Subtitle 2); as a result, part of the subtitles (Subtitles 4) of the second audio program (Subtitled Movie 4) may be missing; this occurred without wrongful intention or negligence and was unavoidable. However, said argument does not serve as the grounds for the alleged fact that it was not altered.

In addition, First-instance Defendant FieldWorks argued that Subtitle 4 was stored in Goods 1, including the missing terms; however, those missing terms were not displayed due to entering chapters, so no alteration was made. However, the right to integrity is to prevent decreases in the social evaluation of an author that is formed through expression in works, by the alteration of expressions. Therefore, even if the data stored in a DVD is original, if the expression that is recognized as subtitles by the purchaser, etc. was altered, infringement of the right to integrity occurs, and therefore, the argument of the First-instance Defendant FieldWorks cannot be accepted.

Moreover, First-instance Defendant Stingray argued that the missing of terms falls under "modifications that are found to be unavoidable" (Article 20, paragraph (2), item (iv) of the Copyright Act) on the grounds that the missing was a missing of the second audio program due to a bug, and First-instance Defendant FieldWorks argued the same on the grounds that what are missing are only 11 characters. However, if the second audio program was altered due to a bug, it should be handled after checking the altered part. In this case, the alteration itself was overlooked, and therefore, it was not unavoidable. In addition, even if merely 11 characters are missing, they constitute a group of meaningful parts. As shown in the Attachment to the Judgment in Prior Instance "Comparison Table," the subject of "what is out of control" is no longer unambiguously clear due to the missing part, and therefore, it is not unavoidable.

In addition, based on the fact that the alteration was overlooked as stated above, negligence is also found with First-instance Defendant Stingray and First-instance

Defendant FieldWorks.

4. Issue 3 (Whether having not displayed the First-instance Plaintiff's name as a subtitle translator in Goods 2 through 4 and Goods 6 through 9 constitutes an infringement of the right of attribution of the First-instance Plaintiff)

(1) The determination on the supplementary argument of First-instance Defendant Stingray as stated in (2) below is added, but other details are as stated in No. 3. 5 in the "Facts and reasons" section of the judgment in prior instance (from page 42 and after), and therefore, they are cited.

(2) First-instance Defendant Stingray argued that only when there is the author's manifestation of intention to exercise the right concerning the right of attribution between the parties in a close relationship under an agreement, other relevant persons are bound. However, in cases of foreign movies with subtitles, it is general practice to display the name of the subtitle translator (as stated in the cited judgment in prior instance), and it is difficult to consider that the First-instance Plaintiff, who is engaging in subtitle translation into Japanese as its business, would daringly desire not to display its name. In addition to such circumstances in this case, based on the purport of the right of attribution where the decision on whether to display the name is left to the author in order to protect the author's honor, reputation, social evaluation, satisfaction, etc., the name is required to be displayed unless the author's intention that the display of the name is not necessary can objectively be found. Therefore, the argument of First-instance Defendant Stingray cannot be accepted.

5. Issue 4 (Whether the extinctive prescription is established)

(1) The determination on the supplementary argument of First-instance Defendant FieldWorks as stated in (2) below is added, but other details are as stated in No. 3. 6 in the "Facts and reasons" section of the judgment in prior instance (from page 44 and after) (except the part related to infringement of the copyright [reproduction right and distribution right]), and therefore, they are cited.

(2) There is not enough evidence to find that the First-instance Plaintiff had recognized that Subtitle 4 for the Goods are an alteration of Subtitle 4 and that the name of the First-instance Plaintiff was not displayed on Goods 2 through 4 and Goods 6 through 9, before October 8, 2018, when the First-instance Plaintiff recognized them.

First-instance Defendant FieldWorks argued that the First-instance Plaintiff recognized that the inspection of Goods 7 received on May 19, 2018 was complete and that the name of the First-instance Plaintiff was not displayed on Goods 7 as of September 7, 2018, when the First-instance Plaintiff started purchasing other goods and, moreover, on Goods 6 and 8 that were launched individually on the same date as Goods

7, and also argued that since the First-instance Plaintiff received Goods 2 through 4 on September 8 or September 9, 2018, the First-instance Plaintiff recognized that the name of the First-instance Plaintiff was not displayed on these goods on September 16, 2018 at the latest, when several days had elapsed from the receipt date. However, even if the name of the First-instance Plaintiff was not displayed on the package of these goods, it may be displayed in the credits. It is not found that the First-instance Plaintiff checked them including this possibility and had acquired specific recognition that the right of attribution was infringed by the date of the aforementioned argument. Therefore, the argument of First-instance Defendant FieldWorks cannot be accepted.

6. Issue 5 (Whether First-instance Defendant Happinet is liable for infringement of the right of attribution and infringement of the distribution right and reproduction right)

(1) As stated in 2. above, the First-instance Plaintiff granted a license for the reproduction and distribution of the Subtitles for Blu-ray goods as well. Therefore, First-instance Defendant Happinet does not hold tort liability concerning infringement of the distribution right and reproduction right.

(2) On the other hand, concerning Goods 2 through 4 and Goods 6 through 9, when First-instance Defendant Happinet sold them, they were "made available to the public" and the right of attribution was infringed.

A. First-instance Defendant Happinet argued that the determination on "whether or not to display the author's name and, if displaying the author's name, what name of the author is to be displayed" was made between First-instance Defendant Stingray and First-instance Defendant FieldWorks before First-instance Defendant Happinet purchased the Goods, and therefore, there is no objective or subjective coordination with First-instance Defendant Happinet. However, First-instance Defendant Stingray and First-instance Defendant FieldWorks produced Goods 2 through 4 and Goods 6 through 9 naturally with the anticipation that First-instance Defendant Happinet would "make them available to the public." Therefore, First-instance Defendant Happinet's objective collaboration with First-instance Defendant Stingray and First-instance Defendant FieldWorks can be found.

B. Next, the existence of wrongful intention and negligence of First-instance Defendant Happinet is a concern. It is objectively obvious that the name of the translator was not displayed on the jackets of Goods 2 through 4 and Goods 6 through 9. There was an objective situation where First-instance Defendant Happinet should have had questions about whether the name of the subtitle translator is displayed other than on the jackets (such as in the credits, etc.) for these goods, or if it is not displayed, whether the subtitle translator did not desire it. Therefore, before selling the goods to general consumers or

rental business operators, First-instance Defendant Happinet had a duty of care to confirm these questions with First-instance Defendant FieldWorks. However, First-instance Defendant Happinet did not make a confirmation, so it is found that First-instance Defendant Happinet is negligent concerning infringement of the right of attribution. First-instance Defendant Happinet argued that there was no situation that aroused a question concerning the fact that First-instance Defendant FieldWorks, which is a professional, did not receive a license or conclude an agreement with the First-instance Plaintiff appropriately, and therefore, First-instance Defendant Happinet is not negligent. However, it is not found to be normal that the name of the subtitle translator is not displayed on the videogram of a translated movie. Therefore, the argument of First-instance Defendant Happinet cannot be accepted.

7. Issue 6 (Occurrence of damages and the frequency and amount of the damages)

(1) Infringement of the right to integrity

It is reasonable to find that the amount of solatium for mental distress to the First-instance Plaintiff from the infringement of the right to integrity related to Subtitle 4 for the Goods is 10,000 yen as stated in No. 3. 8. (1) of the "Facts and reasons" section of the judgment in prior instance (from page 48 and after).

The First-instance Plaintiff argued that the infringement of the right to integrity due to alteration may result in the evaluation that the translation capability of the First-instance Plaintiff is low so that the amount of 10,000 yen is insufficient. However, the altered part is related to the Commentary, not to the main version of the movie, and the amount of the alteration is very small. As shown in the Attachment to the Judgment in Prior Instance "Comparison Table," it merely remained in the situation where the subject of "what is out of control" would no longer be unambiguously clear due to the missing part, and it is not completely meaningless. Therefore, the impact on the decrease, etc. in evaluation related to the translation capability of the First-instance Plaintiff is not significant and the argument of the First-instance Plaintiff cannot be accepted.

On the other hand, the infringement of the right to integrity in this case is not at the level where the right to demand solatium is not established as argued by First-instance Defendant FieldWorks.

(2) Infringement of the right of attribution

It is reasonable to find that the amount of solatium related to the infringement of the right of attribution due to the fact that the name of the First-instance Plaintiff was not displayed as the subtitle translator on Goods 2 through 4 and Goods 6 through 9 is 70,000 yen per good and 490,000 yen in total as stated in No. 3. 8. (2) in the "Facts and

reasons" section of the judgment in prior instance (from page 49 and after).

The First-instance Plaintiff argued that if it is only known to consumers who purchased the DVD-box that the producer of the Subtitles is the First-instance Plaintiff, it would not lead to the next job and the impact is large. However, concerning the DVDs, boxed products were launched first. Concerning the Blu-ray products, the number of shipments of Goods 5, which is a boxed product, is the largest (No. 3. 8. (3) of the judgment in prior instance [on page 51]). Since the name of the First-instance Plaintiff is displayed on them, it cannot be said that the situation where the First-instance Plaintiff would miss following job opportunities occurred.

On the other hand, First-instance Defendant Stingray and First-instance Defendant FieldWorks argued that it is unreasonable to calculate damages for each of the goods on the grounds that there were no major differences in the details of the Goods. However, since they are sold as individual goods, it is not unreasonable to calculate damages for each of them.

(3) Attorney's fees

It is reasonable to find 1,000 yen in relation to the infringement of the right to integrity and 7,000 yen per product in relation to the infringement of the right of attribution (49,000 yen in total).

No. 6 Conclusion

Based on the above, the claim of the First-instance Plaintiff in Case 1 has grounds to the extent of demanding that First-instance Defendant Stingray and First-instance Defendant FieldWorks pay 11,000 yen jointly and severally concerning the infringement of the right to integrity of Goods 1, and therefore, it is upheld to that extent, and the remaining claims should be dismissed due to being groundless. The claim of the First-instance Plaintiff in Case 2 has grounds to the extent of demanding that the First-instance Defendants pay 539,000 yen jointly and severally in relation to the infringement of the right of attribution concerning Goods 2 through 4 and Goods 6 through 9, and therefore it is upheld to that extent, and the remaining claims should be dismissed due to being groundless. The judgment in prior instance, which differs from the above, is inappropriate for the part where it upheld the amount exceeding the aforementioned amount to be upheld, and therefore, the judgment in prior instance shall be changed as stated in paragraph 1. of the main text based on the appeal by the First-instance Defendants, and the Appeal by the First-instance Plaintiff is groundless and is dismissed. The judgment is rendered as stated in the main text.

Intellectual Property High Court, Fourth Division

Presiding judge: MIYASAKA Masatoshi

Judge: MOTOYOSHI Hiroyuki

Judge: IWAI Naoyuki

(Attachment)

[i] ... First-instance Defendant Stingray, [ii] ... First-instance Defendant FieldWorks, [iii] ... First-instance Defendant Happinet

Case 1 (Defendants [i], [ii])

	Amount demanded (jointly and severally by [i] and [ii])	Amount upheld for [i] and [ii] (court of prior instance)	Amount upheld for [i] and [ii] (this court)
Infringement of the reproduction right and distribution right	3850000	0	0
Infringement of the right to integrity	500000	10000	10000
Attorney's fees	435000	1000	1000
Case 1 total	4785000	11000	11000

Case 2 (Defendants [i] through [iii])

	Amount demanded (jointly and severally by [i] through [iii])	Amount upheld for [i] and [ii] (court of prior instance)	Amount upheld for [iii] (court of prior instance)	Amount upheld for [i] through [iii] (this court)
Infringement of the reproduction right and distribution right	22466860	781320	0	0
Infringement of the right of attribution	3500000	490000	490000	490000
Attorney's fees	2596686	127132	49000	49000

Fixed delay damages	1375286			
Case 2 total	29938832	1398452	539000	539000

Notes

The demanded amount of fixed delay damages in Case 2 is the fixed amount of delay damages on damages related to Goods 2 (launched on October 2, 2010), Goods 3 and 4 (launched on November 4, 2010), and Goods 5 through 8 (launched on December 20, 2013) for the period from each launch date until December 1, 2014 (the day immediately before the launch date of Goods 9). The interest rate is the one determined by the Civil Code before the amendment by Act No. 45 of 2017. Concerning the part upheld, the judgment in prior instance and this judgment used the method to order payment of delay damages for the period from each starting date until the completion of payment, but not by the fixed amount method.