Provider Liability Limitation Act
Guidelines Relating to Defamation and Privacy

First Edition: May 2002
Second Edition: October 2004
Third Edition: September 2011

Provider Liability Limitation Act Guidelines Review Council

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I Purpose and Scope of Guidelines

I-1 Objectives of Guidelines

The objective of these Guidelines is to promote a prompt and appropriate response by the provider, etc. and to promote the smooth and sound use of the Internet while respecting the interests of each of the parties concerned, that is, petitioners, senders, and providers, etc., by clarifying the standards of behavior that should be taken by a specified telecommunications service providers (hereinafter referred to as the "provider, etc.") in cases where a request for transmission prevention measures has been received from a petitioner whose reputation has been damaged or privacy has been infringed following the distribution of information by specified telecommunications based on article 3 of the Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Senders (Act No. 137 of 2001, hereinafter referred to

as the “Provider Liability Limitation Act” or simply the “Act”).

I-2 Positioning of Criteria for Guidelines

These Guidelines are practical guidelines to enable a prompt and appropriate response by the provider, etc. through the clarification of standards of behavior to be taken by the provider, etc. with respect to requests for transmission prevention measures from persons, etc. who file petitions whose rights have been infringed (hereinafter referred to simply as “petitioners, etc.”).
Consequently, these Guidelines find criteria on whether the response by the provider, etc. with respect to illegal information is appropriate in terms of “whether cases where the provider, etc. has taken or has not taken transmission prevention measures fall under limitations on liability for damages in accordance with article 3 of the Provider Liability Limitation Act”, and are organized according to the following standpoint-
1) The kind of cases in which liability for damage is not incurred with respect to petitioners even if transmission prevention measures are not taken (article 3 paragraph (1) of the Act)
2) The kind of cases in which liability for damage is not incurred with respect to senders in cases where transmission prevention measures have been taken in response to requests from petitioners, etc. (article 3 paragraph (2) of the Act)

Whether the provider’s, etc. liability for damages is limited by the Provider Liability Limitation Act is ultimately decided by the courts, and whether certain information falls under defamation or invasion of privacy and whether the provider, etc. incurs liability for some action or inaction as a result differs depending on the information content, the characteristics of locations that have published information, and the way that the sender, petitioner, or provider, etc. responds with respect to information, further, it is necessary to consider that the criteria for determining defamation and invasion of privacy will also vary according to changes in the social environment. Consequently, liability for damage shall not always be incurred if the response is not made in accordance with these Guidelines. Conversely, the provider, etc. shall not be absolved from liability for damages even if the provider, etc. responds in accordance with these Guidelines.
These Guidelines have been drafted bearing in mind that they will be utilized to assist in enabling the independent establishment of criteria for determining an autonomous

response to information that falls under defamation and invasion of privacy[1], each provider, etc. taking this into reference.
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Furthermore, once formulated these Guidelines shall be revised continuously in accordance with changes relating to honor and privacy following changes in the social environment, information technology developments, and the practical operating situation, etc.

I-3 Cases not Covered by the Application of the Guidelines

These Guidelines, as a general rule, do not treat matters that are not provided for in the Provider Liability Limitation Act. Note, however, that requests for a provider, etc. to take transmission prevention measures may be received even for matters not provided for in the Provider Liability Limitation Act, and the way of thinking that assists such decision and background judicial precedents are introduced in chapter II, since the provider, etc. must determine the illegality of transmitted information in order to determine both (a) the kind of cases in which the provider, etc. shall be exempt due to relations with the sender even if transmission prevention measures are taken, and (b) the kind of cases in which the provider, etc. shall be exempt due to relations with the petitioner even if transmission prevention measures are not taken.

Additionally, the following kinds of matters are not provided for in the Provider Liability Limitation Act-
1) Communication other than specified telecommunications (defamation, invasion of privacy, slander, etc. in electronic mail)
(Note) These Guidelines only handle cases where information has been transmitted that falls under defamation and the invasion of privacy, etc. in specified telecommunications (telecommunications made in a format that transmits information to unspecified persons such as Internet web pages, and electronic bulletin boards, etc.; article 2 item (1) of the Act).

[1] Defamation and invasion of privacy is a typical type of breach of law that occurs due to slander via the Internet but there are also insults, damage to credibility, infringement of publicity rights, and other related types of breaches of law, and care is necessary as the requirements for breach of law differ in each case.

2) Existence of criminal liability in relation to criminally illegal information
(Note) The Provider Liability Limitation Act prescribes cases where a petitioner or sender is exempted with respect to civil liability (tort liability) in relation to information that infringes the rights of a specified person. For this reason, it is not possible to determine the existence of criminal liability in relation to criminally illegal information[2] based on these guidelines, and generally parties will not be accused of criminal liability in cases exempted from civil liability.
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3) Harmful information (information that are not illegal but that may be an issue depending on the characteristics of the recipient. For example, violent or sexual expressions that have a negative influence on the sound upbringing of young people, etc.)

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I-4 Persons Covered by the Guidelines

These Guidelines have been drafted for providers, etc., namely, specified telecommunications service providers referred to in the Provider Liability Limitation Act.
Specified telecommunications service providers referred to in the Provider Liability Limitation Act (article 2 item (3)) refers to providers, etc. that carry out web hosting, etc. either commercially or non-commercially and persons that operate electronic bulletin

[2] In addition to cases where the rights of specified persons have been infringed as with defamation, damage to credibility, and insults, etc., criminally illegal information is not limited to the rights of specified persons being infringed as with indecent images, the ID or passwords of others (Act on the Prohibition of Unauthorized Computer Access), child pornography (Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children), or the dissemination of rumors (Commodity Exchange Act), etc.
Note, however, that while with indecent images and child pornography, the applicability to crimes displaying indecent images, and crimes displaying child pornography is an issue, conversely, there is a possibility of falling under civil defamation and invasion of privacy, etc., and these Guidelines apply to responses in such cases.

boards to which third parties can post freely. Consequently, not only telecommunications business operators provided for in the Telecommunications Business Act (Act No. 86 of 1984) but universities, local governments, and individuals, etc. who manage electronic bulletin boards are also included. Consequently, we would like even those providers, etc. who do not belong to organizations which constitute this council to refer to these Guidelines when establishing autonomous rules that respond to the Provider Liability Limitation Act.

I-5 Way of Thinking Regarding the Provider Liability Limitation Act

(1) Limitation of Liability for Damages with Respect to Petitioners

In the case of individuals, information that corresponds to defamation, invasion of privacy, insults, or infringements of portrait rights is conceivable as information subject to requests for transmission prevention measures by the provider, etc., and information that corresponds to damage to credibility or the obstruction of business is conceivable in the case of juridical persons.

In cases where such information is subject to a notice to take transmission prevention measures such as deletion, etc., there is a possibility that the provider, etc. may be held liable. In most judicial precedents, reasonable obligations on the provider, etc. to take transmission prevention measures for the relevant information are recognized.

1) No continuous monitoring obligation

In cases where the rights of others have been infringed due the distribution of information published on web pages or electronic bulletin boards, etc., when the provider, etc. did not after all know that the relevant information was being distributed (irrespective of the reason for not knowing), even if the provider, etc. did not take transmission prevention measures, they shall not incur liability for damages as a result of having left the relevant information unattended due to the relationship with the petitioner (article 3 paragraph (1), item (2) of the Act).

Put another way, the provider, etc. is not obliged to monitor whether information stored on the servers they manage infringes the rights of others. If such an obligation exists, information updated frequently on servers will need to be constantly monitored, which is not just an enormous burden, but carries the likelihood that more information than necessary will be deleted, etc. as the provider, etc. constantly checks information uploaded to servers for fear of being accused of liability for negligence, and this may

have a chilling effect with respect to “freedom of expression”. [3, 4]

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Additionally, the provider, etc. is not obligated to monitor new illegal acts that take place even in cases where, after taking transmission prevention measures, etc. once, the same sender changes the file name, etc. and once again transmits information that infringes the rights of others.

2) Limitation of liability in cases where requests for transmission prevention measures have been received from petitioners, etc.

When a provider, etc. has been made aware of the distribution of information published on web pages or electronic bulletin boards, etc. in the wake of requests, etc. for transmission prevention measures from petitioners, etc., even if the provider, etc. has not taken transmission prevention measures, unless there are resultant “reasonable grounds to find that said relevant service provider could know the infringement of the rights of others (article 3 paragraph (1) item (2) of the Act)”, the provider, etc. shall not incur liability for damages due to having left the relevant information unaddressed in relations with the petitioner.

Will refer to the kind of cases that can be referred to here as “reasonable grounds” in chapter II.

3) Technical potential of limiting liability

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[3] Ignoring information uploaded to servers and fulfilling the obligation to make a choice with regard to the provider, etc. falls under censorship that is prohibited in article 3 of the Telecommunications Business Act, and is a way of thinking that runs contrary to the spirit of prohibiting censorship provided for in article 21 paragraph 2 of the Constitution.

[4] Shinichi Omura, Hiroyuki Osuga, Hiroshi Tanaka, “Outline of the Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Senders” NBL No. 730 (1 February 2002) page 30, etc.

According to the Provider Liability Limitation Act, even if a provider, etc. falls under either article 3 paragraph (1) item (1) or item (2) of the Act, in cases where it is not technically possible to take transmission prevention measures, the provider, etc. cannot, after all, be expected to take transmission prevention measures, and for this reason, shall not incur liability for damages as a result of leaving relevant information unaddressed with respect to the petitioner.

(2) Limitation of Liability for Damages with Respect to Senders

As far as the provider, etc. is concerned, there are many cases where it is difficult to determine whether information subject to requests for transmission prevention measures is illegal information that infringes the rights of others. Determining whether an expression falls under defamation and invasion of privacy, etc. or is a legitimate criticism is difficult, and the same expression may and may not fall under defamation in different times depending on circumstances unknown to the provider, etc. such as whether the expression is true and the objective of the act of expression. Despite such an extremely difficult decision being necessary, there is a possibility of a demand for compensation for damages from the sender when information that does not infringe the rights of others is mistakenly deleted. For this reason, providers, etc. fear being accused of liability for damages by senders, and there is a risk for petitioners of damage spreading if transmission prevention measures requests are unnecessarily left unaddressed.

Accordingly, the Provider Liability Limitation Act sets forth that in cases where the requirements listed below ((1) or (2) and (3)) are fulfilled with respect to claims for compensation for damage by senders[5], the provider, etc. shall not incur liability for damages with respect to senders.

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[5] Article 3 paragraph (2) item (1) of the Provider Liability Limitation Act is a provision close to the "Good Samaritan theory" recognized in the US CDA (Communication Decency Act and DMCA (Digital Millennium Copyright Act), etc. It is a way of thinking that exempts or mitigates persons who attempt to help others out of good will from tort liability. Moreover article 3 paragraph (2) item (2) of the Provider Liability Limitation Act is a provision in which the provider, etc. does not determine illegality, and transmission prevention measures can be taken in cases where certain requirements (infringing information is sent to the sender, inquiries are made as to whether have consented to taking transmission prevention measures, and no objections are made by the sender within seven days) are fulfilled.

(1) Cases where there are sufficient reasonable grounds to believe that unjust right-infringing has taken place (article 3 paragraph (2) item (1)) will refer to the kind of cases where there are "reasonable grounds" in chapter II.

(2) Cases where a notice to satisfy certain requirements is made by the petitioner, and in which inquiry procedures as to whether a sender consents to transmission prevention measures are undertaken and no notice to the effect that the sender does not consent to the relevant transmission prevention measures is made within seven days of the date the relevant inquiry is received (hereinafter referred to as an "objection") (article 3 paragraph 2 item (2)).
Inquiries are made with the sender when a notice that satisfies certain requirements that requests that transmission prevention measures be taken has been made.

(3) Necessary limits in transmission prevention measures
It is a requirement to take the minimum prevention measures required to block the transmission of illegal information when taking transmission prevention measures with regard to defamatory or privacy invading, etc. posts.
What is to be considered as the minimum transmission prevention measures required is an issue to be appropriately determined by the provider, etc. taking the content and urgency of infringing information, etc. and other relevant grounds into consideration.
If certain determination criteria are shown, in cases where it is possible to prevent transmission by deleting illegal posts or suspending browsing by the public, acts in which only the relevant post is subject to deletion, etc. are considered to be the minimum required measures. However, in cases where information other than illegal information (irrelevant information or information that cannot be said to be illegal but that relates to illegal information) is included in files that exist in servers managed by the provider, etc. (for example, the type of bulletin board to which multiple people post) there are cases where other irrelevant information, etc. must also be deleted in order to prevent the transmission of illegal information due to it only being possible to delete, etc. relevant files in units. In such cases, it is conceivable that it will be difficult to uniformly specify what kind of measures can be referred to as the minimum measure in which deleting the relevant file will be recognized as being a transmission prevention measure, and individual specific decisions will be necessary.

(3) Response Based on Provider Liability Limitation Act

In determining whether information is illegal, whether it is a case where liability for damages is not incurred in relations with sender when implementing transmission prevention measures, must be determined pursuant to article 3 paragraph (2) of the Provider Liability Limitation Act, and whether it is a case where liability for damages is not incurred in relations with the petitioner when not implementing transmission prevention measures is determined pursuant to article 3 paragraph (1) of the Provider Liability Limitation Act.

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II Criteria for Determining Transmission Prevention Measures

II-1 General Remarks

(1) Structure of this chapter

Transmission prevention measures such as deleting, etc. due to falling under defamation or invasion of privacy, etc. are often requested in information distribution through the Internet.

In these Guidelines, in cases where a provider, etc. who have received such requests takes transmission prevention measures, cases when it is conceivable that liability for damages will not be incurred with respect to the sender are illustratively enumerated into two classifications, "invasion of privacy and defamation with respect to individuals" and "damage to honor or credibility with respect to juridical persons". (Note, however, that, cases where information should not be deleted are also given as illustrative examples as required).

(2) Response to requests to delete from Human Rights Organs of the Ministry of Justice

In cases that fall under "incidents of serious violations of human rights"[6] and defamation or invasion of privacy, etc., at Human Rights Organs of the Ministry of

[6] Falls under "special incidents" pursuant to article 22 of the Rules for Conducting Investigations into Human Rights Violation Incidents (2004, Instructions from the Ministry of Justice No. 2) (meaning incidents requiring reports to or approval of, etc. the head of the Civil Liberties Bureau and the head of the Audit and Legal Affairs Bureau at each legal affairs bureau and district legal affairs bureau for the commencement, conducting of investigations, and completion of relief procedures).

Justice,[7] requests[8] to delete relevant information on the Internet originating from declarations, etc. from injured parties go to the provider, etc. 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 in not incurred due to deletion by the provider.

In cases where a crime suspect is the injured party in human rights violations in particular, there are cases in which attempting recovery and prevention of damage themselves is acknowledged as being difficult given that they are being held as a suspect. In such cases, it is not possible to use inquiry procedures to the sender pursuant to article 3 paragraph (2) item (2) of the Provider Liability Limitation Act. In this sense, it is possible to forestall the spread of damage resulting from illegal

[7] Refers to the head of each legal affairs bureau and district legal affairs bureau. Note, however, that the head of the Civil Liberties Bureau may make requests to delete in view of the urgency or importance of the incident.

[8] Here requests to delete, under the Rules for Conducting Investigations into Human Rights Violation Incidents, fall under "requests to take necessary measures with regard to parties who are able to practically respond with regard to damage relief or prevention due to human rights violations (request)" provided for in article 14 paragraph 1 item (1) [measures for cases where human rights infringement facts are recognized]. With respect to this, in cases where the provisions of "mediation, legal advice, and other assistance recognized as reasonable in relation to the introduction or legal aid for relevant administrative organs or relevant public or private organizations with regard to injured persons, etc." provided for in article 13 item (1) of the Rules [Assistance, etc. Measures] is recognized as sufficient, determine the necessity or propriety of transmission prevention measures pursuant to generally determined criteria provided for in chapter II of these Guidelines due to the injured party making requests to delete transmitted information directly to a provider, etc. based on assistance from Human Rights Organs of the Ministry of Justice.

information distribution by promptly responding pursuant to these Guidelines.
Consequently, in cases where requests for transmission prevention measures are received from Human Rights Organs of the Ministry of Justice, having specified necessary matters such as infringing information, etc., in accordance with procedures set forth in these Guidelines, unless there are special reasons that deny "sufficient reasonable grounds to believe that the rights of others have been unjustly infringed", the courts are expected to determine that the provider, etc. is exempted from liability for damages with respect to the sender when the provider, etc. has taken minimum measures to prevent the transmission of relevant information with respect to the unspecified person based on the relevant request. Note, however, that the Council would like it to be noted that not incurring liability for damages with respect to the sender as a result of responding to requests for Human Rights Organs of the Ministry of Justice is not always assured. (For example, cases in which abuse of public authority are suspected, etc. such as requests to delete photographs that accuse scandals, etc.)
However, the Human Rights Organs of the Ministry of Justice carry out administrative work in relation to the investigation and processing of human rights violation incidents, and persons with specialist knowledge relating to human rights violations make requests to delete as a result of adding careful reviews spanning multiple stages. Moreover, there are aspects that differ from reports from the general public in that reports are based on certain determination criteria in relation to human rights protection, but even in such cases, a provider, etc. is not obliged to take transmission prevention measures as a result. For example, when a provider, etc. has determined that there are no "sufficiently reasonable reasons to believe that the rights of others have been unjustly infringed" and it has been determined that responding to requests to delete will result in bearing the sender's liability for damages, the provider, etc. may not take transmission prevention measures. Note, however, that in such cases, considering there are cases where providers are not exempted from liability for damages from injured parties, etc. (cases falling under article 3 paragraph (1) of the Act), the Council recommends that the provider consult with a legal expert, e.g. an attorney when determining the need for transmission prevention measures.
Additionally, with requests to delete any information by Human Rights Organs of the Ministry of Justice, cases other than those in which defamation and invasion of privacy covered by these Guidelines are possible, but in which expressions that are not obviously defamation or invasions of privacy, are not covered by these Guidelines.

(3) Criteria for determining providers', etc. conduct guidelines

For the provider, etc. in principle, a response in line with these Guidelines is expected and at present specified conduct guidelines are conceivable. Additionally, related judicial precedents and theory trends are also stated as a commentary at the end of these Guidelines but these should only be used as a reference since this is a field in which future changes are likely.

In cases where transmission prevention measures are not taken with regard to information shown below and information is left unaddressed despite a request to delete, etc. having been made, it is conceivable that there will be cases that fall under "sufficient reasonable grounds to recognize that it was possible, in relations with the petitioner, to be aware that the rights of others had been infringed" as provided for in article 3 paragraph (1) item (2) of the Provider Liability Limitation Act.

Additionally, whereas article 3 paragraph (1) item (2) of the Provider Liability Limitation Act prescribes cases where liability is limited with respect to the petitioner in cases where transmission prevention measures are not taken, article 3 paragraph (2) item (1) prescribes cases where liability is limited with respect to the sender in cases where transmission prevention measures are taken, and even though the phrase "reasonable grounds" is used in both cases, there is no mutual relationship and it is necessary to determine each case separately.

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II-2. Transmission Prevention Measures for Information that Infringes the Rights of Individuals (from standpoint of invasion of privacy)

II-2-1 Information Protected as Private

The judgment on 28 September 1964 issued by the Tokyo District Court, which has become a leading case, that recognized tort with regard to the invasion of privacy ("after the party" case, Judicial Precedent Summary 1), interprets that "information must be 1) a private life fact or at risk of being construed as a private life fact, 2) recognizable as being information the individual does not want to disclose to others from the perspective of the relevant individual taking the feelings of ordinary people as a reference, and 3) not yet know to the general public" in order for information in relation to individuals to be protected as private. These three requirements have been quoted many times and have become well established in subsequent judicial precedents in relation to invasions of privacy.

"Information at risk of being construed as a private life fact" provided for in 1) is mentioned in the "After the Party" case in the sense that it applies if there is a risk that ordinary readers will construe information as fact despite it being fiction, due to the

model novel having become an issue. It is sufficient to understand at a level at which cases where ordinary people will not first construe information as fact (consider it to be made up) are excluded.
Currently, the requirement provided in 2) is understood to be subject to legal protection as not wanting to negligently disclose names and addresses to others is natural as is described hereinafter, and coupled with the enactment of the Act on the Protection of Personal Information, privacy protection targets have become more widely recognized.
With regard to the requirements provided for in 3) too, even if information has been reported in one media, common awareness is often denied as publishing in another media will result in new persons being aware of such information (readers or audience differs for each media). Even in cases where information published in official documents such as telephone directories or official gazettes, etc. is quoted or reprinted, information may be subject to privacy protection depending on the media that publishes such information and the publication circumstances.
Note, however, that facts relating to the work of professionals, such as public officials and quasi public officials in particular, is often not subject to privacy protection due to not being facts relating to their private lives.

II-2-2 Justifiable Cause for Noncompliance with the Law

In cases where even those facts concerning private lives that are subject to privacy protection have been provided as material for determining the propriety and nature thereof with regard to public officials, quasi public officials, and in particular persons in public office appointed through elections and candidates for such offices, and professionals, etc., the judgment will be no illegality when the content and method of expression is not unjust in light of the objective. Further, with regard to news coverage of crimes, unless the content and method of expression is unjust, the judgment will be no illegality if relating to a matter of public interest or of legitimate social interest (explained in full separately in II-2-6).
If parts of the private lives of distinguished persons could be of legitimate social concern, and distinguished persons are understood to have abandoned their privacy to a certain extent in the process of choosing that kind of occupation or to become high profile, then there may be times when disclosure of information relating to the field in which that person has become well-known will be judged as not being illegal.

II-2-3 Response to Information such as Names and Contact Information

(1) Features of information such as names and contact information, etc.

Contact information such as names, addresses, and telephone numbers, etc. is basic information that identifies individuals, and due to the nature of such information, it tends to be understood as not being highly confidential, however, following disclosure to the public and especially when disclosed through the Internet, it becomes information that people do not want to be disclosed to the general public due to the likelihood of information being easily accessed by unknown third parties and with an apprehension of interruption in private and personal life.

(2) Cases of ordinary private individuals

Taking the following kind of response is conceivable when a request has been received for transmission prevention measures for information such as the name and contact information, etc. of ordinary private individuals.

1) As a general rule,[9] when a request to delete, etc. has been made with regard to web pages that publish names, work and home addresses, and telephone numbers, deletion is possible in cases where a provider, etc. can delete information due to the extreme likelihood that use of such relevant information will disturb private life peace. (Additionally, in cases where the wrong number is stated as the telephone number and another person's number is stated, as a general rule such number will be deleted if a request is made due to such act being harassment).

2) As a general rule deletion is possible in cases where the name, work and home address and telephone numbers are stated in a collected form such as a list, etc.

3) As a general rule deletion is possible in cases where information that discloses names is stated in cases in which a person only acts using a pseudonym on the Internet (cases in which names and contact details are not published).

4) As a general rule deletion is also possible in the same way in cases where information that discloses electronic mail addresses that are not published is stated.

[9] As an exception with respect to the general rule, in cases which are not especially urgent such as cases where published addresses or telephone numbers, etc. do not actually exist and in which there is no possibility of harassment that disturbs private life peace actually taking place, etc., it is conceivable that the sender will be informed of the request to delete and the voluntarily deletion of information by the sender will be encouraged.

(3) Cases of public officials[10]

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As a general rule, when a request for transmission prevention measures for information such as the name and contact information, etc. of public officials, etc. has been received, handling is the same as in cases of ordinary private individuals but taking the following kind of response is conceivable considering the peculiarities of public officials, etc.

While there are many cases in which deletion is not necessary with regard to well known facts such as the duties and positions of public officials, etc. and addresses and telephone numbers relating to such duties and positions, as a general rule it is desirable that information not relating to duties and positions, etc. and that does not need to be widely known, even in the case of public officials (for example their home address and telephone number[11]), be handled in the same way as information on ordinary private

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[10] "Public officials" means members of the Diet, prefectural heads, councilors, and other public officers who hold office, etc. Further, company representatives and distinguished persons are also public officials due to having an official character that corresponds to that of a "public official". There are cases where such persons are requested to tolerate disruption to private life peace to a certain extent in connection with such duties, and consideration that differs to that of ordinary private individuals is necessary. Additionally, in these Guidelines in addition to the above-mentioned "public officials", ordinary private individuals who are not public officials but who have official positions such as company representatives, etc., and who have social influence are categorized as "quasi public officials", people who are simply distinguished or famous are categorized as "distinguished persons", and other ordinary private individuals are categorized as "ordinary private individuals".

[11] Cannot to find a judicial precedent relating to the publishing of housing information relating to public officials and quasi public officials. Decided to handle in the same way as ordinary private individuals due to the risk of disrupting private life peace, including that of family members, such as harassment, if home addresses and telephone numbers are published without permission. Note, however, that with regard to company managers, as a general rule, handling in which the home of a company's representative director is not deleted is conceivable due to the home address of the representative director being an essential item stated in commercial registers for juridical persons (obtainable by anyone at a legal affairs bureau).

individuals.[12]

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(4) Judicial precedents
(4)-1 Outline
A Supreme Court judgment has also been issued with regard to cases where name and contact information have been disclosed as a set, and in a lower court judicial precedent too, being covered by privacy protection has been recognized, and there is nothing that explicitly denies this. Whether publishing is tort and an obligation to compensate for damage is incurred will ultimately be considered together with justifiable cause for noncompliance with the law, but taking the following criteria into consideration as enshrined in the Supreme Court judgment, it should be considered difficult to legitimize the release of the names and contact information of ordinary persons.

* The judgment issued by the Supreme Court on 12 September 2003 (Judicial Precedent Summary 2), states “matriculation numbers, names, addresses, and telephone numbers are simple information . . . to identify individuals; therefore, to this extent, the necessity for concealment is not very high.” “However, even with respect to the aforementioned personal information, it is natural that a principal would not want more information than it is necessary to be disclosed to others whom the person would not let know, and this expectation should be protected; therefore, the personal information of this case should be legally protected as information concerning the jokoku appellants' privacy”. Moreover, this judgment states, continuing on from the above-mentioned ruling, that despite it having been easy for the university to obtain prior authorization, the university neglected to obtain authorization and disclosed information to the police without permission which “contravene the rational expectation of the jokoku appellants that the voluntarily reported information concerning privacy

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Conversely, it is conceivable that there will be few cases in which the legitimacy of publishing the address of a distinguished person will be recognized.

[12] It is conceivable that deleting will be possible if a provider, etc. can delete such information, in cases where urgency is high, such as harassment that damages the peace of the public official’s private lives actually occurring, etc., even if public officials’, etc. contact information, etc. is widely known.

will be adequately controlled and should be regarded as constituting tort due to infringing the privacy of the appellants", and "The circumstances that were mentioned in the judgment of the second instance court including the degree of concealment, non-existence of concrete disadvantages by disclosure, and justifiability and necessity of the purpose of disclosure are not sufficient to affect the above conclusion". Based on this judgment, the disclosure of private information such as the name and contact information of ordinary private individuals will not be legitimized even if the legitimacy and necessity of disclosure objectives are reasonable. However, in this judgment two of the five judges stated an opposing opinion that high security needs of the seminar and legitimate disclosure objectives are not grounds for tort (3:2 majority decision).

(4)-2 Cases of ordinary private individuals

In addition to the above-mentioned Supreme Court judgment, the following are lower court judicial precedents with regard to information such as names and contact information, etc. pertaining to ordinary private individuals.

1) Case in which a name and home address and telephone number were mistakenly published in a telephone directory despite having refused publication (judgment issued by the Tokyo District Court on 21 January 1998, Judicial Precedent Summary 3)

2) Case in which the name of an employer and telephone number, which the name of the apartment purchaser and individual concerned had indicated as wishing to keep secret, was provided to the company due to act as the management company for the relevant apartment building (judgment issued by the Tokyo District Court on 29 August 29 1990, Judicial Precedent Summary 4)

3) Case in which the name, occupation, (employer's) address and telephone number published in a telephone directory (Town Pages) were disclosed on a bulletin board (linked to a pseudonym) (judgment issued by the Kobe District Court on 23 June 1999, Judicial Precedent Summary 5)

4) Case in which a university that organized a seminar provided the names, student ID numbers, addresses and telephone number of seminar participants to the police (judgment issued by the Tokyo District Court on 11 April 2001, Judicial Precedent Summary 6), and the court of second instance (judgment issued by the Tokyo High Court on 16 January 2002, Judicial Precedent Summary 7), remanded the above-mentioned Supreme Court judgment on the lawsuit in accordance with a separate petition (judgment issued by the Tokyo High Court on 23 March 2004, Judicial Precedent Summary 8)

* The above-mentioned judicial precedent includes substantial evidence of the danger of

disruption to private life peace by being contacted by an unknown person.
* In cases where employers' addresses and telephone numbers published in telephone directories are published in other media, such information is not common knowledge (not yet known to ordinary people) and care should be taken to ensure it is subject to privacy protection (Judicial Precedent Summary 5).

Interest in a particular piece of information may decrease (note, however, that increased interest in the site itself as being easy to use due to the accumulation of data is also conceivable) with regard to cases where names and employers and home addresses are published collectively in a list format, but given the list form, it is conceivable that such situations will not to be circumstances in which constituting tort is influenced.
* There is a judicial precedent that recognized tort with regard to the publishing of a telephone directory (judgment issued by the Tokyo District Court on 21 January 1998, Judicial Precedent Summary 3).

Except in cases where the person involved in the crime is a public official, etc., a person involved in crime should be treated as an private individual since publishing the work and home addresses of crime suspects or defendants, petitioners, and the family of such persons is only justified in cases where such places are the scene of the crime, and it is conceivable that in most cases publishing telephone numbers will not be justifiable.

* With regard to a person involved in a crime, publishing the appellation of the suspect's wife's employer was considered illegal given that, "the reason why news coverage of crimes is generally of public interest is to have the general public recognize that a criminal act or suspicion thereof has occurred, and given that it is conceivable that coverage satisfies warnings, prevention, and nuisance value from a social standpoint, rather than permitting unrestricted indications and news coverage even if a matter relating to the crime, the scope of facts permitted to be indicated should be limited to crime facts and facts closely related thereto. Consequently, it is reasonable to construe that permitting indications and news coverage of facts in relation to the suspect's family in relation to a crime is limited to crime facts and closely related facts such as cases where it is necessary in order to specify that relevant facts are crime facts, or cases where it is particularly necessary in order to investigate the motive and cause of the crime" (judgment issued by the Tokyo District Court on 4 April 1995, Judicial Precedent Summary 9. Judgment issued by the Tokyo High Court, the court of second instance, on 17 October 1995, Judicial Precedent Summary 10).

Considering that acting only under a pseudonym is an indication of the intention to conceal a name, that maintaining anonymity is a rule on bulletin boards, etc. in which a person ordinarily acts under a pseudonym, and that acts that reveal the actual name of a person acting under a pseudonym ordinarily take place when a person has been antagonized on the Internet or is the subject of curiosity, then, judging from the flow of lower court judicial precedents so far, the possibility of treating as information not wanting to be published on the basis of the sensitivity of reasonable persons is not always thought to be negligible (Judicial Precedent Summary 5, Judicial Precedent Summary 11).
With regard to electronic mail address too, given that the possibility that slanderous electronic mail or unsolicited mail will be concentrated is not negligible, it can be determined that the peace of private lives will be interrupted (Judicial Precedent Summary 12).

(4)-3 Cases of distinguished persons
* There have been a series of judgments that permitted the prohibition of publishcation of the home address and telephone number of a distinguished person or his family (relatives' abode) (judgment issued by the Amagasaki Branch of the Kobe District Court on 12 February 1997, Judicial Precedent Summary 13, judgment issued by the Tokyo District Court on 23 June 1997, Judicial Precedent Summary 14, judgment issued by the Tokyo District Court on 30 November 1998, Judicial Precedent Summary 15), and in these judgments, although the interest consideration with the objective of publication, etc. is indicated, it is conceivable that there will not be many cases where the publication of the home of a distinguished person is recognized as legitimate.

II-2-4 Response to Information other than Names and Contact Information
(1) Features of information other than names and contact information
It is conceivable that many of the cases in which requests to delete are made with regard to information other than names and contact information are for so-called sensitive information (information that should be handled with more care than normal e.g. physical information, credit information, and other information the nature of which a reasonable person wants to conceal).
In such cases, requests to protect due to privacy carry more weight but conversely, in cases where such information is disclosed, there are many cases that resulting from evaluation and criticism objectives with respect to the applicable person, and in cases

where such applicable person is a public official, etc. request that should protect such criticism start to be made.

(2) Cases of ordinary private individuals

When a request for transmission prevention measures for information other than names and contact information for ordinary private individuals is received, as a general rule, deleting information is desirable since it is difficult to conceive of reasons that legitimize the publication of sensitive information with regard to ordinary private individuals. Naturally, there is also private information other than sensitive information regarding ordinary private individuals and there are cases where, depending on the circumstances, information will be determined as not being a target for the protection of privacy. However, if such decisions are included, and given that decisions by a provider, etc. will become even more complicated and that cases in which it is possible to legitimize the release of private information to the public are considered extremely rare with regard to ordinary private individuals, then as a general rule, private information for which the individual concerned requests transmission prevention measures with respect to ordinary private individuals shall be deleted.

In cases where private information other than names and contact information with regard to a specified individual (meaning information in relation to a living individual that enables the identification of that specific individual through that described, etc. that is included in the relevant information. For example, academic background, medical history, performance, assets, thoughts and beliefs, previous convictions, social status, etc.) is stated, if the request to delete is from the private individual him or herself, and the sender is informed of the request to delete, and if the sender does not voluntarily delete information then the provider, etc. shall, as a general rule, delete the information if it can be deleted.

If a request to delete is made by the individual him or herself or other parties concerned with regard to that information relating to those involved in a crime that are “facts that do not relate to crime facts” (for example, information in relation to the family of persons involved in crime, etc.) and if the sender is informed of the request to delete, and if the sender does not voluntarily delete the information then the provider, etc. shall, as a general rule, delete the information if it can be deleted.[13]

[13] Facts not relating to a crime shall be handled in the same way as non-crime related

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Additionally, in the case of information other than names and contact information, there are often cases where in addition to the privacy standpoint, issues arise from the standpoint of defamation, and thus it is always necessary to refer to defamation items.

(3) Cases of public officials
When a request for transmission prevention measures for information other than the names and contact information of public officials, etc. is received, the following kind of response is conceivable.

Cases exist with regard to public officials, etc. in which it is acceptable not to delete information such as when information can be said to be "occupational facts".

If a request to delete is made by the individual him or herself or other persons concerned with regard to the "private life facts" of public officials, etc., and if the sender is informed of the request to delete, and if the sender does not voluntarily delete information then the person making the request to delete shall be informed of the progress, and encouraged to voluntarily resolve the situation. Note, however, that there are cases where the provider, etc. can delete information such as when the mode of publication lacks dignity and is beyond endurance.[14]

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private information even if not limited to facts in relation to the suspect's family but also facts in relation to the suspect him or herself, since the aforementioned judgment issued by the Tokyo District Court on 14 April 1995, etc. did not recognize the legitimacy of publications stating that "rather than permitting unrestricted indications and news coverage even of matters relating to crimes, the scope of facts permitted to be indicated should be limited to crime facts and facts closely related thereto".

[14] There are cases with regard to public officials and quasi public officials where the publishing of that private information that is so-called sensitive information (information that should be handled with more care than normal. For example, physical information, credit information, etc.) is justified due to the objective and necessity.

In judicial precedents, in cases with respect to public officials where materials for determining the propriety that such person holds a public office have been published, publication is virtually always justified (refer to judgment issued by the Supreme Court (Third Petty Bench) on 8 February 1994, Judicial Precedent Summary 16), and with respect to quasi public officials, it may be determined that "there are cases that must be tolerated" considering the objective and necessity of publication (refer to judgment issued by the Tokyo District Court on 22 May1990, Judicial Precedent Summary 19). Furthermore, there are also judicial precedents that justify the publication of information on quasi public officials' private lives as such expressions lack illegality, when expressions have been made concerning matters of legitimate social interest and when satisfied that the expression content and method is not unjust. In addition to such judicial precedents, given that restricting is appropriate in cases where judgment is comparatively obvious, the liability of a provider, etc. in cases where difficult factors are involved in judgments, is to delete information in cases where illegality is evident from the objective, necessity and expression method, and to recommend a response of leaving it to voluntary resolution in cases that are not so clear.

Additionally, in the case of information other than names and contact information, there are often cases where in addition to the privacy standpoint, issues arise from the standpoint of defamation, and it is necessary to refer to defamation items.

(4) Judicial precedent

(4)-1 Outline

* It is conceivable that the judgment issued by the Third Petty Court of the Supreme Court on 8 February 1994 (Judicial Precedent Summary 16) will be a reading case in relation to previous convictions with respect to so-called sensitive information. This judgment states that there are benefits which deserve legal protection with regard to facts relating to previous convictions, etc. that are not published while avoiding the concept of privacy, and having stated that "of course, in cases where historical or social significance is acknowledged in publicizing the case itself given that facts relating to a certain person's previous convictions, etc., do on the other hand, relate to matters that should be the target of social and public concern or criticism of a criminal case or a criminal trial, publicizing the real name of the person concerned cannot be said to be unacceptable", (this part assumes that the previous conviction is not merely a private life fact and that there is leeway for it not applying to other matters), "depending on the nature of that person's social activities or the extent of their influence on society

through such activities, it has to be said that there are cases in which the publicization of facts relating to said past convictions, etc. must be tolerated as a document that criticizes or evaluates such social activities.", "in cases where that person is someone of official standing who is the subject of legitimate interest to society in general such as someone who holds a public office who was appointed by election, or a candidate for public office, etc., when facts relating to said past convictions, etc. have been published as documents for determining the propriety, etc. of that person holding public office, this should not be referred to as being illegal.", and "in cases where facts relating to the previous convictions, etc. of a certain person are published in a work using his real name, in order to determine the foregoing points, it should be necessary to consider both the significant and necessity of using his real name in light of the objective and nature, etc. of such work", and holds that "in conclusion, there are cases where the benefit of not publicizing facts relating to previous convictions, etc, are worth legal protection while at the same time, there are cases where such publication is permitted, and whether publicizing facts relating to the previous convictions, etc. of a certain person in a work using his real name constitutes tort should be determined not only on that person's subsequent living situation but also on the historical or social significance of the case in itself, the importance of that person, the social activities and influence of that person, together with the significance and the necessity of using his real name in the light of the objective and nature of the work, and as a result, in cases where the legal benefit of not publicizing facts concerning previous convictions, etc. are surpassed, it must be said that it is possible to request compensation for mental anguish suffered by such publication".

(4)-2 Cases of ordinary private individuals

It is conceivable that cases in which the publication of sensitive information relating to ordinary private individuals is justified will be rare. However, it is not possible to unambiguously determine what kind of information falls under sensitive information, and from a provider's, etc. viewpoint, it is difficult to determine how to divide private information on ordinary private individuals into sensitive information and non-sensitive information.

* For example, in the judgment on the model novel (judgment issued by the Tokyo District Court on 19 May 1995, Judicial Precedent Summary 17), holds that "of matters plaintiffs claim are invasions of privacy, the plaintiff's academic background, marital background and facts that the plaintiff is referred to by his wife's name, the background to the opening of Otuyama Clinic and property relations, and the background to the

birth, career, and marriage of plaintiff Hanako's parents, cannot, in so far as the criteria of the feelings of ordinary people, be acknowledged as matters that the plaintiff does not want others to know, and thus should not correspond to infringements of privacy". However, given that the novel is a creation produced from the author's artistic imagination, and can be taken as fiction, issues of defamation and invasion of privacy do not arise and the above-mentioned judgment holds that, from the standpoint that it can be said to be obiter dictum, and that in cases where the crime suspect's wife is announced, even if her employer, age, home town, university, career, and personal appearance, etc. are criteria for ordinary person's sensitivity, she will not want such information to be published and will experience pain (judgment issued by the Tokyo District Court on 14 April 1995, Judicial Precedent Summary 9), and the scope of privacy protection, as ruled in the judgment issued by the Tokyo District Court judgment on 19 May 1995, is thought to be much narrower than the sense of reasonable persons, and there are risks of relying on this.

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(4)-3 Cases of public officials

* The above-mentioned judgment issued by the Third Petty Bench of the Supreme Court on 8 February 1994 as an incident is a case of an ordinary person but mentions the case of a public official.

* Further, while a judgment in a criminal case relating to defamation, the judgment pronounced by the First Petty Bench of the Supreme Court on 16 April 1981 (Judicial Precedent Summary 18) ruled that, with regard to "private life behavior" pertaining to scandals involving relations with the opposite sex, "even if behavior in the private life of ordinary private individuals, depending on the nature of the social activities involved and the extent of the influence on society through such behavior, etc., it should be understood that there are cases that correspond to 'matters of public interest' as referred to in article 230.2 of the Penal Code as materials for criticizing or evaluating with respect to such social activities". This judgment was able to legitimize the publicization of private life behavior including scandals involving relations with the opposite sex due to social influence with respect to quasi public officials.

* With respect to coordinating the privacy of quasi public official and freedom of expression, the judgment issued by the Tokyo District Court on 22 May 1990 (Judicial Precedent Summary 19) in relation to the news coverage of the hospitalization of the chairman of a leading consumer loans company, and the judgment issued by the Tokyo

High Court judgment on 18 July 2001 (Judicial Precedent Summary 20) with respect to the reporting of details of budgetary expenditure in addition to earnings in an assumed name of a full time director of an incorporated foundation, discusses comparative weight citing various matters for consideration and is one typical pattern for determining the state of other information with respect to public officials.

* The judgment issued by the Tokyo High Court on 31 August 2006 (Judicial Precedent Summary 21) in the case in which compensation for damages was claimed on the grounds of defamation and invasion of privacy following a lawsuit for acts of sexual harassment during a physician's medical examination in which the petitioner lost the case (the physician won) and with regard to the holding of a press conference and subsequent news articles, ruled that since an occupational act of a professional had become an issue, the matter could not be attributed to personal territory and was not a target for the protection of privacy.

* The judgment issued by the Tokyo District Court on 19 February 2004 (Judicial Precedent Summary 22) in the case in which news coverage of visits to cabaret clubs by a prominent attorney, who had appeared regularly in television programs, ruled that there is legitimate social interest since a single element can question the credentials of a person involved in social activities as a legal expert, and when the expression content and method is not unjust in light of objectives, such act is not illegal and does not constitute tort.

* When making decisions on quasi-public officials, great care should be taken with respect to former public officials and prospective public officials.

The judgment issued by the Tokyo District Court on 5 October 2001 (Judicial Precedent Summary 23) in the case in which the details, etc. of a marital dispute (judicial) involving the former representative director of Recruit Co., Ltd. who was a defendant in a criminal case were reported, did not treat the person concerned as a public official given that he had retired from Recruit at that time and was not engaged in activities as an economist or public activities and did not have any influence with respect to society, and ruled that while a defendant in a criminal case, the news coverage content was unrelated to the criminal case.

The judgment issued by the Tokyo High Court on 31 March 2004 (Judicial Precedent Summary 24) in the case in which news coverage of the divorce of a member of a politician's family became an issue, did not treat the person concerned as a public official since, even though the family of a prominent politician was involved, at a time when that person had not indicated a desire to become a politician the person was no more than a private individual.

* The publication of the private lives of distinguished persons other than facts relating to general prominent areas is often treated as invasion of privacy tort. The judgment issued by the Tokyo District Court on 29 February 2000 (Judicial Precedent Summary 25) recognized tort for the invasion of privacy with respect to a professional soccer player, and the judgment issued by the Tokyo High Court as the court of second instance on 25 December 2000 (Judicial Precedent Summary 26) referred to the judgment issued by the Tokyo District Court on 15 July 15 (Judicial Precedent Summary 27) that recognized tort for the invasion of privacy with respect to the marital relations, etc. of a prominent cartoonist.
* Facts professed by entertainers on television is an issue from a separate standpoint to that of distinguished persons, namely it can lead to an issue of abandoning the right to privacy.
The judgment issued by the Tokyo District Court on 31 March 2006 (Judicial Precedent Summary 28) in a case in which a comedian professed on television and in publications that he is not embarrassed that he likes pornographic videos and sometimes borrows them, recognized that, while it should be understood that he had abandoned confidentiality with respect to making private information public and that there is no merit in legal protection, the facts he made public are within the scope of liking and frequently purchasing pornographic videos, while those parts of reports that specified the type of pornographic video purchased infringe the right to privacy as the specific type of pornographic video he or she is interested in and purchased is highly confidential and not public knowledge.

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II-2-5 Response to Photographs and Portraits, etc.

(1) Features of photographs and portraits, etc.[15]

[15] The publishing of photographs and portraits, etc. is an issue from the standpoint of portrait rights or privacy rights being moral rights, and in cases of photographs and portraits of distinguished persons and entertainers in particular, there are issues from the standpoint of publicity rights being property rights. The latter by nature closely relates more to copyright issues and there are judicial precedents that recognize privacy right infringements as well as publicity right infringements with respect to identical photographs, and the issue of photographs and portraits, etc. will be covered here.

Even if photographs have been taken as if of appearances and conduct shown publicly, there are also cases where locking a moment can give a different impression to reality, and even when that is not so, there are often cases in which the subject feels uncomfortable or embarrassed about publication due to leaving a strong impression on the viewer.
With portrait photographs there is a risk of use in crimes such as attacks or kidnapping. Photographs that show certain conduct or states may, due to such content, infringe privacy rights or damage someone's reputation, and the publication of photographs frequently increases the extent of the damage.
Conversely, in criticisms with respect to news coverage, specified individuals, or other conduct, there is a reasonable chance that the publication of such photographs is necessary or useful and such adjustments will be necessary.

(2) Cases of ordinary private individuals

Taking the following kind of response is conceivable when a request has been received for transmission prevention measures for photographs and portraits, etc. of ordinary private individuals.
In the case of portrait photographs, etc. from which it is possible to identify the subject, as a general rule, delete the photograph from the point of view of photograph content, and publication status, in respect to photographs where it is obvious that the photograph has been taken without the individual's consent. Note, however, that there are cases, such as a) and b) below, where falling under privacy and portrait right infringements immediately is conceivable if transmission prevention measures are not taken and photographs are left unaddressed.

a) When appearing in only part of a crowd photograph taken to show the atmosphere at a resort, etc. and the photograph is not a close-up of any specific person.
b) When the publication of real names and portrait photographs, etc. such as photographs of suspects in crime news coverage is in the public interest, and such photographs are published to serve the public interest.

Even with photographs for which it is thought that consent to take the photograph has been obtained, there are many cases where it is possible to delete photographs (depicting a person in hospital or undergoing treatment) when individuals who have an ordinary sense of shame find such photographs to be uncomfortable or feel mental

anguish at their publication.
Further, as a general rule, except in cases where it is reasonably possible to determine that a guardian has given consent, it is possible to delete portrait photographs that can clearly be recognized as being of minors.[16]

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(3) Cases of public officials
Taking the following kind of response is conceivable when a request has been received for transmission prevention measures for photographs and portraits, etc. of public officials, etc.

In the case of portrait photographs, etc. from which it is possible to identify the subject, with the exception of the following cases, from the point of view of photograph content and publication status, it is possible to delete the photograph where it is obvious that the photograph has been taken without the individual's consent.

i) In cases where it is possible that there is legitimate social interest such as articles published about the work of public officials, and when the means of publishing the

[16] Minors have the same rights as adults not to have their appearance or person photographed and published without permission, and even in cases where the relevant minor consents to being photographed, minors and juveniles in particular, cannot be expected to appropriately determine whether any damage (including the danger of being kidnapped, etc.) will arise from having their photograph published on web pages, etc. Further, in the case of juveniles, it is difficult for the juvenile him or herself to safely resolve the matter on their own in cases where actual damage has been caused. Consequently, from the standpoint of protecting children, based on the need for consent of guardians for acts that are detrimental to minors, when necessary in order to protect the privacy of minors and to protect minors from the risk of kidnapping, etc., a provider, etc. may take voluntary transmission prevention measures with regard to photographs for which is it conceivable that if the guardian is asked, they will not give additional consent or confirmation to publish a photograph.

portrait photograph is reasonable.

ii) In cases where it is possible that there is legitimate social interest in articles that publish portrait photographs, etc., rather than unjustly attempting to use goodwill from the relevant distinguished person's publicity with regard to portrait photographs of distinguished persons (actors, singers, professional athletes, etc.), and when the means of publishing the portrait photograph is reasonable.

(4) Judicial precedents

(4)-1 Outline

Photographing and publishing an individual's appearance or person without their consent is a violation of the provision of article 13 of the Constitution, and was traditionally referred to as infringements of "portrait rights", and liability for damages is incurred with tort.

The Supreme Court did not use the word "portrait rights" with regard to the publication in a weekly magazine of photographs of the suspect and photographs of illustrations of the suspect and defendant in the recent Wakayama curry incident during the trial and recognized that "any person has a legally protected personal interest not to have his or her appearance photographed without their permission", "it is reasonable to construe that any person has a personal interest not to have photographs taken of his or her appearance published without their permission", "it is reasonable to construe that any person has a personal interest not to have illustrations that depict his or her appearance published without their permission".

Additionally, the scope of consent with regard to the publishing of photographs, etc. taken with consent has become an issue, and it is understood that consent not to cover cases where published in a form the subject do not predict at the time taken or cases where published at an unexpected time or in an unexpected media,

* The judgment issued by the First Petty Bench of the Supreme Court on 10 November 2005 (Judicial Precedent Summary 29) having first established with regard to the taking of photographs that "any person has a legally protected personal interest not to have his/her face or appearance photographed without good reason, and whether or not an act of photographing a person's face or appearance without consent should be deemed to be a tort should be determined by examining whether or not the photographed person's personal interest has been injured beyond the tolerable limit in social life, while taking various factors into consideration such as the photographed person's social status, the

photographed activity, the place, purpose, manner, and necessity of photographing". Subsequently, the judgments holds with regard to publication that, "it is reasonable to construe that any person has a personal interest not to have photographs taken of his or her appearance published without their permission, and in cases where photographing the appearance of someone, etc. is evaluated as illegal, then acts that publish the photograph taken of such appearance, etc. should be understood to have illegality as infringing the above-mentioned moral rights of the subject". In these cases, publishing is concluded as being illegal due to have evaluated the photography as illegal, and the requirement for publication being illegal in cases where photography is legitimate, should be understood as not having been determined in this case. Finally the Supreme Court, having established with regard to the publication of illustration (portraits) that "it is reasonable to construe that any person has a personal interest not to have illustrations that depict his or her appearance published without their permission", states that illustrations, unlike photographs, reflect the author's view or technique, viewers accept illustrations on such assumption, and quietly drawing during ordinary court hearings is an act socially endorsed, but that the publication of illustrations of handcuffs and ropes tied at the waist is insulting and illegal due to damaging feelings of dignity.

* While a criminal case, there is a Supreme Court judicial precedent that mentions "the freedom of not having one's face or appearance photographed without consent or permission", and judgments with respect to portrait rights had been made in this way before the above-mentioned judgment issued by the First Petty Bench of the Supreme Court on November 10, 2005, namely, "any person has the right not to have his/her face or appearance photographed without consent or good reason. Putting aside whether this is called "portrait rights", at least, if a police officer, without good reason, has photographed a citizen's face or appearance, such an act is in violation of the purport of article 13 of the Constitution and therefore it is unacceptable…when a police officer takes a photograph out of necessity to investigate a crime, even if not only the offender but also the face, etc. of a third party individual is included in the photograph, then this is a case where photography is allowable (judgment issued by the Supreme Court on 24 December 1969 Judicial Precedent Summary 30). This judgment was also quoted as a precedent for the personal interest of not being photographed without permission in the above-mentioned judgment issued by the First Petty Bench of the Supreme Court judgment on 10 November 2005.

* The judgment issued by the Tokyo District Court on 31 March 2006 (Judicial Precedent Summary 28) with respect to an article that published surveillance video images and named the subject stated that regardless of whether the relevant individual

was the subject him or herself, as with cases where portrait rights have been directly infringed, personal rights has been infringed and recognized infringements of “personal rights directly related to portrait rights” in cases where the reader is lead to believe that it is the relevant individual when read together with the explanation, even in cases where the identify of the person is not evident from the published photograph.

(4)-2 Cases of ordinary private individuals

It is conceivable that the margin for justifying the photographing and publication of portrait photographs without consent with respect to ordinary private individuals is extremely narrow except in cases of crime news coverage.

There is a judicial precedent that concluded that there is absolutely no illegality in publishing photographs taken with consent when photographs were taken by a professional photographer and the subject could predict that the photographs would be published in a pictorial magazine (judgment issued by the Tokyo District Court on 8 August 1956, Judicial Precedent Summary 32) but generally, there are cases where the illegality of publishing even those photographs taken with consent is recognized, and considerably cautious decisions are required in determining the scope of such consent.

* The judgment issued by the Tokyo District Court on 27 September 2005 (Judicial Precedent Summary 31) in a case in which a site set up to introduce Tokyo’s cutting edge fashion took full-length photographs of ordinary private individuals walking along a public road and published close up full-length photographs including faces, stated that “any person has a personal right not to have his or her face or appearance photographed and not to have portrait photographs taken published without permission as a private life freedom ” and if taking photographs and publishing on sites is closely related to matters in the public interest, and is carried out solely with public interest in mind, and if the way in which photographs are taken and published on sites is reasonable in light of such objective, then illegality is rejected, and the judgment ruled that unauthorized photographs for the purpose of introducing fashion is not reasonable, and that full-length close-ups are not necessary, and publishing in a form that enables the subject to be identified when publishing on the site lacks appropriateness.

* The judgment issued by the Tokyo District Court on 5 September 2001 (Judicial Precedent Summary 33) relating to the republishing of photographs publishing in a magazine of an announcer in a swimming costume during her university years ruled that even if approval to published was given at the time of photographing, it is necessary to

obtain consent once again when republishing in a different media with different objectives, in a different manner and a different time.

* The judgment issued by the Tokyo District Court on 14 April 2009 (Judicial Precedent Summary 34) in a case in which a passing garbage truck driver, who had hidden that he was a garbage truck driver from his friends, was interviewed live on nation-wide television, demanded compensation, ruled that at a time when prejudice and a lack of understanding with respect to certain occupations remains and given social circumstances that trigger discriminatory statements and bullying of children, being a garbage truck driver falls under privacy from the plaintiff's perspective, and given that the plaintiff asked twice mid-way "will this be on television?" and the announcer responded "err, um, we'll consider, err, not broadcasting this", the plaintiff had not given approval for his face, etc. to be broadcasted on television, and recognized portrait right infringements due to consent not having been given.

(4)-3 Cases of public officials

Portrait rights are often judged based on similar criteria for determining defamation, and are matters concerning public interest, and if published for public interest objectives and if the content published is reasonable, then it is often the case that illegality of publication will be denied and liability for damages will not be incurred. Note, however, that unlike cases that determine the existence of justifiable cause for noncompliance with the law from the standpoint of defamation, truth alone is generally said not to excuse publication.

* The Sankei Weekly Magazine case (judgment issued by the Tokyo District Court on 27 February 1987. Judicial Precedent Summary 35) is an example of a judicial precedent that recognized the rejection of illegality due to "being a matter relating to public interest and being published for public interest objectives" in a case where the facts indicated had credibility. Namely, with regard to an article published in the Sankei Weekly Magazine concerning a private university professor (plaintiff) having sex with local women abroad on successive days as well as taking a percentage from prostitution, and published photographs of the plaintiff's face, photographs of him fully naked putting on underwear, and photographs of him on a bed playing with numerous women, the photographs reinforced and clarified the article itself, and the article related to public interest, was published with objectives solely in the public interest, and there is a case that applied justifiable cause for noncompliance with the law in defamation that covers public officials as illegality is lacking as a requirement for tort from the perspective of

the purpose of publishing the photographs and the necessity and means, etc. that recognized that the facts indicated as being true for the most part.
* In a case in which pictures of the chairman of a leading consumer loans company in a wheelchair were published, emphasis was placed on the fact that the chairman's appearance was photographed without permission while undergoing treatment in hospital and conversely, photographs were judged as not being necessary for news coverage of the illness, and taking photographs of the chairman sitting in a wheelchair in hospital was an illegal infringement of portrait rights and an invasion of privacy (judgment issued by the Tokyo District Court on 22 May 1990, Judicial Precedent Summary 19).

(4)-4 Cases of celebreties such as actors, and professional sports, etc.
The existence of celebreties is similar to that of public officials and there is a way of thinking in which celebreties can be said to have partly relinquished privacy rights, given the assumption that portrait photographs are a matter of social interest, even if portraits are used without permission such as the publication of portrait photographs, etc., this differs from ordinary private individuals and falls under justifiable cause for noncompliance with the law. Note, however, that in cases where celebreties attracting customers is abused, it is necessary to consider recognizing publicity rights and compensating for damages recognized.
Additionally, in the case of entertainers, there is a need to carefully judge the scope of such consent even when consent for photographing and publication has been given once with regard to photographs of poses that are generally embarrassing.

* The judgment issued by the Tokyo High Court on 26 April 2006 (Judicial Precedent Summary 36) with regard to the publication of photographs before debuting as an idol personality and private life photographs, ruled that, having acknowledged an invasion of privacy as limiting privacy as far as an entertainer's private life as being impossible to recognize depending to the way of thinking on legitimate society concerns, entertainers make a status in which they can exclusively enjoy economic benefits of customer attraction preparing portraits, etc. that function to express a unique reputation, social valuation, and degree of familiarity, etc. into publicity rights, and "cases where others use portraits that express such customer attractions according to a commercial method without the permission of the relevant entertainer", will be construed as publicity rights infringement tort.
* The judgment issued by the Intellectual Property High Court on 27 August 2009

(Judicial Precedent Summary 37) in a case in which an entertainer's photograph was used in an article that advocated a way of dieting involving dancing to music, ruled that since distinguished persons are more likely to be of legitimate social interest than ordinary persons, use of their name and portrait is necessary for news coverage, reviews, and the introduction of social phenomena, etc., and given the process in which a third party publishes his or her name and portrait, etc., the extent of their prominence amplifies and they establish a social status, the right of distinguished persons to exclusively control their name and portrait is limited, and "whether the use of a distinguished person's name and portrait is illegal requires the capturing of the correlation as an interest comparison issue of the right of a distinguished person to control their name and portrait and the guarantee of freedom of expression or the planned burden permitted in the process that leads to such a socially prominent existence, and the use and management method, etc. should comprehensively observe and judge the process of obtaining, reputation of the distinguished person, the extent to which they are famous, and the name and portrait of the relevant distinguished person with regard to the purpose, method, manner, and portrait photograph that uses their name and portrait", and the use of photographs in this case is to get people interested or encourage people to memorize the dance and cannot be said to exceed the planned burden permitted in the process of becoming a socially significant existence, and thus infringement of publicity rights were denied.

* The judgment issued by the Tokyo District Court on 23 May 2006 (Judicial Precedent Summary 38) in a case in which photographs taken of a former pornography actress during her time as a pornography actress for publication in a weekly magazine, photographs of her wearing underwear with her clothes undone taken to promote sales of the video, and images captured from videos were published together with a gossip article, ruled that republishing of photographs taken for publication in a weekly magazine could not be said to be unforeseeable and were approved, and use of images captured from videos to introduce the video should be consented to by the performer but that consent to the use of photographs taken to promote sales of the video and images captured from videos, considered together with the content of photographs that embarrass reasonable persons, stops at that scope, and publication in a weekly magazine exceeds the scope of publicity for a video after retirement and goes beyond that consent and was recognized to infringe portrait rights.

II-2-6 Response to Criminal Facts

(1) Features of criminal facts (ordinary private individuals)

In cases where crimes are reported in the news using real names, mentioning the relevant news coverage in posts, etc. does not infringe rights, but if a long period of time has elapsed after the crime and sentencing with respect to the offender has finished, bringing up crime facts could be right-infringing. It is difficult to illustrate the general criteria for the kind of cases for which it will be illegal (and how long a term has elapsed).[17]

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(2) Crimes by juveniles, etc.

News coverage of crimes by juveniles that enables the offender to be identified is prohibited in article 61 of the Juvenile Act[18] from the standpoint of rehabilitation. As a general rule the deleting of news coverage, etc. using real names is permitted.

(3) Crimes by public officials

The scope for permitting publication of crime facts in cases involving a person currently holding public office or a candidate for public office is wide.

(4) Judicial precedents

(4)-1 Outline

That a crime has taken place is in itself a matter of legitimate social concern and thus, except in cases of juvenile crimes, as a general rule, news coverage of real names

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[17] There are news organizations that are creating guidelines for the timing of anonymizing information. Refer to "NHK's 'Rules for Protecting Moral Rights for Databases Provided Externally' – the significant and background to reviews" (Copyright August 2009 P.19)

[18] Article 61 of the Juvenile Act provides that "No newspaper or other publication may carry any article or photograph from which a person subject to a hearing and decision of a family court, or against whom public prosecution has been instituted for a crime committed while a Juvenile, could be identified based on name, age, occupation, residence, appearance, etc."

immediately after the crime is permitted. It is not illegal to mention such news coverage. Note, however, that when a long period of time has elapsed since the crime and sentencing with respect to the offender has finished, bringing up crime facts could be right-infringing. The kind of cases specifically (depending on how long a term has elapsed) that it will be illegal to bring up differs according to the nature and gravity of the crime, and the characteristics of the offender, and are not easy to determine. In the case of juvenile crime, there are instances in which news coverage using real names in limited cases only will be permitted (as a general rule news coverage using real names is illegal), and there are instances in which, weighing up the legal benefits of not publishing against the grounds for publishing, only the former overriding the latter will constitute a tort (whether news coverage using real names is illegal will vary case-by-case). The latter is the decision made by Supreme Court.

p. 23-24
(4)-2 Cases of ordinary private individuals
There is a case in which a previous conviction for an injury 12 years earlier that was taken up in a non-fiction book was considered right-infringing. The High Court judgment in this case ruled that when a reasonable amount of time has elapsed since a crime and the punishment with respect to the offender has been carried out, then information in relation to such previous conviction, as a general rule, should be handled in the same way as undisclosed information and as information that is not of legitimate social interest, and unless there are special grounds, indicating and publishing crime facts using real names shall be unacceptable due to being an infringement of privacy. (Tokyo High Court 5 September 1989 “Reversal” case, Court of Second Instance Judicial Precedent Summary 39)

The Supreme Court judgment in the above-mentioned “reversal” case, ruled that whether publicizing facts relating to a previous conviction using a real name constitutes tort should be determined not only on that person’s subsequent living situation but also on the historical or social significance of the case itself, the importance of that person, the social activities and influence of that person, together with the significance and the necessity of using his real name in the light of the objective and nature of the work (judgment issued by the Supreme Court “Reversal” appeal hearing on 8 February 1994, Judicial Precedent Summary 16).

There was a case in which stating the employer, age, place of birth, and career history of the wife of a suspect arrested on suspicion of an indecent crime in a weekly magazine was considered an illegal invasion of privacy. The judgment ruled that "permitting indications and news coverage of facts in relation to the suspect's family in relation to crimes is limited to crime facts and closely related facts such as cases where it is necessary in order to specify that relevant facts are crime facts, or cases where it is particularly necessary in order to investigate the motive and cause of the crime", and as there were no such special circumstances, the article in the weekly magazine is illegal (judgment issued by the Tokyo District Court on 14 April 1995, Judicial Precedent Summary 9).

(4)-2 Juvenile cases

There was a case in which whether the publishing of an article that stated the manner of the crime and personal history, etc. of the perpetrator, who was a juvenile at the time of the crime, using a pseudonym similar to the perpetrator's real name, was tort or not was contested. The High Court judgment in this case confirmed that the news coverage was tort liability given that news coverage that infers real names is a violation of article 61 of the Juvenile Act. It was held that illegality shall only be constituted in cases where there are special circumstances such as when requests that evidently defend social interests should be given strong precedence over the rights or legal interest of the juvenile who should be protected (judgment issued by the Nagoya High Court on 29 June 2000 "Nagara River Lynch Mob Murder" case, court of second instance, Judicial Precedent Summary 40)

The Supreme Court held in the above-mentioned "Nagara River Lynch Mob Murder" case that news coverage of the case was not news coverage that inferred real names that violates article 61 of the Juvenile Act, and quashed and sent back the original judgment. Privacy infringements weight the legal interest of not publishing facts against the grounds for publication. Given that cases where the former overrides the latter are a tort, the legal interest of not publishing such facts as the age and social status at the time and the relevant crime act details, that were published in an article in a weekly magazine, the scope that information attributed to privacy information was transmitted as a result of publishing such facts, and the extent of the actual damage suffered by the juveniles, and the various circumstances in relation to the grounds for releasing such information should be examined in detail separately and weighed and determined (judgment issued by the Supreme Court on 14 March 2003 "Nagara River Lynch Mob Murder" case

appeal hearing, Judicial Precedent Summary 41)

(4)-3 Cases of public officials

There was a case in which a Metropolitan Assembly member's claim for compensation for damage was denied with regard to an incident in which a director of a metropolitan hospital, having brought criminal charges for unlawful entry into a building against the member of the Tokyo Metropolitan Assembly who entered the hospital's clinical laboratory without permission from the manager and conducted an investigation in relation to alcohol consumption in the hospital, published such facts on the hospital's website. The judgment construed that the charge was pertaining to a criminal act by an incumbent Metropolitan Assembly member and in view of the importance of the Metropolitan resident's right of know, such information should by its nature be provided widely to Metropolitan residents (Tokyo District Court 11 June 2008, Judicial Precedent Summary 42).

There was a case concerning an obstetrician who broke into a women's house in which a request for a temporary injunction, in which the obstetrician made a request with respect to a search service business operator for news coverage, etc. of the relevant incident to be hidden in search results, was rejected. The ruling stated that only 18 months had elapsed since the incident, and that the court considered that the incident's influence on the local society and patient interest remained (judgment issued by the Tokyo District Court on November 14 2008, Judicial Precedent Summary 43).

There was a case that denied tort with regard to news coverage that stated the actual name of a public junior high school teacher who was arrested for violation of the Juvenile Protection Ordinance. The judgment ruled that the detriment suffered by the appellant as a result of news coverage using his real name was great, and while it is necessary to give adequate consideration to the legal interest of not publishing his actual name, given the details of the alleged facts in which a junior high school teacher, who was in a position of teaching and instructing young people, engaged in indecent acts with a female junior high school student, news coverage using his real name is highly necessary since it is conceivable that specifying the suspect is of grave public concern along with the details of the alleged facts (judgment issued by the Fukuoka High Court, Naha Branch on 28 October 2008, Judicial Precedent Summary 44).

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II-3 Transmission Prevention Measures for Information that Infringes the Rights of Individuals (from standpoint of defamation)

II-3-1 Outcome of Defamation

(1) Lowering social evaluations

Fame is an objective social evaluation received from society with regard to a person's personal value such as their character, virtue, and credibility, and tort is constituted pursuant to article 709 of the Civil Code as defamation for acts that lower such social evaluation and such acts are the target of compensation for damage (judgment issued by the Third Petty Bench of the Supreme Court on 27 May 1997, Supreme Court Reports (civil cases) 51 No. 5 page 2024).[19]

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With regard to defamation through expressions through the Internet, the situation is such that it is possible to upload and transmit to electronic bulletin boards, etc. messages that lower the social evaluations of others, and at the point in time at which general users can read such message, dissemination is possible, and the social evaluation of others will fall as a result, and thus the establishment of defamation is conceivable regardless of whether that person knew of the publication of the relevant message.

Whether an expression lowers the social evaluation of someone should be determined

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[19] There is an example of a recent lower court judicial precedent that recognized tort as falling under "insults" with regard to the infringement of feelings of fame that are not accompanied by a decline in social evaluation (Tokyo District Court July 16 1990, judicial precedent report No. 1380, page 116, etc.) and an example in which defamation with respect to a deceased person is a feeling of the bereaved family's respect and cherishing with respect to the deceased person and recognized tort as a type of moral interest (Osaka District Court December 27 1989, judicial precedent report No 1342, page 53). However, in the drafting stage for these Guidelines, it is difficult to present general judgment criteria such as whether it falls under "insults" or whether it is possible to say that moral interests as a feeling of respect and cherishing have been infringed, and the guidelines can only handle representative examples of defamation that recognize a lowering of social evaluations.

based on the criteria of general readers' ordinary observations and interpretations with regard to the relevant article (judgment issued by the Second Petty Bench of the Supreme Court on 20 July 1956, Supreme Court Reports (civil cases) Vol. 10 No. 8 page 1059).

* Amongst the judicial precedents, a judgment issued by the Tokyo District Court on 17 June 2002 (Judicial Precedent Summary 1) that denied defamation with regard to a politician who was a member of the House of Representatives and a senior party member, as a judicial precedent that denied the establishment of defamation as not being possible to recognize the lowering of the plaintiff's social evaluation enough to constitute a defamation tort, and a judgment issued by the Tokyo District Court on 26 July 2004 (Judicial Precedent Summary 2) that denied defamation with regard to a former Prime Minister and member of the House of Representatives.

(2) Specifying an Applicable Individual

Defamation is established with respect to a certain person in cases where the name of a specified individual is not actually indicated but can be guessed by piecing together other circumstances. There are a number of lower court judgments and the judgment issued by the Tokyo District Court on 17 July 2003 (Judicial Precedent Summary 3) that constituted tort due to defamation in a case where a defamatory remark was made using an alias is a recent judicial precedent.

Defamation is not established with respect to people belonging to such group in cases where the target is vague such as "people from XXX are sly". The judgment issued by the Tokyo District Court on 14 December 2007 (Judicial Precedent Summary 4) that denied defamation by persons whose mother tongue is French or who were studying French, etc. with regard to remarks that criticized the French language is a recent judicial precedent. Note, however, that cases involving juridical persons are described hereinafter.

II-3-2 Justification for Illegal Acts by Defamation

(1) Requirements for Justification for Illegal Acts by Defamation

In cases where information that lowers the social evaluation of a specified individual has been published on web pages, etc., there are cases where it is possible to delete relevant information, but information is not to be deleted in cases where there is a possibility that the following three requirements will be satisfied-

a) The relevant information is a matter of public interest. For example, cases where information is published relating to specified crimes and acts pursuant to status in social life
b) The publishing of relevant information does not aim to offend individuals but aims to serve the public interest. For example, cases where insulting expressions that extend to personal insults that go beyond criticism with regard to criticisms in relation to a specified individual do not fall under this requirement.
c) The relevant information is true or there are reasonable grounds sufficient to believe that the sender is sincere. For example, cases where it is obvious that the relevant information is false, and where it cannot be said that there are reasonable grounds sufficient for even the sender to believe that the information is true, do not satisfy this requirement.

From the standpoint of defamation, there are many cases that fall under justifiable cause for noncompliance with the law, and it is conceivable that there will be many cases where the grounds for a provider, etc. to be able to believe in "unjust right-infringing" are poor since it is difficult for a provider, etc. to determine the public nature, public benefit, and credibility (or reasonability) required.

Additionally, from the standpoint of defamation, etc. even if there are cases where deciding whether information is illegal is not possible, from a privacy and other standpoint, there are cases where rights can be said to have been infringed and thus reviews from other standpoints are also necessary.

(2) Judicial precedents
(2)-1 Outline
In cases 1) involving matters of public interest, 2) where the sole objective is to serve the public interest, and 3) indicated facts have been proved to be as true, then unlawfulness is lacking with regard to defamation and in cases where provisionally indicated facts are not true but there are reasonable grounds for the person who acted to believe that the facts are true, then the act lacks intent or negligence and therefore, it does not constitute a tort (judgment issued by the First Petty Bench of the Supreme Court on 23 June 1966, Supreme Court Reports (civil cases) Vol. 20 No. 5 page 1118).
Namely, it is the view of judicial precedents and popular opinion that even if social evaluation has fallen, if the above-mentioned requirements of 1) or 3) are met, this does not constitute a tort. (This is referred to as "doctrine of truth and appropriateness")

In civil litigation in which tort based on defamation is the cause of the claim, liability substantiated by the defense (burden of proof) is assumed, but, when providers make a decision on transmission prevention measures pursuant to the Provider Liability Limitation Act, providers make judgments based on the fall in social evaluation (defamation) in conjunction with the requirements of above-mentioned 1) to 3).

Of these three requirements, "matters of public interest" signifies matters likely to be of ordinary interest as a member of democratic society, and can be paraphrased as "matters of legitimate social concern" (Minoru Takeda "Invasion of Privacy and Civil Liability (expanded and revised edition)" (Hanreijihosha, 1998) page 298).

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(2)-2 Matters of public interest (relates to criteria 1)

Whether a matter falls under a "matter of public interest" should be objectively determined in light of the content and nature of the indicated facts themselves.

* As a general rules crimes prior to the institution of prosecution fall under matters of public interest. The judgment issued by the Tokyo District Court on 26 October 1987 (Judicial Precedent Summary 5) is a judicial precedent in which the publication of an article that revealed the involvement of the JNR labor union in guerilla incidents such as the disconnection of a railway signal cable was deemed to be a matter of public interest.

* As a general rule, the private life behavior of pure ordinary private individuals does not fall under matters of public interest but, it has been ruled that "even if behavior in the private life of ordinary private individuals, depending on the nature of the social activities involved and the extent of the influence on society through such behavior, etc., it should be understood that there are cases that correspond to 'matters of public interest' as referred to in article 230.2 of the Penal Code as materials for criticizing or evaluating with respect to such social activities" (judgment in a criminal case, judgment issued by the First Petty Bench of the Supreme Court on 16 April 1981, Supreme Court Reports (criminal cases) Vol. 35, No. 3 page 84, similar rulings given in civil cases [for example, Judgment of the Tokyo District Court on 28 August 2009, judicial precedent times No. 1316 page 202]), and the scope of social activities with regard to official persons is deemed to fall under "matters of public interest".

* In terms of judicial precedents, there is the judgment issued by the Tokyo District Court on 15 February 1985 that ruled that an article in a weekly pictorial magazine that reported a lover in relation to the murder of the chairman of Toyota Shoji was not a

matter of public interest (Judicial Precedent Summary 6), and the judgment issued by the Tokyo District Court on 20 December 1990 that ruled that an article that reported relations with the Los Angeles allegations incident was private life behavior and not a matter of public interest (Judicial Precedent Summary 7), and the judgment issued by the Tokyo District Court on 28 August 2009 that ruled that an article that reported that an entertainer who was formerly a member of an idol group had demanded solatium from a man she had been dating was by its nature a private life behavior in that it concerned a relationship between a man and a woman and behavior after the end of such relationship and not a matter of public interest (Judicial Precedent Summary 8).

(2)-3 Objectives that serve the public interest (relates to criteria b)

"Objectives that serve the public interest" means "whether an article is recognized as something written or published based on public interest objectives, should not only be determined according to that which is apparent from the outside such as the content and context of the article, but should be evaluated and judged as a whole, including substantive relations that are not apparent from the outside".

Namely, "objectives that serve the public interest" means "whether an article recognized as something written or published based on public interest objectives, should not only be determined according to that which is apparent from the outside such as the content and context of the article, but collectively reviewing the method of expression, existence of materials that serve as the basis, and the writing attitude with regard to the handling thereof, and the issue of whether the article was appropriately sincere in being based on public interest objectives, and, moreover, whatever the content and context of the article, etc., whether any objectives linking to the denial of public interest exist, etc, for example, to settle a personal grudge or to pursue self-interests, as a hidden ulterior motive, should be evaluated and judged as a whole, including substantive relations that are not apparent from on the outside". (Note, however, that this is a judgment in a criminal case. Judgment issued by the Tokyo District Court on 10 June 1983, Reports of Precedents No. 1084 page 37.)

It is conceivable there will be cases where it is possible to determine the existence of "objectives that serve the public interest" comparatively easily from the content of expressions, etc. with regard to expressions via the Internet.

(2)-4 Truth and Appropriateness (relates to criteria c)

It is conceivable that there will be many cases where it is not possible to determine truth and appropriateness from the standing of a provider, etc. and it is conceivable that a

response can be taken if a case in which it is obvious that the relevant information is false, or it is evident that there are not sufficient reasonable grounds for the sender to believe the facts published on web pages, etc. to be true.
With regard to this aspect, it has been ruled that "information that is published on the Internet by individual users is not always regarded as less reliable information among the audience, and when determining whether there were any reasonable grounds, there is no reason to distinguish such case, without exception, from cases where an individual uses other means of expression. Considering that information published on the Internet can be viewed instantly by many and unspecified Internet users and it could damage someone's reputation seriously in some cases, and that it is not easy to restore the reputation once damaged and it is not certain that such damaged reputation can be fully recovered by making counterarguments on the Internet, in the case of an act of expression performed by an individual Internet user, similarly in other cases of expression, it is appropriate to construe that the establishment of the crime of defamation is denied only when the person who performed the act can be found to have had reasonable grounds, in light of reliable materials or evidence, for erroneously believing the facts that he/she alleged to be true; it cannot be construed that the establishment of this crime should be denied by applying less strict requirements." (Note, however, that this is a judgment in a criminal case. Judgment issued by the First Petty Bench of the Supreme Court on 15 May 2010, Supreme Court Reports (criminal cases) volume 64, No. 2 page 1, Judicial Precedent Summary 9).

II-3-3 Fair Criticisms, etc.

(1) Response to fair criticisms
It is possible to delete the relevant information in cases where insulting expressions that extend to personal attacks exceeding such realm have been used for criticisms in relation to specified individuals.

When an opinion or criticism has been manifested on the basis of a certain fact, when 1) such act involves matters of public interest, 2) in cases where such objective is solely to serve the public interest, and 3) when facts that predicate opinions or criticisms have been certified as true for important aspects, or there are reasonable grounds to believe that the facts are true, then unless the scope extends beyond the realm of opinions or criticisms such as extending to personal attacks, the act of the relevant criticism lacks illegality (judgment issued by the Second Petty Bench of the Supreme Court on 24

April 24 1987, Supreme Court Reports (civil cases) Vol. 41 No. 3 page 490) judgment issued by the First Petty Bench of the Supreme Court on 21 December 1989, Supreme Court Reports (civil cases) Vol. 43 No. 12 page 2252, judgment issued by the Third Petty Bench of the Supreme Court on 9 September 1997 Supreme Court Reports (civil cases) Vol. 51 No. 8 page 3804).

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Since exemption requirements differ with defamation indicating facts, classification of the act of expression that has become an issue into the indication of facts or into opinions or criticisms becomes an issue and, "when a part is charged for defamation, even where the said part of the article cannot immediately be construed, by understanding only the words and phrases used in such part in ordinary meanings, to assert specific matters concerning another person of which existence or non-existence can be identified based on evidence or otherwise, if the said part of the article can be construed, by taking into account the context as well as the knowledge or experience shared among ordinary readers at the time of publication of the article, to assert the said matters indirectly or euphemistically by using rhetorical exaggeration or emphasis, using figurative expressions or employing a form of hearsay report of a third party or inference, it is appropriate to regard the said part as alleging a fact. Further, if the said part of the article avoids such an indirect citation but can be construed, by taking into consideration the context and other relevant factors, to assert the said matters implicitly as the basis for the statements in the said part, it is also appropriate to regard the said part as alleging a fact." (judgment issued by the Third Petty Bench of the Supreme Court on 9 September 1997 Supreme Court Reports (civil cases) Vol. 51 No. 8 page 3804).

* "Even when speculative forms of expressions are used in parts for which the outcome of defamation has become an issue, based on the criteria of ordinary readers' ordinary care and reading of the relevant article, by taking into consideration the context before and after the relevant part and the knowledge or experience, etc. of such readers at the time of publication of the article, when it is construed that asserting as the result of such speculation of specific matters relating to other who have evidence and can decide existence, the said part, is also appropriate to regard the said part as alleging a fact." (judgment issued by the Second Petty Bench of the Supreme Court on 30 January 1998, Judicial Precedent Summary 11).

* Judicial precedents include a Tokyo District Court judgment on February 28, 1996

(Judicial Precedent Summary 10) that ruled that, with regard to a book that indicated mistakes in examples sentences in a dictionary, overall the scope of criticism had been exceeded, such as stating that the English language scholars and English reviewers who compiled the dictionary are incompetent, and using extreme satirical, derisive, scornful, and contemptuous expressions in multiple places, a judgment issued by the Osaka High Court on 26 December 2007 (Judicial Precedent Summary 12) ruled that a weekly magazine article with the headline "stupid mayor" exceeded the scope of criticism that the mayor lacked the qualities to be a mayor, making expressions that the appellant himself is a silly fool and given that remediation is not possible, the scope of opinions and criticism was exceeded, a judgment issued by the Tokyo District Court on 29 January 2009 (Judicial Precedent Summary 13) ruled that the publishing of an article that criticized a former legal advisor by a religious organization's newsletter exceeded the scope of opinion or criticism stating that "in addition to the appropriateness of the expression itself with regard to whether an opinion or criticism exceeds such scope, should also determine the necessity of the relevant opinion or criticism. Should determine the need for that mentioned above taking the background leading to the expression of the relevant opinion or criticism, such as past behavior by the other person, into consideration".

(2) Judicial precedents in cases of disputes

Recently, a view prevails that attempts to restrict the establishment of defamation from the standpoint of antagonistic speech in cases such as disputes on an electronic bulletin board (Kazuyuki Takahashi "PC Communication and Defamation", Jurist No. 1120, page 83 onwards, same, "Internet Defamation and Freedom of Expression", edited by Kazuyuki Takahashi and Shigeru Matsui, "Internet and the Law" [Version 4] (Yuhikaku, 2010) page 53 onwards).

According to this view, in cases where objections of the injured party can be seen to have an adequate effect, the risk of a fall in social evaluation cannot be recognized and it is reasonable to conceive an understanding that honor or feelings of honor defamation will not be established.

* Judgment issued by the Tokyo District Court on 27 August 2001 rejected the claim that the injured party had made necessary and adequate objections stating that their social evaluation had not been allowed to fall with regard to remarks on a PC communications service (Judicial Precedent Summary 14).

* There is a judicial precedent that recognized defamation and insults even for acts of expression that took place during a dispute, with regard to "abusive content that

emphasizes his or her opinion and refutes opposing opinions as not being necessary, not being appropriate expressions, using words that lack character…"judgment issued by the Tokyo High Court on 5 September 2001, Reports of Precedents No. 1786 page 80).

* In recent judicial precedents care is necessary as prudent rulings continue in the application of the legal principal of opposing speech with regard to cases of unilateral posting on Internet bulletin boards and websites.

* The judgment issued by the Tokyo High Court on 25 December 2002 (Judicial Precedent Summary 15) ruled that "it goes without saying that it is desirable to resolve verbal battles through speech, and this can first be said to happen when the assumption is of those persons who will be able to exchange words on an equal basis, and there are cases in which it is not possible to expect a resolution by handling with such verbal battles", and denied the application of the legal principal of opposing speech due to not having ever used the bulletin board in question, not having behaved in a way that induces criticism of oneself on the bulletin board in question, remarks aimed at the appelles on the thread in question should be considered slander by anonymous persons, and there being a limit on the making of effective rebuttals to such remarks on the bulletin board in question.

* The judgment issued by the Tokyo District Court on 17 July 2003 (Judicial Precedent Summary 16) denied the application of the legal principal of opposing speech on the grounds that remarks in each thread virtually all concern the social ensnaring of the plaintiffs, and since it is recognized that a large number of unspecified users unilaterally attacked the plaintiffs, the assumption itself to begin with of engaging in debate on equal terms with plaintiffs is lacking, etc.

* The judgment issued by the Tokyo District Court on 31 May 2007 (Judicial Precedent Summary 17) denied the application of the legal principal of opposing speech on the grounds that even if the injured party stated refutals on his or her own website, etc. on the Internet with respect to the content stated on a website by the perpetrator, viewers of the website concerned may not necessarily view the website that states the injured party's refutals, and being able to refuse on the Internet cannot be said to have an influence on the constituting of a tort defamation.

(3) Judicial precedents involving the character of the media

There are judicial precedents that restrictively interpret the affect of the media's character with regard to whether the media's character has an affect on the outcome of defamation. Namely, the court ruled that "society's general evaluation of the relevant newspaper's editorial policy, the main make-up of their readership, and the nature of the

relevant newspaper based on such factors does not affect the outcome of the tort liability", and even though it is a sports newspaper, "as long as the relevant newspapers has the characters of a news coverage medium, the readership will not as a general rule perceive articles published in the relevant newspaper to be unsubstantiated, and since it is usual to think that the relevant articles contains a certain degree of truth, it is not possible to deny the danger that the social evaluation of the person targeted by the article will fall as a result of the publication of such article" (Judicial Precedent Summary 19). Based on this judicial precedent, even acts of expression that provisionally state that the information is hearsay, (for example, acts of expression on site and bulletin boards that compile second class stories) can be construed as defamation.

In cases other than those mentioned above, from the standpoint of defamation, there are many cases that fall under justifiable cause for noncompliance with the law, and it is conceivable that there will be many cases where the grounds for a provider, etc. to be able to believe in "unjust right-infringing" are poor since it is difficult for a provider, etc. to determine the public nature, public benefit, and credibility (or reasonability) required.
Additionally, from the standpoint of defamation, etc. even if there are cases where deciding whether information is illegal is not possible, from a privacy and other standpoint, there are cases were rights can be said to be being infringed and thus reviews from other standpoints are also necessary.

II-4 Transmission Prevention Measures for Information that Infringes the Rights of Corporations and Other Juridical Persons

(1) Information that infringes the rights of corporations and other juridical persons, etc.

Given that there are many cases in which it is not possible for a provider, etc. to determine the authenticity of the facts indicated in cases where acts of expressions have been made that damage the honor or credibility of specific political parties, corporations, or other juridical persons, or local governments, generally, it is reasonable to respond having taken the inquiry procedures, etc. provided for in article 3 paragraph (2) item (2) of the Provider Liability Limitation Act.
However, as there are cases that may fall under legitimate defense or emergency evaluations even if such cases do not fall under grounds for exemption set forth in article 3 of the Provider Liability Limitation Act, there are cases where such aspect needs to be reviewed.
Reviews were undertaken from the standpoint of defamation, etc. since invasions of

privacy are not established for corporations and other juridical persons, etc.
Not only individuals but even for a specified political party, company or other juridical person (judgment issued by the First Petty Bench of the Supreme Court on 28 January 1964, Supreme Court Reports (civil cases) Vol. 18 No. 1, page 136) or an organization without right capacity, if a certain social evaluations exists with regard to them, such evaluation is the target of legal protection as fame.
Additionally, in order to determine that defamation attacks with respect to juridical persons simultaneously constitute defamation with respect to representatives, it is necessary to examine whether attacks are aimed at a number of people and to determine that such attack was also substantially aimed at the representative (judgment issued by the Third Petty Bench of the Supreme Court on 16 April 1963, Supreme Court Reports (civil cases) Vol. 17, No. 3 page 476, Judicial Precedent Summary 20).

(2) Local governments
Local governments are public juridical persons that operate with the objective of undertaking administration in a certain region, and there are a large number of local governments in Japan. The activities, etc. they engage in for administrative purposes are varied and different, and they have a certain social evaluation since they may be the target of evaluations that include such activities, and they are the target of legal protection as fame given that such social evaluation forms a foundation with regard to social activities involving transactions is the same as private juridical persons (judgment issued by the Oita District Court on 19 November 2002, Law Times Reports No.1139 page 166).

(3) Response to information that infringes the rights of corporations and other juridical persons, etc.
Credit in economic transactions is protected by damage to credit under the Penal Code (Penal Code article 233) but since credit is an evaluation that society grants to people from an economic standpoint, it is possible that it is a form of honor under civil legislation.
In cases where acts of expression have taken place that damage the honor or credit of corporations and other juridical persons, etc., given (1) that corporations and other organizations are seen as being public entities in almost all cases, (2) that acts of expression relate to matters of public interest and putting aside whether this is solely the case (there are also cases that include other motives), they can be evaluated in their own way as having objectives that serve the public interest, and (3) even if expressions

reduce social evaluations of corporations and other organizations, given that there are many cases in which it is not possible for a provider, etc. to determine the authenticity of the facts indicated, it is conceivable that grounds that are sufficient for "unreasonableness" of right-infringing at the provider, etc. will virtually always not be satisfied.
For this reason, it is conceivable that generally, it is reasonable to respond having taken the inquiry procedures, etc. provided for in article 3 paragraph (2) item (2) of the Provider Liability Limitation Act.
However, as an exception, in cases where deletion is permitted such as cases where trade secrets (such as customer management system security holes, etc.) are published on web pages, etc. and there is a real and imminent danger that the relevant corporation and their customers will suffer major economic losses, etc., (for example, a case that falls under the spreading of rumors, etc. set forth in the Financial Instruments and Exchange Act), such aspect needs to be reviewed as there are cases that may fall under legitimate defense or emergency evaluations even if such cases do not fall under grounds for exemption set forth in article 3 of the Provider Liability Limitation Act.

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III Response Procedures for Taking Transmission Prevention Measures

III-1 Acceptance of Petitions
It is conceivable that in many of the cases where a provider, etc. is subject to petitions for transmission prevention measures, such petitions are not filed by the providers', etc. members or contractors. Consequently, it is envisaged that there will be petitions to take preventative measures pursuant to the Provider Liability Limitation Act and demands in relation to the disclosure of identification information of the sender, and it is desirable to make arrangements that enable a prompt response to petitions from parties other than the providers', etc. contractors.

Satisfying all of the following conditions and accepting notice of transmission prevention measures for infringing information is necessary in order to commence inquiry procedures with the sender in accordance with article 3 paragraph (2) item (2) of the Provider Liability Limitation Act.

1) The person requesting transmission prevention measures shall be a person whose rights have been infringed due to the distribution of information by

specified telecommunications.

2) Be information that infringed the rights of the person him or herself due to the distribution of information by specified telecommunications.
3) Rights infringed are specified.
4) Describe reasons as to how rights have been infringed.
5) Be a declaration of intent to desire transmission prevention measures.

It is conceivable that the acceptance of the above-mentioned infringing information, etc. from a petitioner in writing by a provider, etc. will be useful in determining the need for voluntary transmission prevention measures by the provider, etc. provided for in 2 below.

Additionally, care is necessary since there are cases that will not be exempted from liability for damages even if all the five above-mentioned items are not satisfied due to the relationship with the petitioner. For example, even if there are cases in which the conditions of (1) are not satisfied but a petition is filed by a third party (including Human Rights Organs of the Ministry of Justice) or the conditions of (5) are not satisfied and it is not evident whether transmission prevention measures are desired, when transmitted information is specified by the relevant warning and satisfies the requirements for tort such as defamation or invasion of privacy, then there will be cases that fall under "where there is a reasonable ground to find that said relevant service provider could know the infringement of the rights of others" set forth in article 3 paragraph (1) item (2) of the Provider Liability Limitation Act.

III-2 Necessity of Voluntary Transmission Prevention Measures by Providers, etc.

Where requests for transmission prevention measures or complaints have been received to the effect that illegal information has been published from a petitioner or third party on websites that are stored on servers managed by a provider, etc., a judgment will be made by the provider, etc. as to whether such information infringes the rights of others. Where it is evident in accordance with the judgment criteria provided for in chapter II that the relevant information infringes the rights of others, voluntary transmission prevention measures will be taken to ensure that liability for damages is not incurred due to falling under "where there is a reasonable ground to find that said relevant service provider could know the infringement of the rights of others" (article 3 paragraph (1) item (2) of the Act) in relations with the petitioner. Due to falling under

"where there was a reasonable ground for said specified telecommunications service provider to believe that the rights of others were infringed without due cause" (article 3 paragraph (2) item (1) of the Act) in relations with the sender, there will be cases where even if transmission prevention measures are taken, there are no risks of demands for compensation for damages from the sender.

Nevertheless, even in light of the judgment criteria provided for in chapter II, there are many cases where the judgment of whether it is permissible will not be clear even if transmission prevention measures are taken. In such cases, it is possible to take inquiry procedures pursuant to article 3, paragraph 2 item (2) of the Provider Liability Limitation Act. Further, notwithstanding the provisions of article 3, paragraph 2 item (2), in cases where it is conceivable that measures are not urgent even when the provider, etc. has judged that voluntary transmission prevention measures are permissible, it is conceivable that it is desirable to first encourage problem resolution by the parties concerned such as a response by the sender through inquiry procedures.

III-3 Inquiry Process Procedures

In cases where it is hard to judge whether it is a case in which the provider, etc. is allowed to take transmission prevention measures, namely, cases where the existence or of a "reasonable ground for said specified telecommunications service provider to believe that the rights of others were infringed" set forth in article 3 paragraph (2) item (1) of the Provider Liability Limitation Act is not evident, the procedures set forth in article 3, paragraph 2 item (2) may be used.

1) Petitioner verifications

In inquiry procedures, verification that the person who is requesting the transmission prevention measures is the person whose rights have been infringed as a result of the distribution of information by specified telecommunications or an agent (attorney, etc.) of that person. Consequently, it is necessary to verify identity according to the following procedures, for example,-

a) In writing – obtain an imprint of a registered seal (so called *jitsuin*) and attach a Certificate of Seal Registration issued within the last three months.

b) By electronic mail – verify that an electronic signature is included that can certify that the message was sent by the individual himself using an official electronic certificate.

c) Where using an agent – in addition to a) or b), attach a letter of power of attorney to

the agent.[20]

Additionally, in cases where it is definitely possible to verify the individual, the above shall apply but methods such as using other traditionally used means of verifying identity (copy of passport, driver's license, or other identification certificate, etc.) or requesting submission using a seal other than a *jitsuin*, or receiving a facsimile as an initial report, are also conceivable. Either way, it is necessary to adopt identity verification means considered appropriate at the responsibility of the provider, etc.

2) Specifying infringing information, etc.

It is necessary to receive notice of infringing information, etc. from the petitioner himself or his agent in order to commence inquiry procedures. Due to it being necessary for a provider, etc. to inform the sender of such infringing information, etc. and to inquire as to whether transmission prevention measures will be taken, in cases where infringing information, etc. that is sufficient to determine whether the sender shall consent to taking transmission prevention measures, cannot be specified, the provider, etc. must carry out verifications by a method such as having the informer amending the unclear aspects, etc. and resubmitting documents. In cases where infringing information, etc. is not adequately specified despite asking about unclear aspects, etc., in cases where approximate grounds cannot be recognized in a petitioner's claim, and in cases where the relevant infringing information is not actually managed by the sender, it is desirable for a provider, etc. to inform the petitioner without delay that it is not possible to commence inquiry procedures.

Further, the following information should be conveyed to the sender-

(a) Information that infringes his or her rights due to the distribution of information through specified telecommunications.

(b) Right infringed.

(c) Reasons rights have been infringed.

(d) Declaration of intent of desiring transmission prevention measures.

[20] If the agent is an attorney, requests to attach a power of attorney are not ordinarily made and are thus unnecessary. Additionally, Certificates of Seal Registration are not necessary for attorneys.

Additionally, given that there are cases where there are rational grounds to conceal names, etc. in relations between the petitioner and the sender (such as cases where the transmitter does not know the name of the petitioner such as the publication of photographs, etc.) with regard to whether it is acceptable to disclose the name, etc. of the person who made the request to the sender to take transmission prevention measures, as a general rule, such information should not be disclosed. Note, however, that this shall not apply when the petitioner has consented to disclosure (attached form). Further, as only the petitioner him or herself or their agent may request that transmission prevention measures be taken in relation to the inquiry process, in right-infringing such as defamation or invasion of privacy, etc., the sender may be naturally able to guess the name of the petitioner during the inquiry process, and this is unavoidable.

3) Cases where inquiries are possible

Providers, etc. may notify the sender that a request has been made to take transmission prevention measures and of the infringing information, etc. provided by the petitioner, and inquire whether the sender consents to the taking of transmission prevention measures. Refer to (2) above as to whether the name, etc. of the petitioner may be disclosed in such cases.

In such cases, it is desirable to write, in order that the sender recognize the situation, that deletion, etc. transmission prevention measures will be taken in accordance with the purpose of article 3 paragraph (2) item (2) of the Provider Liability Limitation Act unless objections are made according to a method specified by the provider, etc. within seven days of receipt of the relevant notice by the sender. (Refer to: form 1) -1)

4) Cases where inquiries are not possible

In cases where a provider, etc. has received reports of infringing information, etc., it is not an obligation under laws and regulations to notify the sender that a request has been made to take transmission prevention measures and of the infringing information, etc. provided by the petitioner, or to inquire whether the sender consents to the taking of transmission prevention measures. Consequently, it is not necessary to proceed with inquiry procedures in cases where it is not possible to contact the sender.

If such case falls under a cases where transmission prevention measures may be taken instantly without undertaking inquiry procedures, (article 3 paragraph (2) item (1)), transmission prevention measures may be taken based on the judgment of the provider, etc. Conversely, when it is not possible to determine whether transmission prevention measures may be taken instantly, since it is generally thought to be difficult to

determine whether falling under cases where there is a high risk of not being immune to liability for damages from the petitioner (cases where there are "reasonable ground to find that said relevant service provider could know the infringement of the rights of others" as used in article 3 paragraph (1) item (2) of the Act), respond by either considering and contemplating the risk of a lawsuit from the sender or taking transmission prevention measures considering the risk of a lawsuit from the petitioner.
In the latter case, if it has been manifested that deletion, etc. measures may be taken at the provider, etc. discretion in contract clauses or terms of use, for example, even if there are cases where it is not clear whether falling under article 3 paragraph (2) item (1) of the Provider Liability Limitation Act, if the relevant contract clauses or terms of use are of a scope recognized as being reasonable, then it will surely be possible to take transmission prevention measures pursuant to the relevant provisions (note, however, that, care should be taken in the manner of provisions since there is a risk that one-sided exclusion clauses will be invalid in relation to the Consumer Contract Act).

5) Inquiry procedures
In cases where it is possible to verify the petitioner through the above-mentioned process (including verifying relations of entrustment in the case of agents) and infringing information, etc. has been specified, and inquiries are possible, it is desirable for inquiry procedures to the sender to be taken without delay after receiving the request for transmission prevention measures from the petitioner. Note, however, that in being slow to make decisions in relation to the necessity of voluntary transmission prevention measures due to the provider, etc., determining after all that there are no grounds for making inquiry procedures that should take transmission prevention measures, and planning responses other than transmission prevention measures (promoting resolution between the parties concerned, etc.) there may be cases where it is not possible to start inquiry procedures even after a reasonable term has elapsed since receiving the request from the petitioner. Since the obligation to commence inquiry procedures after receiving a request for transmission prevention measures is not provided in the Provider Liability Limitation Act, when there are unavoidable reasons, excluding cases that fall under any item of article 3 paragraph (1) of the Provider Liability Limitation Act,[21] it is

[21] Even if falling under any item of article 3 paragraph (1) of the Provider Liability Limitation Act, this alone does not result in liability for damages due to violations of the obligation of a provider, etc. to take transmission prevention measures immediately, and there are cases were a provider, etc. can be absolved from violations of obligations to

conceivable that a provider, etc. will not incur liability for delaying inquiry procedures with regard to the petitioner.

Inquiry procedures are undertaken using reference forms, and verifying whether there are objections from the sender within seven days reckoning from the day immediately after the day on which the relevant inquiry arrived at the sender (for example, if the relevant inquiry is sent on 1 March, forms will arrive within two days if within the same municipality and objections should be made by 9 March). Additionally, using a verification method such as recorded delivery if sending by post is a surefire method of verifying the date on which the relevant written documentation (inquiry form) arrived at the sender.

6) When the response from the sender to the inquiry does not consent to the taking of transmission prevention measures

In cases where there is a "notice from said sender indicating his disagreement with implementation of said transmission prevention measures" on the grounds of a reasonable objection from a sender, if it is determined that there are no "reasonable grounds to find that said relevant service provider could know the infringement of the rights of others" based on such objection, etc., the provider's, etc. immunity from liability for damages is conceivable even if transmission prevention measures were not taken with regard to information subject to requests to take transmission prevention measures.

Conversely, cases where grounds are not stated although there has been a "notice from said sender indicating his disagreement with implementation of said transmission prevention measures", are conceivably the same as in cases where inquiry procedures are not gone through as to whether a provider, etc. can take transmission prevention measures. Further, even in cases where there is an objection have gone through inquiry procedures, if the provider, etc. can verify that the relevant objection is unreasonable, etc., falling under "where there is a reasonable ground to find that said relevant service

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delete by taking an appropriate response such as issuing warnings without delay to the sender and responding to consultations with the petitioner.

provider could know the infringement of the rights of others" (article 3 paragraph (1) item (2) of the Act) or "where there was a reasonable ground for said specified telecommunications service provider to believe that the rights of others were infringed without due cause" (article 3 paragraph (2) item (1) of the Act) , then it is safe to delete.[22]

7) When there is no response from the sender to the inquiry that does not consent to the taking of transmission prevention measures

In cases that fall under article 3 paragraph (2) of the Provider Liability Limitation Act, liability for acting with respect to the sender is not borne and transmission prevention measures can be taken. Further, in relations with the petitioner, by taking transmission prevention measures a provider, etc. will be concurrently exempt from liability for not acting.

III-4 Response to Requests to Delete Information from Human Rights Organs of the Ministry of Justice

(1) Acceptance of requests

It is necessary to accept notices of transmission prevention measures for infringing information in a form that satisfies all the following conditions in order to respond to requests to delete information from Human Rights Organs of the Ministry of Justice and verify that there is "a reasonable ground for said specified telecommunications service provider to believe that the rights of others were infringed (article 3 paragraph (2) item (1) of the Act)". As a general rule, notices need to be made in writing but in highly urgent cases, after sending the notice by facsimile, and having been able to verify by telephone that a request to delete has been made with the relevant Human Rights Organs of the Ministry of Justice, a written document may be accepted after the fact (refer to: form (1) -2).

(1) The request is from a Human Rights Organ of the Ministry of Justice.

[22] Safe used here means, in addition to a provider, etc. being immune from liability for failure to act in relation to the distribution of the relevant information with regard to the petitioner by deleting information subject to requests for transmission prevention measures, also means the strong possibility of being immune from liability for deleting information with regard to the sender.

(2) Infringing information, etc. is specified.
(3) Infringed rights are specified and the grounds for right-infringing are reason.

(2) Review of need for transmission prevention measures
Verify whether there are any grounds (refer to below) for not responding to requests to delete from Human Rights Organs of the Ministry of Justice, transmission prevention measures may be taken if there are no such grounds, but it is desirable to make a decision on the response method having consulted with a specialist such as an attorney, etc. in cases that fall under any of the following grounds.

<Grounds for not being able to respond to requests to delete>

(1) When it is not possible to verify that the request is from a Human Rights Organs of the Ministry of Justice.
(2) Where there is no infringing information at the location specified by the Human Rights Organs of the Ministry of Justice.

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(3) When the rights supposedly infringed have not been specified.
(4) In cases where the illegality of information that infringes the rights of others is not obvious in light of the criteria for determining provided for in chapter II of these Guidelines (including when there is scope for inserting reasonable doubt with regard to abuse of public authority.)
(5) When measures exceed “necessary limits” such as cases in which a large volume of other unconnected information will be deleted as a result of deleting the infringing information.

(3) Cases in which decide not to take transmission prevention measures
It is possible to request additional explanations from a Human Rights Organs of the Ministry of Justice in cases that fall under any of the grounds set forth in (2) above where it is recognized that there are reasons for not being able to respond to requests to delete from a Human Rights Organs of the Ministry of Justice. Further, while voluntary, it is desirable to notify the Human Rights Organs of the Ministry of Justice stating the reason in cases where the request to delete from a Human Rights Organs of the Ministry of Justice does not satisfy the criteria provided for in these Guidelines.

III-5 Non-Transmission Prevention Measure Responses

Even in cases where a provider, etc. has determined that taking transmission prevention measures is not necessary with regard to information declared by the petitioner, conducting inquiry procedures, etc. and taking measures that promote voluntary problem resolution by the parties concerned such as dispute resolution through direct negotiations between the sender and the petitioner, is desirable.

Further, as with cases in which a declaration of damage was first made to the provider, etc. that hosted the relevant web page with regard to a post on a bulletin board on a web page, in cases where a specified telecommunications service provider has a multiple existence, (provider, etc., and web page developer and bulletin board manager), the provider, etc. that received the declaration may respond by requesting that the petitioner first request a response from the specified telecommunications service provider (web page developer and bulletin board manager) more likely to be able to manage the relevant information.

Note, however, that this shall not apply in urgent cases where actual damage has occurred to the petitioner and where there is a need to respond immediately to prevent damage spreading.

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IV Reference Forms and Judicial Precedents, etc.

1 Reference Forms

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Form (1) -1 Notice of Infringing Information (Defamation / Privacy)

Year--Month--Day

To: [appellation of specified telecommunications service provider]:

[Person claiming that their rights have been infringed]
Address
Name (name) seal

Contact Information (telephone number)
(e-mail address)

Notice of Infringing Information and Request for Transmission Prevention Measures

Since my rights were infringed because of the distribution of the following information that was published on a specified telecommunications system you manage, I hereby request you to take measures to prevent the transmission of the relevant information.

Details

Location at which published
URL:
Other information necessary to identify the information: (bulletin board appellation, location of post within bulletin board, date, file name, etc.)
Information published
Example) Having published my real name, address, telephone number and mail address, you made a deceptive post that made it seem as if I am looking for a lover, stating "Would you like to have a no-strings-attached relationship with me?".
Infringing information, etc.
Rights infringed
Example) Infringement of privacy, defamation
Grounds on which rights were infringed (state of damage, etc.)
Example) When using the Internet I use a handle name and do not disclose my real name and contact information, information was published against my wishes, I received xx relationship requests and harassment, teasing prank telephone calls and unsolicited emails and suffered mental anguish.

Details stated in the bold frame above are true and I consent to you using the above when notifying the sender.

Please write a circle in the column on the left if you agree to the disclosure of your name to the sender. If you do not write a circle it shall be assumed that you do not agree to the disclosure of your name.

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Form (1) -2 Notice of Infringing Information and Request for Transmission Prevention Measures (defamation / privacy)
Year--Month--Day
To: [appellation of specified telecommunications service provider]:

[Human Rights Organs of the Ministry of Justice]
Head of the ○○ (District) Legal Affairs Bureau seal

Contact Information (address)
(telephone number)
(e-mail address)
(Agent)

Notice of Infringing Information and Request for Transmission Prevention Measures

As it is revealed that my human rights were violated following the distribution of the following information that was published on a specified telecommunications system you manage, and in addition, since it is also recognized that it is difficult for the injured party to plan the recovery and prevention of damage, I hereby request you to take measures to prevent the transmission of the relevant information.

Details

Location at which published
URL:
Other information necessary to identify the information: (bulletin board appellation, location of post within bulletin board, date, file name, etc.)
Information published
Example) Name and address of ○○
Infringing information, etc.
Rights infringed
Example) Infringement of privacy
Grounds on which rights were infringed (state of damage, etc.)
Example)
Against the wishes of the injured party, an private individual, the name and address of

that party were published and a number of letters, etc. that slandered the injured party were sent to the relevant address.

Details stated in the bold frame above are true and I consent to you using the above when notifying the sender. I also consent to the notifying of the appellation, etc. of the requesting agency when notifying the sender.

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Form (2) Infringing Information (Defamation / Privacy)

Year--Month--Day

To: [sender]

[Specified telecommunications service provider]

Address
Company
Name
Contact Information

Notice of Infringing Information and Inquiry in Relation to Transmission Prevention Measures

We have received a report of infringing information that infringes rights through the distribution of the following information you transmitted and a request to take transmission prevention measures, and thus we are inquiring as to whether you consent to the taking of transmission prevention measures pursuant to article 3, paragraph (2) item (2) of the Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Senders (Act No. 137 of 2001).
There may be cases where, if you do not indicate that you do not consent to the taking of transmission prevention measures within seven days of the date of receipt of this document, we shall immediately delete the following information as a transmission prevention measure. Further, please be aware that there may be cases in which we take measures pursuant to our separate contract clauses.*

Additionally, you may take transmission prevention measures such as deleting the following information voluntarily.

Details

Location at which published
URL:
Information published
Infringing information, etc.
Rights infringed
Grounds on which rights were infringed

* Can be added if there are contract clauses, etc. between the sender and the provider, etc. (specified telecommunications service provider).
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Reference Forms Response (Defamation / Privacy)
Year--Month--Day

To: [appellation of specified telecommunications service provider]:
[Sender]
Address
Name
Contact information

Response

I hereby response as follows to your inquiry regarding the handling of the following infringing information.

[Indicate infringing information]
Location at which published
URL:
Information published
Infringing information, etc.
Rights infringed
Grounds on which rights were infringed

Details

[Response Details] (Write a circle as appropriate*)

( ) I do not consent to the taking of transmission prevention measures
( ) I consent to the taking of transmission prevention measures
( ) I consent to the taking of transmission prevention measures and I shall delete the problematic information.

[Reason for Response]

*N.B. We shall assume that consent has not been given if there is no circle.
END
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IV-2 Judicial Precedents in Relation to Communications Service Providers' Liability for Illegal Acts

(1) Metropolitan University incident, first judgment (Tokyo District Court, September 24, 1999, Reports of Precedents No. 1707 Page 139)

1 Outline of case
(1) Fight broke out between groups in a dispute involving the legitimacy of a university circle in which members of both groups incurred injuries.
(2) A student belonging to one of the groups published a document on a website established within the university's system that stated that the opposing group had engaged in violence and caused injury.
(3) There are no guidelines for "liberal education systems" but there are guidelines for "education and research systems" with provisions to the effect that it is possible to order deletion in cases where it has been judged that the content of the information is not permitted as a socially accepted idea.
(4) A student of the opposing group took legal action against the person who made the statement and (Tokyo metropolitan government that established) the university.

2 Outline of ruling (relevant sections)
(1) Since the transmission from the network of information that it not permitted as a

socially accepted idea damages the credibility of the network as a whole, the network manager, (generally the manager does not have the authority to give instructions and orders with regard to the content of individual bits of information and even in cases where the draft actor bears liability) ordinarily has the authority to delete individual bits of information in order to prevent such damage.
(2) Having the authority to delete public information that it not permitted as a socially accepted idea is not an immediate obligation, the exercising of authority lies at the reasonable discretion of the manager, and as long as there is no deviation or abuse of discretion, the exercising of authority is not illegal.
(3) There are cases where the manager should assume damage incidence obligations to the injured party but rather than assuming uniform obligations if a situation that violates penal laws and private law policy arises, it is essential to examine the nature of the matter according to the details of the penal laws and private law policy that has become an issue.
→ For example, with virus transmission, given that there is a high probability that the property of others will be greatly affected and that there is a strong likelihood that the interests of the daily lives of ordinary people will be infringed, etc., the obligation to prevent damage occurring, as a logical obligation, arises at the point in time at which such act was perceived as a peremptory fact.
→ In terms of defamation, it is a criminal act and illegal act under private law, and it is inappropriate to impose the obligation to prevent damage arising since the risk of infringing the interests of ordinary persons other than those concerned is minimal and it is often difficult for the manager to determine whether the act constitutes defamation.
(4) The manager bears the obligation to prevent damage arising in cases where the transmission of defamatory documents is perceived to have actually occurred and is limited to extremely exceptional cases in which it is obvious at a glance that such act falls under defamation, that the mode of the offending act is particularly heinous, and that the extent of the damage is enormous.

3 Application to the case
(1) It is not obvious at a glance whether the problem document constitutes defamation, or if the mode of the offending act is malicious, or the damage enormous.
→ No obligations on the manager
(2) The adoption by the manager of a measure that suspended the link on the problem page following receipt of the written protest and the closure of the page following the filing of a lawsuit was undertaken in accordance with a decision that such action was

necessary in order to maintain the credibility of the system and were not taken on the grounds that the act was a violation of the obligations under private law (is not an indication that knew that it was an illegal defamatory document)

Source: Ministry of Internal Affairs and Communications “Report by the Study Group on the Security of Appropriate Information Distribution on the Internet” (December 2000) page 17

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(2) Modern Ideas Forum (FSHISO) Second Judgment (Tokyo High Court on 5 September 2001, Reports of Precedents No. 1786 page 80)

1 Outline of case

(1) Case of defamation between members triggered by criticism of the meeting room operating policy on a forum.

(2) Nifty, as the final manager that operates the forum, the system operator as the operator of the forum commissioned by Nifty, and the members who made the remarks were accused. (Member who made the remark, the system operator and Nifty were the appellant in the second judgment)

(3) The plaintiff members participated in the operation of the forum and had a different status to general members (plaintiff members were appellees in the second judgment)

2 Outline of ruling (relevant sections)

(1) Criteria concerning the establishment of defamation

1) Even on forums where differences of opinion can be easily predicted, naturally restraint in arguments is necessary and diminishing others and compromising their honor beyond restraint is not permitted.

2) Remarks that do not bring meaning that substantiates a person’s claims and that are no more than simple words that are abusive are not permitted even in the name of discussion.

3) It is easy to object in the forum but it is difficult to recognize the value of objecting to words that are abusive and being abusive is not permitted as discussion just because it is possible to object.

(2) Criteria by which the obligation to act, such as the obligation to delete, is incurred by the operator of the community in cases where defamation is established

* There is a need for system operators to exercise the authority to delete problematic remarks such as slander, etc. by members, for the smooth operation of forums, and in cases where persons at whom remarks are targeted do not have valid remedies and issues are not resolved despite taking other measures, the system operator shall assume the reasonable obligation to delete the relevant remarks.

3 Application to the case

(1) Defamation

Excluding that falling under criticism with respect to the operating policy taken by the appellee, defamation is established with regard to user members' remarks.

(2) System operator/Nifty's liability

In general terms, the obligation to delete is incurred but the system operator took the following response and did not violate the obligation to delete. There is no liability as far as Nifty, who commissioned the operation of the forum to the system operator, is concerned either.

1) The forum is operated based on the idea of not immediately deleting remarks judged as being reasonable to delete and raising the quality of remarks through constant discussion, and as an operating method, this cannot be said to be unjust.

2) The member who made the remark was reminded without delay of the remarks that, based on indications by members and their own judgment, were subject to deleting. Further, although attempts were made to delete the remarks, were unable to obtain the agreement of the appellee regarding the method of deleting, remarks were deleted after a request by the appellee's agent, and further remarks expressed after the suit was filed were deleted and it cannot be said that the delay in exercising the authority to delete exceeded permissible limits.

3) The appellant's remarks relate to matters requiring an explanation from the appellee (criticism with respect to the appellee's operating policy) and circumstance in which the appellant alone cannot be unilaterally blamed are recognized. Taking this aspect into consideration, violations of the obligation to delete the system operator cannot be recognized.

END

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(3) Modern Ideas Forum (FSHISO) First Judgment (Tokyo District Court on 26 May 1997, Reports of Precedents No. 1620 page 22)

1 Outline of case

(1) Defamation was contested due to remarks corresponding to slander being posted in the forum, and the member who made remark, system operator, and Niftyserver (at the time) the PC communications carrier, were defendants.

(2) Case of PC communication, Niftyserve had a contractual relationship with both parties concerned.

(3) Forum system operator was partly expected to have a certain involvement in remarks by members.

2 Outline of ruling (relevant sections)

(1) In light of the following circumstances, "in light of logic", there are cases where the system operator should assume a certain obligation to act.

1) The system operator was commissioned to operate and manage a specific forum and received remuneration as consideration, and the slanderous remarks were such details

2) The system operator was able to take measures to delete, etc. defamatory remarks and as a result such remarks could no longer be seen by other members

3) There are no effective means that a person subject to defamation can take him or herself

4) Terms and conditions of membership and operating manuals include provisions to the effect that slanderous remarks and remarks likely to be slanderous will be deleted

(2) In light of the following circumstances, "in light of logic", there is no obligation on the system operator to act to constantly monitor the content of remarks, proactively search to ensure there are no remarks (that will be problematic) and to review the likelihood of problems with all remarks.

1) System operator is unable to check remarks posted to the forum in advance (fundamental difference to newspapers, magazines, etc.)

2) Many system operators are not full-time

3) It is extremely difficult for the system operator to check all individual remarks as they are posted due to the enormous number of posts

(3) In cases where a system operator can be recognized as, at the very least, having been specifically aware that remarks that damage the honor of others have been posted, in light of such status and authority, system operators should be construed as having a reasonable obligation to act to adopt necessary measures.

(4) Niftyserve does not contractually have an obligation to consider safety between members and there is no liability for breach of contract, however, a practical control and supervision relationship that should form the basis for users' liability is recognized between Nifty and the system operator.

3 Application to the case

(1) After making remarks, received notice from operating committee and members and warned the person who made the remark but did not delete and left the situation to free discussions amongst those concerned

→1) Were aware of the content and existence of the remark, further, 2) being able to make an objection does not lead to the violated obligation to act and thus is a violation of the obligation to act

→ If a violation of the obligation to act is recognized, at the very least, the fact that negligence occurred is factually presumed

(2) Was informed by the injured party and 1) put on agenda of operating committee, 2) contacted and consulted with injured party (noted that deleted due to being illegal as a result of reviews following a lawsuit by the injured party and proposed to delete and was rejected), and 3) spoke with the injured party by telephone

→ From the standpoint of harmonizing two requests involving the plaintiff's interests and the smooth operation and management of the forum, commend response that were not unable to approve and that necessary measures were adopted.

Further, when undertaking 3) consulted with a trustworthy person and thus were told want to wait to delete, and after 4) received a request to delete and immediately deleted

→ In this aspect, commend that necessary measures were adopted

(3) Adopted measure involving removal from register after consulting with Niftyserve regarding circumstances that became aware of through lawsuit

→ Evident that was proper

→ Given that a lawsuit was filed, are unable to argue that there was a certain time interval (received notice of lawsuit on April 25, removed from register on May 25) and should say that have adopted necessary measures

Source: Ministry of Internal Affairs and Communications "Report by the Study Group on the Security of Appropriate Information Distribution on the Internet (December 2000) page 16

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(4) Book and Magazine Forum first judgment (Tokyo District Court August 27, 2001)* N.B.
1 Outline of case

(1) Case of defamation and invasion of privacy with respect to member B by member A that stemmed from a dispute involving the Chinese character notification of terminology between non-accused member A and the plaintiff, member B.
(2) Nifty is not a party concerned in the defamation and invasion of privacy but as member B was unable to identify the address and name of member A, the operations manager, Nifty, alone was sued as the accused.

2 Outcome of Defamation
(1) Criteria for defamation outcome
1) Asserting through discussion with regard to infringements due to discussion is a freedom of expression (since it is a basic principle of article 21 paragraph 1 of the Constitution in cases where the injured party has made adequate objections to the perpetrator and this has proved successful, it is possible to evaluate that the social evaluation of the injured party has not fallen and in these cases too, certain expressions have not emerged in particular and in recognizing tort liability with regard to the expresser there is a risk of atrophy and this cannot be said to be reasonable.
2) At the time of determining whether remarks in PC communication damage the honor or honor emotion of a person, should review whether the relevant remark is in danger of lowering a person's social evaluation, and whether illegality will be rejected as assertion discussions, as the criteria for general readers who participate in PC communication, having jointly considered proof together with the background to the relevant remark, the surrounding context, and objections from the injured party.
→ Decisions are made as the criteria for ordinary people who participate in PC communication
→ Cannot merely take a specific remark and discuss whether defamation with be established.
→ In cases where the injured party has separately objected and this has proved successful, cannot recognize that social status has fallen and defamation is not established.
→ In cases where the remarks by the perpetrator that induced the injured party's

inappropriate remarks have become an issue, illegality is lacking and defamation is not established as long as such remarks are within the scope permitted as opposing discussions.

(2) Judgment
Member B made necessary and adequate objections to the remarks of non-accused member A and whether the danger that member B's social evaluation will fall exists, illegality is exempt given that non-accused member A's remarks are within the scope permitted as opposing discussions with respect to member B, and defamation is not established.

3 Outcome of invasion of privacy
(1) Criteria for invasion of privacy outcome
Published matter is,

- a private life matter or a matter likely to be construed as such,
- a matter recognized as being something not wished to be disclosed from the criteria of the sensitivity of ordinary people,

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- a matter not yet known to ordinary people,
- a matter from which ordinary people who see the published matter can perceive to indicate a specific individual

(2) Judgment
Invasion of privacy is not established given that handles indicating a specific individual who actually exists (member B) are unlikely among participants, doubts remain that member B wished as an essential requirement to maintain anonymity such as sending messages in his or her real name to a unspecified large number of people, and member B's real name is unusual and it is difficult for a third party to identify that the handle used by non-accused member A refers to member B, etc.

* N.B. Pending Tokyo High Court at time of publication of first version of these Guidelines (May 2002)
END

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IV-3 Human Rights Organs of the Ministry of Justice's Process Leading to Requests to Delete Information

Requests to delete at human rights organs of the Ministry of Justice are made in the name of the director of each legal affairs bureau and district legal affairs bureau (refer to the "List of Human Rights Organs of the Ministry of Justice" for details), and decisions on requests to delete are, as shown below, undertaken through a double screening by each legal affairs bureau and district legal affairs bureau and the Ministry of Justice Civil Liberties Bureau (*1).

(1) Commencement of relief procedures

Each legal affairs bureau and district legal affairs bureau commences relief procedures starting with damage declaration or various information from the injured party.

(2) Each legal affairs bureau and district legal affairs bureau reviews the relief method and each legal affairs bureau and district legal affairs bureau that has commenced report relief procedures with respect to the Ministry of Justice Civil Liberties Bureau shall review whether

1) it is a case that cannot be overlooked in terms of human rights protection

2) it is a case in which the injured party him or herself recognized that planning recovery and prevention is difficult considering the various circumstances overall

Cases that fall under above-mentioned 1) and 2), and in which requests to delete are considered to be reasonable must be reported as special cases (*2) to the Ministry of Justice Civil Liberties Bureau.

(3) Reexamination by the Ministry of Justice Civil Liberties Bureau, attaching approval and instructions

The Ministry of Justice Civil Liberties Bureau shall, having received a report of a special case, once again review whether the case is one in which the request to delete is considered reasonable and give approval or instructions regarding rights and wrongs.

(4) Carry out deletion requests at each legal affairs bureau and district legal affairs bureau for cases for which approval or instructions have been received as provided for in above-mentioned (3)

(*1) In view of the urgency and gravity of the case, the Ministry of Justice Civil Liberties Bureau may undertake relief procedures directly, and make requests to delete in the name of the bureau director.
(*2) Special cases: cases in relation to certain important and difficult human rights violations that require a report to and approval, etc. from the director of the controlling legal affairs bureau and the director of the Civil Liberties Bureau.

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IV-4 List of Human Rights Organs of the Ministry of Justice (related to requests to delete) Current as of July 1, 2004
IV-4 法務省人権擁護機関のリスト(削除依頼関係)翻訳対象外

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IV-5 Summary of Judicial Precedents
This Judicial Precedent Summary (hereinafter referred to as this "Judicial Precedent Summary") is a brief summary of judicial precedent summaries relating to that mentioned in this document for the reference of users of the Provider Liability Limitation Act Guidelines Relating to Defamation and Privacy (hereinafter referred to as these "Guidelines").

(1) Two types of Judicial Precedent Summary have been prepared, a privacy compilation and a defamation compilation.
(2) Parts that quote judgments use quotation marks. As there are cases where it is difficult to tell from the quotations from judgments whether either the appellant or appellee is the injured party and media, etc., quote notes have been included within square parentheses as necessary for cases that were appealed. Example) "The appellants [media] claim that privacy rights have not been infringed."

(3) Description of each item in Judicial Precedent Summaries
(3)-1 Date Indicated judgment date or ruling date.
(3)-2 Judicial precedent reports Representative judicial precedent reports have been stated as abbreviations.
Example) Supreme Court Reports (civil cases): Supreme Court Civil Case Judicial Precedent Reports

Lower Instance Supreme Court Reports (civil cases): Lower instance Court Civil Judicial Precedent Reports
Supreme Court Reports (criminal cases): Supreme Court Criminal Case Judicial Precedent Reports
Reports of Precedents: Hanrei Jihou
Law Times Reports No.: Hanrei Times, etc.

(3)-3 Categories

In the privacy compilation, disclosed or published, etc. are targeted, and the types of information contested with regard to the existence of an invasion of privacy are indicated, in the defamation compilation, mostly the points of contention are stated.

(3)-4 Cases Indicate the details of claims by parties concerned with these Guidelines (claims by injured party).

(3)-5 Judgment summaries

State the rulings of courts with respect to the details of the claim by the party concerned (generally referred to as the "injured party") that requests relief with respect to right-infringing with regard to claims for compensation for damages and the publishing of apologizes from the standpoint of both invasion of privacy and defamation, and briefly introduce the reasons. Even those judicial precedents that include many points of contention are described limited to claims in relation to privacy or defamation. Cases where certain claims from injured parties (for example, claims only for compensation for damages) are permitted and the remaining claims have been dismissed, as a general rule, are stated as permitting compensation for damages.