

Date	May 17, 2013	Court	Tokyo District Court, 29th Civil Division
Case number	2013 (Wa) 1918		
– A case in which the court recognized that the act of uploading video works on a website without due authorization constitutes infringement of the right of public transmission and ordered the payment of 10 million yen as damages.			

This is a case where the plaintiff, who holds a copyright for video works (the "Works") created by shooting and editing videos of the tournament and matches of the Ultimate Fighting Championship ("UFC"), which is a mixed martial arts event, alleged that the defendant uploaded the Works to the website "niconico video" for a total of 84 times and infringed the plaintiff's copyright (the right of public transmission) and demanded the payment of 10 million yen to compensate a part of the damage suffered by the plaintiff as a result of the act of tort, namely the infringement of said copyright, and the delay damages accrued thereon.

The plaintiff alleged that, since the defendant, who was aware that the UFC videos were the plaintiff's works because the defendant received from a provider a request for disclosure of subscriber information that the plaintiff sent to the provider, continued uploading the Works over the subsequent period of at least one year and thereby intentionally committed said copyright infringement, therefore the plaintiff suffered, among other things, the damage equivalent to the amount of the royalties calculated based on the number of times the Works were played. The defendant admitted that the act of uploading the Works constitutes infringement of the plaintiff's right of public transmission and disputed the amount of damage only.

In this judgment, the court found that some of the Works based on which the plaintiff made a part of its claim may be regarded as cinematographic works, that the copyright for those works belongs to the plaintiff, that the defendant's act of recording and storing said works in the recording medium in the server computer used for the operation of "niconico video" constitutes infringement of the right of public transmission, and concluded that the defendant shall be liable for paying damages to the plaintiff based on the tort liability for copyright infringement. Furthermore, the court found it reasonable to calculate the amount of damage suffered by the plaintiff (Article 114, paragraph (3) of the Copyright Act) by multiplying the amount equivalent to the distribution charges that would be imposed on the online distribution of said works by the number of times said works were played and also by the royalty rate of 60%, at which the plaintiff was supposed to receive compensation based on the agreement concluded with the distributor. Based on these findings, the court calculated the amount

of damage accordingly and accepted all of the plaintiff claims.