

Judicial Symposium on Intellectual Property/TOKYO 2019
Second day (September 26th), Case of the Mock Trial
(Civil Cases—Copyright on the Internet—)

CASE 1

Case

The cat character *Love* (Figure 1), which appears on the popular TV animation program “*Nacchun and Friends*” produced by TV Station A in Japan, has become a popular character all over the world with cats becoming all the rage. PONY TV, the TV station in your country, has been granted a copyright license from TV Station A which holds the copyright of “*Nacchun and Friends*” and distributed the TV animation program of “*Nacchun and Friends*” in your country.

Stuffed figurines modeled after the shape of the cat character *Love* (Figure 2, however, the character is not named *Love*) are being sold at the online store operated by Donkey Net in your country, but Donkey Net has not been granted any license from TV Station A nor Pony TV. Only Pony TV has exclusive copyright license for distribution of the TV animation program of “*Nacchun and Friends*” and merchandising rights in your country.

[Figure 1 : Cat character *Love*]



[Figure 2 : A Stuffed figurine in the 3-D shape of *Love*]



[Figure 3 : Different gender *Love* with ribbon]



[Figure 4 : Panda *Love*]



Questions

Q1: Questions pertaining to TV animation character protection

Are 2-D images of the cat character *Love* who appears in the Japanese TV animation program also protected under copyright law in your country?

Q2: Questions pertaining to making 2-D images into 3-D shapes

(If your answer to Q1 is "Yes": If 2-D images of TV animation characters are protected under copyright law in your country) Are 3-D stuffed figurines of the cat character *Love* also protected under copyright law in your country (namely, their sales can be prevented as copyright infringement)?

Q3: Questions pertaining to standards for judgment of similarity

Using Figures 2, 3 and 4, please briefly explain how to determine "similarity" which is required for copyright infringement under copyright law in your country.

Q4: Questions pertaining to overseas computer servers

Is it necessary for the computer server in question to be located in your country in order to apply copyright law in your country to sales of copyright infringed items from the online shop operated by Donkey Net which sells copyright infringed items in your country?

(If it is possible to apply copyright law in your country to sales of copyright infringed items even when the computer server in question is located outside of your country) Is it necessary for the selling methods to be directed and addressed towards consumers of your country such as information being displayed in the language of your country on the website of the online shop operated by Donkey Net?

Q5: Questions pertaining to standing to sue

(Assuming that TV Station A, as the copyright holder, has standing to sue for copyright infringement)

In the following (1) through (3), is PONY TV deemed to have standing to sue in an action against Donkey Net operating the online shop for a copyright infringement in your country?

(1) When PONY TV is granted an exclusive copyright license from TV Station A for distribution of the TV animation program "*Nacchun and Friends*" and merchandising rights in your country.

(2) When PONY TV is granted only a non-exclusive copyright license from TV Station A for distribution of the TV animation program "*Nacchun and Friends*" and merchandising rights in your country .

(3) When PONY TV is granted a copyright license (regardless of whether exclusive or non-exclusive) from TV Station A only for distribution of the TV animation program "*Nacchun and Friends*" but not for merchandising rights in your country.

CASE 2

CASE

The original “dog-typed” AI speaker robot *Hachiko* produced and sold by the Japanese electrical manufacturer PONY, enjoys popularity in Japan.

Stuffed figurines modeled after the shape of the AI speaker robot *Hachiko* (however, the name is not *Hachiko*) is being sold at the online store operated by Donkey Net in your country, but Donkey Net has not been granted any license from the Japanese electrical manufacturer PONY.

Questions**Q1: Questions pertaining to existence of protection for works of applied art**

Are works of applied art protected under copyright law in your country according to Article 2, Paragraph 7 of the Berne Convention for the Protection of Literary and Artistic Works (and/or Article 9, Paragraph 1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights)?.

Q2: Questions pertaining to protection under copyright law of useful articles

(1) The AI speaker robot *Hachiko* is a useful article (namely, work of applied art) and not a work of pure art, but is it possible that the shape of the AI speaker robot *Hachiko* can be protected under copyright law in your country?

(2) Is it possible that the shape of the AI speaker robot *Hachiko* can be protected under laws other than copyright law in your country, including criminal law, civil law or other laws which prevent unfair competition?

Q3: Questions pertaining to mass production and functions

(If your answer to Q2(1) is "Yes": If it is possible for the shape of the AI speaker robot *Hachiko* to be protected under copyright law in your country)

(1) Is the shape of the AI speaker robot *Hachiko* protected as work of applied art or is it protected as work of pure art under copyright law in your country? Or is there no particular classification for protection as work of applied art (separately from work of pure art) under copyright law in your country?

(2) When the AI speaker robot *Hachiko* is mass-produced as useful article, is the shape of such mass-produced article protected under copyright law in your country?

(3) When the AI speaker robot *Hachiko* has electrical functions with sound and movement, is the shape of such useful article having electrical functions with sound and movement protected under copyright law in your country?

End of Cases