

Patent Right	Date	March 11, 2021	Court	Intellectual Property High Court, Second Division
	Case number	2020(Ne)10046		

- A case in which, in a membership web service where multiple services are available using an identical ID and password, an article that infringes copyright was posted on a website established after the start of use of website-creating services using a specific registered ID and password, the court found that the electronic mail address registered at the registration falls under the "electronic mail address of the sender" as set forth in item (iv) of the Ministerial Order Specifying Identification Information of the Senders under 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 Sender and also falls under "identification information of the sender" to be disclosed based on 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 Sender.

Case type: Disclosure of Identification Information of the Sender

Results: Partial modification of the prior instance judgment

References: 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 Sender, item (iv) of the Ministerial Order Specifying Identification Information of the Senders under 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 Sender

Judgment of the prior instance: Tokyo District Court, 2019 (Wa)30272, June 25, 2020

Summary of the Judgment

1. The Appellant is the copyright holder of works that are articles of electronic mail newsletters distributed by the Appellant (hereinafter referred to as the "Works") and the Appellee is a stock company that provides various services to general users under the generic name of "Ameba" and in particular provides multiple types of specified web services (hereinafter the services to registered members are collectively referred to as the "Member Services"), including a service titled "Ameba Ownd" related to the creation of websites, etc., to registered members (hereinafter referred to as the

"Service").

In this case, on the allegation that an article stating the same details as the Works (hereinafter referred to as the "Article") was posted on a specific website that was established using the Service by a member of the Member Services (hereinafter referred to as the "Website") and therefore the copyright (right of reproduction and right to transmit to the public) of the Appellant was infringed, the Appellant claimed that the Appellee, which is the specified telecommunications service provider as set forth in Article 2, item (iii) 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 Sender (hereinafter referred to as the "Act"), disclose the electronic mail address (hereinafter referred to as the "Information") and the name (registered name; the same applies hereinafter) associated with the members who established the Website as a claim for disclosure of identification information of the sender based on Article 4, paragraph (1) of the Act.

2. In the prior instance, the court judged as follows: concerning the name, it is not found that the Appellant had the relevant information; concerning the electronic mail address (the Information), in cases where the name, etc. are not provided as personal information of the individuals concerned upon registration, but an electronic mail address, etc. is provided instead, there is a reasonable question whether the registrant has provided its true electronic mail address and it is difficult to recognize that the registered electronic mail address is truly owned by the registrant, and therefore, it cannot be said that Information falls under the "identification information of the sender" as set forth in Article 4, paragraph (1) of the Act. The court dismissed all the claims of the Appellant. Dissatisfied with this judgment, the Appellant filed this appeal. The Appellant did not file an appeal for the part dismissing the claim for disclosure of the name among the aforementioned claims.

3. In this judgment, the court made findings regarding the background of starting to use the Member Services, type of the Member Services, provisions of the rules related to the Member Services, the background of starting to use the Services, and the status of establishment and operation, etc. of the Website, and the background of an inquiry made by the Appellee to hear an opinion based on Article 4, paragraph (2) of the Act, and held as outlined below and upheld the claim of the Appellant for disclosure of the Information.

(1) The Service is available only when members that registered for the Member Services input the password, etc. that was set upon registration. Therefore, persons who registered for the Member Services and users of the Service are usually considered to

be identical. When registering for the Member Services, specified information must be input although the name, etc. is not included, and definitive registration becomes available only after clicking the URL indicated in an electronic mail sent to the electronic mail address that was input at the time of provisional registration. Members of the Member Services may use various services by using the account obtained through registration.

At the same time, the rules related to the Member Services prohibit posting false information upon registration or allowing a third party to use credentials, etc.; they stipulate the obligation to report to the Appellee when registered information is changed or a third party has learned the credentials; and they stipulate that the Appellee imposes a suspension of use, a disposition of withdrawal, or other sanction in cases of breach of the provisions or of posting an article that infringes copyright. These are determined as the details of the agreement between members and the Appellee as a result of registration.

The aforementioned points are circumstances leading to the presumption that a person who intends to register inputs the electronic mail address that he/she usually uses at the time of registration for the Member Services and are circumstances leading to the presumption that once a person becomes a member, he/she will not allow a third party to use his/her credentials or transfer them to a third party.

(2) There were only approximately seven months from the registration for the Member Services to the establishment of the Website and there were no circumstances suggesting that the credentials were transferred to a third party during that period. In particular, the aforementioned period of approximately seven months suggests that the use of various services in addition to the Service was scheduled at the time of registration for the Member Services and it is also a circumstance leading to the presumption that the registrant used the electronic mail address that he/she usually uses.

(3) According to the details of the articles posted after the establishment of the Website, it is difficult to consider that there was a change to the operator of the Website after the establishment thereof.

(4) In consideration of the points indicated in (2) and (3) above, the absence of reply, although an electronic mail from the Appellee to ask for an opinion seems to have arrived, can be considered to be the circumstance leading to the presumption that the member related to the account used for the establishment of the Website (hereinafter referred to as the "Member") has no intention to reply to the inquiry in good faith, has no specific opinion, or cannot allege reasonable grounds to refuse disclosure.

(5) According to the points indicated in (1) through (4) above, it is reasonable to

presume that the Member and the person who posted the Article are identical and there is no evidence to overturn the presumption.

Consequently, it can be said that the Information is the electronic mail address of the person who posted the Article and that the Information falls under the "identification information of the sender" as set forth in Article 4, paragraph (1) of the Act.