

【Tentative Translation】

Attachment 2

Expert group on Platform Services

**Urgent Recommendations
on How to Deal with Online Harassment**

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Urgent Recommendations on How to Deal with Online Harassment

Expert group on Platform Services

Preface

This Expert group on Platform Services has been meeting since October 2018 as a forum to examine issues related to platform services, such as how to ensure proper handling of user information, and how to deal with fake news and false information. The expert group compiled discussions on the above into a February 2020 report.

After that, considering that problems of abusive comments are getting serious on the Internet, especially on platform services (including SNS), the expert group resumed discussions and widely called for opinions on the issue of "How to Deal with Online Harassment (Draft)".

As a result, wide-ranging opinions on various points have been received from over 200 individuals and corporations. Many of them agreed on some points, in particular, the need for measures against online harassment¹, the basic viewpoint in examining posts that online harassment needs to be differentiated from legitimate criticism, and the need to raise public awareness. On the other hand, there were arguments for and against the introduction of legal regulations that impose deletion obligations and fines on platform operators.

Online harassment is a difficult problem with various points tangled, but with public interest soaring, the expert group has decided to make urgent recommendations due to the need to swiftly address the problem. The report summarizes how various industry, academia, government and private sector stakeholders are expected to handle online harassment, taking into account many ideas collected by calling for public opinions as well. Based on the urgent recommendations in this report, various industry, and

¹ The term of "online harassment" is mainly understood as libel, defamation, slander and bullying on the Internet. Moreover, the term includes not only 'illegal information' which infringes the rights of others, but also 'harmful information' which injures the dignity of others but does not always cause the liabilities of its sender.

academia, government and private sector stakeholders, both domestic and overseas, are expected to cooperate and collaborate with each other, and quickly step up their respective efforts on the issue of online harassment in Japan.

General Remarks

1. Basic Viewpoints for Discussions

- When considering measures against online harassment, it is important to examine specific measures from a basic viewpoint of organizing various issues taking into account the legal order of Japan(based on the Constitution). The issues include preventing abusive posts, stopping posted comments from spreading damage, and providing more support and relief for victims of online harassment. They also include guaranteeing freedom of expression for those who legitimately send out legal information, and considering the role of the Internet (particularly, platform services) in daily life and social-economic activities.
- At that time, it is necessary to note that online harassment against someone should be differentiated from legitimate criticism and should be handled separately.

2. Necessity for Discussions based on Features of the Internet

- Unlike physical space, the Internet features a high level of anonymity that makes it easy to post any comment online, and a high degree of propagation that may causes damage to spread unlimitedly. Anonymity of the Internet is considered as a factor behind many online harassment problems, and anonymous online harassment should not be allowed. But it is also necessary to deepen discussions, noting that anonymous expression has played a valuable role in securing a forum for free speech.
- In addition, as services on the Internet are different in kind, it is necessary to have further discussions in view of forms and kinds of each service.

3. Attention to the Differences between Online Harassment which Infringes on Rights (Illegal Information) and which Doesn't Infringe (Harmful Information)

- Considering online harassment posts from a legal viewpoint, some posts are judged as information which infringes on the rights of others (illegal information), and some are not necessarily judged as such (harmful information). Therefore, it is necessary to take measures, considering that it might be difficult for business operators to tell

the difference, and noting that some steps should be taken regardless of the difference, while some depend on the difference.

* Furthermore, it has been pointed out that the government needs to deepen discussions on the criteria of illegality on online abuse. For example, even an online harassment post against someone which doesn't seem to infringe on his or her rights (when an individual continues to do such posts on a large scale, or many people post a large number of abusive comments all together), it can be judged as illegal, as the suffering of the victim may exceed social tolerance limits.

4. Necessity to Implement Comprehensive Measures

- Online harassment is becoming a major social problem. The government needs to give priority to addressing the issue and inform the people and businesses (including overseas ones) of their policies.
- There are various factors behind problems related to online harassment, and when considering measures, those problems cannot be completely resolved with just one countermeasure. In this regard, it is appropriate to consider measures for each of the following : ①users who post or spread abusive comments (sender/spreader) ② platform business operators that provide a place for posting abusive comments (ex. SNS) ;③people who suffer abusive posts (victims).
- As for the implementation of measures, industry, academia, government and the private sector have cooperated and taken their respective efforts so far through the following framework :(1)raising awareness to improve information ethics of users (2) taking efforts by business operators and sharing knowledge and know-how by industry organizations (3) improving the environment by the government (4) providing support for victims. In the future, based on the above framework, it is more important to put forward comprehensive measures with analyzing factors behind online harassment and investigating how it spreads by cooperating with various industry, academia, government and private sector stakeholders.

5. Importance of the Role of Platform Business Operators

- As online harassment on platform services (mainly on SNS) is becoming more

serious, platform business operators are especially required to take positive measures. In this regard, it is more essential to ensure transparency and accountability of the measures, from a viewpoint that contents and effects of the measures should be made clear to the government and users (and the public) for the implementation of effective measures in consideration of freedom of expression.

Itemized Discussion Points

6. Raising awareness to Improve Information Morals and ICT Literacy for Users

- As for measures against online harassment, information morals of each users is of the utmost importance. Each users should respect others as an individual, imagine the prospects that their posts on the Internet including the SNS could hurt others, and take care not to post abusive comments.
- As the problem of online harassment on platforms are becoming more serious, it is necessary for platform businesses and industry organizations to work on improving ICT literacy and raising awareness for users not to post abusive comments by conveying that abusive comments hurts others and could face criminal charges cooperating with schools and local communities. These measures include education on information morals, appropriate usage of the SNS (not only countermeasures for senders of abusive posts, but also noticing measures for recipients, such as informing the use of contents filtering functions such as “mute” and “block”, ways to request deletion of posts, and consultation service to inquire about their troubles without bearing them alone).
- Furthermore, in the process of these efforts, it is important that the industry, the academia, the government, and the private sector work together to examine the following issues from various viewpoints. These issues contains examining contents for raising awareness of information morals and ICT literacy, the features of people posting, spreading, or supporting abusive comments, and the effective activities of dissemination. In addition, it is necessary to take effective measures, not only for young people who have been considered as main targets, but for users of a wider range of generations including adults,.

7. Efforts by Platform Business Operators

- As for measures against online harassment on platform services (including SNS), voluntary efforts by platform business operators that provide a forum for free speech are the most important. In order to promote those efforts, it is necessary to improve the environment.

7 - (1) Reinforcement of Measures such as Deletion by Platform Business Operators

- As conceivable measures, to tackle what is judged as infringement on the rights of others (illegal information), first of all, various website operators (including platform business operators) can take actions such as deletion and off-display of posts, and suspension of accounts (hereafter shortened to "deletion etc."). They are required to establish a user-friendly system where users can easily report harassment or ask for deletion, and to take quick actions including deletion etc. in response to victims' requests.
- In this regard, as there is a huge amount of information on platform services, operators could also take quicker actions when they find infringement information (illegal information) by watching masses of information through their own 24-hour monitoring system, even if they don't receive requests of deletion from users. It might not be appropriate to ask all the operators to take such actions right now, but in the future, as technologies using algorithm of artificial intelligence (AI), including deep learning, prevails and develops, it will be easier to introduce such technologies because of reduced costs. In that stage, operators could be expected to more positively take actions such as deletion etc. in accordance with the rules and policies made by their own scheme, even without requests from victims and other users.
- Also, as for infringement information (illegal information), platform business operators are required to take appropriate actions such as swiftly deciding for or against deletion in response to requests from governmental agencies and others with legitimate authority and expertise, as well as requests from users. Especially, the Human Rights Bureau of the Ministry of Justice send requests of deletion to

website operators including platform business operators when they receive a request from victims themselves and they make judgment that the abusive comments are libel or infringement of privacy (stated as "serious case of human rights infringement"). In response to those requests, website operators (including platform business operators) are required to take swift actions such as deletion etc., when they judge that "there is a reasonable ground to believe that the rights of others have been violated without due cause", or when they approve that deletion is an appropriate solution in light of their own rules and policies.

* Excerpt from Guidelines for Defamation and Privacy of the Provider Liability Limitation Act

"If transmission prevention measures are taken by a provider, etc. pursuant to such deletion requests, such cases will fall under cases in which "there was a reasonable ground to believe that the rights of others were infringed without due cause" (article 3, paragraph (2) item (1) of the Act) and it is conceivable that there will be many cases where the sender's liability for damages is not incurred due to deletion by the provider.

https://www.telesa.or.jp/wp-content/uploads/consortium/provider/pdf/guidelines_defamation.pdf

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- On the other hand, as for abusive comments that are not judged as infringement (harmful information), it is difficult to require business operators to take actions based on legal grounds, and basically, those cases should be left to the judgement of operators. However, platform business operators are also expected to independently take various actions against posts judged as harmful information, based on their own rules and policies, according to size and specifications of each of their services, with emphasis on preventive measures against excessive deletion that could cause the problems of a chilling effect on freedom of expression and unjust private censorship. Furthermore, operators need to pay attention to the viewpoint that because a large number of posts can cause victims to suffer serious mental damage, such posts can be judged as illegal information, as a result of exceeding socially accepted limits.
- When implementing measures with emphasis on the balance between the need to tackle harassment and to prevent the chilling effect on freedom of expression

(mentioned above), platform business operators are expected to consider to introduce some systems by their creative efforts, as well as deletion of contents. The systems include contents moderation such as rank display or frequency restraint (made by AI according to users' choice) and service design (architecture) based on each operator's rules and policies. (ex. functions of offering a chance to rethink/reconsider comments before posting them: filtering contents according to users' choice: automatically detecting and temporarily off-displaying a large number of abusive comments posted in a certain short time etc.).

7 - (2) Improvement of Transparency and Accountability

- For the purpose of providing platform services people can use with a sense of safety and trust, it is desirable that platform business operators not only take actions including voluntary deletion etc. (stated in 7-(1)) but show their users and the public how appropriately their actions are taken. Also, in order to secure freedom of expression for users, platform business operators are expected to make it clear that excessive actions concerning deletion or suspension of accounts are not being taken in light of the rules and policies they set up for each service.
- As it is important to provide platform services that are open to users and the public, it is appropriate that platform business operators take active measures to ensure transparency and accountability, as well as those measures listed in 7-(1).
- As for specific measures to ensure transparency and accountability, platform business operators are expected to take such measures as the following:
 - ① on the issue of online harassment, define ahead and clearly make open their overall idea of services they provide and their own rules and policies on specific measures (what kinds of actions are taken against what kinds of information or accounts).
 - ② in light of their rules and policies, disclose the results of their actual efforts with specific data.
 - ③ analyze the effects of their efforts and disclose them.
 - ④ provide outside researchers with information the researchers need in order to investigate and analyze the effects of efforts and the circumstances of online

harassment

⑤ in preparation for complaints and inquiries from users about posts deletion or accounts suspension, adequately set up a system of steps that receive and deal with complaints, show it to users in a user-friendly way, and operate it in an appropriate way.

- As for measures to ensure transparency and accountability (including ①~⑤ of the above), some overseas platform business operators that provide services worldwide implement those measures only in the United States or Europe, not necessarily in Japan. However, they are expected to make the most efforts to implement those measures in Japan as well, paying attention to the difference of how online harassment spreads, social circumstances, and legal systems between Western countries and Japan.
- Furthermore, it is expected that measures are taken in an easy way for Japanese users to understand, according to each condition in Japan, when creating rules and policies on how to classify and deal with problematic information, drawing up and announcing transparency reports and establishing a system that receives complaints. Specifically, it is desirable that the following measures are taken.
 - ① make open information concerning rules, policies and transparency reports in Japanese so that Japanese users can easily understand them.
 - ② in releasing transparency reports, show not only the total number of cases handled globally but also the total in Japan.
 - ③ after securing enough staff members who can correctly understand Japanese, establish a system that receives and deals with complaints in Japanese, and build up remedy system where actions (including legal procedure) can be swiftly taken in Japan.
 - ④ create rules and policies that can adequately deal with online harassment problems peculiar to Japan related to how information spreads on platforms.
- Also, industry organizations are expected to take actions such as sharing business operators' each know-how and best practice gained by their creative efforts.

- As stated above, what is expected to be established is the following cycle. First of all, business platform operators voluntarily implement their own measures and also secure transparency and accountability about their measures. Next, the effects and problems are made open to the public and the media, through interactive communications between operators and various stakeholders (industry, academia, government, and the private sector) and disclosure and explanation by operators themselves of their actual actions. As a result, society as a whole plays the role of a monitor. In response to feedback gained in that way, platform business operators put forward further efforts.

8. Development of the Environment by the Japanese Government

- It is appropriate that the Japanese government cooperate and collaborate with platform business operators and improve the environment (including certain legal circumstances) to help operators smoothly implement various efforts related to online harassment.
- In this regard, it is important to pay close attention to foreign legal systems and policies against illegal or harmful information on the Internet (including online harassment) and to proceed with policy-making with emphasis on international harmonization. For that purpose, it is appropriate to deepen global dialogue.

8 - (1) Measures on Efforts by Business Operators such as Deletion

- In the existing circumstances, the Provider Liability Limitation Act, stipulates that providers are secured exemption from liability when they take an action of deleting posts. Under the law, providers are just encouraged to take voluntary action. To change the conditions, with the aim of urging platform business operators to do quick and complete deletion, some say it is necessary to introduce legal regulations that obligate providers to delete some posts and impose fines for not taking appropriate actions. However, in Germany, there is criticism against some examples of legislation that they might have a chilling effect on freedom of expression. And in France, obligated deletion within 24 hours in a recently enacted law has been judged

as unconstitutional. Considering these global movements, extremely cautious discussions are thought to be required about introducing legal regulations that obligate posts deletion and impose fines in Japan.

- As technologies (AI etc.) spread and develop, cost burdens on providers will change and users' expectations for the role of providers will also change. Taking the trend into account, as for how the Provider Liability Limitation Act will apply, it is appropriate to further review it in a timely way.

8 - (2) Ensuring Platform Services' Transparency and Accountability

- As mentioned before, as for platform business operators' efforts to tackle online harassment, first of all, it is important that measures to ensure transparency and accountability are voluntarily taken. It is appropriate that the government grasp how those measures are taken, in an adequate time and way at some forums like this expert group, by asking platform business operators to submit surveys. It is also appropriate that the government grasp conditions on the part of users with methods like through the Illegal Harmful Hotline (mentioned below), not just information from platform business operators.
- In that case, There is a possibility of assessing the achievements and effects of voluntary efforts by platform business operator, after setting some kinds of indicators or criteria according to size and nature of various services by each provider.
- As a result, it is important that industry, academia, government, and the private sector in unison try to find flexible and effective methods, respecting voluntary efforts by platform business operators as much as possible.
- From now on, if those voluntary efforts are not achieved, or are found not to have much effect on online harassment problems, it is appropriate to examine following measures considering certain involvement of the government. Measures include that the government could require platform business operators to create and comply with their own code of conduct concerning measures to ensure transparency and accountability, and could consider whether to introduce legal systems on the issue of transparency and accountability.

8 - (3) Disclosure of Sender Information

- On the issue of how to identify an anonymous sender of abusive posts so that the victim can recover from damage, the Provider Liability Limitation Act stipulates a system to disclose senders' information. However, the current system should be reviewed to provide victims with quicker and more reliable remedy. As for reviewing the system, discussions have been held in the Expert group on the Ideal State of Disclosing Sender Information, another group within the Ministry of Internal Affairs and Communications which has been meeting since April 2020. It is appropriate to leave the review to the discussion at that meeting and consider comprehensive measures against online harassment in cooperation with that expert group.

9. Handling of Consultation

- It is necessary for industry, academia, government, and the private sector to work together to develop a system where victims from online harassment can easily get advice based on various viewpoints.
- The Ministry of Internal Affairs and Communications operates the Illegal Harmful Hotline, which is consulted by users or business operators and provides advice for them. Users concerned in damage of information spreading on the Internet and business operators dealing with abusive posts can get appropriate advice on specific methods including how to delete posts.
- As for the Illegal Harmful Hotline, first of all, it is necessary to build up the system by increasing staff members enough for inquiries and by improving training sessions.
- In dealing with inquiries, cooperation needs to be deepened with other institutions such as the Legal Affairs Bureau, police, local governments, consumer affairs advice services, and private advice services. From the viewpoint, it is also important to have regular meetings with these institutions for exchange of views, grasp the strength of each institution and introduce a victim to the most appropriate institution according to what kinds of trouble he or she suffers.
- Furthermore, the Illegal Harmful Hotline needs to be familiar to the victims who are in urgent need for advice. For that purpose, it is necessary to clearly inform victims

of where to get advice about their trouble, with more publicity efforts like announcing some typical examples of counseling.

Future

This report shows a wide range of viewpoints on the issue of online harassment in Japan. From these viewpoints, various stakeholders (industry, academia, government and the private sector), both domestic and overseas, are expected to swiftly put forward their respective efforts in cooperation and collaboration with each other.

This expert group, on a regular basis, will continue to see how each stakeholder's efforts related to these viewpoints are taken and will deepen discussions on the need for further measures.