

Summary of Minutes of the 8th Meeting of the Round Table Conference on the Privacy of Information in the Telecommunications Service Sector

1 Date and time: January 28 (Wed) 2004 18:00 to 20:00

2 Location: Special Conference Room No.4 (5F), Ministry of Internal Affairs and Communications

3 Attendees:

(1) Members:

Kazuko Otani, Hiroyuki Kuwako, Kazunori Kohai, Kazuteru Tagaya (Acting Chairman), Nobuo Tezuka, Susumu Hirano, Naoya Bessho, Masao Horibe (Chairman), Koichi Miki, Toru Murakami, Hatsuko Yoshioka

(2) Ministry of Internal Affairs and Communications

Aritomi (Director-General of the Telecommunications Bureau), Ezaki (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 Telecommunication), Shibuya (Assistant Director of Telecommunications Consumer Policy Division), Okawa (Assistant Director of the Telecommunications Consumer Policy Division)

4 Outline of proceedings

(1) Opening

(2) Disclosure of transmitter information and protection of the confidentiality of communications

(3) The current state of deliberations on personal information protection in the financial and trust sectors, and the personal information protection system in Korea

(4) Direction of the amendment of the guideline (General Rule and Basic Rules)

(5) Closing

5 Major discussions

(1) Regarding the disclosure of transmitter information, the following points were discussed:

(a) Cases relating to emergency evacuation and disclosure of transmitter information

- Suicide notes and auction related troubles on the Internet are difficult problems to address under the current law.
- Regarding the disclosure of transmitter information in sites relating to suicide, the guideline of the Telecom Service Association, for example, states that suicide notes are classified under emergency evacuation. When considering specific cases, it is difficult to determine to what extent providers are allowed to disclose information.
- Even if they fall under the category of emergency evacuation, there may be cases where providers need to obtain some documents from the police to disclose transmitter information.
- Providers are willing to cooperate in preventing suicides, but at the same time, we have to consider the cost involved in receiving requests from the police.

- It seems that we as providers cannot help being reluctant to generally disclose transmitter information on a general basis. Primarily it is desirable to have a mechanism in place that enables the court to promptly judge whether or not to disclose, so as to release providers from the duty of being the first to make a judgment.
- In such cases, instead of imposing legal duties on providers, mechanisms such as voluntary remedies may be considered that, for example, present a guideline to providers to give them principles for action and that exempts them from the duties as long as they follow the guidelines.
- The legal system for disclosing transmitter information according to the guideline is a point of contention, since such information is classified under the confidentiality of communications.
- Although we can grant that suicide notes may be disclosed since they are of an emergency nature, while troubles in auctions on the Internet may not be disclosed since they are not of an emergency nature, in practice it is very difficult to differentiate between the two.

(b) Issue of disclosing the transmitter information of those who transmit harmful information

- Primarily, it seems quite difficult to determine what constitutes “harmful” information.
- It may be impossible to address the matter only by the court mediating on behalf of the police in order to receive transmitter information.
- It is high time we discussed to what extent we can address the case of suicide notes.
- It seems it would be impossible to deter suicides only by means of the guideline.
- It seems difficult to generally write emergency evacuation in so-called industrial laws such as the Telecommunications Business Law. Isn’t it necessary to encourage the cooperation of ISPs when applying the guideline?

(2) As for personal information protection in the telecommunications service sector, the following points were discussed:

(a) Disciplinary rules for acquiring personal information

- We should first discuss to what extent individual laws need be established in the telecommunications sector based on the Basic Law.
- Receiving subscription to a telecommunications service in writing falls under Article 18.2 of the Basic Law and thus it is required to “expressly show the purpose of usage to the user in advance”. It may be necessary to specify in the amended guideline to what extent it is required.
- It would be worthwhile clarifying in detail how we should respond to abstract specifications in the Basic Law when they are applied to the telecommunications sector.

(b) How to obtain consent from users

- When acquiring personal information from those other than the information entity, personal information may sometimes be provided to other operators in cases such as interconnection. In such cases we consider that the consent has been obtained from the information entity under the terms of the agreement.
- It is very important for us to consider in what form terms of agreement are provided to users?
- Which part of the terms of agreement really matters depends on the understanding on the parts of providers and consumers. In addition, there may be large differences in awareness of the terms of agreement among consumers.
- When setting a provision that specifically requires the consent of the person concerned “in certain cases” for acquiring personal information, what exactly does “in certain cases” mean?
- “In certain cases” means, for example, such cases as when 1) collecting sensitive information and trust information with emphasis on the content of information; 2) collecting information from minors with emphasis on the subscribing party; and 3) collecting information based on subscriptions that may easily cause an imbalance of power among subscribers with emphasis on the type of subscriptions.

(c) Handling of small-scale operators

- It seems that the guideline should apply to small-scale operators as well since the necessity of personal information protection is high even for them. To supplement the Basic Law, small-scale operators should be covered by the guideline.
- The Basic Law deems operators handling 5,000 or less pieces of information as small-scale operators and excludes them from coverage. However, we feel that the guideline should require small-scale operators as well to properly manage personal information.

End