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Date of the judgement

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2001.03.02

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Case Number

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2000(Ju)222

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Reporter

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Minshu Vol.55, No.2, at 185

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Title

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Judgment upon the case concerning the duty of care by reason of the lessor of karaoke  
equipment for business use

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Case name

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claim for an injunction against infringement of copyright

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Result

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Judgment of the Second Petty Bench, partly dismissed, partly decided by the Supreme Court

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Court of the Second Instance

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Tokyo High Court

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Summary of the judgement

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When concluding a lease agreement of Karaoke equipment, the lessor bears the duty of care by  
Reason not only to advise the lessee to conclude a copyright licensing agreement for the use of  
the copyrighted work, but also to transfer the equipment to the lessee only after verifying that  
the lessee has concluded such an agreement or has offered to conclude such an agreement with

the holder of the copyright.

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Main text of the judgement

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1. Part of the original judgment related to the jokoku appellee are to be revised as follows:

The judgment of the first instance court shall be revised as follows:

(1) The jokoku appellee shall pay the jokoku appellant 7,539,239 yen and an interest of 5% on this amount from March 13, 1997 to the date of payment.

(2) Other claims by the jokoku appellant vis a vis the jokoku appellee shall be dismissed.

2. The total cost of litigation shall be divided by five and one-fifth of it shall be borne by the jokoku appellant, and the remaining amount by the jokoku appellee.

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Reasons

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On the ground of certiorari by the representatives for the jokoku appeal, Yutaka Tanaka, Keiichi Horii, and Hiroshi Fujiwara:

I. The facts lawfully ascertained by the original instance court are as follows:

1. The jokoku appellant had the copyright of the musical works accommodated in the list attached to the judgment of the first instance court and the supplementary list for trust management (hereinafter, 'the Work entrusted for management') transferred and managed these works. The appellant is the sole organisation for the intermediation of copyright on musical works in Japan which manages a great majority of musical works by having the copyright transferred for trust management from the time the present case emerged.

The jokoku appellee is a limited liability company which is engaged in the leasing and selling of karaoke equipment for business use in the area south of the Ibaragi prefecture. A is one of the joint owners of the 'B' and 'C' (hereinafter, 'the Outlets').

2. The appellee concluded a lease agreement for karaoke equipment with A on September 30, 1991 for B, and on December 27 of the same year, for C (hereinafter, 'the Lease Agreements'), and transferred sets of karaoke equipment for laser discs to him. In the Lease Agreements, it was stipulated in writing that 'if the present equipment is to be used for business purposes, the lessee

is required by the appellant to conclude a license agreement for the copyright. In concluding the present agreement, the lessee is asked to be responsible for taking these measures. The appellee, when concluding the contract, also orally explained this to A, but did not verify if A had concluded a licensing agreement or offered to conclude one. A and others played the laser disc using the above karaoke equipment in the Outlets from the date of the conclusion of the lease agreement to June 8, 1995 without the consent of the appellant, played the song and the libretto which are the Work entrusted for management, allowed the customers and employees to sing, and thus enhanced the atmosphere with the intention of increasing profit.

3. The appellee became aware that A had been served the interim order to prohibit the use of the karaoke equipment which is the object of the appeal by the appellant, and came to realise for the first time that A had failed to conclude a licensing agreement for the use of the copyright. However, because A promised the appellee that it would solve the dispute in a responsible manner and would not trouble the appellee, the appellee concluded new lease agreements for the karaoke equipment for the Outlets and transferred sets of karaoke equipment with a communication device to A. A and others utilised this karaoke equipment transferred by the appellee in the Outlets without the consent of the appellant in B, until December 20, 1996, and in C, until October 20, 1995, played the music which was the Work entrusted for management, allowed the customers and employees to sing them, and thus created a lively atmosphere with the intention of increasing the profit.

4. The amount which the appellant is entitled to receive from the Outlets is 73,452 yen per month per outlet.

II. The present case involves a claim by the jokoku appellant for compensation equivalent to the amount of the royalty on the ground that the act of the jokoku appellee constitutes a joint tort with A as an infringement of the copyright.

III. The original instance court acknowledged the fault of the jokoku appellee and ordered the appellee to pay compensation from September 1995, but denied the fault on the part of the appellee up to June 8, 1995 and ruled as follows.

1. Entrepreneurs who are lessors of karaoke equipment have a general duty of care to ensure that the karaoke equipment will not be used as an instrument of infringement of copyright. This duty of care should be regarded as having been fulfilled, if the lessor advises the lessee in writing or orally at the time of concluding the agreement that the lessee is under a legal obligation to conclude a licensing agreement of copyright. The lessor of karaoke equipment is

under an obligation to take measures to prevent the infringement of copyright by not transferring the equipment to the lessee if the possibility of the lessee not concluding a licensing agreement on the copyright is, to a certain level, foreseeable, or if after the conclusion of the lease agreement, there are special circumstances to suspect that the licensing agreement has not been concluded after the lease agreement was concluded. The lessor is also under an obligation, where the equipment has already been transferred, to retrieve the equipment from the lessee. However, the lessee is not under any general obligation to verify, before concluding the lease agreement, whether or not the lessee has offered the appellant to conclude a licensing agreement of the copyright, or to verify the existence of such an agreement at any time after the conclusion of the lease agreement.

2. In the agreement of lease in the present case, there is a warning that a licensing agreement on copyright with the appellant should be concluded and the appellee has orally explained this to A. There are no special circumstances that lead the court to suspect that A had no intention to conclude a licensing agreement of copyright with the appellant at the time of the conclusion of the lease agreement, or had not concluded a licensing agreement after the conclusion of the lease agreement. Therefore, there is no breach of the duty of care until June 8, 1995.

IV. However, the above ruling of the original instance court cannot be upheld from the following reasons.

1. In cases where the owners of restaurants and other similar outlets install karaoke equipment for laser discs which has the function of showing on the screen the libretto and songs of the copyrighted music or karaoke equipment with a communication facility which has the function of replaying the libretto and songs of the copyrighted music (hereinafter, 'the Karaoke Equipment'), encouraging the customers to sing, reproducing the piece of music chosen by customers, showing the libretto and playing the songs which are copyrighted, letting the customers and employees sing accompanied by this music, and, by creating a lively atmosphere, intend to solicit more customers and to increase profit, the above owner is not exempted from tort liability for the infringement of the right to perform and the right to show on the screen in relation to the singing of the customers and employees and the showing or reproduction of the libretto and the song by the use of the Karaoke Equipment, unless he has obtained the consent of the holder of the copyright of the music (Supreme Court 1984 (o) No.1204, Judgment of the Third Petit Bench, March 15, 1988; Minshu 42-3-199).

2. It is reasonable to consider that the lessor of karaoke equipment, when concluding a lease agreement for the equipment, bears a duty of care by Reason not only to advise the lessee to conclude a copyright licensing agreement for the use of the copyrighted work, but also to

transfer the equipment to the lessee only after verifying that the lessee has concluded such an agreement or has offered to conclude such an agreement with the holder of the copyright, if the equipment is solely for showing on the screen and playing the copyrighted music and letting the public directly watch or listen to it. This is because (1) in the light of the fact that most of the works shown or played by karaoke equipment are copyrighted, such equipment generally has a high probability of being used in infringement of copyright as mentioned above in 1 by the owners of the outlets with such equipment, unless there is a consent of the copyright holder, (2) an infringement of copyright is a criminal offence (Article 119 and the following), (3) karaoke lessors make profit out of the business of leasing such karaoke equipment which has a high probability of being used in breach of copyright, (4) it is publicly known that in general, the rate of conclusions of licensing agreements by the owners of karaoke outlets is not necessarily high, and the lessor should have foreseen the probability of the infringement of copyright unless it could be verified that the lessee has concluded, or offered to conclude a licensing agreement on copyright, (5) it is easy for the lessor of the karaoke equipment, to verify whether the lessee has concluded, or offered to conclude a licensing agreement on copyright, and thus, it is possible to take measures to prevent the infringement of copyright. Therefore the existence of the above duty of care should be acknowledged.

3. In the present case, it is evident that A intends to use the karaoke equipment to show and play the Work entrusted for management to the public for direct viewing and listening. The appellee was under a duty of care to prevent the infringement of copyright by A by verifying whether A has concluded, or offered to conclude a licensing agreement on copyright at the time of the transfer of the equipment to A based upon the Lease Agreements. Nevertheless, the appellee merely advised A to conclude a licensing agreement of copyright, but failed to verify whether he had concluded, or offered to conclude a licensing agreement on copyright, and transferred the equipment to A. This is contrary to the above-mentioned duty of care based upon Reason. The infringement of copyright by A and others resulted from this omission, and therefore, there is a causal link between the failure of the appellee to fulfil the duty of care and the damage incurred by the appellant caused by the infringement of copyright by A.

Thus, the above ruling of the original instance court which found that there was no breach of the duty of care on the part of the appellee until June 8, 1995 erred in the interpretation and application of law, and it is evident that this error affects the conclusion of the judgment of the original instance court, and the grounds of appeal are well-founded.

V. In the following section, the amount payable by the appellee is to be determined.

The amount of damage incurred by the appellant per month is 73,542 yen, and the period of infringement is, as stated above, in relation to B, 44 months and 10 days between September 30,

1991 to June 8, 1995, and 15 months 12 days between September 9, 1995 to December 20, 1996, and in relation to the C, 41 months 13 days from December 27, 1991 to June 8, 1995, and one month 12 days from September 9, 1995 to October 20 of the same year. Therefore, the amount of damage incurred by the appellant is 4,391,168 yen for B, and 3,148,071 yen for the C, and these total 7,539,239 yen.

Therefore, the claim of the appellant vis a vis the appellee is with grounds for the part of 7,539,239 yen and the claim on the penalty for the delay at the rate of 5% per year as provided by the Civil Code from March 13, 1997, which is after the date of the commitment of tort, up to the time of payment, is also with grounds. The rest of the claims shall be dismissed as groundless.

VI. The judgment of the first instance court which is different from the above ruling shall be revised according to the above ruling, and therefore, the part of the judgment of the original instance court relevant to the appellee shall be revised as stated in item 1 of the main text of the judgment.

Thus, the justices unanimously rule as the main text of the judgment.

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Presiding judge

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Justice KAMEYAMA Tsugio

Justice KAWAI Shinichi

Justice FUKUDA Hiroshi

Justice KITAGAWA Hiroharu

Justice KAJITANI Gen

(\*Translated by Sir Ernest Satow Chair of Japanese Law, University of London)