

MANEKI TV Case
Supreme Court
Case H21 (Ju) No. 653, Judgment on 18 January 2011

Facts

Appellants of final appeal (Plaintiffs, Appellants), Japanese broadcasting companies, have the exclusive right of "public transmission" with regard to their TV programs ("Programs") and "making transmittable" their broadcasts ("Broadcasts"). Appellee of final appeal (Defendant, Appellee) provides a service called "MANEKI TV" which transmits broadcast programs to users ("Service"). Appellants sued Appellee to enjoin Appellee's act and for damages, claiming that the service infringes on the Appellants' exclusive rights of public transmission and making transmittable their broadcasts.

Note:

The author has the exclusive right to effect a public transmission of his work (including, in the case of automatic public transmission, making his work transmittable) (Copyright Act §23 (1)).

"Public transmission" means a transmission, by wireless communication or wire-telecommunication, intended for direct reception by the public (§2 (1) (vii)-2).

"Automatic public transmission" means a form of public transmission which occurs automatically in response to a request from the public (§2 (1) (ix)-4).

"To make transmittable" means to make an automatic public transmission possible by prescribed acts (§2 (1) (ix)-5).

The Service uses a commercial device sold by Sony Corp., a company not party to this action, and called Location Free. Location Free has a Base Station (BS) as its core. BS incorporates a TV tuner and, upon request of a user, converts the received broadcasts into digital data and automatically transmits such data through the Internet in real time to the user. With the MANEKI TV system, a user buys a Location Free, registers his/her terminal (monitor) with the BS, and sends the BS to Appellee. Appellee receives the BS, membership fee and monthly fee from the user, installs the BS owned by the user in Appellee's place of business, and connects the BS to a TV antenna and the Internet (See figure below). The BS is equipped with a TV tuner and, at the request of the user, converts Broadcasts to digital data and sends this data automatically in real time over the Internet to the user's terminal which is registered to the BS.

Lower instance courts dismissed the claims (Tokyo D.C., 2007 (Wa) No.5765, judgment on 20 June 2008 and IP H.C., 2008 (Ne) No.10059, judgment on 15 December

2008), on the grounds that each BS, which only performs transmission to a single apparatus designated in advance, cannot be regarded as an automatic "public transmission" server. Therefore, there is no infringement on the right to make their broadcasts transmittable which is a precondition of automatic public transmission. Transmission to the user's terminal from the BS does not constitute automatic public transmission and does not infringe upon the right of public transmission.

Issues

1. Does Appellee's act of inputting the Broadcasts into the BSs constitute an act of making the Broadcasts transmittable?
2. Does Appellee's act of transmitting the Programs to the users' terminals constitute an act of public transmission of the Programs?

Holding

Reversed and remanded

(1) Issue 1

The purpose of the Copyright Act subjecting transmissible form to regulation is to regulate acts in the stage of preparation that will result in actual automatic public transmission being undertaken. In accordance with this, a device which, when connected with a telecommunications line for public use, automatically transmits the information upon request by the receiver, is regarded as an automatic public transmission server even if the device only performs transmission to a single apparatus designated in advance, as far as the transmission performed by the device constitutes automatic public transmission.

It is appropriate to construe that the party who performs automatic public transmission is the person who creates a condition in which such device can automatically transmit information upon request by the receiver. The person who inputs information into such device is the party who performs transmission in a case where such device is connected to a telecommunications line that is provided for public use and information is input continuously into such.

With this service, each BS is connected to the Internet and information is continuously input into the BS. Appellee installs the BSs in its place of business, connects to a TV antenna and manages them after having set the BSs so that they are connected to the TV antenna which is managed by the Appellee and the broadcasts received are continuously input into the BSs. In view of this, even where the users are the owners of the BSs, it is the Appellee who inputs the Broadcasts into the BSs that is the party who performs transmission using the BSs. Any person, irrespective of his/her relationship with

Appellee, is able to use the Service by contracting with Appellee. In this respect, when viewed from Appellee, users of the Service are unspecified persons, that is, the public. Accordingly, the transmission performed using the BSs constitutes automatic public transmission, the BSs fall within the category of an automatic public transmission server. Consequently, Appellee's inputting the Broadcasts into the BSs constitutes an act of making the Broadcasts transmittable.

(2) Issue 2

It is Appellee that performs transmission from the TV antenna to the BSs. It is also Appellee that performs transmission from the BSs to the users' terminals, as explained above. Consequently, Appellee's transmitting the Programs from the TV antenna to the users' terminals constitutes an act of performing public transmission of the Programs.

Complement

Following the remand, IP H.C., conforming to this judgment, granted the injunction and partial damages (IP H.C., 2011(Ne)10009, Judgment on 31 Jan 2012).

Links

- Judgment of Sup. C. (Case 2009 (Ju) No. 653)

<http://www.courts.go.jp/english/judgments/text/2011.01.18-2009.-Ju-.No..653.html>

- Summary of judgment of IP H.C. (2011(Ne)10009)

<http://www.ip.courts.go.jp/hanrei/pdf/20100317215516.pdf>

