

Litigation - Japan

Supreme Court rules on copyright infringement by service providers

Contributed by [Anderson Mori & Tomotsune](#)

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[First case](#)

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In Japan, it is accepted law that liability for copyright infringement may extend to persons or organisations, such as internet service providers, that provide a place, medium or opportunity for copyright infringement by another person, under certain conditions. Recently, the Supreme Court rendered two judgments on the liability of service providers that assisted remote users in watching or copying television programmes in breach of copyright law.

First case

The first judgment was issued on January 18 2011 in a case in which the respondent:

- maintained a device which enabled a remote user to watch television programmes online; and
- provided a service to such users by connecting the device to a television aerial and internet connection.

The claimant, a television broadcaster, argued that the service infringed its exclusive right publicly to transmit copyrighted programmes.

The IP High Court dismissed the claim, finding that no 'public' transmission had taken place for the purposes of the Copyright Act. In considering the function of the devices in question, the court held that each device had only a one-to-one transmission function; as such, it could transmit data only to a single, specified computer.

However, the Supreme Court reversed the decision. In contrast to the IP High Court, it found that the service users could be categorised as 'unspecified persons' - making them 'public' recipients within the meaning of the act - because anyone could conclude a contract with the service provider to receive the service, regardless of any prior relationship with the service provider.

The Supreme Court's interpretation of the term 'unspecified persons' appears to be very broad and this decision has significant practical implications, particularly in terms of the definition ascribed to the term 'public' under the act. The act uses the term 'public' in a number of contexts, not only in relation to public transmissions; thus, this broad use will have a major impact on the courts' future interpretation of the act.

Second case

The second judgment was issued on January 20 2011 in a case in which the respondent owned a device that could be operated by a remote user. The device recorded television programmes and transmitted the copy to the user online. As in the previous case, the claim was brought by a television broadcaster which argued that the service infringed its exclusive right to reproduce copyrighted programmes.

The IP High Court dismissed the claim. It found that the copier was the online user, not the service provider, as the user selected the programme to be recorded. However, the Supreme Court reversed the decision, finding that the service provider was responsible for copying the programmes. In reaching this conclusion, the court examined all of the facts in determining whether the users or the service provider should bear primary responsibility for copyright infringement, and considered the means, scope and extent of involvement in the reproduction process. The court reasoned that the users would be unable to copy programmes without the service provider entering the data into the recording device. As such, the service provider facilitated the infringement and on that basis it was reasonable to extend liability to it.

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