

Telecommunications Council, Information and Communications Policy Committee
Digital Content Trading Promotion Committee 8th Meeting Minutes

1. Date and Time Tuesday, January 23, 2007 17:15 – 18:45

2. Location: Special Conference Room 1, Ministry of Internal Affairs and Communications

3. Attendees (Honorifics omitted)

(1) Committee members (Including expert committee members)

Jun Murai (Chairman), Nagaaki Ohyama (Deputy Chair), Mutsuya Asano,
Tomoyuki Ikeda, Ryohei Ishii, Tsunetoshi Ishibashi, Yu Inaba,
Gota Iwanami, Noriyuki Uei, Naotaka Kacho, Makiko Kawamura,
Junichi Kishigami, Nobuhiko Sato, Kazuo Shiina, Mitsuo Sugawara,
Yoshiyuki Seki, Nobuko Takahashi, Shinji Takada, Shuichi Tago,
Ichiya Nakamura, Akio Nosaka, Hidetoshi Haeno, Toshio Fukuda (A total of 23 persons)

(2) Observers

Naohiko Amamiya (KDDI Corporation); Wataru Ishida (I-Cast, Inc.);
Akira Ito (I-Cast, Inc.); Makoto Kawase (Agency for Cultural Affairs);
Tomoko Kohno (Sony Corporation); Shuji Nakamura (Mitsubishi Research Institute, Inc.);
Yoshiji Nakamura (Japan Association of Music Enterprises);
Tatsuo Matsuoka (Nippon Telegraph and Telephone Corporation);
Keiya Motohashi (Japan Broadcasting Corporation [NHK]);
Kensuke Yasue (Mitsubishi Research Institute, Inc.)

(3) Secretariat

Ogasawara, Director, Contents Development Office, Information Policy Division, Information
and Communications Policy Bureau

(4) MIC

Suzuki, Director-General, Information and Communications Policy Bureau; Terasaki,
Director-General for Policy Planning; Katsuno, Deputy Director-General, Minister's
Secretariat; Ando, Director, Terrestrial Broadcasting Division; Fujishima, Director, Regional
Broadcasting Division

4. Agenda

(1) Rules pertaining to IP multicasting

- Based on Document 1, Mr. Ogasawara, Director of the Contents Development Office, explained the rules pertaining to IP multicasts.
- Based on Document 2, Mr. Takada, a committee member, explained the background regarding IP retransmission in terrestrial digital broadcasting.
- Based on Document 3, Mr. Nakamura, an observer, explained the activities of the IPTV Forum.
- Based on Document 4, Mr. Nosaka, a committee member, explained the requests regarding IP multicasting.
- Based on Document 5, Mr. Shiina, a committee member, explained the concepts regarding terrestrial retransmission and independent broadcasting.
- I have heard that IP multicasting is fostered to a great extent in France, Hong Kong, and Italy. It was mentioned that there is probably no instance where CATV broadcasting and IP multicasting are treated differently in foreign countries. I would like to confirm the fact of this matter, and therefore wish to request that an investigation be conducted as to whether there is any difference in treatment. Consumers have the right to be given opportunities to make selections. If, under the current circumstances, Japanese consumers alone are suffering disadvantages, I would like to request that this problem be corrected.
- In Italy, France, and the United Kingdom, communication lines are used to transmit television programs. In these countries, communication carriers and terrestrial television broadcasting stations cooperate to create win-win businesses. In Japan, however, the start of such businesses has not even been initiated. In the background to this, there may be issues of systems and business models. Nevertheless, as seen from the users' viewpoint, Japan alone fails to make use of these businesses. It may be true that Japan has become a broadband power and a mobile phone power, but it seems that Japan is a backward country in terms of services and content.
- At the time the Service Utilization Broadcasting Law was being formulated, conducting businesses like IP multicasting were not permitted under the legal system. My understanding is that this law was established with the aim of setting up a broadcasting scheme that would permit such businesses to be carried out. At the time this law was enacted, the government, the legislative body, and the communications carriers contemplating doing business were supposed to have the intent to promote operations on the assumption that relevant broadcasting was based on the Copyright Law. I wonder how such changes occurred in management. Am I right to understand that due to the recent amendment of the Copyright Law, independent broadcasting was reflectively determined to be communication in terms of the text of the law?
- A few years ago, the Ministry of Internal Affairs and Communications and the Agency for Cultural Affairs consulted together to answer a written question submitted to the Cabinet. On that occasion, the answer was given in the form of a government comment to the effect that broadcasting under the Service Utilization Broadcasting Law will be treated as automatic public transmission under the Copyright Law.
- It can be said that the amendment of the Copyright Law pertains to studies of the right to enable transmission. The interpretation of this law has been consistently the same since it was amended

in 1997. The fact that this law was recently amended means that necessary action was taken based on the interpretation made in 1997.

- KDDI Corporation said that a new business would be run together with rights holders. What does this specifically mean? I think that the course of action should be established after conducting sufficient studies of the following, among others: what the multicast broadcasting is actually like in specific terms, what aspects there are to it, and what verification has been made. It is somewhat unreasonable to think that if a certain situation is the case with IP multicasting in simultaneous retransmission, then the same will be true of independent broadcasting.
- If rights holders' power is weakened by imposing drastic restrictions on them, there is a possibility that the content procuring power of broadcasters and IP multicasers will also be greatly weakened in a sense. Sufficient consideration should be given to this issue.
- IP multicasting and cable television broadcasting should not be considered to be the same as each other. There are differences in the service content and the business features. The cable television business has a very high public nature. Programs for such as daily life-related information, relay broadcasting of municipal assembly sessions, guidance on history and culture, and NPO activity status reports are created by the cable television broadcasters themselves. They also run public relations-oriented programs made by local autonomous bodies. Just as in the case of simultaneous retransmission, many carriers run all programs, by way of nonprofit undertakings, to viewers in electromagnetic interference areas and to people like apartment house residents who do not subscribe to multichannel service and who are double the number of multichannel service subscribers. It is necessary to be aware of these facts.
- As seen historically, cable television broadcasting started from limited areas in terms of municipalities, and it is actually operated on this basis. Therefore, even in the case of major MSOs, the content of services differs depending on the affiliated broadcasting stations. Particularly, independently produced programs differ from municipality to municipality.
- If situations in Europe are to be investigated, it is also necessary to investigate what services are run at what quality levels. Some people say that in Italy, it is basically difficult to lay cables, and because of that, there is no choice but to use existing telephone lines to provide DSL service. I hear that there are cases where movies were run in such poor quality that Hollywood requested that they be stopped. It is necessary to conduct investigations including such instances.
- We agree to simultaneous retransmission for the great cause of complete digitalization in 2011. However, this does not lead us to consent to doing the same for independent broadcasting. In conjunction with the transition to complete digitalization in 2011, IP multicasers are obligated to perform sufficient activities by way of complementary measures in areas with disadvantageous conditions, for example, thereby contributing to this national policy.
- The rights are very clearly defined for movies. Therefore, if the demand for theatrical movies rises for purposes of independent programming for IP multicasting, it is possible to supply such movies relatively easily, whether they are treated as objects of broadcasting or communication, provided that the relevant environment is developed, and that decisions are made on prices for

broadcasting, allocations to authors, and distribution rates from sources. If the production of original content is kept in mind, I presume that content can be produced and run, whether in the case of communication or broadcasting, provided that contracts are concluded with authors, performers, or record producers, as applicable.

- In the case of simultaneous cable retransmission, movie producers do not claim relevant rights. However, under a five-group agreement, it is arranged that prices be paid to authors such as scenario writers. Is it that in the future, IP multicasters will conclude something like a five-group agreement with literary groups and musical groups?
- If I remember correctly, an Agency for Cultural Affairs report on the Council mentions a scheme like a group contract or a five-group agreement. I feel that it is necessary to set up such a scheme.
- The House of Representatives passed a supplementary resolution that “Studies should be promoted promptly.” The House of Councilors added the following to the above-mentioned resolution: “Furthermore, in conducting studies, not only should sufficient consideration be given to the protection of the rights of authors, etc., but attention should also be paid to the features of broadcasting, which has a strong social influence, and to the meaning of the authorization system based on broadcasting legislation.” Therefore, there is the issue of what to think the above issue in consideration of this point.
- When viewed from the standpoint of rights holders, we entertain great expectations for the potential of IP multicasting in the sense that a new market will be formed by a potential that differs from that of the conventional mass media means. However, the foregoing statement concerns the reuse of broadcast programs. The scope of such programs is the same as for the programs brought to viewers. This fact results in partial division of the current market. Within the framework of different potentials, there is an issue of where the superiority of multicasting lies and what businesses will be involved. Apart from this, there is another issue of independent broadcasting, which is now being discussed, and which I think is premised on reuse. Discussing the former issue is somewhat different from discussing the latter issue.
- There are instances where efforts are made to carry out intelligent creation, as is done by current rights holders, and cases where authors are perplexed if such works are freely televised. The same is the case when such rights holders produce content by themselves. I think that things will go back to the original intent of copyright protection, because it is meaningless if produced content keeps leaking out, and because without this protection, there will be no incentive.
- Due to differences in backgrounds, there are complete differences in social presence between CATV broadcasting and IP multicasting. In the case of CATV, there are various patterns. For example, CATV broadcasting is closely linked to local autonomous bodies, and it is obligated to cover areas with electromagnetic interference, for which subsidies or the like are granted depending on the cases.
- I presume that various categories of broadcasting services will arise from now on. What follows is a matter of policies and legislation intents. If someone says that the conventional broadcast service patterns are all that are available, I will claim that it is wrong. In the case of CATV,

various types of services have in fact emerged. For example, there are cases where in service utilization broadcasting business using fiber-optic cables, all programs are multichannel broadcasts, with no independent productions offered. Therefore, I believe that it is difficult to apply the same argument to all aspects. When making arguments, it is necessary to make a distinction between programs produced by the broadcasters and those procured from other companies. There are various phases, for example, depending on classification of broadcasting businesses.

- If a movie is fixed when produced, the producer becomes the copyright holder of the movie. Namely, the producer does not become a neighboring rights holder but can become the holder of the copyright. I presume that there are ways to achieve satisfaction other than the grounds that things are equivalent to cable broadcasting.
- Some CATV broadcasters can survive just by providing multichannel programs. This happens when major communications carriers are involved. Such cases are different from cases with so-called cable television or CATV, which is discussed here.
- NTT, which is not in a position to carry out communication service utilization, provides new networks. In this regard, as mentioned earlier, no new business has arisen in specific terms, but NTT is desirous of developing an environment where new business will be realized. NTT thus wishes to go ahead in such a way as to make NGN trials last for one year.
- What matters are the issues of independent broadcasting and IP retransmission. We, who are in a position to provide infrastructure and facilities, have the understanding that the issue of IP retransmission originally arose from the issue of areas with disadvantageous conditions. As regards such areas, our intention has invariably been to make the utmost efforts toward providing the relevant environments as soon as the needs are identified. With regard to independent broadcasting, we wish to give as much cooperation as possible in providing the new business opportunities and realizing the diverse utilization of content.
- In the users' eyes, IP multicasting and CATV broadcasting may look almost the same, but there are big differences in content. IP multicasting has the features of wide area mass media, while CATV broadcasting has the features of local mass media. Moreover, there is the issue of the potential number of channels. There is a remarkably big difference in the influence on rights holders between CATV broadcasting and IP multicasting.
- Some of the independent programs of IP multicasting are provided by means of CS broadcasting. In this connection, CPRA and the Recording Industry Association of Japan are beginning to perform centralized control on records as well. Centralized control is not realized until contracts are concluded smoothly by means of centralized control systems and licensing systems. A balance can then be struck between the protection of rights and the smoothing of utilization. This time, KDDI Corporation made a proposal requesting that easy use be realized in preparation for the spread of IP multicasting, and that rights be downgraded for this purpose. I have my doubts about this proposal. In the proposal, it was proposed that CATV broadcasting and IP multicasting be treated equally under the Copyright Law. My understanding is that this proposal is requesting that

current licensing rights of record producers and performers be downgraded to remuneration claim rights. On this basis, I would like to ask if it is requested that neighboring rights be newly given to IP multicastrers.

- As a matter of fact, there are differences in status between record producers and performers in the case of CATV broadcasting, and therefore it is very difficult to conduct negotiations. In this connection, there are various methods including concentrated control. Consequently, we would like to spend some more time in negotiations.
- An argument is made on the assumption that if license rights are restricted, things will end in failure. This is very unreasonable. If there are business deals that are attractive to people reserving license rights, then such people will take part in these deals. Making this argument is equivalent to requesting that license rights be taken away to begin with. There is nothing as unfair as this.
- Discussions were started on the assumption that, in terms of law coverage, IP multicasting and CATV broadcasting are entirely different. However, this is unreasonable, and this unreasonableness constitutes the greatest basis of the argument. The significant point is the fact that, as a result of the above, various differences occurred in the provisions of the law.
- It is mentioned that there is no difference between IP multicastrers and cable broadcasters. However, there are innumerable differences. Technical explanations alone appear to be present. The position of people who produce broadcast programs and the position of those who present technical matters look quite different in our eyes.
- Under the current circumstances, where there is no community channel, I feel that there are differences. I would like to be allowed to speak about whether any possibility of community channels should be destroyed because no such channel exists or any such possibility should be fostered.
- We are in a position to attempt new content businesses such as the Internet business and the mobile business. We would like very much to welcome the right to claim remuneration, as distinct from the prior license right. If no license is granted in a stage where no clear understanding of the market is formed, it is impossible to make new attempts. Moreover, if prior licensing is required, it is hardly realistic to formulate business plans on an in-house basis. There is a question of what entities actually make new trials. In many cases, overseas players do so. It will turn out that Japanese carriers will wait for overseas players to create new markets and businesses. I presume that it is better to make arrangements whereby the making of new trials will be encouraged, and any problems that may arise will be pointed out and dealt with.
- It is not possible for very small enterprises to engage in IP multicasting. Nevertheless, quite a few content carriers desiring to substantially perform, or are actually carrying out, broadcast type screen image service or such and such television service. In this regard, there is a question of whether such content service providers intend for their own services to be regarded as broadcasts. Such providers do not feel that their own service has a public nature. Therefore, my belief is that they probably do not intend that.

I believe that it is permissible to treat IT multicasting in the same way as CATV broadcasting in terms of technology. Nevertheless, I think that broadcasting involves prestigious aspects on one hand, and that it is obligated to fulfill public missions on the other hand. I therefore presume that it is necessary to hold discussions, not only in technological terms, but also from the viewpoint of the above, as to whether IT multicasting should be treated as broadcasting.

- With regard to IP multicasting, I wanted to ask if it was decided that independent broadcasting be treated as communication under the Copyright Law. I presume that discussions will also be held in the Agency for Cultural Affairs as to what should be done about the issue of the relevant system under the Copyright Law. It is advisable to straighten out the extent to which the handling of the Copyright Law should be discussed in this working group. It will be fine if discussions that are more intensive are to be held as to what should be done to run specific services or businesses and what should be done about centralized control to run them better.
- In this committee, the following items are regarded as falling into the category of discussions: independent broadcasting in IP multicasting; the possibility of such broadcasting; and the methods of producing and procuring content. I would like to request the Secretariat to consolidate the actual conditions of items taken up for discussion, including business descriptions, tasks, opinions, and situations in foreign countries.

(2) Schedule of future studies

- Based on Document 7, Mr. Ogasawara, Director of the Content Development Office, explained the schedule of future studies.

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