Summary of Minutes of the 5th Meeting of the Round Table Conference on the Privacy of Information in the Telecommunications Service Sector

1 Date and time: September 29 (Mon) 2003　18:00 to 20:00

2 Location: Conference Room 1101 (11F), Ministry of Internal Affairs and Communications

3 Attendees:

(1)Members

Kazuko Otani, Hiroyuki Kuwako, Hitoshi Saeki, Kazuteru Tagaya (Acting Chairman), Masahiro Tajima, Nobuo Tezuka, Susumu Hirano, Naoya Bessho, Masao Horibe (Chairman), Shigeki Matsui, Koichi Miki, Toru Murakami, Hatsuko Yoshioka

(2)Ministry of Internal Affairs and Communications

Aritomi (Director-General of the Telecommunications Bureau), Suzuki (Director-General of the Telecommunications Business Department), Oku (Director of Telecommunications Consumer Policy Division), Nakamizo (Assistant Director of the Environment Improvement Office for the Usage of Telecommunications), Shibuya (Assistant Director of Telecommunications Consumer Policy Division), Okawa (Assistant Director of the Telecommunications Consumer Policy Division)

4 Outline of proceedings

(1)　Opening

(2)　Guideline for future discussions

(3)　Actions against legislation of the personal information protection law in the telecommunications service sector

(4)　Closing

5 Major discussions

(1)Regarding the guidelines for future discussions, the attending members agreed to discuss “actions against the legislation of the personal information protection law” before “measures for damages caused by inappropriate

behavior in the telecommunications service sector."

(2)Regarding "personal information," "personal data" and "owned personal data" (Articles 2.1, 2.4 and 2.5 of the Law for the Protection of Personal Information [hereinafter "Law"]), the following points were discussed:

- Subscriber information handled by telecommunications operators falls under the category of personal data, since it is mostly databased. However, some data are being stored for less than six months and such data may not fall under the category of owned personal data.
- It seems that data that has been printed and issued to users cannot be regarded as eliminated even if it is personal data that is deleted within a short period of time.
- In such cases, we can no longer say that the management right belongs to the telecommunication operator.
- Do communication histories correspond to written personal information of the users themselves as specified in Article 18.2 of the Law?
- Communication histories do not appear to correspond to the above, since they are not created by the users themselves.
- Communication histories are special in that they include personal information relating to the other party involved in the communications.
- It is clear that communication histories are used for charging and thus it seems unnecessary to publish the purpose of their use.
- Considering the above, how do we deal with the case of a flat-rate system?
- The purpose of keeping communication histories includes troubleshooting, such as finding out the cause when an access point fails, in addition to charging.
- Whether phone numbers and e-mail addresses fall under the category of personal information depends on what standard the judgment of personal identifiability is made on. In the case of the Information Disclosure Law, the standard used is the judgment of an ordinary person, but this cannot be used as the standard in these cases. It seems that clues showing the connection of a phone number or an e-mail address with a particular individual may be regarded as identifiable, even if they are unidentifiable to ordinary people.
- E-mails correspond to personal information when the account is the name

of an individual and the domain is the name of a particular company, while in other cases they do not. A telephone number alone usually cannot help identify who is using the phone and thus it does not seem to fall under personal information. It is not helpful at all to discuss here whether specific information falls under personal information, but what matters is what type of database the information is in or how the data are combined. For example, a telephone directory may fall under the category of a personal information database, since the name of the user and the telephone number are related.

- The EU Directive does not place much emphasis on the issue of identifiability.
- Regarding identifiability, we must consider *who* is doing the identifying. If we are considering ordinary people can identify an e-mail address, we cannot consider it personal information. On the other hand, if we are considering whether it is identifiable by operators or the government, an e-mail address may be deemed as personal information.
- Does the telecommunications service sector possess sensitive information?
- Medical information, for example, is of a specific nature while the content of information in the telecommunications service sector does not necessarily appear to be sensitive.
- The content of personal information, including the confidentiality of communications, in the telecommunications service sector is not particularly sensitive, but it may sometimes be very sensitive when combined with other information.

(3)Relating to “personal information handling operators” (Article 2.3 of the Law), the following points were discussed:

- ISPs appear to have quite a number of operators who handle less than 5,000 pieces of personal information.
- The draft ordinance on which the Cabinet Office is currently soliciting public comment excludes the use of personal information for business without editing or processing. What type of information in the telecommunications service sector would come under this exclusion requirement?
- What about the cases where a link is attached to a database?

・Regarding search engines, not only the use but also the management of search engines will be excluded. Search engines may not fall under the category of personal information database in the first place.

(4)Regarding “the purpose of use” (Articles 15 and 16 of the Law), the following points were discussed:

・It seems that “the purpose set out in the articles of incorporation of the company” is insufficient for the identification of the purpose of use required by Article 15 of the Law. On the other hand, if the purpose of use is written too specifically, it becomes difficult to change proportionally with the changes in purpose of use specified in Article 15.2 of the Law. This will be tough for operators.

・As operators, we would require some concrete examples of the above.

・The actual situation is that our use is not for individual purposes such as customer management or billing but for a combination of purposes.

・We may perhaps identify the purpose of use simply as “the provision of services”.

・From the standpoint of users, the purpose of use must not be too broadly defined. Based on the fact that Article 15.2 of the Law permits changes proportionate to related changes, it seems that identification specified in Article 15.1 must be made stricter.

・The purpose of use should be identified for each individual service and we should regard those that can be considered as another service from the standpoint of users as services beyond the purpose.

・In relation to Article 16 of the Law, in what cases can the collected personal information made be available? Is it possible, for example, to solicit users of fixed phones for the provision of high-speed Internet services?

・It seems that the purpose of use in the telecommunications service sector need not be written in detail since it is usually self-evident. In the case of cellular phones, for example, the purpose of use will be different from usual when gathering information for making a blacklist of non-paying users. In such a case, it seems that the purpose of use should be identified by the type of information.

・Services will develop and it does not appear particularly detrimental to users when leaflets describing new services providing beneficial services

to users are enclosed in envelopes along with bills.

- The development of services in the telecommunications service sector is so rapid that it seems impractical to make stricter the identification of the purpose of use.
- When conventional services are being provided in parallel with a newborn service developed from a service, it seems a sensitive matter whether it is permissible to use personal information used in conventional services, in the new service.
- As for the duty to warn under the Product Liability Law, there was a comment that if too many detailed warnings are given, users will be reluctant to read them, and thus they will not be well informed of possible dangers. That comment may be of some help.
- Since new services are more convenient and thus beneficial to users, can't we consider that users are giving implied consent to the use of their personal information for advertising new services?
- It cannot be determined that the law does not assume such implied consent at all but it appears that the law does generally assume expressed consent to some extent.
- Is the category of "cases under the law" as set out in Article 16.3 Item 1 of the Law limited only to what is expressly written directly in the Law or does it allow inclusion of court decisions as well?
- We may read about this matter in Article 16.3 Item 4 of the Law.

(End)