

Copyright	Date	December 24, 2019	Court	Tokyo District Court, 46th Civil Division
	Case number	2017 (Wa) 33550		
- A case in which, concerning the display of a photograph which was turned into a circular shape upon posting of a tweet, the court acknowledged that there was infringement of the right to integrity and approved a request for disclosure of the sender's information.				

Case type: Request for Disclosure of Identification Information of the Senders

Result: Partially approved

References: Article 20 of the Copyright Act

### Summary of the Judgment

1. The present case is one in which Plaintiff alleged that, in "Twitter", an online site for posting short messages which is operated by Defendant, an unidentified person used, without Plaintiff's consent, a photograph which is a copyrighted work of Plaintiff (Photograph), as a profile image for his or her account or as a part of a post, and later displayed the Photograph on the web page of the account concerned, thereby infringing Plaintiff's copyright (right of automatic public transmission) and the moral right of author (right to integrity). As such, Plaintiff demanded against Defendant, pursuant to Article 4, 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, for disclosure of identification information of the senders.
2. In the judgment of the present case, the court approved, concerning the allegation that the display of the Photograph, which was trimmed into a circular shape, on the web page for the account concerned constitutes infringement of the moral right of author (right to integrity), that there was infringement of the right to integrity, by holding that such act can be evaluated as "modification" as prescribed in Article 20, paragraph (1) of the Copyright Act. The court held that a poster of a tweet is able to choose his or her actions, for example, whether or not to keep the Photograph in the state of being set up and registered as a profile image and allow the Photograph to be displayed in a circular shape, or whether or not to change the Photograph to a different image, so that the transmission of text data or the like pertaining to a tweet can be evaluated as an act which directly triggered the existence of two types of data (image data and CSS data), which are essential factors for "modification", on the client computer as well as the new display of the Photograph in a circular shape, and acknowledged that the poster of a tweet is a

"sender" as stipulated in Article 2, item (iv) 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. Accordingly, the court approved the request for disclosure of the IP address and time stamp pertaining to the login which immediately preceded the tweet.

Judgment rendered on December 24, 2019 Original issued on the same date to the court clerk

2017 (Wa) 33550 A case of seeking damage compensation, etc.

Date of conclusion of oral argument: October 17, 2019

### Judgment

Plaintiff: A

Defendant: Twitter, Inc.

### Main text

1. In connection with the use of "Twitter", an online site for posting short messages which is operated by Defendant, Defendant shall disclose to Plaintiff the information indicated on the attached List of Sender's Information under No. 1-1
  - (1) concerning the following persons:
    - (1) The user of Account 1, as indicated on the attached List of Accounts Requested for Disclosure, who set up his or her account so that the image indicated on "Image Displayed" under No. 1-1 of the attached List of Posted Information is displayed on the monitor screen of a client computer which accessed the URL indicated on the attached List of Posted Information under No. 1-1;
    - (2) The user of Account 2, as indicated on the attached List of Accounts Requested for Disclosure, who set up his or her account so that the image indicated on "Image Displayed" under No. 2 of the attached List of Posted Information is displayed on the monitor screen of a client computer which accessed the URL indicated on the attached List of Posted Information under No. 2;
    - (3) The user of Account 3, as indicated on the attached List of Accounts Requested for Disclosure, who set up his or her account so that the image

- indicated on "Image Displayed" under No. 3 of the attached List of Posted Information is displayed on the monitor screen of a client computer which accessed the URL indicated on the attached List of Posted Information under No. 3;
- (4) The user of Account 4, as indicated on the attached List of Accounts Requested for Disclosure, who set up his or her account so that the image indicated on "Image Displayed" under No. 4-1 of the attached List of Posted Information is displayed on the monitor screen of a client computer which accessed the URL indicated on the attached List of Posted Information under No. 4-1;
  - (5) The user of Account 5, as indicated on the attached List of Accounts Requested for Disclosure, who set up his or her account so that the image indicated on "Image Displayed" under No. 5-1 of the attached List of Posted Information is displayed on the monitor screen of a client computer which accessed the URL indicated on the attached List of Posted Information under No. 5-1;
  - (6) The user of Account 6, as indicated on the attached List of Accounts Requested for Disclosure, who set up his or her account so that the image indicated on "Image Displayed" under No. 6-1 of the attached List of Posted Information is displayed on the monitor screen of a client computer which accessed the URL indicated on the attached List of Posted Information under No. 6-1; and
  - (7) The user of Account 7, as indicated on the attached List of Accounts Requested for Disclosure, who set up his or her account so that the image indicated on "Image Displayed" under No. 7 of the attached List of Posted Information is displayed on the monitor screen of a client computer which accessed the URL indicated on the attached List of Posted Information under No. 7.
2. In connection with the use of "Twitter", an online site for posting short messages which is operated by Defendant, Defendant shall disclose to Plaintiff the following information:
    - (1) For Account 1 as indicated on the attached List of Accounts Requested for Disclosure, the IP address from which the same account was logged in immediately before the posting (sending of text data for a post) as indicated on the attached List of Posted Information under No. 1-2 [i] "Posted Tweet", as well as the date and time of transmission, from the telecommunications

equipment which was assigned the same IP address to the specified telecommunications facilities used by Defendant, of the information pertaining to the above login; and

- (2) For Account 6 as indicated on the attached List of Accounts Requested for Disclosure, the IP address from which the same account was logged in immediately before the posting (sending of text data for a post) as indicated on the attached List of Posted Information under No. 6-2 [i] "Posted Tweet", as well as the date and time of transmission, from the telecommunications equipment which was assigned the same IP address to the specified telecommunications facilities used by Defendant, of the information pertaining to the above login.
3. Plaintiff's other claims shall be dismissed.
4. Court costs shall be divided into six parts, one of which shall be borne by Defendant, and the remainder shall be borne by Plaintiff.
5. For the benefit of Defendant, the period during which Defendant may appeal this judgment shall be extended to thirty days.

#### Facts and reasons

##### No. 1 Claims

1. Defendant shall disclose to Plaintiff each of the sender's information indicated on the attached List of Sender's Information.
2. Defendant shall pay to Plaintiff a sum of 786,000 yen as well as money accruing therefrom at an annual interest rate of 5% during a period starting from July 1, 2015 until full payment.

##### No. 2 Outline of the case

###### 1. Summary of the case

In the present case, [i] Plaintiff demanded against Defendant, pursuant to Article 4, 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 "Provider's Limited Liability Act"), for disclosure of each of the pieces of information indicated on the attached List of Sender's Information by asserting, in connection with the use of "Twitter", an online site for posting short messages which is operated by Defendant (hereinafter referred to as "Twitter"), and concerning the photographs indicated on the attached List of Photographs (hereinafter the photograph numbered "1" in the same List 1 is referred to as

"Photograph 1", the photograph numbered "2" in the same List 2 is referred to as "Photograph 2", and the photograph numbered "3" in the same List 3 is referred to as "Photograph 3"), which are Plaintiff's copyrighted works, (a) that an unidentified person used the photographs, without Plaintiff's consent, as a profile image for the person's account or as a part of a post, followed by display of the photographs on the web pages pertaining to said account, thereby infringing Plaintiff's copyright (right of automatic public transmission), and (b) that, upon the posting by an unidentified person, the photographs were displayed on the web pages pertaining to said account by being trimmed into circular shapes, thereby infringing Plaintiff's moral right of author (right to integrity). Furthermore, [ii] Plaintiff demanded against Defendant, pursuant to Article 709 of the Civil Code and Article 114, paragraph (3) of the Copyright Act, for payment of a sum of 786,000 yen as well as delay damages accruing therefrom at an annual rate of 5% as prescribed in the Civil Code during a period starting from July 1, 2015, which is the day of the tort, until full payment by asserting that the act by Defendant of making Photograph 1, which had been subjected to the unauthorized use as a profile image on an account, once again available for viewing without having taken sufficient measures to prevent transmission constitutes infringement of a copyright (right to transmit the public) and the moral right of author (right to integrity, right of attribution).

2. Outline of the facts (the facts described below are those which neither party disputes, or those which can be easily acknowledged based on the evidences indicated later and the entire purport of the oral argument)

(1) Parties, etc.

A. Plaintiff is a professional photographer living in Japan who took Photographs 1 to 3.

B. Defendant is a U.S. corporation having control over and operating Twitter. In the present case, Defendant falls under the "relevant service provider" as stipulated in Article 3, paragraph (1) of the Provider's Limited Liability Act and the "provider of disclosure-related service" as stipulated in Article 4, paragraph (1) of the same Act (a fact which neither party disputes; the entire purport of the oral argument).

(2) Photographs 1 to 3

Photographs 1 to 3 are all copyrighted works of photographs (Article 10, paragraph (1), item (viii) of the Copyright Act), and Plaintiff holds copyrights for Photographs 1 to 3 as the author.

### (3) How Twitter works

- A. A user of Twitter can open his or her account to publish posts and conduct other activities on Twitter.

A person who opens an account and uses the account for use of Twitter's services (hereinafter sometimes simply referred to as "account user") can log into Twitter by using said account, and post tweets (hereinafter referred to also as "tweet (verb)") by sending text data and the like (hereinafter referred to as "tweet (noun)") to a server on Twitter. The web page for the homepage of said account displays said tweets and the like in chronological order (hereinafter this display part is referred to as "Timeline"; also, the words, "web page for Timeline" shall refer to the web page for a homepage that contains the Timeline), and according to the setting, viewers of Twitter (hereinafter sometimes simply referred to as "users") can view the Timeline. Also, by selecting an individual tweet that is displayed on the Timeline, a web page that displays only said tweet (hereinafter sometimes referred to as "web page for a tweet" etc.) is displayed, and according to the setting, a user can view the web page of a tweet.

- B. An account user can set, register, or change his or her profile image on the relevant account by sending image data to a server on Twitter.

The image which is set up as a profile image on an account is displayed in a circular shape at the start of a tweet on an individual tweet that is displayed on the Timeline of said account as well as on the web page for the same tweet (hereinafter the display is referred to as "Circular Mark"). (For the above, refer to Exhibits Ko 14 to 16, Ko 20, Ko 22, Ko 48, Ko 50, Ko 97)

An account user can tweet on the relevant account, and can also change his or her profile image or delete a tweet which was posted in the past (a fact which neither party disputes).

- C. The data pertaining to the Circular Mark have four types, which are HTML data, image data, CSS data, and JavaScript data.

Of those, CSS data specify the design of a web page, so that the image data which were sent by an account user of Twitter for use as a profile image were set up by Defendant so that the four corners of the image become transparent and the image is displayed in a circular shape (Exhibits Ko 57 to 62, Ko 69, Ko 70).

The servers on Twitter where the pertinent data are stored are located at the following three URLs.

- (a) (URL omitted) / (hereinafter referred to as "Server 1")
- (b) (URL omitted) / (hereinafter referred to as "Server 2")
- (c) (URL omitted) / (hereinafter referred to as "Server 3")

CSS data and JavaScript data are recorded and stored on Server 3 even before an account user sets up and registers a profile image.

D. The process of how a server behaves and how data flows from the time an image that is set up and registered by an account user as a profile image turns into a Circular Mark on the monitor screen of a computer of a user viewing Twitter (hereinafter the computer which a user uses for viewing a web page for a specific account holder's Timeline or tweet is referred to as "client computer") is described below.

(A) Steps involved in the setup and registration of a profile image by an account user

When an account user sets up and registers his or her profile image, the image data which are set up and registered as a profile image are recorded and stored in a storage area on Server 2 that corresponds to the web page for the four URLs (Exhibits Ko 3 to 6; hereinafter referred to as "URLs For Storing Image Data") in the minified sizes of 400 × 400 pixel (Exhibit Ko 3), 128 × 128 pixel (Exhibit Ko 4), 73 × 73 pixel (Exhibit Ko 5), and 48 × 48 pixel (Exhibit Ko 6), respectively. In addition, the HTML data for the web pages of Timeline and tweets on the account are updated so as to include the inline link information for the above image data, and in the HTML data, the CSS data which should be applied to this image data are linked to those image data.

Incidentally, an inline link refers to a link that does not involve a user's intervention and that is set up so that when a link source web page is opened, a screen of the link destination website or its supporting file is automatically sent to a client computer, to be automatically displayed on the client computer from the link source website (Exhibit Ko 74; hereinafter the information pertaining to the setup of an inline link is referred to as "inline link information").

(B) Steps involved in tweeting by an account user

When an account user tweets, the account user's terminal from which he or she tweeted sends the text data or the like of the content of

such tweet to a server on Twitter. As a result, the HTML data for the Timeline of the relevant account, which is recorded and stored on Server 1, is updated by Twitter's system to reflect the new content, and furthermore, the HTML data for the web page for such new tweet are newly created on Server 1.

(C) Steps involved in viewing, by a user, of Timeline on a specific account or of a web page for a tweet

When a user tries to view a web page for Timeline or a tweet on a specific account, the HTML data for each web page of the above (B) are sent from Server 1 to the relevant user's client computer. Such HTML data contain various content types, including the text data forming a web page for the Timeline or a tweet on the relevant account, as well as inline link information for image data, CSS data, and JavaScript data. As a result, the client computer automatically accesses Servers 2 and 3, which are link destination servers where a total of these three types of data are recorded and stored. Next, image data are sent from Server 2, and CSS data and JavaScript data are sent from Server 3, to the client computer.

Based on the four types of data received above, which are HTML data, image data, CSS data, and JavaScript data, the client computer combines various content types, including text data and image data, etc. contained in HTML data, according to the instructions indicated on HTML data, CSS data, and JavaScript data, and makes adjustments to how they are mutually placed and positioned, so that the rendering data pertaining to the web page for Timeline or a tweet are created, and each web page is displayed on the browser. In such case, the image data for the profile image displayed on the web page for Timeline or a tweet are displayed in a circular shape (Circular Mark).

(4) Display of Photographs 1 to 3 on Twitter by an unidentified person

A. Account 1 as indicated on the attached List of Accounts Requested for Disclosure (hereinafter referred to as "Present Account 1")

(A) On February 16, 2017, at around 4:04:47 PM, an unidentified person set up and registered an image of Photograph 2 as the profile image for Present Account 1 without Plaintiff's consent (Exhibits Ko 23, Ko 24; hereinafter this act of setup, etc. is referred to as "Profile Image Setup Act 1"). As a result, Photograph 2 became available on the

Timeline and the like of Present Account 1 for viewing by users, and Plaintiff's right to transmit the public for Photograph 2 was infringed (neither party disputes this point).

(B) On September 28, 2018, at around 4:47 PM, an unidentified person used Present Account 1 to tweet the content indicated on the attached List of Posted Information under No. 1-2 [i] "Posted Tweet" (Exhibit Ko 48; hereinafter referred to as "Tweet Act 1", and the posted tweet as "Tweet 1"). As a result, Photograph 2, which was turned into Circular Mark, was displayed on the web page for Tweet 1 in addition to the Timeline of Account 1 (No. 1-2 [iv] of the attached List of Posted Information).

B. Account 2 as indicated on the attached List of Accounts Requested for Disclosure (hereinafter referred to as "Present Account 2")

On December 18, 2016, at around 10:14:36 PM, an unidentified person used Present Account 2 and posted, without Plaintiff's consent, a tweet containing an image file of Photograph 2, as indicated on the attached List of Posted Information under No. 2 (however, the image was modified so that the part of the penguin's face showed a photograph of a person's face) (Exhibits Ko 12, Ko 15, Ko 25; hereinafter referred to as "Tweet Act 2", and the posted tweet as "Tweet 2"). As a result, Photograph 2 became available on the web page for Tweet 2 and the like for viewing by users, and Plaintiff's right to transmit the public for Photograph 2 was infringed (neither party disputes this point).

C. Account 3 as indicated on the attached List of Accounts Requested for Disclosure (hereinafter referred to as "Present Account 3")

On January 14, 2016, at around 8:43:13 PM, an unidentified person used Present Account 3 and posted, without Plaintiff's consent, a tweet containing an image file of Photograph 2, as indicated on the attached List of Posted Information under No. 3 (Exhibits Ko 16, Ko 26; hereinafter referred to as "Tweet Act 3", and the posted tweet as "Tweet 3"). As a result, Photograph 2 became available on the web page for Tweet 3 and the like for viewing by users, and Plaintiff's right to transmit the public for Photograph 2 was infringed (neither party disputes this point).

D. Account 4 as indicated on the attached List of Accounts Requested for Disclosure (hereinafter referred to as "Present Account 4")

(A) On January 12, 2018, at around 1:11:56 PM, an unidentified person

set up and registered an image file of Photograph 2 as the profile image for Present Account 4 without Plaintiff's consent (Exhibits Ko 19, Ko 27; hereinafter this act of setup, etc. is referred to as "Profile Image Setup Act 2"). As a result, Photograph 2 became available on the Timeline and the like of Present Account 4 for viewing by users, and Plaintiff's right to transmit the public for Photograph 2 was infringed (neither party disputes this point).

(B) On January 15, 2018, at around 1:34 AM, an unidentified person used Present Account 4 to tweet the content indicated on the attached List of Posted Information under No. 4-2 [i] "Posted Tweet" (Exhibit Ko 20; hereinafter referred to as "Tweet Act 4", and the posted tweet as "Tweet 4"). As a result, Photograph 2, which was turned into Circular Mark, was displayed on the web page for Tweet 4 in addition to the Timeline of Account 4 (No. 4-2 [iv] of the attached List of Posted Information).

E. Account 5 as indicated on the attached List of Accounts Requested for Disclosure (hereinafter referred to as "Present Account 5")

(A) On March 8, 2017, at around 8:19:36 PM, an unidentified person set up and registered an image file of Photograph 2 as the profile image for Present Account 5 without Plaintiff's consent (Exhibits Ko 21, Ko 28; hereinafter referred to as "Profile Image Setup Act 3"). As a result, Photograph 2 became available on Timeline and the like of Present Account 5 for viewing by users, and Plaintiff's right to transmit the public for Photograph 2 was infringed (neither party disputes this point).

(B) On September 1, 2015, at around 2:56 PM, an unidentified person used Present Account 5 to tweet the content indicated on the attached List of Posted Information under No. 5-2 [i] "Posted Tweet" (Exhibit Ko 22; hereinafter referred to as "Tweet Act 5", and the posted tweet as "Tweet 5"). As a result, Photograph 2, which was turned into Circular Mark, was displayed on the web page for Tweet 5 in addition to the Timeline of Account 5 (No. 5-2 [iv] of the attached List of Posted Information).

F. Account 6 as indicated on the attached List of Accounts Requested for Disclosure (hereinafter referred to as "Present Account 6")

(A) By no later than February 1, 2018, an unidentified person set up and registered an image file of Photograph 1 as the profile image for Present

Account 6 without Plaintiff's consent (Exhibits Ko 49, Ko 50; hereinafter referred to as "Profile Image Setup Act 4"). As a result, Photograph 1 became available on the Timeline and the like of Present Account 6 for viewing by users, and Plaintiff's right to transmit the public for Photograph 1 was infringed (neither party disputes this point).

(B) On September 2, 2019, at around 7:31 AM, an unidentified person used Present Account 6 to tweet the content indicated on the attached List of Posted Information under No. 6-2 [i] "Posted Tweet" (Exhibit Ko 109; hereinafter referred to as "Tweet Act 6", and the posted tweet as "Tweet 6"). As a result, Photograph 1, which was turned into Circular Mark, was displayed on the web page for Tweet 6 in addition to the Timeline of Account 6 (No. 6-2 [iv] of the attached List of Posted Information).

G. Account 7 as indicated on the attached List of Accounts Requested for Disclosure (hereinafter referred to as "Present Account 7")

On February 1, 2019, at around 4:45 PM, an unidentified person used Present Account 7 and posted, without Plaintiff's consent, a tweet containing an image file of Photograph 3, as indicated on the attached List of Posted Information under No. 7 (Exhibit Ko 108; hereinafter referred to as "Tweet Act 7", and the posted tweet as "Tweet 7"). As a result, Photograph 3 became available on the web page for Tweet 7 and the like for viewing by users, and Plaintiff's right to transmit the public for Photograph 3 was infringed (neither party disputes this point).

(5) Information held by Defendant

Defendant holds the information indicated on the attached List of Sender's Information under No. 1-1 (1) pertaining to Present Accounts 1 to 7 (hereinafter simply referred to as "e-mail addresses"), the information indicated on the same List under No. 1-1 (2) pertaining to Present Accounts 2 and 4 (hereinafter referred to as "short mail addresses"), the IP addresses and Time Stamps from when Present Accounts 1 to 7 were created (No. 1-2 and No. 1-3 of the same List; hereinafter the IP address and Time Stamp from when an account user created the relevant account are referred to as "IP Address, etc. upon Account Creation"), the IP addresses and Time Stamps from when the users of Present Accounts 1 and 6 logged into the respective accounts immediately before Tweet Act 1 or 6 (Nos. 3-1 and 3-2 of the same List; hereinafter the IP Address and Time Stamp from when an account user logged

into the relevant account immediately before a tweet are referred to as "IP Address, etc. upon Login Immediately Before Tweeting"), and the IP addresses and Time Stamps from the latest instance of login pertaining to Present Accounts 1, 2, 4, 6, and 7 (hereinafter referred to as "Most Recent Login") as of noon of the day on which this judgment becomes final (Japan time) (No. 4-1 and No. 4-2 of the same List; hereinafter the IP Address and Time Stamp from the latest instance of login by an account user pertaining to the relevant account as of noon of the day on which this judgment becomes final are referred to as "IP Address, etc. from the Most Recent Login").

On the other hand, in the present case, in regards to the other information whose disclosure is requested by Plaintiff as the "identification information of the sender pertaining to infringement of the rights" which should be disclosed pursuant to Article 4, paragraph (1) of the Provider's Limited Liability Act (hereinafter simply referred to as "Sender's Information"), there is no evidence to sufficiently acknowledge that such information is currently held by Defendant or will be held by Defendant in the future, so that Defendant does not hold such information.

(6) Regarding short mail addresses

A. A short mail service is a system in which a text message, which is sent from the sender's mobile phone or the like, is accumulated on a computer that is equivalent to a mail server and is called a "short message service center", and when the receiver's mobile phone or the like accesses the center, the message is sent from the center to the receiver's mobile phone or the like (Exhibit Ko 80).

An e-mail service is realized by the packet exchange method (a method in which communication is shared among multiple persons), whereas a short mail service is realized by the circuit switching system (a method in which communication is used exclusively on a one-to-one basis), (Exhibits Ko 77, Ko 79).

B. A short mail address is a string of letters for identifying a user of a short mail service, and is the same as a mobile phone number (the entire purport of the oral argument).

(7) Legitimate grounds for having Sender's Information disclosed

Plaintiff is able to exercise its rights against the person who displayed Photographs 1 to 3 on Present Accounts 1 to 7 on the grounds of infringement of copyrights or the moral right of author. However, it cannot be

acknowledged that there are any other means by which to obtain the information which can help identify the above persons, so that it is acknowledged that there are legitimate grounds for having Sender's Information disclosed (Article 4, paragraph (1), item (i) of the Provider's Limited Liability Act; a fact which neither party disputes).

(8) Measures for preventing transmission and the background leading to the redisplay

A. Around January 21, 2015, an unidentified person set up and registered an image file of Photograph 1 (however, the image is one in which Plaintiff added letters such as "© A" in the lower left corner of Photograph 1; hereinafter referred to as "Image Data") as the profile image for an account having the account ID (remainder omitted) (hereinafter referred to as "Present Account 8") without Plaintiff's consent (Exhibits Ko 3 to 6; hereinafter referred to as "Profile Image Setup Act 5"), and the Image Data were stored in a storage area on Server 2 that corresponds to the web page for the URLs For Storing Image Data (a fact which neither party disputes)

As a result, Photograph 1 became available on the Timeline and the like of Present Account 8 for viewing by users, and Plaintiff's right to transmit the public for Photograph 1 was infringed (neither party disputes this point).

B. Plaintiff sent to Twitter Japan Kabushiki Kaisha a letter dated January 26, 2015 and titled "Request for Disclosure of Sender's Information involving Infringed Site 1 and Request for an Injunction against Public Transmission", demanding for discontinuation of the state of public transmission described above in A (Exhibits Ko 42, Ko 46-1, Ko 46-2). The letter came to the knowledge of Defendant by no later than February 13 of the same year (a fact which neither party disputes).

C. Around February 13, 2015, Defendant took a measure for preventing transmission of Image Data on the URLs For Storing Image Data (hereinafter referred to as "First Preventive Measure against Transmission") (a fact which neither party disputes).

D. By no later than May 26, 2016, the Image Data became once again available for viewing on the URLs For Storing Image Data (Exhibits Ko 7 to 10; hereinafter referred to as "Redisplay"), and Plaintiff's right to transmit the public for Photograph 1 was infringed (neither party disputes this point).

E. Around June 10, 2016, Defendant learned of the state described above

in D, and once again took a measure for preventing transmission of Image Data on the URLs For Storing Image Data, by no later than June 13 of the same year (hereinafter referred to as "Second Preventive Measure against Transmission") (a fact which neither party disputes).

Afterwards, until the time of conclusion of the oral argument of the present case, the Image Data were never again made available for viewing on the web pages pertaining to Account 8 (Exhibits Ko 37 to 40; the entire purport of the oral argument).

- (9) Incidentally, since the tweets by users of Present Accounts 1 to 8 are posted in Japanese (Exhibits Ko 14 to 16, Ko 20, Ko 22, Ko 43, Ko 44, Ko 48, Ko 50, Ko 107, Ko 109), it can be presumed that the Profile Image Setup Acts 1 to 5 and Tweets 1 to 7 were carried out or posted by said users in Japan, and there is no evidence to sufficiently overturn this presumption.

### 3. Issues

From among the Sender's Information whose disclosure Plaintiff requests pursuant to Article 4, paragraph (1) of the Provider's Limited Liability Act, the information which is acknowledged to be held by Defendant is the information indicated above in 2 (5), and Defendant does not hold any other information. As such, Plaintiff's request for disclosure of information which is not held by Defendant is not reasonable, without having to determine other points.

In view of the above, whether or not the request for disclosure of the information held by Defendant is appropriate is at issue in the present case, and points of dispute are as follows:

- (1) Whether or not Plaintiff can request for disclosure of the IP Address, etc. from the Most Recent Login for Present Accounts 1, 2, 4, 6, and 7
- A. Whether or not the failure to delete the image data for Photographs 1 to 3 falls under copyright (right of automatic public transmission) infringement by omission, and whether or not it is evident that Plaintiff's copyright was infringed as a result of the distribution of infringing information (Issue 1)
  - B. Whether or not the IP Address, etc. from the Most Recent Login fall under Sender's Information (Issue 2)
- (2) Whether or not disclosure of IP Address, etc. upon Login Immediately before Tweeting may be requested for Present Accounts 1 and 6.
- A. Whether or not it is evident that the display of Photograph 2 on the web page for Tweet 1 and the display of Photograph 1 on the web page for Tweet 6 infringe Plaintiff's moral right of author (right to integrity) (Issue

3)

B. Whether or not the IP Address, etc. upon Login Immediately before Tweeting fall under Sender's Information (Issue 4)

(3) Whether or not the IP Address, etc. upon Account Creation for Present Accounts 1 to 7 fall under Sender's Information (Issue 5) Whether or not the short mail addresses for Present Accounts 2 and 4 fall under Sender's Information (Issue 6)

(4) Whether or not Defendant is liable for compensation for damage concerning Redisplay (Issue 7)

(5) The monetary amount for the damage resulting from Redisplay (Issue 8)

(omitted)

No. 3 Judgment of this court

1. Regarding Issue 1 (Whether or not the failure to delete the image data for Photographs 1 to 3 falls under copyright (right of automatic public transmission) infringement by omission, and whether or not it is evident that Plaintiff's copyright was infringed as a result of the distribution of infringing information)

(1) Plaintiff requests for disclosure of information such as IP Address, etc. from the Most Recent Login on the grounds that since the users of Present Accounts 1, 2, 4, 6, and 7 uploaded Photographs 1 to 3 unlawfully by way of respective acts of Profile Image Setup Act 1, Tweet Act 2, Profile Image Setup Act 2, and Tweet Acts 6 and 7, they bear the duty, based on reason, to delete Photographs 1 to 3, so that the omission of not deleting them constitutes infringement of Plaintiff's right of automatic public transmission, and thus the act of maintaining the state of automatic public transmission should be evaluated as an act by a sender of infringing information due to the omission at the time of Most Recent Login.

(2) Information distribution by a specified telecommunications service (Article 2, paragraph (1) of the Provider's Limited Liability Act) is uniquely different from other means of information distribution in that it makes infringement of other people's rights easier and its highly contagious nature causes the resulting damage to expand unlimitedly, so that once information is transmitted anonymously, even identification of the perpetrator becomes impossible and recovery of damage becomes difficult. On the other hand, Sender's Information involves the sender's privacy, freedom of expression, and

secrecy of communications, and should not be disclosed to a third party without legitimate grounds. Furthermore, once the Sender's Information is disclosed, it becomes impossible to reinstate the state prior to the disclosure. In view of these circumstances, Article 4 of the Provider's Limited Liability Act provides that a person whose rights were infringed by distribution of information via specified telecommunications service may demand a specified telecommunications service provider to disclose Sender's Information provided that the disclosure fulfills strict requirements that take into consideration the privacy, freedom of expression, and secrecy of communications of the sender of the information, including the requirement that it must be evident that the right of the person requesting for disclosure was infringed as a result of distribution of infringing information. It is interpreted that the purport of this provision is to enable identification of the perpetrator so as to remedy the victim's rights (refer to Supreme Court Judgment dated April 8, 2010, 1st Petty Bench, Minshu Vol. 64, No. 3, page 676; Supreme Court Judgment dated April 13, 2010, 3rd Petty Bench, Minshu Vol. 64, No. 3, page 758).

Next, Article 4 of the Provider's Limited Liability Act provides the following as the premise for constituting infringement of rights: "Any person alleging that his or her rights were infringed by distribution of information via specified telecommunications service may demand (omitted) to disclose identification information of the sender pertaining to said infringement of the rights (referring to information, including a name and address, contributing to identifying the sender of the infringing information and which is as stipulated in the applicable ordinance by the Ministry of Internal Affairs and Communications)" (the main clause of paragraph (1)); and "Where it is evident that the rights of a person demanding said disclosure were infringed by the distribution of the infringing information" (paragraph (1), item (i)). As such, disclosure of Sender's Information may be requested on the premise that the rights were infringed as a result of the information distribution per se ("distribution of information", "distribution of the infringing information"). In addition, Article 2, paragraph (4) of the Provider's Limited Liability Act identifies a "sender" as a person who has recorded information in the recording media of specified telecommunications facilities, or who has input information in the transmission device of specified telecommunications facilities, thus identifying the sender as a person who actively engaged in the specific act of recording or inputting. Next, the Ordinance for Sender's Information

specifies, as Sender's Information, only the information pertaining to the infringing information, which is "IP address pertaining to the infringing information" (Item 4), "mobile phone terminal or PHS terminal pertaining to the infringing information" (Item 5), and "SIM card ID number pertaining to the infringing information" (Item 6).

According to the purport and provisions of the above law, it can be said that the Provider's Limited Liability Act stipulates that if a person actively engages in the specific act of recording and inputting, and causes information distribution as a result, and if rights are infringed as a result of information distribution per se, the uniqueness and the like of infringement of rights as a result of such information distribution should be taken into consideration, and the person who engages in the act of recording or inputting the information shall be the "sender", and disclosure of the Sender's Information may be requested.

Plaintiff requests for disclosure of the information of IP Address, etc. from the Most Recent Login based on the grounds that, in regards to the accounts concerned, infringement of Plaintiff's rights took place even before the Most Recent Login, thereby constituting infringement of rights by omission at the time of Most Recent Login, so that the account user pertaining to the Most Recent Login should be evaluated as the sender of the infringing information.

However, the above claim by Plaintiff is directed at the mere omission by a person who logged in of failing to delete Photographs 1 to 3, and not at the person's active engagement, per se, in the specific act of recording and inputting. Since there is no active action, there is no distribution of information based on an active action as of that time. A performer of such act cannot immediately be considered to be a "sender" as envisaged by the Provider's Limited Liability Act as described above. Also, in the present case, there is no evidence to sufficiently acknowledge that there are special circumstances to consider the account user at the time of Most Recent Login to be a "sender" as described above, so that the account user at the time of Most Recent Login cannot be considered to be a "sender" as envisaged by the Provider's Limited Liability Act.

Accordingly, Plaintiff's claim of seeking disclosure of Sender's Information on the premise of the allegation that the failure to delete Photographs 1 to 3, which were uploaded by the users of Present Accounts 1, 2, 4, 6, and 7 as a profile image or the like, constitutes infringement of the right to transmit the

public by omission is not reasonable, without having to determine whether or not these account users engaged in infringement of the right to transmit the public by omission.

2. Regarding Issue 2 (Whether or not the IP Address, etc. from the Most Recent Login fall under Sender's Information)

(1) Plaintiff argues that the IP Addresses at the time of Most Recent Login pertaining to Present Accounts 1, 2, 4, 6, and 7 fall under the "IP addresses pertaining to the infringing information" as stipulated in Item 4 of the Ordinance for Sender's Information, and that the Time Stamps at the time of Most Recent Login fall under the "date and time of transmission of the infringing information" as stipulated in Item 7 of the same Ordinance.

(2) Given that Article 4, paragraph (1) of the Provider's Limited Liability Act provides for "information of the sender pertaining to said infringement of the rights", and Item 4 of the Ordinance for Sender's Information provides for "IP address pertaining to the infringing information", thereby providing ranges, respectively, by the use of the expression of "pertaining to", it is interpreted that disclosure may be requested for not only the Sender's Information which can be learned from the very transmission of the infringing information but also for the Sender's Information which can be learned in relation to the transmission of the infringing information. On the other hand, even in light of the above provisions, it is interpreted that the information which can be considered as having no relationship to the transmission of the infringing information is not included in the "information of the sender pertaining to said infringement of the rights".

According to the fact described above in "Outline of the facts" under (4), the act of infringement of the right to transmit the public pertaining to Plaintiff's Photographs 1 to 3 took place on February 16, 2017 for Profile Image Setup Act 1, on December 18, 2016 for Tweet Act 2, on January 12, 2018 for Profile Image Setup Act 2, on February 1, 2018 or earlier for Profile Image Setup Act 4, and on February 1, 2019 for Tweet Act 7. Also, the act which, according to Plaintiff's allegation, infringes the right to integrity for Photographs 1 and 2 took place on September 28, 2018 for Tweet 1, on January 15, 2018 for Tweet 4, and on September 2, 2019 for Tweet 6.

Given that the rendering of this judgment is scheduled for December 24, 2019, it is likely that the Most Recent Login at the time when this judgment becomes final will have taken place after a significant period of time elapsed

from the above points of time of when the infringing act was carried out and when the infringing information was transmitted. When these facts are taken into consideration, it should be said that the IP Address, etc. from the time of Most Recent Login as of the time when this judgment becomes final cannot be acknowledged as information which can be learned in relation to the transmission of the infringing information, and that it does not fall under either of Items 4 and 7 of the Ordinance for Sender's Information as the information that can be considered as having no relationship to the transmission of infringing information.

Accordingly, Plaintiff's claim of seeking disclosure of Sender's Information as indicated on the attached List of Sender's Information under No. 4 is not reasonable.

- (3) In response, Plaintiff asserts that there was infringement of the right of automatic public transmission as a result of omission by the users of Present Accounts 1, 2, 4, 6, and 7, and that the IP Address, etc. from the Most Recent Login are the same as the IP Address, etc. from the time of the login immediately preceding this omission. However, as described above in 1, the performer of the omission of not deleting Photographs 1 to 3 cannot be considered to be the sender as envisaged by the Provider's Limited Liability Act, so that the IP Address, etc. from the time of the login immediately before said omission cannot be evaluated as the information relating to the transmission of infringing information.

Also, Plaintiff asserts that in order to guarantee Plaintiff the opportunity to file a lawsuit against the senders, disclosure should be ordered, in consideration of the purport of Article 32 of the Constitution, by extending the scope of interpretation of Article 4, paragraph (1) of the Provider's Limited Liability Act and the Ordinance for Sender's Information. However, as described above in 1 (2), Article 4 of the Provider's Limited Liability Act provides for strict requirements for requesting for disclosure of Sender's Information, including the requirement that it must be evident that the right of the person requesting for disclosure was infringed as a result of distribution of infringing information, because Sender's Information involves the privacy, freedom of expression, and secrecy of communications of the sender and should not be disclosed to a third party without legitimate grounds, and because once the information is disclosed, it becomes impossible to reinstate the state prior to the disclosure. Accordingly, if the scope of interpretation of

the above provisions is extended to allow for the disclosure of IP Address, etc. from the Most Recent Login, it increases the likelihood of disclosing the information about persons other than the sender of infringing information, which is against the purport of the above Provider's Limited Liability Act.

Accordingly, the above claims by Plaintiff are not reasonable.

3. Regarding Issue 3 (Whether or not it is evident that the display of Photograph 2 on the web page for Tweet 1 and the display of Photograph 1 on the web page for Tweet 6 infringe Plaintiff's moral right of author (right to integrity))

(1) Whether or not the Circular Mark infringes the right to integrity

A. (A) On September 28, 2008, the user of Present Account 1 posted Tweet 1. In Present Account 1, an image of Photograph 2 was set up and registered as a profile image. Also, on September 2, 2019, the user of Present Account 6 posted Tweet 6. In Present Account 6, an image of Photograph 1 was set up and registered as a profile image.

Photograph 1 is a square-shaped photograph (as indicated on the attached List of Photographs under 1), and Photograph 2 is a rectangular-shaped photograph (as indicated on the same List under 2).

When tweeting, as described above, the user of Present Account 1 or 6 was able to choose his or her own profile image by making decisions, such as which image to set up as a profile image, and was able to set up, register, or change the photograph (as described above in "Outline of the facts" under (3) B).

(B) When the user of Present Account 1 or 6 posts a tweet, the text data or the like of the content of said tweet is sent from the user's terminal to a server on Twitter, and the HTML data of the web page pertaining to the Timeline of Present Account 1 or 6, which are recorded and stored on Server 1 (including the inline link information for the image data of Photograph 1 or 2 to which CSS data are linked), are updated to reflect the new content, and furthermore, HTML data for the web page for such tweet are newly created on Server 1 (including the inline link information for the image data of Photograph 1 or 2 to which CSS data are linked) (as described above in "Outline of the facts" under (3) D).

(C) When a user tries to view the web page for Timeline of Present Account 1 or 6 or for Tweet 1 or 6, the HTML data, which were updated or created as described above, are sent from Server 1 to said user's client computer. The client computer accesses Servers 2 and 3 according to the

above inline link information contained in said HTML data. Next, the image data of Photograph 1 or 2 are received from Server 2, and CSS data and JavaScript data are received from Server 3, and the client computer combines the data and makes adjustments to how they are mutually placed and positioned, so that the rendering data for the web page for Timeline of Present Account 1 or 6 or for Tweet 1 or 6 are created. As a result, Tweet 1 or 6 can be viewed on the Timeline of Present Account 1 or 6 (with Photograph 1 or 2, which is turned into Circular Mark, being displayed on the left side) on the client computer, and furthermore, Tweet 1 or 6 can be viewed on the relevant web page (with Photograph 1 or 2, which is turned into Circular Mark, being displayed on the left side). Of the above, Photograph 1 or 2, which is turned into Circular Mark on the left side of Tweet 1 or 6 on the Timeline of Present Account 1 or 6, and Photograph 1 or 2, which is turned into Circular Mark on the web page for Tweet 1 or 6, are newly displayed as a result of posting of Tweet 1 or 6, which created new HTML data or updated HTML data.

- B. According to what is described above in A, it is acknowledged that, based on the fact that the user of Present Account 1 or 6 posted a tweet while Photograph 1 or 2 was set up as the profile image for such account, the HTML data for said tweet, which include the inline link information for the image data of Photograph 1 or 2, to which CSS data are linked, were newly created on Server 1, and on the client computer of a user who tries to view the Timeline or the like on Present Account 1 or 6, the rendering data were created by way of the HTML data which were transmitted from Server 1 as well as the image data or CSS data or the like for Photograph 1 or 2, which were transmitted from Servers 2 and 3, and the rendering data were temporarily recorded on the client computer, and consequently, Photograph 1 or 2, which is turned into Circular Mark, is displayed on the browser of the client computer.

Upon making this display, no modification is made to the image data per se of Photograph 1 or 2, which are recorded and stored on Server 2 of Twitter, and the above rendering data are not permanently stored on the client computer. On the other hand, on the screen of the client computer, Photograph 1 or 2 is displayed as if having been modified, with the four corners of Photograph 1 or 2 being cut off to create a circular shape, and this is displayed when a user views the Timeline of Present Account 1 or 6

or the web page for Tweet 1 or 6, and of the foregoing, Photograph 1 or 2, which is turned into Circular Mark on the left side of Tweet 1 or 6 on the Timeline of Present Account 1 or 6, and Photograph 1 or 2, which is turned into Circular Mark on the website for Tweet 1 or 6, are newly displayed as a result of posting of Tweet 1 or 6.

Photograph 1 or 2 is a square-shaped or rectangular-shaped photograph as described above in A (A). However, when a user views the Timeline of Present Account 1 or 6 or the web page for Tweet 1 or 6, it can be said that only a part of each photograph is displayed as a circle-shaped photograph on a client computer, and it can be evaluated that Circular Mark is a result of modification of Photographs 1 and 2 against the author's will.

Accordingly, Circular Mark infringes Plaintiff's right to integrity for Photographs 1 and 6.

- C. In response, Defendant argues that the rendering data which are created on a client computer are not stored continuously on a terminal, and as for Circular Mark, a part of Photograph 1 or 2 failed to be displayed any longer due to the display by way of inserting the frames, which are designated by HTML data or CSS data or the like, into Photographs 1 and 2, and no modification was made to the image data per se, so that the "alteration, cut, or other modification" (Article 20, paragraph (1) of the Copyright Act) is not applicable.

However, although the image data per se were not modified when Circular Mark was created, change was made to the shape or the like of the image that is displayed on a client computer, which is visually recognizable by a user, so that it can be evaluated that such change being made to the display falls under "modification" as stipulated in Article 20, paragraph (1) of the Copyright Act.

Also, upon considering whether or not it can be said that "modification" did not take place based on reasons such as that, as in the present case, the system is set up in such way so that the image that is displayed on a certain screen as an icon indicating the relevant account takes the same specific shape, and a person coming in contact with the image does so with the assumption that the image is a part of an image which was set up as the above icon and cannot evaluate the image as being shown as a single, new, and independent expression, the profile image of the present case is such that, even from the manner in which it is displayed, it can be understood as

being displayed as a circle-shaped photograph on the screen of a client computer, as a single expression in itself. According to this understanding, it can be said that the author benefits from no display being made of such expression, which is a modification of a copyrighted work, so that it is reasonable to interpret that "modification" took place in the present case. Also, Defendant argues that the original work had to have been used in order to establish that the Circular Mark infringed the right to integrity, whereas Tweet Acts 1 and 2 are merely acts of setting up inline links, and that these acts do not fall under the definition of rights comprising a copyright. However, even if the act of setting up an inline link does not constitute the act of copyright infringement, which corresponds to reproduction or adaptation of Photograph 1 or 2, if Photograph 1 or 2, which is a copyrighted work as described above, is used, and the resulting display is different from Photograph 1 or 2, it should be said that the right to integrity was infringed.

- D. Defendant also argues that, given various circumstances, including the fact that the display of a trimmed image as in the present case occurs inevitably and unavoidably in order to display the content of the link destination effortlessly and naturally when a link is made by framing or embedding, in which the content of a link destination is embedded in a frame that is established on the web page of a link source, the Circular Mark falls under "a modification which is found to be unavoidable" (Article 20, paragraph (2), item (iv) of the Copyright Act).

Even if making certain changes to an image of a link destination is deemed to be unavoidable modifications which are technically necessary to display the content of the link destination in an effortless and natural manner, and is deemed not to constitute infringement of the right to integrity, in the present case, a part of a square-shaped image is turned into a circular image whose shape is completely different from the original image, so that it cannot be acknowledged that it was necessary to make such modification from the technical perspective of displaying the content of the link destination in an effortless and natural manner. It is not reasonable to acknowledge that the present case is one in which the modification was unavoidable and was technically necessary as described above.

Accordingly, the Circular Mark does not fall under a "modification

which is found to be unavoidable" (Article 20, paragraph (2), item (iv) of the Copyright Act), and Defendant's claims are not reasonable.

(2) Whether or not it is evident that Plaintiff's right to integrity was infringed due to "distribution of the infringing information"

A. A performer of Tweet Act 1 or 6 is the person who logged into Present Account 1 or 6. An account user is able to set up, register, and change his or her profile image (as described above in "Outline of the facts" under (3) B), and upon tweeting, was in a position to choose whether to keep Photograph 1 or 2 being set up and registered as a profile image and to allow the same to be turned into Circular Mark, or to change the same to a different image. On that premise, the performers of Tweet Acts 1 and 6 posted Tweet 1 or 6 with the knowledge that, when a user views the web page or the like for such tweet, Photograph 1 or 2, which is turned into Circular Mark, would be displayed.

B. Next, if the performers of Tweet Acts 1 and 6 as described above in A post tweets, and if the text data or the like, which are the content of Tweets 1 and 6 being posted, are transmitted from the performer's terminal to a server on Twitter and recorded there, this immediately triggers, as described above, the new creation or update of the HTML data, which contain the inline link information for the image data of Photograph 1 or 2, to which the CSS data, which are set up so as to turn the image into Circular Mark, are linked, and as a result, when a user views the relevant content, Circular Mark is displayed on the client computer, and of the foregoing, Photograph 1 or 2, which was turned into Circular Mark on the left side of Tweet 1 or 6 on the Timeline of Present Account 1 or 6, and Photograph 1 or 2, which was turned into Circular Mark on the web page for Tweet 1 or 6, are newly displayed as a result of posting of Tweet 1 or 6. It can be evaluated that the transmission of the above text data and the like is an act which directly triggered the new display of Circular Mark because of the two types of data (image data and CSS data), which are essential factors for modification of Circular Mark, existing on the client computer.

C. According to what is described above in A and B, it can be said, at least, that performers of Tweet Acts 1 and 6 are performers of the infringement of the right to integrity due to Circular Mark in regards to Photograph 1 or 2, which is turned into Circular Mark and displayed on the left side of Tweet 1 or 6 on the Timeline of Present Account 1 or 6, and in regards to

Photograph 1 or 2, which is turned into Circular Mark and displayed on the web page for Tweet 1 or 6. As such, it is reasonable to evaluate that the text data or the like pertaining to Tweets 1 and 6 are infringing information, and that the performers of Tweet Acts 1 and 6 are "senders" who recorded the information on a server (Article 2, item (iv) of the Provider's Limited Liability Act).

4. Regarding Issue 4 (Whether or not the IP Address, etc. upon Login Immediately before Tweeting fall under Sender's Information)

(1) Plaintiff seeks disclosure of IP Address, etc. upon Login Immediately before Tweeting for Tweets 1 and 6 in regards to Present Accounts 1 and 6. In response, Defendant argues that since the IP address and Time Stamp at the time of login fall under the information pertaining to the act of logging into an account, which is a completely different act from the act of sending infringing information, the information does not fall under the "information of the sender pertaining to said infringement of the rights" (the main clause of paragraph (1) of Article 4 of the Provider's Limited Liability Act).

(2) Given that Article 4, paragraph (1) of the Provider's Limited Liability Act provides for "information of the sender pertaining to said infringement of the rights", and Item 4 of the Ordinance for Sender's Information provides for "IP address pertaining to the infringing information", thereby providing ranges, respectively, by the use of the expression, "pertaining to", for the Sender's Information to be disclosed when referring to the infringement of rights and the infringing information, it is reasonable to interpret that disclosure may be requested for not only the Sender's Information which can be learned from the very transmission of the infringing information but also for the Sender's Information which can be learned in relation to the transmission of the infringing information.

When the above is taken into consideration to determine the present case, as described above in 3 (2), the text data or the like which are transmitted by Tweet Acts 1 and 6 can be evaluated as the infringing information which caused the infringement of Plaintiff's right to integrity pertaining to Photographs 1 and 6. Next, it is acknowledged that, in order to post messages ("tweets") on Twitter, one has to log into a specific account, and that Tweet 1 or 6 was posted by using the login state accomplished by the act of logging into Present Account 1 or 6 immediately before Tweet 1 or 6. In view of these circumstances, it can be evaluated that the information pertaining to the

immediately preceding login as described above is information that is closely related to the transmission of infringing information.

Accordingly, it should be acknowledged that the IP Address and Time Stamp for the login immediately before Tweets 1 and 6 fall under the Sender's Information which is known in connection with the transmission of the infringing information, and Plaintiff is able to demand against Defendant for disclosure of each of the pieces of information indicated on the attached List of Sender's Information under No. 3.

- (3) In response, Defendant argues that due to the system of Twitter, it is a frequent occurrence for multiple states of login to compete with each other on a single account, and since it is not evident whether or not the act of tweeting took place by using the login state which was accomplished by the immediately preceding act of login, it cannot be said that the relevance between the act of tweeting and the immediately preceding act of login is evident.

However, although it is possible, due to the system of Twitter, for multiple states of login to compete with each other on a single account, there is no evidence to sufficiently acknowledge that the condition in which multiple states of login compete with each other occurs frequently on Present Accounts 1 and 6, so that the point made by Defendant does not influence the above finding, which is that the IP address and Time Stamp at the time of login immediately before Tweet Acts 1 and 6 fall under the information which is known in connection with the transmission of the infringing information.

Accordingly, the above claim by Defendant is not reasonable.

5. Regarding Issue 5 (Whether or not the IP Address, etc. upon Account Creation for Present Accounts 1 to 7 fall under Sender's Information)

Plaintiff seeks disclosure of IP Address, etc. Upon Account Creation for Present Accounts 1 to 7.

Here, as in the case described above in 4, the reasonable interpretation would be that, based on the words of the provisions of the Provider's Limited Liability Act and the Ordinance for Sender's Information, not only the Sender's Information which is known from the transmission per se of the infringing information, but also the Sender's Information which is known in connection with the transmission of the infringing information should be allowed to be disclosed. At the same time, it is reasonable to interpret that the information which is not related to the transmission of infringing information shall not be included in the "information of

the sender pertaining to infringement of the rights".

When this is considered in light of Present Accounts 1 to 7, in regards to Present Account 1, Profile Image Setup Act 1, which infringes Plaintiff's right to transmit the public for Photograph 2, was performed on February 16, 2017, but in Twitter, setting up of a profile image at the time of opening an account is not a necessity, and an account user is able to set up and change a profile image at any time (Exhibits Ko 43, Ko 44), so that the Profile Image Setup Act 1 is not necessarily performed by use of the act of login at the time of opening of the account and of the resulting state of login, or rather, given that it is acknowledged that Present Account 1 was opened around January 2015 (Exhibit Ko 48), it is evident that Profile Image Setup Act 1 was not performed by use of the state of login at the time of opening of the account. Likewise, it is acknowledged that Present Account 5 was opened around May 2013 (Exhibit Ko 22), and it is evident that Profile Image Setup Act 3 (March 8, 2017) was not performed by using the state of login at the time of opening of the account. The same is true of Present Accounts 4 and 6, and there is no evidence to sufficiently acknowledge that Profile Image Setup Acts 2 and 4 were performed by use of the act of login at the time of opening of each account and of the resulting state of login.

In regards to Present Accounts 2, 3, and 7, Tweets 2, 3, and 7 which infringe Plaintiff's right to transmit the public for Photograph 2 or 3, respectively, are posted, but there is no evidence to sufficiently acknowledge that these tweets were posted by use of the act of login at the time of opening of each account and of the resulting state of login. In particular, it is acknowledged that Present Account 7 was opened around November 2016 (Exhibit Ko 118), and it is evident that Tweet 7 was not posted by using the state of login at the time of opening of the account.

Accordingly, since it cannot be acknowledged that the IP addresses and the Time Stamps for the login at the time of opening of Present Accounts 1 to 7 fall under the Sender's Information which is known in connection to the transmission of infringing information, Plaintiff cannot request Defendant for disclosure of each of the pieces of information indicated on the attached List of Sender's Information under No. 1-2 and No. 1-3.

6. Regarding Issue 6 (Whether or not the short mail addresses for Present Accounts 2 and 4 fall under Sender's Information)
  - (1) Plaintiff seeks disclosure of the short mail addresses for Present Accounts 2 and 4 because they are included in the "email addresses" as stipulated in Item 3 of the Ordinance for Sender's Information.

- (2) Item 3 of the Ordinance for Sender's Information stipulates that the "electronic mail address of the sender" falls under the Sender's Information, and defines "electronic mail address" as the "codes, including characters, numerical characters, and marks, for identifying the user of such electronic mail".

In a response made to a public comment at the time of establishment of the Ordinance for Sender's Information (May 10, 2002), the response by the Ministry of Internal Affairs and Communications noted little necessity for including telephone numbers among the information to be disclosed, by stating the following: "Disclosure of a sender's information is an issue that involves serious rights and interests such as secrecy of communications and freedom of expression, and furthermore, once the information is disclosed, it becomes impossible to reinstate the original state. Accordingly, in light of the purport of the system of enabling the recovery of the rights by means of a lawsuit, it is reasonable to restrict the extent of disclosure of sender's information to the minimum requirement beforehand"; and "Recovery of rights by law requires identification of the other party against whom the claims are made. In order to enable identification of the other party so that legal measures for recovery of rights can be taken, it is sufficient if the name and address are disclosed, and it seems that there is little need for having the telephone number or fax number disclosed. On the other hand, some specified telecommunications service providers such as providers of free electronic bulletin boards do not normally possess names and addresses. Even in such cases, it is assumed that e-mail addresses are likely to be recorded, and such information may provide a clue as to identifying the sender, and thus it is appropriate to include e-mail address to the information to be disclosed" (Exhibit Otsu 1). In order to revise the Ordinance for Sender's Information, the Ministry Internal Affairs and Communications issued MIC Order No. 128 of September 15, 2011 to add to the Sender's Information the Internet connection service user identification code (Item 5 of the Ordinance), the SIM card identification number (Item 6 of the Ordinance), and the relevant Time Stamps (Item 7 of the Ordinance), which are obtained from a mobile phone terminal or the like pertaining to the infringing information, and issued MIC Order No. 102 of December 9, 2015 to add to the Sender's Information the port number combined with the IP address pertaining to the infringing information (Item 4 of the Ordinance). However, the telephone number was not added to the Sender's Information, and the above

Item 5 contained the words, "for the purpose of identifying on the Internet the user of the Internet connection service", thereby not including the telecommunications number for identifying the terminal system transmission line facilities such as mobile phone numbers into the above Item 5 (Exhibit Otsu 24).

As described above in 1 (2), Article 4 of the Provider's Limited Liability Act provides that disclosure of the Sender's Information may be requested to a specified telecommunications service provider for identifying the perpetrator, provided that strict requirements, which take into consideration the privacy, freedom of expression, and secrecy of communications of the sender of the information, are fulfilled in light of the fact that the Sender's Information involves the sender's privacy, freedom of expression, and secrecy of information, and should not be disclosed to a third party without legitimate grounds, and that once the Sender's Information is disclosed, it becomes impossible to reinstate the state prior to the disclosure. As such, the information which may be requested for disclosure should be determined by taking into consideration the privacy and the like of the sender of the information. The fact that, in light of all these perspectives, the ordinance which provides for details of the Sender's Information excludes telephone numbers from the information which may be requested for disclosure pursuant to Article 4 of the Provider's Limited Liability Act is evident from the words of the relevant provisions as well as from the explanation and the like provided in the course of establishment of the law. If, in the procedures for requesting for disclosure of the Sender's Information, it becomes possible to request for disclosure of a short mail address, which identifies the user by the same letter string as a mobile phone number, it would be possible, in the same procedures, to generally request for disclosure of at least the mobile phone number, but this would be against the purport of the above provisions and the like. Given this fact, it is reasonable to interpret that the "electronic mail address" according to Item 3 of the Ordinance for Sender's Information does not include a short mail address which identifies the user by having the same letter string as a mobile phone number.

Accordingly, since a short mail address does not fall under the Sender's Information as prescribed in Item 3 of the Ordinance for Sender's Information, Plaintiff is unable to request for disclosure of the information indicated on the attached List of Sender's Information under No. 1-1 (2) (short mail addresses)

for Present Accounts 2 and 4.

- (3) In response, Plaintiff argues, on the grounds that the term, "Electronic Mail", according to Article 2, item (i) of the Act on Regulation of Transmission of Specified Electronic Mail (Specified Electronic Mails Act) includes a short mail address (Item 2 of the Ordinance for the Specified Electronic Mails Act), that the same interpretation should be applied to the "electronic mail" according to Item 3 of the Ordinance for Sender's Information as well.

However, while the Specified Electronic Mails Act aims to prepare a preferable environment for the use of Electronic Mails, and thereby contribute to the sound development of an advanced information and communications society, by optimizing the proper transmission of Specified Electronic Mails, which are transmitted and received due to simultaneous transmission, etc. of Specified Electronic Mails to many persons (refer to Article 1 of the Specified Electronic Mails Act) for advertisement purposes, the objective of Article 4 of the Provider's Limited Liability Act is to grant to a person, whose rights were infringed due to distribution of information via specified telecommunications, the right to request for the disclosure of the Sender's Information, thereby enabling the person to recover the rights by means of a lawsuit. As such, the two laws are different in terms of objectives and cases of application. In addition, the determination of the "electronic mail address" as the Sender's Information (Item 3 of the Ordinance for Sender's Information) should be made by taking into consideration the issue of the appropriate extent to which the information, which should be protected as an individual's privacy and secrecy of communications, should be disclosed in relation to the benefit of recovery of the damage suffered by the person whose rights were infringed, whereas the "Electronic Mail" according to the Specified Electronic Mails Act is stipulated as the subject of the measures for preventing hindrances to transmission and reception of Electronic Mails due to simultaneous transmission and the like of Specified Electronic Mails to many persons. Since the Specified Electronic Mails Act and Article 4 of the Provider's Limited Liability Act are different in terms of objectives and cases of application, the interpretation of "electronic mail" can also be different, and the fact that the "Electronic Mail" according to the Specified Electronic Mails Act includes a short mail address does not mean that the "e-mail address" as Sender's Information should be interpreted as including a short mail address.

Accordingly, the above claim by Plaintiff is not reasonable.

Incidentally, Article 3-2, item (ii) of the Provider's Limited Liability Act stipulates that, in the case where a specified telecommunications service provider is requested by a public office candidate or the like, who alleges that his or her honor was damaged due to distribution of information pertaining to documents or drawings for an election campaign or blacklisting campaign, to take measures for preventing transmission, if the sender's e-mail address and the like are not shown properly on the screen of the communication terminal equipment, the specified telecommunications service provider shall not be held liable for compensation for damage suffered as a result of the measures for prevention of transmission of the information having been taken within a necessary extent, and the above e-mail address and the like include a short mail address (Article 3-2, item (ii) of the Provider's Limited Liability Act; Article 142-3, paragraph (3) of the Public Offices Election Act; Article 2, item (iii) of the Specified Electronic Mails Act; Article 2, item (i) of the Specified Electronic Mails Act; Item 2 of the Ordinance for the Specified Electronic Mails Act). However, the above provision provides for the case in which a specified telecommunications service provider is not held liable for compensation for damage by taking measures for prevention of transmission of information, and does not provide for the request for disclosure of Sender's Information. Also, the fact that an e-mail address according to the above provision includes a short mail address is because Article 142-3, paragraph (3) of the Public Offices Election Act and Article 142-5, paragraph (1) of the same Act stipulates that an e-mail address or the like, which includes a short mail address, should be shown properly on documents and drawings for an election campaign and blacklisting campaign as the sender's contact information. The purport of Article 4 of the Provider's Limited Liability Act and the purport of Article 3-2, item (ii) of the same Act are different, and the interpretation of "electronic mail" can be different depending on the purport of the law. As such, the scope of "electronic mail" according to Article 3-2, item (ii) of the same Act does not influence the above interpretation of the scope of "electronic mail" in the case where Article 4 of the same Act is applied.

7. Regarding Issue 7 (Whether or not Defendant is liable for compensation for damage for Redisplay)
  - (1) In addition to the facts described above, according to the evidences indicated later and the entire purport of the oral argument, the following facts

can be acknowledged.

A. Defendant's system at the time of First Preventive Measure Against Transmission

The content delivery network (CDN) is a system for accelerating delivery of content such as images and ZIP files by caching the content in multiple servers whose locations are geographically dispersed, and in which each user's request for content delivery is processed by the server which is located nearest to the user (Exhibits Ko 89, Ko 91, Ko 92, Ko 94).

At the time of First Preventive Measure Against Transmission (February 2015), in order to operate Twitter, Defendant was using the servers which were managed by Defendant as well as at least the servers provided by EdgeCast (currently called "Verizon Digital Media Services Inc.; hereinafter referred to as "EdgeCast") and Fastly Inc. (hereinafter referred to as "Fastly"), who are business operators providing CDN services (Exhibit Ko 92, Exhibits Otsu 21, Otsu 23).

B. Background leading to the Redisplay

(A) Around January 21, 2015, Image Data for Photograph 1 were stored in a storage area on Server that corresponds to the web page for Defendant's URLs For Storing Image Data, thereby infringing Plaintiff's right to transmit the public for Photograph 1. Defendant learned of the fact by way of a document sent from Plaintiff informing Defendant of the above infringement, and around February 13, 2015, took First Preventive Measure Against Transmission (as described above in "Outline of the facts" under (8) A and C).

The First Preventive Measure Against Transmission consisted of an order that Defendant delete the Image Data, which are stored on all networks, including the servers on CDN, which are used by Defendant for operating Twitter (the data as the content that is stored on the servers managed by Defendant, the cached data stored on the same servers, and the cached data stored on the servers provided by a CDN operator) (hereinafter referred to as "Deletion Order"), and delete the inline link information for the URLs For Storing Image Data where the Image Data are stored (Exhibit Otsu 21; the entire purport of the oral argument; as described above in "Outline of the facts" under (8) D).

(B) On February 13, 2015, Plaintiff confirmed that Image Data were no longer available for viewing on the URLs For Storing Image Data.

Also, on the last day of June of the same year, Plaintiff confirmed that the same state was maintained (Exhibits Ko 35, Ko 42 to 44).

(C) By no later than May 26, 2016, the Image Data became once again available for viewing on the URLs For Storing Image Data. On May 26, 2016, Plaintiff discovered the Redisplay, and in a separate lawsuit filed against Defendant, noted the incident on the Notice of Amendment (Addition) of Claim dated June 10 of the same year and sent the Notice to Defendant (Exhibits Ko 7 to 10, Ko 35, Ko 42).

(D) Defendant, when learning of the occurrence of Redisplay upon receipt of the above Notice of Amendment of Claim, promptly took the Second Preventive Measure Against Transmission whose content was the same as the Deletion Order, and by June 13, 2016, the Image Data became unavailable for viewing on the URLs for Storing Image Data.

Since then, the Image Data are no longer available on the URLs For Storing Image Data (Exhibits Ko 36 to 40; the entire purport of the oral argument).

#### C. Cause of Redisplay

(A) In June 2016, Defendant, by having been pointed out by Plaintiff the matters described above in B (C), recognized the problem that the image, which had been deleted at one time, was being displayed again. In the same year, before the Redisplay, Defendant recognized the occurrence of a similar case of redisplay. At that point in time, Defendant did not know whether the problem lies with a cause that is inherent to the relevant image, or is caused by the system.

(B) Concerning the Redisplay of the photograph having been deleted, Defendant carried out an investigation, jointly with EdgeCast and Fastly, who were providers of the CDN service used by Defendant. As a result, it was confirmed concerning the Redisplay, that the problem was due to a bug, in which the system or the software program failed to operate as intended, or operated in a way that was not intended, and that the bug was not something that occurred across networks of multiple business operators and was not attributable to Defendant's system or to any other system of a CDN operator other than EdgeCast, but that it was related to a deletion order that was given within the network of EdgeCast (Exhibit Otsu 21).

(C) Defendant notified EdgeCast of the bug problem, and EdgeCast

solved the problem. It is unknown how EdgeCast solved the bug (Exhibit Otsu 21).

- (D) B, who is a senior litigation counsel for Defendant, speculates that although the cause of the occurrence of the Redisplay has not been clarified completely, the Redisplay occurred due to the cached data of Image Data remaining on the servers used by EdgeCast for CDN, and that the cause of such data remaining lies with the existence of a bug, which caused the failure of the deletion order to reach some of the servers used by EdgeCast on its system. There is no evidence based on which said speculation can be overturned, or any circumstance based on which said speculation can be considered irrational.

Also, B speculates that, as of August 29, 2019, there were fewer than ten incidents, including the Redisplay, in which an image or the like, against which Defendant took measures for prevention of transmission, was redisplayed during the use of Twitter worldwide (Exhibit Otsu 21).

- (E) Based on the above, it is acknowledged that Redisplay occurred due to the cache of Image Data remaining on a part of the servers provided by EdgeCast, who is one of the CDN operators used by Defendant, and that the cause of the problem lies with the existence of a bug on the system of EdgeCast (hereinafter referred to as "Bug") and the failure by the Deletion Order to reach throughout the servers of EdgeCast.
- (2) Plaintiff argues that by Redisplay, Defendant infringed Plaintiff's copyright (right of automatic public transmission) and the moral right of author (right to integrity and right of attribution) for Photograph 1.

However, as described above in (1), it is acknowledged that the Redisplay occurred as a result of the cache of Image Data remaining on a part of the servers provided by a CDN operator, on a CDN used by Defendant, and that the cause of the problem lies with the existence of the Bug on the system of EdgeCast, who is one of the above business operators, and with the failure by the Deletion Order to reach throughout the servers of EdgeCast. In that case, it cannot be acknowledged that Defendant infringed Plaintiff's copyright (right of automatic public transmission) and the moral right of author right (right to integrity and right of attribution) by actively engaging in some action to cause the Redisplay to occur.

Accordingly, the above claim by Plaintiff is not reasonable.

(3) Next, Plaintiff's allegation that it is acknowledged that Defendant had the duty of deletion, based on reason or pursuant to Article 112, paragraph (1) of the Copyright Act, and that Defendant violated this duty and failed to take complete measures for prevention of transmission shall be considered below.

A. As described above in (1) B (A), Defendant, upon learning of the fact of infringement of the right to transmit the public pertaining to Photograph 1, promptly issued the Deletion Order and took the First Preventive Measure Against Transmission. The Deletion Order was to order the deletion of the Image Data, which is stored on all networks, including CDN servers, used by Defendant for operating Twitter (the data as the content stored on the servers managed by Defendant, the cached data stored on the same servers, and the cached data stored on the servers provided by CDN operators). After the First Preventive Measure Against Transmission was taken, it was confirmed that the Image Data were no longer available for viewing on the URLs For Storing Image Data, and this state was maintained for at least four months (as described above in (1) B (B)), so that it can be said that the Deletion Order was appropriate, as far as the method per se was concerned, as a measure for preventing transmission.

On the other hand, as described above in (1) C (E), there was the existence of the Bug which caused the redisplay of the image which was ordered to be deleted from the system of EdgeCast that was used by Defendant. Since it is acknowledged that the Redisplay occurred as a result of the Bug, in order to prevent the Redisplay, it was necessary to take appropriate measures, including correction or the like of the program, for the Bug. In that case, Defendant's liability for compensation for damage concerning the Redisplay can be affirmed only if Defendant failed to take the aforementioned measure in spite of having the duty to do so, which must have been premised, at least, on the existence of the duty of Defendant to take appropriate measures concerning the Bug.

The problem of the Redisplay due to the Bug came to the knowledge of Defendant around June 2016 as a result of the occurrence of the two cases of redisplay, including the Redisplay, and as of February 2015, which is when the First Preventive Measure Against Transmission was taken, and the existence of Bug was not yet known to Defendant (as described above in (1) C (A)). Also, there were fewer than ten incidents of redisplay occurrences, which are similar to the Redisplay, in the world (as described

above in (1) C (D)), and the frequency of the occurrence of problems by the Bug was very low, so that it can be said that the First Preventive Measure Against Transmission was objectively substantive as a measure for prevention of transmission, and that Defendant was unable to know the details of the Bug at the time.

Given these circumstances, it is reasonable to consider that, at the time of First Preventive Measure Against Transmission, the Deletion Order was reasonable as a measure for prevention of redisplay, and that Defendant was not liable for taking appropriate measures for Bug beyond the scope of giving the Deletion Order. In addition, even when considering the span between the First Preventive Measure Against Transmission and the occurrence of Redisplay, only a total of two cases of problems concerning the Bug are recognized, and it was not known to Defendant at the time whether or not the cause lies with the system, and given that there are no circumstances which suggest that it is objectively not reasonable that Defendant did not have such knowledge, it cannot be acknowledged that Defendant was liable for taking appropriate measures, including correction or the like of the program, concerning the Bug.

Based on the above, even if Defendant is liable for deletion of Photograph 1, based on reason or on any other cause, it should be said that, in the first place, Defendant had no duty to take appropriate measures for the Bug beyond the Deletion Order, which can be evaluated as a reasonable measure, so that Defendant is not liable for compensation for damage pertaining to the Redisplay, which is premised on said duty, without having to consider other points.

- B. Plaintiff also argues that although Defendant had, as a part of the duty of deletion, the duty of confirmation concerning the success of the measure for prevention of transmission, which is to confirm, within an appropriate and necessary scope, whether or not the measure for prevention of transmission succeeded, Defendant failed to confirm, even once, whether or not the First Preventive Measure Against Transmission was successful, and allowed the state of illegal transmission by Redisplay to continue.

However, as described above in A, it cannot be said that Defendant had the duty to take appropriate measures for the Bug until the time of the Redisplay. Plaintiff's claim cannot be accepted.

- (4) Furthermore, Plaintiff argues that Defendant, who took the First Preventive

Measure Against Transmission, as commissioned by Plaintiff, and who had the duty of care of a good manager under a quasi-mandate contract or on the basis of office work management, violated the duty and took a measure for prevention of transmission, which was incomplete, thereby inviting the Redisplay to occur.

However, although Defendant took a measure for preventing the transmission of the infringing information, it cannot be acknowledged that any special agreement was made between Defendant and Plaintiff as a result, and it cannot be acknowledged that Defendant came to bear a duty, whose content has been especially expanded compared to the prior state, without any special agreement or the like. As described above in (3), it cannot be said that Defendant had the duty to take any appropriate measures for the Bug until the time of the Redisplay, and Defendant is not liable for compensation for damage for the Redisplay. Plaintiff's claim cannot be accepted.

- (5) Based on the above, Defendant is not liable for compensating for the damage suffered by Plaintiff as a result of Redisplay.

#### 8. Conclusion

From what is described above, Plaintiff's claims are reasonable within the extent of requesting for disclosure of the information indicated on the attached List of Sender's Information under No. 1-1 (1) pertaining to the users of Present Accounts 1 to 7 who performed the acts, on which the parties agree, infringe Plaintiff's right to transmit the public (as described above in "Outline of the facts" under (4) A (A), B, C, D (A), E (A), F (A), G), and of the information indicated on the same List under No. 3 upon the logins made to Present Accounts 1 and 6 immediately before the tweets which infringed Plaintiff's right to integrity. Plaintiff's other claims are not reasonable and shall be dismissed, and the court renders a judgment in the form of the main text.

Tokyo District Court, 46th Civil Division

Presiding Judge: SHIBATA Yoshiaki

Judge: YASUOKA Mikako

Judge: FURUKAWA Yoshitaka

(Attachment omitted)