

**Study group on examining issues around ICT services from the user perspective
Recommendations pertaining to the Act to Limit Liability of Service Providers (Overview)**

■ **Background to investigation**

On the occasion of ten years since enactment of Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Senders (Law No. 137, 2001; hereafter the Act to Limit Liability of Service Providers), the study group is examining the need for amendments to the Act in light of changes in the internet environment during the subsequent period.

■ **Results of investigation (overview)**

The investigation covers ① the scope of information defined under the Act to Limit Liability of Service Providers; ② measures to prevent transmission of information that constitutes infringement of rights; ③ the right to demand disclosure of sender identification information; and ④ other matters.

- After investigating the current implementation of the Act to Limit Liability of Service Providers, the study group found **no persuasive evidence of the need for amendments to the Act at this time.**
- In the case of mobile phone transmissions, an IP address is not always sufficient to identify the sender. For this reason, consideration should be given to expanding the rules pertaining to disclosure of sender identification information by **amending the Ministry of Internal Affairs and Communications ordinance to permit the addition of mobile phone identifying telephone numbers to the scope of information disclosed.**
- It is recommended that the Guidelines Investigation Council consider **amendments to the Guidelines to add reference to efficient communication and understanding between the relevant parties** as a means of promoting faster disclosure of sender identification information and also to **add reference to recent judicial precedents** as a means of assisting service providers in making appropriate decisions.

Item	Summary of recommendations
① Scope of information defined under the Act to Limit Liability of Service Providers	<ul style="list-style-type: none"> ■ There is no need to stipulate that extending the scope of the Act to Limit Liability of Service Providers to include harmful information and information that deprives others of the social benefit and protection of the law shall not give rise to civil liability (liability for compensation). ■ Where the circulation of information does not lead to a direct infringement of rights, there is no need for legislation to limit the civil liability (liability for compensation) of service providers irrespective of whether or not measures have been taken to prevent transmission. ■ E-mail should not be included in the scope of the Act to Limit Liability of Service Providers due to the confidential nature of e-mail transmissions.
② Measures to prevent transmission of information that constitutes infringement of rights	<ul style="list-style-type: none"> ■ With regards to the clarification and stipulation of the scope of legal duty of service providers in regards to preventing transmissions, it is considered extremely difficult to clarify in legislation those cases where the legal duty of service providers arises, in light of: technical difficulties with the legislation; the absence of necessity and unworkability of such legislation; and issues around freedom of expression. Nevertheless, it is recommended that the Guidelines Investigation Council consider amendments to the Guidelines to incorporate recent judicial precedents that can assist service providers in making prompt and appropriate decisions. ■ With regards to immunity, the Act already makes appropriate reference to the criminal liability of service providers. As such, there is no need to provide legislation stipulating that criminal liability shall not arise. ■ With regards to mandatory monitoring of specific information in circulation, it is considered both improper and practically unfeasible to legislate for mandatory monitoring of circulating information mandatory. Thus, it is not possible to force service providers to monitor circulating information on a mandatory basis. ■ With respect to making implementation of reasonable measures a condition of immunity, it is neither appropriate or necessary to impose this stipulation as a condition of limited immunity for service providers, in light of: compatibility with the Act to Limit Liability of Service Providers; judicial precedents; and the actual benefit of inserting such a stipulation. ■ With regards to measures to prevent transmission, it is considered difficult to insert a stipulation deferring to the judgement of a third-party agency either because the envisaged third-party agency already exists or because of legal issues.

Item	Summary of recommendations
<p>③ The right to demand disclosure of sender identification information</p>	<ul style="list-style-type: none"> ■ Demonstrable proof of rights infringements is considered a necessary condition in light of the need to protect the privacy of the sender. Therefore it is not appropriate to render this condition unnecessary. At the same time, it is recommended that the Guidelines Investigation Council consider amendments to the Guidelines to incorporate recent judicial precedents that can assist service providers in making prompt and appropriate decisions. ■ With regards to the scope of disclosure of sender information, consideration should be given to widening the scope of disclosure of sender information to include individual identifying numbers. ■ With regards to the issue of expanding the scope of eligibility to demand disclosure of sender information to parties other than those who have suffered infringement of rights, parties that have not suffered infringement of rights should not be considered eligible to demand disclosure of sender information as this could conflict with the wishes of the infringed party. ■ With regards to the issue of amending the wording “whether intentionally or due to gross negligence” to “whether intentionally or due to negligence” in the phrase “obligations in the event of refusal to disclose sender information (whether intentionally or due to gross negligence),” it does not appear that the benefit derived from protecting the rights of the affected party has increased substantially relative to the sender’s right to privacy in the period since the Act was originally enacted. Therefore there is no need to alter the current stipulations. ■ With regards to the issue of introducing stipulations to encourage service providers to make prompt decisions, in the absence of any genuinely persuasive reasons for such stipulations, the introduction of new stipulations is not considered necessary. ■ With regards to the disclosure of sender information by service providers, there is no need to impose a standard time limit. However, in order to promote faster disclosure, it is recommended that a reference to efficient communication and understanding between the relevant parties be incorporated into the Guidelines on Disclosure of Sender Information and that said Guidelines be implemented in an appropriate manner. ■ With regards to the appropriateness of provisional disposition in accordance with the Civil Provisional Remedies Act, it is necessary to consider and make determinations on the necessity of retaining IP addresses (and equivalent) in the normal manner. In particular, it is necessary to exercise caution in the consideration of and determination on the necessity of retaining the name and address of the sender as well as information such as IP addresses that can be used to identify the sender. ■ With regards to mandatory retention of communication logs, this is considered difficult at this point in time, both in terms of legislation and in terms of enforcement, in light of issues such as protecting the confidentiality of communication. ■ With regards to making determinations about disclosure, there are problems with the notion of inserting a stipulation about deferring to the judgement of a third-party agency, such as: differences of opinion about the type of third-party agency envisaged; the fact that such bodies may already exist; and difficulties with actual implementation. ■ With regards to the issue of inserting a reference to the means of sourcing information for the purpose of initiating legal action, this is a general issue pertaining to civil proceedings. As such, it is necessary to consider a wide range of opinions from differing perspectives.
<p>④ Other matters</p>	<ul style="list-style-type: none"> ■ Notice and Takedown* <ul style="list-style-type: none"> · With regards to the Notice and Takedown provisions of the United States Copyright Act, a number of major legal issues would need to be addressed in order to introduce equivalent Notice and Takedown procedures into the legal system in Japan. Furthermore, there is little need for such procedures in Japan. Therefore, consideration of this issue should proceed with due caution. ■ The Three Strikes system** <ul style="list-style-type: none"> · It is not considered suitable to introduce into the legal system in Japan provisions to impose internet access restrictions (such as cutting off access) on those who repeatedly infringe on the rights of others. Similarly, voluntary private-sector initiatives on the basis of contract agreements are not considered appropriate either. · With regards to closing the accounts of those who repeatedly infringe on the rights of others, it is considered appropriate to monitor voluntary private-sector initiatives in this area, taking into account issues such as freedom of expression and protection of confidentiality of communication.

* Where a copyright holder issues formal notification of infringement of rights in accordance with the statutory requirements, the provider must immediately delete the information in question. Where the originator issues a counter notification, the provider must reinstate said information except in cases where the copyright holder plans to initiate legal action. By doing so the provider bears no liability for the copyright issue.

** A party who repeatedly infringes the copyright of others, for example by uploading information that infringes copyright onto the internet, will be warned several times by email or other suitable means. Where the party continues to infringe copyright despite the warnings, a set punishment or sanction may be imposed.