

Date	December 21, 2012	Court	Tokyo District Court, 29th Civil Division
Case number	2011 (Wa) 32584		
– A case wherein the court found the defendant's negligence for an infringement of copyright (right of reproduction and right of public transmission), in that it downloaded a picture from an Internet site and uploaded it on its blog without confirming whether the use of such picture was authorized.			

This is the case wherein the plaintiff, on the premises that Plaintiff T is the copyright holder and the plaintiff company is the exclusive licensee for the picture in question (the "Picture"), sought payment of tort damages from the defendant, based on the allegation that the defendant publicized the Picture on its blog without an authorization, and thereby infringed the copyright (right of reproduction and right of public transmission).

The major issue in this case is whether there was negligence by the defendant. The court found the defendant's negligence and upheld the plaintiffs' claims in part, by holding as outlined below.

According to the defendant's statement in his/her examination, the defendant ran an image search by inputting the keyword "Hawaii" on an Internet search engine, "Yahoo!," selected the Picture from the search results, and clicked on the URL of website P. The defendant stated that he/she mistook the Picture as a copyright-free or licensed, material downloadable without charge as there was a notice on the displayed website which reads: "Designers' Wallpapers are collected from a collection of materials sold on overseas websites as copyright-free or licensed materials and materials distributed on overseas websites. Please enjoy a free-download picture wallpaper for your desktop only. You are asked to indicate the link when you use the pictures on our website as website materials."

However, in the negotiation process before the filing of this action, the defendant did not mention that he/she misunderstood the Picture to be a copyright-free or licensed material by the notice on website P. Therefore, it is not easy to accept the explanation that the defendant had downloaded the Picture by the abovementioned process, and it is highly possible that the defendant had downloaded the Picture based on the image search results of Yahoo! without reading the notice on website P.

However, even on the presumption that the defendant downloaded the Picture by the abovementioned process, one who reads the notice "materials sold on overseas websites as copyright-free or licensed materials" or "materials distributed on overseas websites" with a certain level of care would understand that website P has not been

licensed to use the Picture.

Based on the above, the court finds that the defendant used the Picture without first confirming whether such use was authorized, and the defendant's negligence can be found in that it downloaded and reproduced the Picture, and uploaded, publicized on its blog and made public transmission thereof (infringement of right of reproduction and right of public transmission).