

## Distributing a memory card modifying a game software and the right of integrity.<sup>1</sup>

Supreme Court, 13 February 2001, 55-1 Minshû 87 – “Tokimeki Memorial Case”

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### (1) Facts

The plaintiff (appellee in the Supreme Court) is a company which created computer game software entitled “Tokimeki Memorial”. The game software is a dating simulation game, in which a player becomes an imaginary high school student who over a period of three years makes accumulating efforts to acquire capabilities sufficient to earn a confession of love from the female high school student who is the target of his passions. The game software has initial values set for nine kinds of apparent parameters and three kinds of hidden parameters for play capabilities. The game software commences with the player’s capabilities set at the initial values, the core storyline being for the player to improve his personal capabilities with the aim of earning a confession of love from the female student of his dreams. The game software is set so that as the player progresses through levels of improvement in his capabilities he meets other female students in accordance with his progress, and the storyline unfolds under fixed conditions and within a fixed range.

The defendant (appellant in the Supreme Court) imported and sold a memory card called “X-TERMINATOR for PS Ver.2 Toki-Memo Special”. Parameters used in the game software are stored in the memory card in the data memory units (Blocks 1 to 13), and players could load the data into a block of their choice onto the game hardware and use it. The authorised set-up of the game software is that parameters are linked and some go up and the others go down according to the commands chosen by the player.



The game software “Tokimeki Memorial”



Memory card

<sup>1</sup> See also Tatsuhiro Ueno, Intellectual Property Liability of Consumers, Facilitators and Intermediaries: The Position in Japan, in: Christopher Heath / Anselm Kamperman Sanders (ed.) Intellectual Property Liability of Consumers, Facilitators and Intermediaries (Kluwer, 2012), pp.160.

This means that a player can do no more than raise specific low-value apparent parameters to a higher value just before graduation; the player's subjective efforts alone cannot raise all of the nine apparent parameters to a high value. Further, the development of the story is designed on the premise that female high school students do not appear until the values of the apparent parameters reach a certain level.

However, if the data in Blocks 1 to 11 of the Memory Card is used, almost all the apparent parameters rise to an extremely high value immediately after the player enters high school and female high school students, who should not appear at this early stage, appear. Further, if the data in Blocks 12 and 13 is used, the game jumps to a point just prior to graduation when the game is started and at that point the parameter values are such that the player will definitely be able to obtain a confession of love from the female student of his dreams.

The plaintiff filed a lawsuit seeking damages on the grounds of an infringement of the right of integrity. The Osaka High Court, on 27 April 1999, upheld the claim. The defendant appealed to the Supreme Court. The Supreme Court dismissed the appeal, holding as follows.

## **(2) Findings**

The use of the memory card is to modify the game software and infringes the right of integrity (Art. 20(1) of the Japanese Copyright Act). This is because the parameters in the game software are the means by which a player expresses his personality and the story develops in accordance with changes in the same. The use of the memory card means that the player's personality, which is expressed through parameters authorised by the game software, is modified and, as a result, the storyline in the game software develops beyond the envisaged boundaries, bringing about a modification of the storyline.

The defendant imported and sold the memory card with the sole objective of modifying the game software and numerous people actually purchased the memory card with the same objective. This being the case, the defendant distributed the memory cards in the expectation that there would actually be people who would use them, and people presumably did actually purchase and use the memory cards. It follows that the right of integrity of the game software was infringed by the use of the memory card. If the defendant's acts had not taken place, the infringement of the right of integrity of the game software would never have taken place.

Accordingly, the defendant, who imported, sold and distributed the memory card envisaging others to use it, with the sole objective of modifying the game software, in-

fringed the right of integrity of the game software developers through others' use and should be held liable for damages to the plaintiff.

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\* Translations are available at:

[http://www.courts.go.jp/app/hanrei\\_en/detail?id=571](http://www.courts.go.jp/app/hanrei_en/detail?id=571)

<http://www.tomeika.jur.kyushu-u.ac.jp/chizai/pdf/H13.2.13.pdf>

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\* Japanese Copyright Act<sup>2</sup>

(Right of preserving the integrity)

Article 20. (1) The author shall have the right to preserve the integrity of his work and its title against any distortion, mutilation or other modification against his will.

(2) The provisions of the preceding paragraph shall not apply to the following modifications:

(i) change of ideographs or words or other modifications deemed unavoidable for the purpose of school education in the case of the exploitation of works under the provisions of Article 33, paragraph (1) (including the case where its application *mutatis mutandis* is provided for under the provision of paragraph (4) of the same Article), Article 33bis, paragraph (1) and Article 34, paragraph (1);

(ii) modification of an architectural work by means of extension, rebuilding, repairing, or remodeling;

(iii) modification which is necessary for enabling to use on a particular computer a program work which is otherwise unusable on that computer, or to make more effective the use of a program work on a computer;

(iv) other modifications not falling within those mentioned in the preceding three items, which are deemed unavoidable in the light of the nature of a work as well as the purpose and the manner of exploiting it.

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<sup>2</sup> Translated by Yukifusa OYAMA et al. which is available at <http://www.cric.or.jp/english/clj/index.html>. Regarding the outline of the Japanese Copyright Act (JCA) and major cases written in English, *see* Tatsuhiro Ueno, Chapter 22 (Japan) in: Silke von Lewinski (ed.) *Copyright Throughout The World*, (Thomson / West, loose-leaf from 2008); Peter Ganeva / Christopher Heath / Hiroshi Saito (ed.) *Japanese Copyright Law, Writings in Honour of Gerhard Schricker* (Kluwer, 2005).