

**”Real-time Streaming TV Programs” v. Copyright
Tokyo District Court
Case H19 (Wa) No. 5767 decided on June 20, 2008**

Introduction

The Plaintiff, a Japanese broadcasting company, sued the Defendant for seeking a preliminary injunction to suspend the real-time streaming TV program operated by the Defendant, who was using Sony equipment (“Location-Free”) that allows customers overseas to watch Japanese TV programs through the Internet. The Tokyo District Court disapproved the claim for seeking a preliminary injunction, and the judgment was upheld by the IP High Court (formerly called “the Tokyo Appellate Court). Thus a rule has been established that a “Broadcasting Streaming Service” does not infringe copyrights owned by broadcasting companies.

Facts

(1) Defendant’s service

The Defendant provides a real-time streaming service of TV programs through the Internet by using a Sony system, commonly called ”Location Free Service”, thereby allowing customers to watch TV programs even if they reside far beyond the reception of the programs, for example in the United States. The Defendant uses Sony’s “Location Free” system in operating the Service.

A “Base Station” is an essential component of “Location Free”. Being built in the TV tuner, the “Base Station” receives programs through the TV antenna and reads out analog transmission into digital data, and then transmits the data to the user’s PC automatically upon the user’s instruction.

In this business, the roles of the Defendant are:

- 1) To allow the customers to use the “Base Station”, and
- 2) To keep and manage customers’ “Base Stations” as its place of business, wherein the Defendant does not use its own special software to operate this business.

(2) Customer’s use

After having applied for the Service, a customer buys “Location Free” and sends it to the Defendant. The Defendant sets up a “Base Station” of “Location Free” at Defendant’s place of business, and then provides the connection necessary for starting the Service. A customer sends digital data to his/her own “Base Station” at the Defendant’s place of business through the Internet, and then automatically receives the data through a receiver at the customer’s house. Finally, the customer can enjoy watching TV programs even overseas.

If the contract between the Defendant and the customer terminates, the “Base Station” must

be returned to the customer, and then the Defendant is supposed to dispose of it.

Main Issues

(1) Does the “Location Free” Service infringe the Plaintiff’s right to transmit broadcasts?
(Art.23(1) of Copyright Law)

(2) Does the “Location Free” Service infringe the Plaintiff’s right to transmit to the public?
(Art.(23))

Court Decision

(1) Issue 1

[Decision] The Service does not infringe plaintiff’s copyright.

[Reason 1] Customers send the TV programs data and receive it by themselves as follows.

(A) Function of “Base Station”

In the Service, the Defendant uses software made by Sony “Location Free” available in the market, but never uses its own software to send and receive data of TV programs from “Base Station” to customers’ PCs.

In addition, the Defendant does not set up other servers other than the “Base Station”. The Defendant does not supervise customer’s viewing history by asking them to follow its procedure for certification to access the “Base Station”. Therefore, it is not the Defendant but only the customers who access their own “Base Station” through the Internet, give necessary commands and receive broadcasting data from the “Base Station” that they have chosen.

(B) Role of the Defendant

In accordance with Defendant’s service, the Services include:

- 1) To provide necessary connections to use the “Base Station” on behalf of customers; and
- 2) To keep and manage the “Base Station”, wherein the customers maintain their ownership at their place of business.

Regarding (1), the customers can install and set up the “Base Station” without applying for the Service. Regarding (2), the Service is not different from the service of a housing service provider, who keeps the client’s server at its place and connects between client’s PC and the Internet so that the client can receive data and transmit it. In this litigation, the Plaintiffs did not argue that such housing service itself constituted an infringement under the Copyright Law.

(C) In addition to the above, there are the facts that customers own the “Base Station”, and “Location Free” including the fact that the “Base Station” is sold in the market. Thus, it is concluded that each customer receives TV programs at the “Base Station”, changes it into digital data, sends it to his/her own PC and watches the programs.

[Reason 2] The “Base Station” is not an automatic public transmission system but is a prerequisite of the right to transmit broadcasts (Art.23(1) and Art.2(9)(i)), wherein “Public”

means people in general and a specified group of people.

In this way, the “Base Station” functions exclusively as one-to-one correspondence but neither for people in general nor for a specified mass of people because the “Base Station” is only capable of transmitting to customers’ PCs. Thus, the “Base Station” is not an automatic public transmission system under the Copyright Law.

Also, when looking at the all components related to the business, the Defendant transmits neither to unspecified customers nor to a specified mass of people because each transmission to each customer’s address at each “Base Station” works upon each customer’s request and such transmission is independent of the “Base Station”.

(2) Issue 2

[Decision] The Services do not infringe Plaintiffs’ copyright.

[Reason] Under the Copyright Law, “public transmission” means transmission intended for direct reception by the public. As in (1) above, the transmission from the “Base Station” does not fall within the meaning of “public transmission” because the “Base Station” is equipment functioning as one-to-one correspondence.

Therefore, the Defendant’s act is not public transmission under the meaning of Art.23(1) and Art.2(9)(i), and therefore, does not infringe the Plaintiffs’ copyright.

Comment

If the Service is provided as recorded TV programs streaming through the Internet, such streaming would clearly violate the Copyright Law because the recording itself of TV programs is prohibited (Art.21).

The vital but implied issue in this case is whether the Defendant would fall under the category of a substantial controller of the business although the Defendant does not receive and transmit the data directly.

【Note】

(1) This District Court Decision was upheld by the IP High Court (Tokyo Appellate Court) on December 15, 2008.

(2) Refer to the “Karaoke Doctrine” of the Supreme Court, March 15, 1988.