

Date	May 31, 2012	Court	Tokyo District Court, 46th Civil Division
Case number	2009 (Wa) 28388		
<p>– A case in which the court dismissed the claims filed by the plaintiffs, who are South Korean lyricists or composers, to seek against the defendants payment of tort damages arising due to infringement of the right of reproduction or right of public transmission, on the grounds that at the time when the plaintiffs respectively entered into trust agreements with a South Korean music copyright management association based on the general conditions of copyright trust agreement, the copyrights for the musical works in question effective anywhere in the world including Japan had been transferred in trust from the plaintiffs to the music copyright management association, and therefore the plaintiffs did not retain the copyrights for these musical works</p>			

The plaintiffs, who are lyricists or composers with South Korean nationality, sought against the defendants, who engage in manufacturing and selling terminal units for commercial online karaoke machines, payment of tort damages arising due to copyright infringement. The plaintiffs alleged that the defendants, without the plaintiffs' authorization, compiled data of the musical works written or composed by the plaintiffs (the "Musical Works"), recorded such data on the hard disks installed on the terminal units manufactured by the defendants, or recorded the data of part of the Musical Works (new pieces) which were released after the defendants had shipped those terminal units to online karaoke machine leasing companies, etc., onto the central server managed by the defendants and enabled the downloading of such data onto the terminal units, and such act performed by the defendants infringed the right of reproduction (Article 21 of the Copyright Act) or right of public transmission (Article 23, paragraph (1) of the same Act) that the plaintiffs hold with regard to the Musical Works.

The plaintiffs entered into copyright trust agreements (the "Trust Agreements") with the Korea Music Copyright Association (KOMCA), a South Korean music copyright management association, which cover the musical works written or composed by the plaintiffs, based on the general conditions of copyright trust agreement laid down by KOMCA.

On December 10, 2007, KOMCA entered into a mutual management agreement (the "Mutual Management Agreement") with the Japan Society for Rights of Authors, Composers and Publishers (JASRAC), a Japanese music copyright management association, to the effect that JASRAC will conduct the management in Japan of South Korean musical works that fall under the management of KOMCA, while KOMCA

will conduct the management in South Korea of Japanese musical works that fall under the management of JASRAC. The Mutual Management Agreement took effect on January 1, 2008.

Against this background, the plaintiffs sought tort damages arising due to copyright infringement by alleging that the act performed by the defendants to reproduce the data of the Musical Works and transmit such data publicly before the Mutual Management Agreement took effect constitutes a tort consisting of infringement of the plaintiffs' right of reproduction or right of public transmission with regard to the Musical Works. Against this claim, the defendants argued that as a result of the plaintiffs respectively having entered into the Trust Agreements with KOMCA, which cover the musical works written or composed by the plaintiffs, including the Musical Works, the copyrights for the Musical Works effective anywhere in the world including Japan had been transferred in trust from the plaintiffs to KOMCA before the Mutual Management Agreement took effect, and accordingly the plaintiffs lost their entitlement to the copyrights for the Musical Works. On this point, the plaintiffs made a counterargument that upon entering into the Trust Agreements based on the general conditions of copyright trust agreement, the plaintiffs and KOMCA intended that the transfer in trust would only cover copyrights effective in the areas designated as "service areas" by the clause concerning "service areas" in the general conditions of copyright trust agreement, and for this and other reasons, the plaintiffs retain the copyrights outside the service areas of KOMCA even after entering into the Trust Agreements and the copyrights for the Musical Works effective in Japan had not yet been transferred in trust from the plaintiffs to KOMCA before the Mutual Management Agreement took effect.

The court first determined the law applicable to this case, and after defining the general conditions of copyright trust agreement which are applicable to this case, it interpreted the clauses of the applicable general conditions as follows. The general conditions in question can be interpreted as specifying the scope of trust property subject to the transfer in trust by including all of the copyrights for musical works that the settlors currently hold and those that they will acquire in the future, without setting regional or any other limitations. As a result of the plaintiffs respectively having entered into the Trust Agreements with KOMCA based on the general conditions of copyright trust agreement, all of the copyrights for musical works that the plaintiffs currently hold and those that they will acquire in the future were transferred in trust from the plaintiffs to KOMCA at the time of entering into the respective trust agreements, which had taken place before the Mutual Management Agreement took

effect, and the scope of trust property subject to the transfer in trust includes the copyrights for the Musical Works. Therefore, it is found that the copyrights for the Musical Works had been transferred in trust from the plaintiffs to KOMCA before the Mutual Management Agreement took effect. In conclusion, the court determined that there were no grounds for the plaintiffs' claims to seek against the defendants payment of tort damages arising due to infringement of the right of reproduction or right of public transmission regarding the Musical Works, and dismissed all of their claims.