

Study Group on a Comprehensive Legal Framework for Communications and
Broadcasting
Summary of Minutes (15th Meeting)

1. Date and Time

Tuesday, September 4, 2007, 6 p.m. to 8:15 p.m.

2. Location

Special Conference Room 1, 8th floor, Ministry of Internal Affairs and Communications

3. Attendees (honorifics omitted)

Horibe (Chair), Tagaya (member), Nakamura (member), Hasebe (member), Murakami (member)

Suzuki (Vice-Minister for Policy Coordination), Ogasawara (Director-General of the Information and Communications Policy Bureau), Terasaki (Director-General of the Telecommunications Bureau), Nakata (Director-General for Policy Planning), Suzuki (Director of the General Policy Division), Naito (Director of the Communications and Broadcasting Legal Framework Planning Office)

4. Summary of the Minutes

(1) Public Hearings of Opinions of Relevant Major Business Operators Associations, and other Parties (3rd hearing)

Opinions on the “Interim Summary” were separately given by the National Association of Commercial Broadcasters in Japan (hereinafter “NAB”), Japan Broadcasting Corporation (hereinafter “NHK”), Japan Cable and Telecommunications Association (hereinafter “JCTA”) and the Japan Satellite Broadcasting Association (hereinafter “JSBA”) which were each followed by opinion exchange.

(A) NAB

(a) Explanation

Explanations based on “Opinions on the Interim Summary of the Study Group on a Comprehensive Legal Framework for Communications and Broadcasting” (Document 2-1) and “Written Opinions” (Document 2-2) were given.

(b) Opinion exchange

- Questions were asked about what NAB thinks of the opinions received, mainly from

telecommunications carriers, in support of the conversion of the legal framework into a layer-type one, and what kinds of problems may possibly arise if the whole legal framework is converted into a layer-type one while, for terrestrial broadcasting, the legal framework may be already regarded as being a two-tier layer structure consisting of the Radio Law, or rules for infrastructure, and the Broadcast Law, or rules for content. NAB responded as follows: Naturally opinions can be split between broadcasters, who provide information and are responsible for the information, and telecommunications carriers, whose basic function is to distribute information belonging to third parties. Unlike the current two-tier layer structure whereby content is regulated following the imposition of regulations relating to ownership, there is a concern that, in the legal framework where content comprises a separate layer, content may be directly examined.

- With regard to the comprehensive legal framework for communications and broadcasting shown in the Interim Summary, NAB expressed the opinion that it may not be consistent with other laws, such as the Copyright Law. It further opined that a layer-type legal framework will inevitably regulate content, and there is a concern that in the future newspapers will be subject to the proposed regulations, as newspapers are increasingly distributed via the Internet.
- NAB asked what kinds of legal frameworks other than a layer-type one were studied in by the study group since “layer-type” is not referred to in the “Agreement between the government and the ruling parties on regulatory frameworks for communications and broadcasting.”
- With regard to key broadcasting, NAB was asked for its opinion about the suggestion that BS broadcasting should be deregulated as much as possible compared with the current situation and allowed to develop unrestricted business operations together with CS broadcasting. NAB expressed the opinion that deregulation could possibly be achieved even without introducing a layer-type legal framework and there is a strong concern about the categorization of regulations for content based on the social impact.
- To the question of what NHK ought to be in the future, NAB responded that maintaining the current dual system with NHK and commercial broadcast stations would have a greater public benefit.
- With regard to the comment that “elimination of harmful content should be left to voluntary efforts of business operators concerned,” NAB was asked for its opinion about the claim made by business operators that there are limitations to what they can do on a voluntary basis. NAB responded that the point is that a law already exists but it is not functioning effectively and that this is not an issue that can be somehow resolved by merely establishing a new law.
- With regard to cyberspace issues, such as harmful information, NAB expressed the opinion that discussions are required not about a legal framework like an information law but from the perspective of societal changes due to the expansion of cyberspace.

- A question was asked about the requirements that should be maintained in principle by key broadcasters now and in the future. NAB responded that the concept of key broadcasting is almost fully expressed in the description in the Interim Summary that “key broadcasting has a strong influence on public opinion, which is the most important function of mass media in a sound democratic state. It comprehensively provides the public with crucial information and is one of the most important means of transmitting information during emergencies, such as natural disasters.”
- To a question asking if all of the broadcasting done by the NAB member broadcasters is classified as key broadcasting, NAB responded that all of the broadcasting is presently classified as key broadcasting.
- In response to a comment that new services equivalent to key broadcasting provided without using radio waves may possibly emerge in the future, NAB said that it recommends that media assigned by the government to deal with emergencies and provide universal services be maintained.
- NAB expressed the opinion that key broadcasting be positioned as an essential aspect of local culture in each prefecture.
- NAB expressed the following opinion: Since social impact is used as criteria for classifying media services in the “Interim Report,” the report gives the impression that the administrators may have direct involvement in judging the content.
- With regard to the comment by NAB that “deregulation that contributes to strengthening the commercial foundation is welcome,” NAB was asked what this “deregulation” refers to. NAB responded that it strongly supports the relaxation of the legislation that prevents multiple ownership of mass media in the proposed amendment to the Broadcast Law and that NAB also welcomes the suggestion that broadcasters not be restricted in the variety of services they can provide within the allocated frequency band.
- A member expressed the opinion that, when providers of key broadcasting relaunch converged services following to the deregulation of use of radio waves, a framework in the legal structure for converged services must be established to allow fair competition between the existing broadcasters and new entrants.
- With regard to regulations for content forming a layer, NAB expressed its concern that content belonging not only to “special media services” but also content distributed via the Internet including “communications open to the general public” may be subject to direct examination.

(B) NHK

(a) Explanation

Explanations based on “Briefing Material for the Hearing by the Study Group on a

Comprehensive Legal Framework for Communications and Broadcasting” (Document 3-1) and “Written Opinions” (Document 3-2) were given.

(b) Opinion exchange

- NHK expressed the following opinion: While it is meaningful to make the information and communications legal structure technologically neutral, whether or not the legal framework be converted into a layer-type one should be decided by reference to the definition of each layer and the mechanism of rules.
- With regard to NHK’s opinion that “in the context of the guarantee of freedom of expression a set out under the Constitution, rules concerning information are generally not justified simply on the basis of usefulness to impact on society and that if such rules are allowed, it will be a highly exceptional case,” NHK was asked to give an example of a highly exceptional case. NHK responded that the comment is intended to express its view that it is necessity that sufficient and diverse studies be conducted, even in cases where an exception is allowed and that NHK has no specific example for such a case.
- With regard to the comment by NHK that it is important for it be positioned as a public broadcaster within the new legal framework, NHK was asked if, assuming the legal framework is converted as per this study, all of the current NHK BS broadcasts and international broadcasts as well as the planned future distribution of programs over the Internet should be positioned as “special media services” or if part of them should be classified as “general media services” or “communications open to the general public” and regulations be relaxed or lifted. NHK responded that it is difficult to judge because the classification described in the “Interim Summary” is not necessarily clear.
- NHK expressed the opinion that, in a changing information environment, it would be appropriate to study the positioning of NHK as part of the discussion on how to establish a legal structure for the distribution of information via electromagnetic means.

(C) JCTA

(a) Explanation

Explanations based on “Overview of Cable Television Business (Study Group on a Comprehensive Legal Framework for Communications and Broadcasting)” (Document 4-1) and “Written Opinions” (Document 4-2) were given.

(b) Opinion exchange

- With regard to JCTA’s comment that the CATV business can be generally divided into three parts, “content,” “platform,” and “transmission infrastructure,” and that comprehensive and organic operations are carried out, JCTA was asked whether it agrees on the conversion of the legal framework into a layer-type one. JCTA responded that such conversion will not create

any critical problems, although JCTA cannot comment that it is either fully in agreement or totally opposed.

- With regard to the comment that CATV provides the equivalent of “special media services,” JCTA was asked whether CATV should be regarded as “special media services” and JCTA thinks of the suggestion that it is more advantageous, in terms of business development, for CATV to be positioned as “general media services” or “communications open to the general public.” JCTA responded that JCTA does not expect one company to solely provide “special media services” and JCTA wants a legal framework does not create problems for service providers in terms of whether one set of comprehensive media rules or three sets of rules are applied to one business operator now providing three different types of content services.
- With regard to the comment that practices such as using illegal tuners and illegally using STBs should be regulated, it was asked whether present regulations, such as the Unfair Competition Prevention Act, have any deficiencies. JCTA responded that JCTA wants a law like the one to deal with signal theft in the United States to be established in Japan because current regulations can only deal with individual cases like the removal of illegal tuners from auction.
- To the question of how the relationship between the regional nature of terrestrial radio waves and regional public broadcasting is justified in terms of consistency between them, JCTA responded as follows: Regional public broadcasting transmits regional information, administrative information and disaster prevention information rather than merely retransmitting terrestrial radio waves. Since programs provide specific detailed information compared with those broadcast by commercial broadcasters operating at prefectural level, the information does not overlap and it benefits regional communities.
- JCTA said that a seismic warning system that works by detecting P waves will be deployed through new audio services, rather than through local community channels.
- JCTA expressed the following opinion: CATV network has an advantage because it is a closed network that can also interconnect with other networks. These characteristics will increase benefits to viewers.

(D) JSBA

(a) Explanation

Explanations based on “Current Status of Multi-Channel Broadcasting” (Document 5-1) and “Written Opinions” (Document 5-2) were given.

(b) Opinion exchange

- JSBA said that it agrees in general with converting the legal framework into a layered one.
- With regard to the establishment of rules for the platform function to ensure its openness, JSBA was asked how it assesses, for example, the institutionalization of pay broadcast

management services specified in the proposed amendment of the Broadcast Law now submitted to the Diet. JSBA responded that pay broadcast management services must be considered from the perspective of protecting privacy and in the context of contracts with individuals, and that such services are now functioning between program supplying broadcasters and SKY Perfect in the form of voluntary platform guidelines.

- A question was asked about whether satellite broadcasters are placed in a disadvantageous position in transactions with CATV broadcasters and IPTV broadcasters because many of satellite broadcasters are comparatively small. JSBA responded that the size does not matter but that the situation now is a buyers' market due to the disparity between the number of broadcasters who want to distribute programs and the number of broadcasters who can be accommodated.
- To a question about whether any problems are anticipated if business is carried out not based on the market principle but via platform guidelines, JSBA responded that, since guidelines were recently revised in 2007, whether the guidelines work well in the future is an important matter for broadcasters.
- It was asked if it is natural that the copyright issues are settled on the platform in the case of program-supplying broadcasting and broadcasting via telecommunications services. JSBA responded that JSBA has made contracts now with groups of copyright holders based on specific standards and that research should be conducted as to whether such contracts ought to be integrated into the platform.