

## Study Group on Comprehensive Legal System for Communications and Broadcasting Summary of Minutes (7th Meeting)

### 1. Date

Monday, February 26, 2007, 5 p.m. to 7:10 p.m.

### 2. Location

Special Conference Room 4, 5th floor, Ministry of Internal Affairs and Communications

### 3. Attendees

Mr. Horibe, Chair; Mr. Murai, Vice-Chair; Mr. Tagaya, member; Mr. Nakamura, member; Mr. Hasebe, member; Mr. Funada, member; Mr. Murakami, member

Mr. Aritomi, Vice-Minister for Policy Coordination; Mr. Suzuki, Director-General of the Information and Communications Policy Bureau; Mr. Mori, Director-General of the Telecommunications Bureau; Mr. Terasaki, Director-General for Policy Planning; Mr. Nakata, Deputy Director-General of Minister's Secretariat; Mr. Sakamoto, Director of the General Policy Division; Mr. Sato, Director of the Information and Communications Policy Bureau; Mr. Naito, Director of the Communications and Broadcasting Legal System Planning Office

### 4. Outline of proceedings

#### (1) Issues related to content (2nd discussion)

Dr. Hidemi Suzuki, Professor, Graduate School of Osaka University, and Mr. Nakamura, a member, gave explanations, respectively, which were followed by a question and answer session.

#### A. Presentation by Dr. Hidemi Suzuki, Professor, Graduate School of Osaka University

##### (a) Explanation

An explanation was given based on "Freedom of Expression under Communications and Broadcasting Laws" (Document 2).

##### (b) Questions and answers

- A question was asked about penalties for content that was prohibited in broadcasting and telemedia under other than criminal laws. The following response was given: "Yes (to the question of whether monetary penalties are imposed). The broadcasting regulatory organization in Germany mainly oversees protection of minors and regulations for advertisement."
- Why there is no argument on on-demand services was questioned. The following response was given: "It is based on the thought that there is no difference between the Internet and broadcasting in that pictures are displayed on the screen. Their concept of broadcasting is

functional and based on the idea that, since broadcasting has a strong function to form public opinion, there should be a mechanism to not allow a few to monopolize it and regulations should be in accordance with the function.”

#### B. Presentation by Mr. Nakamura, a member

##### (a) Explanation

An explanation was given based on “Tentative Draft of the Legal System 10 Years from Now” (Document 3).

##### (b) Questions and answers

- Why the Main Broadcasting Law and NHK law are out of the framework and whether or not the Digital Law Concerning Children pertains to content was questioned concerning the description on page 9. The following response was given: “Since the NHK Law will fall under Rules for Special Corporations, it was separated. The Main Broadcasting Law was tentatively set aside as its image is still unclear. The Digital Law Concerning Children is assumed to be a kind of a support law.”

#### (2) Free Discussion

The Secretariat explained “Document for the 7th Meeting of the Study Group – Discussion Concerning Content (2) – ” (Document 4) and “Discussion Points Concerning Content (Document Submitted in the 6th Meeting)” (Document 5). As a complement, Mr. Murai, Vice-Chair, explained concerning measures to deal with harmful information on the Internet, particularly the present status of filtering. A free discussion was then held (also joined by Professor Suzuki). As a result of the free discussion, a general consensus was reached that it is necessary to specify “freedom of expression in communications (freedom of communication)” conceptually. Main opinions in the free discussion were as follows.

#### A. Institution to deal with illegal and/or harmful content on the Internet (General)

- For communications that are open to the public, freedom of expression through anonymity will be one of the pillars. For services comparable to broadcasting, regulatory forms similar to those imposed on present broadcasters will be possible.
- Because illegal information is beyond the scope of the guarantee of freedom of expression, regulating such information will not cause any significant problem from the perspective of freedom of expression under the Constitution. It will also be possible to consider regulations for harmful information because of the precedent-setting Supreme Court decision that stringent unconstitutional conditions do not apply to regulating harmful books.
- “Secrecy of communications” is aimed at to guarantee freedom of expression between both of the parties concerned, and ensuring freedom of expression by individuals is a starting point for the distribution of information on the network as a whole. Consequently, priority will have to

be placed on freedom of expression in communications that are open to the public, and the government will have to be particularly cautious in regulating information that falls in the gray area of illegality.

- In the future, unexpected new technology may emerge to increase the risk of illegal content distribution over the network. It will therefore be difficult to take measures while stringently maintaining freedom of communications.
- While information such as “how to commit suicide” and “how to make bombs” is delicate in terms of its illegality, it will be necessary to restrict minors’ access to such information.
- It is sufficiently possible, even today, to prevent access to harmful content thanks to advanced filtering technology. It will therefore be important to promote the use of such technology and deal with illegal content on a social basis.
- It will be possible to establish various technologies and frameworks for protection from harmful content.
- There are some cases where regulations under the Japanese laws alone cannot solve problems because illegal and/or harmful content is in servers abroad.
- There is another issue as to whether regulations for illegal and/or harmful content should apply to site creators or be expanded to apply to those such as portal site operators.
- Since there are cases where issues are resolved on an international basis in such areas as copyrights and the environment, it will be possible to form an international consensus on “illegality”. For example, in the case of domain names for the Internet, coordination has been made by WIPO as a core and consensus has been established. It will be necessary for Japan to study how to form an international consensus on this issue proactively.

#### B. Relationship between measures to deal with harmful content (including filtering) and censorship

- “Censorship” as specified in Article 21 of the Constitution is rigorously defined in accordance with a precedent court case. Censorship, which is absolutely prohibited, is not an issue in relation to measures to deal with harmful information, but possibly an issue of whether it constitutes prior restraint. The same applies to filtering.
- In terms of freedom to not receive harmful anonymous content, the “right to not be forcibly exposed to unwanted information” of those people in a status of “captive audience” must be protected; however, it will be necessary to consider the extent to which the government should be involved in taking care of it.
- Imposing filtering obligations on all users will possibly pose problems under the Constitution in relation to adults who want to see harmful content.

#### C. Relationship with the press

- There are no restrictions imposed on newspaper content in Japan. It was explained that integrated restrictions on journalistic content are considered in Germany. How should we

regard this in relation to the situation in Japan?

- In the USA it is argued (by Bollinger) that it would be good if media as a whole could spread various types of information to the world through a mutual check and balance function by regulating broadcasting and not regulating newspapers. From this standpoint, it is not necessary to regard it as a precondition that frequencies are scarce and broadcasting has a peculiar impact.
- In Germany, a “Press Law” that is already established for print media specifies the confidentiality of news sources and the right to reply. (However, there are additional specific regulations for broadcasting. Consequently, they have a framework where more freedom is allowed to the press.) In Japan, on the other hand, such a law was abolished after the war and there is no law specifically regulating print media (i.e., regulations under general laws only), and a specific law applies to broadcasting only. As for the Internet, the issue will be whether it should be regulated under general laws alone or whether specific regulations should apply to journalism on the Internet similarly to broadcasting.
- When we think of the distinction between newspapers and broadcasting at a global level, there is no Anglo-Saxon legislation on the press. European laws, however, regulate not only broadcasting, but also the press (consequently making the distinction more relative between laws on newspapers and laws on media in the case of electronic newspapers), and regulations are stringent in China and developing countries. The coordination of these different situations is a difficult issue, and even though there is an opinion to develop a common press law in the EU (while there is already a common framework for broadcasting), it has not been realized due to the objection of various countries.
- Press media emerged at the end of the 15th century, telecommunications in the late 19th century, and broadcasting with the advent of the 20th century, and laws were established, respectively. With the convergence of these categories, opinions are split as to whether information on the Internet should be regulated by the rules for press media alone because certain regulations are required for broadcasting, or whether it requires certain rules similarly to broadcasting.