

judgedate:

October 8, 2009

caseid:

2008 (Ju) 889

casename:

Case of seeking injunction of copyright infringement and the like

casetitle:

Judgment related to the duration of copyright of a work whose author is a natural person under the Old Copyright Act (before revision by Act No. 48 of 1970) in the case where the fact that the natural person is the author is indicated using the real name thereof and the work is made public

summary\_judge:

Regarding the duration of copyright under the Old Copyright Act (before revision by Act No. 48 of 1970) of a work whose author is a natural person, when the fact that the natural person is the author is indicated using the real name thereof, and the work is made public, even if there is indication that the authorship of the work is attributed to an organization, Article 3 of the Old Act, not Article 6 of the Old Act, is applied, and the duration is determined on the basis of the time of death of the author.

court second:

Intellectual Property High Court, Judgment of February 28, 2008

references:

Article 3 of the Old Copyright Law (before revision by Act No. 48 of 1970),  
Article 6 of the Old Copyright Act (before revision by Act No. 48 of 1970)

#### Main text

The present final appeal shall be dismissed.

Appellants shall bear the cost of the final appeal.

#### Reasons

Reason No. 1 of petition for acceptance of final appeal by the attorney of the final appeal, ●●●●

1. This case is a case in which Appellee made a claim against Appellants for injunction of reproduction and distribution of DVD goods and disposal of the stock thereof and digital linear tape pursuant to Article 112, paragraphs (1) and (2) of the Copyright Act and a claim for compensation for damages pursuant to Articles 709 and 719 of the Civil Code and Article 114, paragraph (3) of the Copyright Act on the ground of copyright infringement of Theatrical Movies 1 to 9 described in the "movie list" (hereinafter, each of these movies shall be called the "Present Movie 1" and the like in accordance with the number in the list and shall be also collectively called "each of the Present Movies") attached to the judgment in prior instance released before January 1, 1971, which is the date of enforcement of the Copyright Act (the Act No. 48 of 1970). Appellants assert that the authors of each of the Present Movies are only movie production companies which are organizations, and even if it is not applicable, since each of the Present Movies was made public under the authorship of organizations, Article 6 of the Old Copyright Act (before revision by Act No. 48 of 1970. hereinafter, referred to as the "Old Act") is applied to the duration of copyright by the Old act, and the copyright of each of the Present Movies expires at the expiration of the duration and disputes.

2. The outline of factual relations legally finalized in the court of prior instance is as follows

(1) Each of the Present Movies is a work of a movie having creativity and having been made public during a period from June in 1919 to October in 1952.

(2) Original works, screenplays, production or direction, leading performance, and the like of each of the present movies were performed singularly by Charles Chaplin (excluding the Present Movie 3), and most of the production activities from idea (excluding the Present Movie 8) to completion was performed by him. In the contents thereof, too, his thoughts/sentiments are markedly expressed through the performance of Chaplin himself (excluding the Present Movie 3), direction and the like, and the person who creatively contributed to the overall shaping of each of the Present Movies is Chaplin.

(3) It is indicated that Chaplin produced each of videos of the Present Movies 1 and 2 on the basis of his original works, he directed the video of the Present Movie 3 on the basis of his original work, he performed the main role and directed each of the videos of the Present Movies 4 to 7, and he performed the main role and served as the general director of each of the videos of the Present Movies 8 and 9 under his real name. Moreover, the video of the Present Movie 7 has indication that A company is the owner of the copyright thereof, the video of the Present Movie 8 has indication that B company is the owner of the copyright thereof, and the video of the Present Movie 9 has indication that C company is the owner of the copyright thereof.

(4) Regarding the Present Movies 1 to 6, Chaplin was registered as the author thereof at the US Copyright Office, while regarding the Present Movies 7 to 9, A company, B company, and C company were registered as the authors thereof, respectively.

(5) Appellee obtained all the copyrights of each of the Present Movies in 1956.

(6) Chaplin died on December 25, 1977.

(7) Appellants reproduced each of the Present Movies and made and distributed the DVD goods without approval of Appellee.

3(1) Under the Old Act, a work is interpreted to mean those with thoughts/sentiments which are products of spiritual creative activities expressed to the outside. And since the movies are comprehensive works created with involvement of a large number of persons such as scriptwriters, producers, directors, actors, and technicians for photography, recording and the like, the authors of the works of the movies under the Old Act should be determined by who creatively contributed to the overall shaping thereof as the reference. It is not reasonable to understand that the authors are only the movie producers with one thing that movies are works. Moreover, under the Old Act, even if an organization, not a natural person who actually performed the creative activity, can become the author, the movie production company indicated as the author does not naturally result in being the author of the work of the movie under Article 6 of the Old Act. The Article should be interpreted as the provisions related only to the duration of copyright in view of the positions of the wording and provision thereof, and there is no room to understand that the Article prescribes the requirement and effects for an organization to be deemed as the author.

By examining this for this case, according to the aforementioned factual relations, regarding each of the Present Movies, Chaplin creatively contributed to the overall shaping thereof, and there seems to be no one involved in that other than Chaplin and thus, it is obvious that Chaplin is the author.

(2) Under the Old Act, the provisions of Articles 3 to 6 and Article 9 of the Old Act are applied to the duration of copyright of the work of a movie having creativity (Article 22-3 of the Old Act).

The Article 3 of the Old Act prescribes the duration of copyright of the work on the basis of the time of death of the author concerned on the premise that the author is a natural person. However, the author of an anonymous or pseudonymous work which is made public cannot be known to the general public, and if the duration of the copyright thereof is determined on the basis of the time of death of the author, the duration becomes vague, and there is a concern that interests of the social public and legal stability are undermined. The same applies to a case where a work for which the author, who is a natural person, cannot be known since it was made public under the authorship of an organization although the author is a natural person. Thus, Articles 5 and 6 of the Old Act are interpreted such that, from a viewpoint of securing interests of the social public and legal stability, the duration of copyright of these works shall be determined exceptionally on the basis of the publication or performance, and when the author is granted registration under the real name within the duration prescribed on the basis of the time at which the work is made public, since the time of death of the author can be grasped, it is determined on the basis of the time of death of the author as in the principle (see the proviso to Article 5 of the Old Act). Then, with regard to the duration of copyright under the Old Act of a work whose author is a natural person, when the fact that the natural person is the author is indicated using the real name thereof, and the work is made public, the time of death of the author can be grasped by that and thus, even if there is indication that the authorship of the work is attributed to an organization, it is reasonable to interpret that Article 3 of the Old Act, not Article 6 of the Old Act, is applied, and the duration is determined on the basis of the aforementioned time.

By examining this for this case, each of the Present Movies is a work having creativity with Chaplin, who is a natural person, as the author, and according to the aforementioned factual relations, it is indicated that Chaplin performed direction and the like on the basis of the original work of himself, respectively and thus, each of the Present Movies is assumed to be made public with the indication with the real name that Chaplin, who is a natural person, is the author. Therefore, regarding the duration of copyright pursuant to the Old Act, Article 3, paragraph (1) of the Old Act, not Article 6 of the Old Act, should be considered to be applied. The fact that the organization is registered as the author or the indication that an organization is the author on the image of the movie does not affect the aforementioned conclusion.

(3) Then, the durations of the copyright of the Present Movies 1 to 7 are all at least until December 31, 2015 under the provisions of Article 3 of the supplementary provisions of Act No. 85 of 2003, Article 7 of the supplementary provisions of Act No. 48 of 1970, and Article 22-3, Article 3, paragraph (1), Article 9, and Article 52 of the Old Act, while the durations of the copyright of the Present Movies 8 and 9 are at least until December 31, 2017 and December 31, 2022, respectively, under Article 2 of the supplementary provisions of the Act No. 85 of 2003, Article 7 of the supplementary provisions of Act No. 48 of 1970, Article 22-3, Article 3, paragraph (1), Article 9, and Article 52 of the Old Act, and Article 54, paragraph (1) of the Copyright Act.

Therefore, the copyright of each of the Present Movies cannot be considered to expire at the expiration of the duration thereof.

4. The judgment of the court of prior instance with the same purpose as above can be approved as reasonable. The Judgment in the Supreme Court 2007 (Ju) No. 1105, Third Petty Bench on December 18 of the same year/Minshu vol. 61, No. 9, page 3460 cited in the statement is not premised on the indication that a natural person is the author with the real name but only holds application of Article 2 of the supplementary provisions of Act No. 85 of 2003 based on the copyright work with application of Article 6 of the Old Act and is not appropriate for this case. The gist cannot be employed.

Therefore, the judgment shall be rendered as in the main text unanimously by all the judges.

(Presiding judge: MIYAKAWA Koji, judge: KAINAKA Tatsuo, judge: WAKUI Norio, Judge: SAKURAI Ryuko, Judge: KANETSUKI Seishi)