

Study Group on a Comprehensive Legal Framework for Communications and  
Broadcasting  
Summary of Minutes (17th Meeting)

1. Date and Time

Friday, October 19, 2007, 10 a.m. to noon

2. Location

Conference Rooms 1 and 2, B2 floor, Ministry of Internal Affairs and Communications

3. Attendees (honorifics omitted)

Horibe (Chair), Murai (Vice-Chair), Tagaya (member), Nakamura (member), Hamada (member), Funada (member)

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 System Planning Office)

4. Summary of the Minutes

(1) Free Discussion

The Secretariat gave presentations on “Main Opinions in Public Comments and Public Hearings” (Document 2) and “Document for the 17th Study Group Meeting (Prepared by the Secretariat)” (Document 3) and then a free discussion was held. The following are the main opinions expressed by members in the free discussion.

(A) “1. Understanding the Present Status” and “2. Aim of the Fundamental Restructuring of the Legal Framework for Communications and Broadcasting”

- IP is basically a mechanism for the exchange of digital information without users being aware of the difference in transmission routes, for example, whether they are wired or wireless. Therefore, assuming ALL IP as a precondition will mean that the transmission layer is horizontally separated so that it can be shared and that the establishment of a mechanism to create competition within the layer will be pursued.
- There are two reasons for shifting to a layer-type legal framework: (1) Regulations will be relaxed so that the development and use of new services that cross the boundaries between communications and broadcasting are facilitated, particularly in the service and facility aspects.

(2) Layers will be classified based on the different focuses of the administration, such as information content, sending and receiving information and the facilities for such purposes as well as the different purposes of the administration, meaning their respective rules and principles, such as freedom of expression, ensuring impartiality and fairness of services and ensuring the security of facilities. There is an opportunity now to make the shift.

- In light of the situation whereby content is distributed and transmission media are used in a way that is beyond the scope of the existing institution, it is an appropriate time to totally transform the institute. Temporary measures will be required during the transition process.
- The layer-type legal framework is based on the need to balance the institute's capacity to deal with older communications and broadcasting services with its capacity to deal with newly emerging technologies in circumstances where the use of these new technologies is increasing. Therefore, the essential aim is to establish a workable institution rather than drastically change the existing one.
- This study group has compared a layer-type legal framework with the existing legal framework where different laws apply to broadcasting and communications, respectively. For example, the Radio Law and the Broadcast Law together form very complicated layers, and in the conventional legal framework, no relationship between the measures to regulate the new situation regarding communications open to the general public with existing measures for broadcasting has been assumed. Therefore, something new must be considered.
- A layer-type legal framework will relax regulations from the perspective of distribution of information and impose regulations on content to a certain extent; however, the imposition of excessive regulations is not intended.
- In one aspect, the Radio Law and the Broadcast Law are mutually entwined; however, the Broadcast Law relates to content, while the Radio Law is more concerned with transmission routes. Therefore, it may be possible to assume that each of these laws forms a kind of layer.

(B) "3. Vision for Future Legal Framework for Content"

- The expression "a special social impact," has traditionally been used to describe the grounds for regulating broadcasting. While it includes the element of limited availability of frequency spectrum, "a special social impact" has been defined particularly as the potential negative influence audio and visual material can have. This concept has been taken up not only by Japan but other countries as well.
- While regulations can be imposed on sections of the various media, the purpose of such regulations must be to ensure the communication of higher-quality and more well-balanced information. If "a special social impact" is narrowed down by divorcing it from this purpose, it will be possible to design an institute that can withstand contrary opinions about rules

regarding content.

- To deal with content distributed beyond the national border, the approach Japan takes must include a mechanism that takes cultural differences into account to make coordination with other countries possible.
- “Communications open to the general public” are conceived as communications released to an indefinite number of people, not necessarily simultaneously. SNSs and the like, which do not require subscribers to be subject to investigation, come under this definition.
- It is essential that a legal framework for content balances two public interests, that is, freedom of expression on one hand and inspection of illegal and/or harmful content and the like and user protection on the other.
- Opposing aims—freedom versus regulation—are not workable in regard to content. The use of the term “rules” illustrates this. Taking this into account, in the case of, for example, communications open to the general public, the question that should be asked is, rather than whether or not to regulate them, to what extent should voluntary regulations be depended on and how to fine-tune communications open to the general public.
- The definition of “communications open to the general public” should be based on the definition of “communications not open to the general public.” If access to the network is controlled and communications are only exchanged between members, these will be “communications not open to the general public.” However, if membership is open to anyone, the communications in question will be more likely to fall under the definition of being “open to the general public.”
- Certain kinds of information can bring about substantial benefits to humanity in general if the information can be shared among certain people. Information about cutting-edge medical science is one such example. This point must be considered to ensure that the distribution of this kind of information is not hampered if the information is open to the general public.
- The final report must clearly state that the aim is for deregulation of content as a whole.
- Apart from whether to be included in the final report or not, this issue will be considered at the same time as the issue of whether a committee system should be adopted for the administrative organization.

(C) “4. Vision for Future Legal Framework for Platforms,” “5. Vision for Future Legal Framework for Transmission Infrastructure,” “6. Vision for Future Inter-layer Rules,” and “7. Others”

- At present, it is impossible to regulate platforms as a layer. Therefore, an accurate explanation will be required on the rules envisioned for platforms. At the moment only the need or not of such rules has been studied. In addition, substantial deregulation of services and facilities is the most important point and therefore it must be stressed.

- Since the Antimonopoly Act imposes very stringent regulations compared with preemptive regulations, it would be better to think about how to establish a better environment before the Antimonopoly Act is applied. For example, a starting point for this kind of thinking could be the prohibition of unfair discriminatory practices.
- The concept of the platform is yet to be completed and it is too early to fix everything at the present stage.
- Rules for content could vary depending on which transmission route is used for certain content.
- Also for services using terrestrial waves, it would be better to introduce a competition mechanism and eliminate restrictions that prevent third parties entering the market.
- More measures to protect users should be incorporated into the new legal framework in addition to rules for mutual cooperation between business operators.

#### (D) General

- A consensus on what is regarded as illegal information may have already been formed to a considerable extent among those who deal with issues related to illegal information.
- It should be ensured that the process for deciding whether or not certain information is harmful, including who makes the decision, is not arbitrary.
- The definition of illegal information will depend on who accesses or uses information (such as minors). The degree of strictness of regulations will also have to be carefully studied in relation to the availability of means (such as filtering software) of dealing with harmful information.
- While certain rules are specified in the ordinance to deal with books and magazines harmful to minors, the way in which similar content on the Internet is dealt with will also be a very important issue to be addressed by all levels of government.
- Some information can be both harmful and useful. Access to this kind of information must remain possible. In contrast, it will be special media services and the like that ensure opportunities for users to obtain secure information.
- With regard to the argument on openness to the general public and the argument on secure information, since some information open to the general public is secure and some not, rules, if applied to such information, will be more like regulations imposing an obligation to disclose and indicate the nature of the content, rather than regulations for the distribution of information. These points must be further clarified.
- It would be better to talk about what kinds of benefits the restructuring of the legal framework will have on the national economy. In particular, a discussion about the benefits of rules for transmission services and facilities would help get the support of external parties.
- Changing the concept on which the legal framework is based comes from the idea that, as platforms, communications and broadcasting can benefit people in all fields, not just those

involved in the telecommunications and television industries. Increasing the number of beneficiaries will lead to stronger international competitiveness, and the contribution thereof to the Japanese economy and future generations of Japanese people will be substantial.