

Summary of Minutes of the 11th Meeting of the Round Table Conference on the Privacy of Information in the Telecommunications Service Sector

1 Date and time: May 26 (Wed) 2004 17:00 to 20:00

2 Location: Conference Room 1001 (10F), Ministry of Internal Affairs and Communications

3 Attendees:

(1) Members

Kazuko Otani, Hiroyuki Kuwako, Kazunori Kohai, Hitoshi Saeki, Kazuteru Tagaya (Acting Chairman), Masahiro Tajima, Nobuo Tezuka, Susumu Hirano, Minoru Hirukawa, Naoya Bessho, Masao Horibe (Chairman), Koichi Miki, Toru Murakami

(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), Furuichi (Examiner), Fujinami (Assistant Director), Shibuya (Assistant Director)

4 Outline of proceedings

(1) Opening

(2) Concept behind the amendment of the guideline

(3) Closing

5 Major discussions

- We believe it reasonable to assume that the consent of the party concerned has been obtained where the subscription has been made according to the stipulations regarding the provision of personal information to third parties, specified in the terms of agreement of the contract.
- It is necessary to consider in how much detail the stipulations regarding the provision of personal information to third parties should be stated.

- If no limitation is applied to the acquisition of personal information already acquired by operators, it seems it can be interpreted that such information may be used for any purpose. Furthermore, if the consent of the party concerned, defined in the Personal Information Protection Law, is deemed to have been obtained due to the subscriber's consent to the terms of agreement of the contract, this will mean that any information can be transferred to third parties following acquisition so long as allowances for such a transfer have been stipulated in the terms of agreement of the contract. Doesn't this mean insufficient protection of the personal information of the subscriber?
- Where the content of the terms of agreement of the contract becomes void under a private law in such cases as where it goes against civil laws or the consumer contract laws, the consent may be considered as ineffective also under the Personal Information Protection Law.
- If all actions are validated as long as the consent of the party concerned can be obtained regarding the provision of information to third parties, cases may arise where the rights of the party may be violated. Thus we should define cases in the guideline where exclusion is admitted.
- The Personal Information Protection Law allows competent ministers to issue recommendations or orders when personal information is used beyond the extent of the stated purpose of use. Will the Ministry of Internal Affairs and Communications still be able to grasp the content of the terms and agreements of contracts, now that the amended Business Law has been enforced?
- Since the amended Business Law primarily abolished the control of terms of agreements, it has become difficult to grasp the content of terms of agreements in advance. If the interests of the user are damaged after requesting a report in response to a submitted comment or complaint, correction will be made in accordance with an operation improvement order.
- The phrase "handle personal information properly" should be rendered "handle personal information appropriately".
- It is stated that temporary employees are also included as subjects of supervision, but in what way are they supervised?

- This means that we need not enter into a confidentiality agreement with all employees. For example, it may be considered necessary to ensure that we enter into a confidentiality agreement with the company dispatching the temporary employee, and that the dispatching company enter into a confidentiality agreement with the dispatched employee.

- Do the “cases where someone is actually committing the crime of intimidation via the telephone”, stated in Article 25, Item 3 of the draft amendment, only correspond to intimidation as described in Article 222 of the Criminal Law?

- This stipulates cases where transmitter information can be provided as an emergency measure when a crime of intimidation is actually being committed. This includes not only the crime of intimidation under Article 222 of the Criminal Law but it also integrally includes crimes when the act of intimidation is committed.

- Regarding Article 15 of the draft amendment, we think that opt-out and shared use need not be provided as exceptional stipulations if it is deemed sufficient to obtain consent under the terms of agreement of a contract regarding the provision of personal information to third parties. Is this acceptable?

- It seems desirable to leave the opt-out stipulation in the guideline, since consent under the terms of agreement of a contract is a rather uncertain factor. Listing in the telephone directory requires the consent of the party concerned; the terms of agreement of contracts also specify that the listing of information will be omitted if so requested by the party concerned.

- The proviso of Article 19.3 of the draft amendment stipulates the limitation of disclosure to representatives, but it would seem difficult to apply this to cases where the representative assigned by the party concerned “violates the confidentiality of communications of the party concerned.”

- In cases where the confidentiality of communications of the party

concerned may be violated if the information is disclosed to representatives, the legal representatives of minors or adult dependents are assumed. It is not assumed that individually assigned representatives would violate the confidentiality of communications of the party concerned.

- Will a description be attached to each clause of the draft amendment?
- It is currently under consideration whether a description should be attached to all clauses, but at the very least we are thinking of attaching the concept of the amendment to the portions to be amended this time.
- As for Chapter 3 of the draft amendment, it seems better to organize and define the relations between clauses from the aspect of, for example, whether communication histories fall under the category of personal information, or whether they should be handled differently since they fall under the category of the confidentiality of communications.
- A mail service has the function of automatically analyzing the content of the mail text upon displaying the mail and then displaying related advertisements. Such a function may be considered questionable in terms of the confidentiality of communications.
- Communication histories do not correspond to possessed personal data under the Personal Information Protection Law, since they are deleted after two months. However, should the purpose of use be identified since they correspond to personal information under the Law?
- We are strictly handling communication histories since they correspond to the confidentiality of communications. The purpose of use appears to be automatically defined from the range of the service.
- In the light of the nature of privacy policies under Article 14 of the draft amendment, policies should be left to the discretion of each operator and must be easy for users to understand. From this aspect, it seems better not to state in the guideline the matters to be stipulated in privacy policies.

- It is a great burden on small-scale operators, from the aspects of both cost and ability, to establish a privacy policy on their own. Accordingly, it would seem helpful for them if examples of the matters to be stated are given.
- Would it be possible to use the terms of agreement of contract in place of a privacy policy?
- The role of privacy policies is to show users simply and clearly how personal information is handled by each operator. Therefore, it would not be appropriate to allow the use of the terms of agreement of a contract in place of a privacy policy, since it would be harder for users to understand.
- Privacy policies represent the concepts and principles of operators handling personal information, and thus seem to be different from those set by the government.
- It also seems that small-scale operators will refer to the privacy policies of larger-scale operators, even if they do not have any model of their own.
- Regarding the issue of making the draft amendment of the guideline cover personal information, it would be too much of a burden if it were stipulated in the draft amendment of the guideline that, in contrast to what is stipulated under the Personal Information Protection Law, telecommunications service operators were also made to accept requests for disclosure of personal information that are not databased and thus they have no power to control. If the details of use extend beyond the coverage when possessed personal data alone is covered, it would seem acceptable for possessed personal data to be primarily covered by added, exceptional details of use.
- It is interpreted that any request for disclosure of non-databased personal information can be refused on the ground that accepting the request will affect the operation of services.
- If personal information is made the subject of disclosure, there is a difference between the Personal Information Protection Law and the guideline.

- The regulations of the Personal Information Protection Law are the minimum disciplines, since they apply across sectors. Given that the necessity of protecting personal information is greater in the information communication sector, it seems a higher level of protection may be required compared to the Basic Law.
- The current guideline provides a higher level of protection compared to the Personal Information Protection Law. So if there are no problems with the current guideline, it will be maintained in the future with personal information continuing to be the primary subject of disclosure. Those items not covered will be expressly stated in a proviso.
- The range of personal information under the draft amendment of the guideline is wider than that under the current guideline and thus the subjects of disclosure and correction seem to be limited.
- We will check if the range of personal information stated in the draft amendment is wider than that specified in the current guideline. It is debatable whether personal information should be changed to possessed personal data, since this would definitely reduce the range of personal information that can be disclosed.

(End)
