

Study Group on Systems in Ubiquitous Network Society
Second Meeting Proceedings Summary

1 Date and Time: April 26, 2006 (Wed) 15:30-17:30

2 Location: 9th floor, Meeting Room 902, Ministry of International Affairs and Communications

3 Attendees (Honorifics omitted):

(1) Members

Chairperson HORIBE Masao (Chuo Law School); Vice-chairperson IBUSUKI Makoto (Ritsumeikan University School of Law); OKAMURA Hisamichi (Attorney at law); KISHIGAMI Junichi (Nippon Telegram and Telephone Corporation); KOMUKAI Tao (InfoCom Research, Inc.); TAMAI Katsuya (University of Tokyo); TERADA Shinji (Index Corporation); HIRANO Susumu (Chuo University); YOKOYAMA Tsunemichi (Attorney at law)

(2) Secretariat (MIC)

Takeda, Director-General TAKEDA of the Information and Communications Policy Bureau; Director SAKAMOTO of General Policy Division; Director KONDO of the Research Department, Institute for Information and Communications Policy

4 Proceedings:

(1) Presentation by member: 1

Okamura brought up some issues on (1) the system of the laws related to information security and (2) labeling control concerning online shopping, based on Reference 2-2.

(2) Presentation by member: 2

Tamai brought up some issues on the Copyright Law system in response to the network society, based on Reference 2-3 (provided to members only).

(3) Note from member

The secretariat explained the objectives of the memorandum submitted by Ohtani (Reference 2-4).

(4) Q&A/Opinion Exchange

Q&A and opinion exchange were conducted. Key questions/answers and opinions are as follows:

- In terms of labeling control concerning online shopping, two types of transactions are not covered by the Specific Commercial Transactions Law: transactions for products which are not the designated goods/services and transactions by an individual who is not a business operator. The number of the former is not substantial. As for the latter, disclosure of personal identity across the board seems to go too far from the perspective of privacy protection.
- Most transactions of online shopping are B2C, not C2C as assumed. It seems inevitable to handle most cases as commercial transactions.
- It is difficult to expand the scope of application of the Specific Commercial Transactions Law. A cross-cutting approach from the viewpoint of online transactions could be an option.
- It is difficult to expand the scope of sender information disclosure. Making such indication obligatory would be more desirable, especially in terms of affinity with existing laws.
- Information security has been partially handled by the IT Basic Law and the Act on the Protection of Personal Information, but it may be about time to enact a specific basic law.
- The Financial Instruments and Exchange Law is likely to call for implementation of IT as part of internal control. However, as long as different laws specify security provisions respectively, there could be conflicts of objectives among them.
- There is a trend in the industrial world to avoid involvement with a business that needs personal information due to the Act on the Protection of Personal Information.
- Both security and personal information protection have been hampering economic activities as their code of conduct is not clear. It takes time to accumulate judicial precedents. Although guidelines are effective in clarifying the code of conduct, existence of various guidelines is confusing. It may be necessary to check the consistency among the guidelines and the positioning

of each guideline at some point.

- For example, in the case where you pass through a ticket gate by using a mobile wallet (a mobile handset for mobile settlement service), which ministry's or agency's guideline for personal information protection will be applied, the Ministry of Land, Infrastructure and Transport, Ministry of Economy, Trade and Industry; or the Financial Services Agency? Ultimately, we need to observe the strictest part of each guideline.
 - Any guideline says "You should do this," but not "You have to do it to this extent." As a consequence, people place emphasis on safety and make excessive reactions, which is typically found in their response to the Act on the Protection of Personal Information.
 - As any guideline is formulated at a phase when no specific case is available, it inevitably becomes abstract to some extent. It may be important to establish a process to review the provisions based on feedback from business operators and users.
 - Many enterprises do not know the existence of the laws and the guidelines. It may be helpful if there is an overview map that locates a law/guideline where a point in question is specified.
 - One of the concerns about copyright is whether mobile content such as ringtones should be transferred. Currently, the specifications of each communications provider do not allow external transfer of protected mobile content, but users are not necessarily informed of it. If mobile handsets will be switched frequently due to the introduction of number portability, user complaints are likely to increase.
 - Ringtones should have a scheme of billing per copy. It seems ridiculous to buy the same ringtones again when you change your handset.
 - The problem may be lack of education on copyright and intellectual property rights. It must be publicized that copyright holders cannot support themselves if there is no system that provides consideration for them.
 - Users seem to think that transfer of ringtones when they change their handsets is undoubtedly within the scope of personal usage.
 - Legally, communications providers should obtain user consent to the fact that ringtones cannot be transferred upon making a contract. What matters is the substance of actual consent as pointed out in Ohtani's document. For this point, we should discuss the desirable policy by taking into account knowledge of cognitive science.
 - Tamai's idea of trying to handle a work whose copyright holder is unknown on a negative consent basis seems to be an extension of the system in which there can be "no impunity for use in good faith."
 - Current Copyright Law does not allow acquisition of copyright in good faith because it does not assume trades of works. Apparently, allowing acquisition in good faith goes too far since the right of original copyright holder will become extinct just by a private transaction. It could be possible, however, to establish a system that, making it a requirement to refer to a right holder organization, calls for registration of one's right with the right holder organization if one wishes to protect his right.
 - The copyright law seems effective only within the framework of the Berne Convention. In terms of right of integrity, however, allowing no alteration is excessive and beyond the protection of the convention.
 - From the perspective of smooth trade of content, it is sufficient if there is an assured system that pays a copyright holder as much as his works are used. If one does not wish his works to be used by others, he should clarify it by himself.
- (5) Future schedule
- The meeting procedure was explained by the secretariat, based on the Reference 2-6, and approved.