

Provider Liability Limitation Act
Guidelines Relating to Sender Information Disclosure

First edition: February 2007

Second edition: September 2011

Provider Liability Limitation Act Guidelines Review Council

Provider Liability Limitation Act Guidelines Relating to Sender Information Disclosure

Contents

I	Introduction – Purpose of the Guidelines	1
1	Objectives of the Guidelines	1
2	Status of the Guidelines	1
3	Concerning Utilization of the Guidelines	2
4	Revision	2
II	Demand Procedures, etc.	3
1	Requesters	3
2	Demand Procedures	3
III	Response of Providers, etc., on Receiving a Demand	5
1	Verification of Form Entry Omissions, etc.	5
2	Identity Verification of the Requester	5
3	Verification of Existence of Holding of Identification Information of the Sender	6
4	Verification of Right-infringing Information	6
5	Sender Opinion Hearings	8
6	Determination of Obviousness of Right Infringement	9
7	Determination of Justifiable Grounds for Receiving Disclosure of Sender Information	9
IV	Determination Criteria, etc. for Obviousness of Right Infringement	11
1	General Remarks	11

2	Defamation, Privacy Infringement	11
3	Copyright, etc. Infringement	17
4	Trademark Right Infringement	19
V	Procedures of Disclosure and Nondisclosure	22
1	Cases of Sender Consent for Disclosure	22
2	Cases Where Requirements for Disclosure Have Been Determined to Be Satisfied	22
3	Cases Where Requirements for Disclosure Have Been Determined Not to Be Satisfied	22

p. 1-2

I Introduction – Purpose of the Guidelines

1 Objectives of the Guidelines

In cases of infringement of others' rights by information distribution through the Internet, the interests of the three parties i.e. information sender, right holder, and specified telecommunications service provider (administrator or operator of a server or administrator or operator of an electronic bulletin board, etc.; hereinafter referred to as "provider, etc.") are intertwined, and on occasion, cases exists where response by the provider, etc. with respect to the information distribution is difficult. Amid this, 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 "Act") was enacted in November 2001, having provisions relating to limitation of the civil liability of providers, etc., and to the right to demand disclosure of sender information of persons whose rights have been infringed by distribution of information.

Based on the purpose of article 4 of the Act, which provides for the right of a person (hereinafter referred to as "injured party") who has experienced right infringement by distribution of information through a specified telecommunications service (referring to the "specified telecommunications service" of article 2 item (1) of the Act; the same shall apply hereinafter) to demand disclosure of information contributing to specifying the sender of the information (hereinafter referred to as "identification information of the sender"), these guidelines clarify, within the possible scope, the procedures and determination criteria for demands of disclosure of identification information of the sender, while giving consideration to the standpoints, etc., in which the injured party, the information sender, and the provider, etc., are respectively placed. Through this, their objective is to promote prompt and smooth determination of disclosure or nondisclosure by the provider, etc., through procedures for demand of disclosure of identification information of the

sender grounded on article 4 of the Act, and thereby promote smooth and sound use of the Internet.

2 Status of the Guidelines

The right to demand disclosure of identification information of the sender of article 4 of the Act is a demand right provided for in substantive law, and in cases where the requirements of article 4 of the Act are satisfied, it is even possible for a provider, etc., that has received a nonjudicial demand for disclosure of identification information of the sender to disclose identification information of the sender out of court.

Of course, in cases where a provider, etc., has disclosed identification information of the sender through mistaken determination of the requirements of article 4 of the Act, the provider, etc., incurs liability for damages with respect to the sender, and, depending on the case, may risk accusations of criminal liability (articles 4 and 179 of the Telecommunications Business Act).

Accordingly, these guidelines attempt, with reference to judicial precedent heretofore that permits disclosure of identification information of the sender, to clarify, within the possible scope, cases in which the requirements of article 4 of the Act are unquestionably satisfied.

Additionally, these guidelines have been drafted by persons who are participating in this council, but because right infringement by information distribution on the Internet does not become an issue solely between participants in this council, it is expected that these guidelines will also be utilized by persons other than the participants of this council.

3 Utilization of the Guidelines

These guidelines make their objective the prompt and smooth execution of determination of disclosure or nondisclosure by the provider, etc., through procedures for disclosure of identification information of the sender pursuant to article 4 of the Act, but that objective is not reached solely through these guidelines, and in individual incidents, it is important for the provider, etc., and the injured party to engage in sufficient reciprocal communication and establish an appropriate cooperative relationship, and it need hardly be said that in utilizing these guidelines, it is important that both the provider, etc., and the injured party adequately perceive the relevant point and take an appropriate response.

It expected that the purpose of these guidelines be understood sufficiently not only by the participants in this council, as need hardly be said, but by persons other than the participants, and that the parties concerned continuously carry out appropriate and concrete support relating to the utilization of these guidelines so that prompt and smooth determination of disclosure or nondisclosure is made by the provider, etc.

4 Revision

For these guidelines, appropriate revision according to advances in information and communications technology, the status of practices, and the like is thought to be necessary. Accordingly, even after the establishment of these guidelines, examination by this council shall be continued, and improvement and expansion of the guidelines shall be conducted.

p. 3

II Demand Procedures, etc.

1 Requesters

The right to request disclosure of identification information of the sender is a recognized right created for the purpose of making possible the recovery from damage by persons who have experienced right infringement by distribution of information through a specified telecommunications service.¹ Consequently, those who can demand disclosure of identification information of the sender are persons whose own rights have been infringed by distribution of information through a specified telecommunications service. Specifically, persons demanding disclosure of identification information of the sender shall be the principals whose own rights have been infringed by distribution of information through a specified telecommunications service, and agents such as attorneys.²

2 Demand Procedures

¹ With respect to whether file transmission by so-termed peer-to-peer file-sharing software falls under specified telecommunications services, in every judicial precedent where this has been contested, it has been determined to fall under specified telecommunications services (Tokyo District Court 12 September 2003 – NBL No. 771 page 6, Tokyo High Court 26 May 2004 – Law Times Reports No. 1152 page 131, etc.), and in these guidelines as well, it shall be treated as falling under specified telecommunications services.

² A copyright, etc., management service provider (referring to a "copyright, etc., management service provider" in article 2 item (3) of the Act on Copyright, Etc., Management Service [Act No. 131 of 2000]) can make demands as the principal in cases where a trust contract of article 2 paragraph 1 item (1) of the same Act has been entered into with the copyright holder, etc., and in cases where an agency contract of item (2) of the same paragraph has been entered into, can make demands as an agent within the scope of the contract and within the limit that it does not conflict with the Attorney Act or other such related laws and regulations.

(1) The demand procedures according to these guidelines shall be to submit to the concerned provider, etc.,³ a demand form (Refer to form 1.) on which the necessary items have been entered, material permitting verification of the identity of the requester, material proving that his or her own right has been infringed by distribution of information through a specified telecommunications service, and other necessary documents.

When entering on the demand form that one's own right has been infringed, consideration must be given to ensuring that the provider, etc., can clearly perceive the right alleged to have been infringed and the mode, etc., of right infringement.

(2) As a general rule, demand procedures shall be conducted in writing. Note, however, that in certain cases, notice by means of electronic mail, facsimile, or other electromagnetic means as required shall be permitted. Specifically, the following cases are included-

p. 4

a) Cases where a certain relationship of mutual trust between the provider, etc., and the requester is recognized, such as in cases of ongoing exchange, and wherein further the requester, after demand by means of electronic mail, facsimile, etc., promptly submits in writing a demand form of identical content as the demand by means of electronic mail, facsimile, etc.

b) In cases where the provider, etc., and requester have both priorly agreed, cases of taking the measure of an official electronic signature or an electronic signature certified by an accredited certification business operator of the Act on Electronic Signatures and Certification Business (Act No. 102 of 2000; referred to hereinafter as the "Electronic Signatures Act") in the electronic mail making the demand, and wherein further an electronic certificate pertaining to

³ With respect to whether a demand for disclosure of identification information of the sender to a so-termed access provider is recognized (whether this falls under providers of disclosure-related service), the Supreme Court (8 April 2010 verdict of the First Petty Bench – Supreme Court Reports [civil cases] vol. 64 No. 3 page 676) has determined that "It is reasonable to construe an access provider mediating communications between a sender and a content provider in order to record information on the recording medium of specified telecommunications facilities with the objective of ultimately being received by unspecified persons as falling under 'specified telecommunications service providers' as set forth in article 2 item (3) of the Act."

the electronic signature is attached to the electronic mail.

N.B.: The purpose of making written documentation the general rule and exceptionally permitting electronic mail and facsimile is to leave an accurate record of the demand having been made and of its content. For the requester, [the demand] should be made by form 1) whenever possible, but even in cases where, provisionally, it is not made by form 1), it is desirable that it at least be made in writing. This is because by ensuring that this shall be done in such a way, standardized determination by the provider, etc., becomes possible, and the possibility of obtaining smooth disclosure increases. For the provider, etc., conversely, taking a response of insisting upon form 1) and conducting no other disclosure at all would not be reasonable. This is because the right to demand disclosure of identification information of the sender is substantive, and cases of refusal of disclosure through failure to determine the existence or nonexistence of the right due to excessive commitment to the method of the demand may in cases even be perceived as incurring liability on the grounds of the gross negligence of article 4 paragraph (4). Additionally, for a requester that makes a demand only orally or by telephone, requesting that it be made by written document, etc., and reserving disclosure is a reasonable response on the part of a provider, etc., committed to prudence in procedures, and absent special circumstances, it is believed that liability on the grounds of gross negligence will not be perceived.

p.5-10

III Response of Providers, Etc., on Receiving a Demand

1 Verification of Form Entry Omissions, etc.

In cases where a disclosure request has been received by means of form 1) from a requester, when a formal entry omission or clearly unclear point (hereinafter referred to as "formal entry omission, etc.") is present, the provider, etc., as needed, shall, with as little delay as possible, indicate the formal entry omission, etc., to the requester and urge correction.

2 Identity Verification of the Requester

(1) A provider, etc., who has received a disclosure request is to determine the propriety of disclosure of identification information of the sender, but the identification information of the sender must not be disclosed to anyone other than the person whose right has been infringed by the distribution of information. Also, cases where a requester who has received disclosure of identification information of the sender uses it unjustly (article 4 paragraph (3) of the Act) may constitute an invasion of privacy or other tort, and it is conceivable that the provider, etc., as well may be

requested to make some response. Accordingly, because it is necessary to verify who the person who made the demand is and whether the demand was unquestionably made by that person, the identity of the requester shall be verified.

(2) The requester shall affix name and seal to the demand form according to the way described below, together with attaching material that allows certification of identity, such as a copy of a driver's license, passport, or other such official certificate, and the provider, etc., shall verify identity by means of the attached materials, etc.

(a) The affixed seal shall be a registered seal, and a Certificate of Seal Registration issued no earlier than three months previously shall be attached.

(b) In cases where the requester is a juridical person, the name of the juridical person's representative (including a person who has been assigned authority from a representative; hereinafter the same shall apply) shall be affixed.

(c) In cases where a copyright, etc., management service makes the demand, the copyright, etc., management service shall enter its management service registration number on the demand form, together with affixing the name of the representative.

(d) For demands from overseas, a signature, etc., certified by typical certification methods in said country shall be able to substitute for name or seal.

(3) In cases where a certain relationship of mutual trust between the provider, etc., and the requester is recognized, such as in cases of ongoing exchange, attachment of material allowing certification of identity can be omitted.

(4) In cases where an agent makes a demand (cases where a demand form is drafted), right of agency is verified by having documentation proving right of agency attached. In the case of a copyright, etc., management service, material such as the contract general conditions, etc., showing the content of the contract (trust contract or agency contract) entered into with the copyright, etc., management service is to be attached. In the case of a legal representative (such as the parent of the principal), documentation (residence registry, etc.) proving the legal-representative relationship is to be attached. In the case of an attorney, ordinarily, presenting a power of attorney to the other party is not customary, and so no power of attorney is required.

Additionally, in any case, material that allows certification of the identity of the principal, such as a copy of the principal's driver's license, passport, or other such official certificate, is required.

(1) Under article 4 of the Act, identification information of the sender that is subject to disclosure is that which is held by the provider, etc. (article 4 paragraph (1) of the Act). Accordingly, the provider, etc., shall promptly verify whether it holds the identification information of the sender for which disclosure has been demanded.

(2) As the result of verification, in cases where the provider, etc., does not physically hold the identification information of the sender, or in cases where specifying the identification information of the sender is extremely difficult,⁴ the requester shall be notified through form 5) that disclosure is impossible because the identification information of the sender is not held.

4 Verification of Right-infringing Information

The distributed amount of information on the Internet is enormous, and even when notice has been made that distribution of information alleged to have infringed rights has occurred, often the notice description is vague and the provider, etc., cannot know what information is actually taken to be at issue. (Because of such circumstances, it is specified in article 3 paragraph (1) item (2) of the Act that when the provider, etc., had no knowledge of distribution of information alleged to have infringed rights, liability with respect to the right holder is limited.) Conversely, for disclosure of identification information of the sender to be permitted, it is a requirement that a right have been infringed by the distribution of specific information sent by the sender, and so for a provider, etc., that has received a demand to make a determination of this, it is necessary to verify the information alleged to have infringed the right.

(1) Concerning right-infringing information on an electronic bulletin board or web page

a) With respect to the right-infringing information as claimed by the requester, the provider, etc., shall examine whether the right-infringing information being published or having been published can be verified, based on the URL (Universal Resource Locator) and information reasonably sufficient for specifying the information in question (file name, data size, thread title, write number, and other characteristics, etc.) entered on the demand form.⁵

⁴ The term "holding" means "possessing the authority to be able to perform disclosure with respect to the identification information of the sender," but this includes including apprehending the existence of identification information of the sender as that which is practically executable, and not merely for which disclosure is not simply theoretically possible, and cases where large expenses is required for extraction as well as cases where it is not systematically retained and the provider, etc., cannot apprehend its existence are construed as not being "holding."

⁵ Generally, in cases where right-infringing information has already been deleted from the web page, etc., it is difficult for the provider, etc., to verify the fact of past publication.

b) In cases where a demand has been made to a so-called access provider based on the IP address, etc., disclosed from the provider, etc., administering the electronic bulletin board or web page on which the right-infringing information was published (referred to in this section as "electronic bulletin board administrator, etc."), together with verifying the right-infringing information, it is necessary to verify that the IP address was used in the sending of the right-infringing information, that the Internet connection service user identification code and SIM card identification number from the mobile telephone terminal, etc., were transmitted at the time the infringing information was sent from the mobile telephone terminal, etc., using the Internet connection service, and that these have been accurately recorded. Accordingly, the so-termed access provider shall verify the right-infringing information in accordance with a), together with verifying the information in relation to the accuracy of the IP address, etc.

Specifically, the so-called access provider shall, 1) in cases where the relevant IP address, etc., has been disclosed on the basis of a court verdict, etc., conduct verification through materials showing this, and 2) in cases where disclosure has been made voluntarily by the electronic bulletin board administrator, etc., conduct verification through documentation, etc., bearing affixed name and seal wherein the electronic bulletin board administrator, etc., affirms that the IP address was used in the sending of the right-infringing information, that the Internet connection service user identification code and SIM card identification number from the mobile telephone terminal, etc., were transmitted at the time the infringing information was sent from the mobile telephone terminal, etc., using the Internet connection service, and that these have been accurately recorded.

(2) Concerning so-called peer-to-peer file-sharing software

For so-called peer-to-peer file-sharing software, the requester shall show the provider, etc., the IP address, time stamp, etc., of the user who placed the file that infringes rights such as copyright, etc., in a transmittable state. In addition, the requester shall submit technical material, etc., relating to the method of specifying these being credible, and based on that material, the provider, etc., shall determine whether the specification method has reliability.⁶

⁶ With respect to the reliability of specification methods for IP addresses, the Tokyo District Court on 24 June 2005 held that "It is recognized that when the proxy for the plaintiff used WinMX to download from another personal computer an electronic file already made public using WinMX, and...verified the IP address at that time, the result was that verification was performed three times and all three times the IP address actually assigned to the proxy for the plaintiff at that point in time was accurately displayed, and...that when three other types of IP address investigation programs were run concurrently, connection to WinMX was made repeatedly, and the IP address displayed each time was verified, the result was that the identical address was displayed all 100 times, and there is no other evidence that

(3) The requester, shall, in cases where possible, make illustrations and explanations (in cases of peer-to-peer type), etc., of the technical methods that specified the IP address, etc., in a hard copy of the right-infringing information in question, and in addition, when the provider, etc., cannot perform specification with only the entered information and has requested additional information to correct the demand form, shall present the information requested by the provider, etc.

In cases where the specification of the right-infringing information is inadequate and correction is not made by the requester, the provider, etc., shall communicate to the requester that the right-infringing information cannot be specified and performing disclosure is impossible (Refer to form 5).

5 Sender Opinion Hearings

(1) So that the privacy or freedom of expression, secrets in communication, or other rights or interests of the sender are not unjustly infringed, at the time of response to a disclosure request for identification information of the sender, article 4 paragraph (2) of the Act provides that as a general rule, the opinion of the sender regarding whether disclosure is or is not made must be heard. Accordingly, the provider, etc., when having accomplished verification for the items III 1 through 3, shall hear the opinion of the sender regarding disclosure of identification information of the sender by means of an opinion inquiry form (form 2)) to the sender.⁷

casts doubt on the reliability of these IP address investigation programs." and with respect to material relating to the reliability of specifying the IP address, etc., it is thought necessary to use means for which accuracy can be warranted, such as by verifying IP address, etc., multiple times using multiple software programs. Of course, except for several instances relating to WinMX, there is no accumulation of court precedent that serves as reference for the reliability of the specification method for the IP address, time stamp, and the like, and so establishing specific criteria with respect to the reliability of the specification methods is difficult at the present point in time. (Note, however, that with respect to particular cases relating to other peer-to-peer file-sharing software or specification methods, when the provider, etc., has verified the reliability of the specification method, determination of disclosure or nondisclosure by the provider, etc., is not denied.)

⁷ Article 4 paragraph (2) of the Act provides for the general duty of care that the provider, etc., incurs with respect to the sender, and the paragraph does not constitute a requirement of the disclosure of identification information of the sender. Nevertheless, from the standpoint of protection of privacy, freedom of expression, and the like, these guidelines

(2) Note, however, that depending on the identification information of the sender that the provider, etc., holds, hearing the opinion of the sender may be impossible or extremely difficult, and in such cases, it shall be acceptable not to conduct a hearing of the opinion of the sender.

Additionally, depending on the fact situation claimed by the requester and on the corroborative material, it shall be acceptable not to conduct a hearing of the opinion of the sender also in cases where it can clearly be determined that no right was infringed by the distribution of information.

(3) When the provider, etc., has obtained from the sender a response of consenting to disclosure, the identification information of the sender shall be disclosed in accordance with V, and in cases other than this, response shall be conducted in accordance with 6 and 7 below.

6 Determination of Obviousness of Right Infringement

(1) In cases where the provider, etc., has obtained from the sender a response of not consenting to disclosure, or in cases where no response is received after passage of a certain period (two weeks), then based on the material, etc., submitted by the requester, examination into the obviousness of right infringement with reference to criteria, etc., of IV shall be begun.⁸

(2) Additionally, the import of right infringement being evident as used here is the infringement of a right having occurred being obvious, and is interpreted as signifying even the nonexistence of circumstances that suggest the existence of grounds for barring establishment of a tort or the like. With respect to the existence of such circumstances, determination is to be made with consideration also given to the claims of the sender in addition to the circumstances claimed by the requester, but in cases where opinion inquiry of the sender has been conducted, in cases of no response even after passage of a certain period (two weeks), the sender shall be treated as having made no special claim relating to this point.

are predicated on procedures for disclosure of identification information of the sender after opinion inquiry.

⁸ With respect to right infringement by file transmission utilizing so-termed peer-to-peer file-sharing software, because the technical setup by which files are transmitted by software programs are varied, the requester is required to submit material showing grounds predicated on the technical setup of the so-termed file-sharing software utilized 1) that distribution of the file in question infringes a right of the requester, and additionally, 2) that right infringement occurred through the intent or negligence of the sender, such as by the sender placing the file in a transmittable state.

7 Determination of Justifiable Grounds for Receiving Disclosure of Sender Information

(1) Based on the entries on the demand form, the provider, etc., shall determine whether the requester has justifiable grounds for receiving disclosure of the identification information of the sender.

(2) In cases where the reasons to demand disclosure of the identification information of the sender is 1) a case of being in order to exercise the right to claim damages, 2) a case of being necessary in order to demand measures for restoration of honor, such as a published apology, or 3) a case of being necessary in order to exercise the right to demand injunction, such as a deletion request to the sender, ordinarily, the requester is considered to have justifiable grounds for receiving disclosure of the identification information of the sender, but because it may be possible that the right-infringing information has already been deleted and the need for the demand has been eliminated, for example in cases of demand for injunction, it is necessary that determination take into consideration the opinion of the sender as well.

In other cases, which are cases where determination of whether justifiable grounds are held is difficult, it is desirable that the provider, etc., make determination based on consultation with an attorney or other such specialist.

p. 11-12

IV Determination Criteria, etc. for Obviousness of Right Infringement

1 General Remarks

The right to demand disclosure of identification information of the sender is beneficial from the standpoint of relief for a person who suffered damage by the distribution of information sent anonymously, but on the other hand, identification information of the sender is information that is deeply tied to the privacy and freedom of expression of the sender and to secrets in communication, and so maintaining their balance is important. From the standpoint of attempting to achieve harmony between such need for relief for the injured party and the interests of the sender, with respect to the disclosure of right-infringing information, article 4 of the Act prescribes the requirement that there be "evidence that the rights [...] were infringed."

Here, the import of "evidence" refers to it being obvious that rights have been infringed, and is interpreted as signifying even the nonexistence of circumstances that suggest the existence of grounds for barring establishment of a tort or the like.

Consequently, in cases where it is recognized that 1) rights were infringed by distribution of information and 2) circumstances that suggest the existence of grounds for barring establishment of a tort or the like do not exist, disclosure of the right-infringing information becomes possible.

It may be incidentally noted that as the mode of right infringement by distribution of information, by category, 1) defamation and privacy infringement, 2) copyright, etc. (referring to copyright and neighboring rights, hereinafter the same shall apply) infringement, and 3) trademark infringement are conceivable, and these guidelines describe cases for each type in which it is thought evident that rights have been infringed and determination factors, etc., therefor, with reference to judicial precedent, etc., in which disclosure of right-infringing information was permitted. For categories of right infringement not addressed by these guidelines, it need hardly be said that determination of whether obviousness exists should be made according to the incident in question.

2 Defamation, Privacy Infringement

(1) Defamation

a) Honor is the objective social evaluation received from society with respect to a person's character, virtue, reputation, credibility, and other personal values, and an act which lowers this social evaluation can be defamation (Supreme Court ruling of 27 May 1997, Supreme Court Reports [civil cases] vol. 51 No. 5 page 2024), but in cases where such acts involve facts relating to the interests of the public and are divulged wholly with the objective of benefiting public interest, no illegality exists in cases where the alleged facts are certified to be true, and even if provisionally the alleged facts are not true, and in cases where reasonable grounds exists with respect to the person who so acted believing them to be true, there is no intent or negligence, and no tort is taken to have been established (Supreme Court ruling of 23 June 1966, Supreme Court Reports [civil cases] vol. 20 No. 5 page 1111).⁹ Further, with respect to defamation due to opinion or criticism based on specific facts, in cases where the essential portion of the facts on which the opinion, etc., is predicated is true, illegality is similarly rejected, and along with this, when there are reasonable grounds with respect to believing this to be true, the interpretation is that intent or negligence are negated Supreme Court ruling of 9 September 1997, Supreme Court Reports [civil cases] vol. 51 No. 8 page 3804).

⁹ Additionally, although it was in a criminal case, the Supreme Court determined that "even in cases of an expressive act by an individual user of the Internet, similarly to other cases, with respect to the person who so acted wrongly believing the alleged facts to be true, provided that reasonable grounds are recognized to exist in light of reliable material and grounds, it is reasonable to construe this as no crime of defamation having been established, and it is not construed that the establishment of the same crime under looser requirements should be negated" (15 March 2010 – Supreme Court Reports [civil cases] vol. 64 No. 2 page 1).

Consequently, in order for the obviousness of right infringement with respect to defamation to be recognized, in addition to objective facts concerning the right infringement, such as a lowered social evaluation of the injured party due to the infringing information in question, it is construed that circumstances do not exist that suggest the existence of the respective grounds of 1) pertinence to facts relating to public interest, 2) the objective being wholly toward benefiting public interest, 3)-1 with respect to defamation by facts alleged, the essential portion of the alleged facts being true or reasonable grounds existing with respect to believing them to be true, and 3)-2 with respect to defamation by expression of opinion or criticism, the essential portion of the facts on which the opinion or criticism are based being true or reasonable grounds existing with respect to believing them to be true, are necessary.¹⁰

b) These circumstances, etc., should be determined according to the details of the particular incident, and some are difficult for the provider, etc., to determine. Consequently, at the present point in time, it is difficult to establish general criteria for cases where the obviousness of right infringement is recognized.

In some cases, such as cases where as a result of hearing the opinion of the sender the sender admits that the objective is not toward benefiting public interest or the facts relating to a post are not true, it is acceptable to determine that defamation is obvious, but for other cases, it shall be a general rule to conduct determination of the obviousness of right infringement with reference such as to the following judicial precedents in which disclosure of identification information of the sender was permitted, and in cases where the determination is in doubt, conduct disclosure based on the determination of the court.

(Cases in Which Obviousness of Right Infringement Was Recognized)

- Tokyo District Court – 31 March 2003 (Case in which disclosure was permitted – 1)

(In regard to lowering of social evaluation)

p. 13-15

With respect to a case in which the plaintiff demanded disclosure of the identification information of the sender

¹⁰ Of course, with respect to intent or negligence being taken to be necessary as a subjective requirement in order for a tort to be established, there is also judicial precedent that because article 4 of the Act does not provide for the requirement of intent or negligence in the wording, and at the stage of demanding disclosure of the identification information of the sender, the sender has not been specified and requesting as much as proof of subjective requirements is harsh, and so on, it is not necessary for the plaintiff to claim and prove even up to intent or negligence of the sender, which is a subjective requirement. (Refer to Tokyo District Court ruling of 31 March 2003 and of 24 December 2003).

regarding posts of "That jerk says nothing but negative things about other hospitals. ..., your place must have blinded three people last year." and the like regarding a hospital (ophthalmological) operated by the plaintiff on an electronic bulletin board, it was held that, through the information, "the impression was imparted that the hospital operated by the plaintiff is conducting dangerous medical treatment such that blinds patients, ...and it is reasonable to recognize that the plaintiff's social evaluation was lowered."

(Regarding grounds for rejecting illegality)

1) Public nature of the facts (positive example)

It was held that "in that the facts in this matter are facts related to treatment results at the hospital operated by the plaintiff, facts concerning treatment results at hospitals that play an important role in the medical treatment of citizens can be said to have high public utility."

2) Public utility of the objective (negative example)

In light of the content and the like of the electronic mail stating that the message in this matter was posted as is seen in the method of expression of the "that jerk" and "your place must have blinded three people last year" portions of the post in this matter and the mischievousness of the person who made the post, it was held that "it is evident that it was not conducted the objective being wholly toward benefiting public interest."

3) Truthfulness (negative example)

From documentary evidence submitted by the plaintiff, it is "recognized that at the hospital operated by the plaintiff, over 18,000 cases of refractive treatment have heretofore been conducted, and complications leading to problems such as blindness have not been caused," and so truth was denied.

- Tokyo District Court – 29 August 2005 (Case in which disclosure was permitted – 2)

(Regarding lowering of social evaluation)

With respect to a case in which "to us, X and the others are using us, who are not involved, for the sake of money, and are nothing but extortionists who have inflicted mental abuse that has stolen much happiness" and the like was posted concerning attorney X, heading injured-party counsel related to child abuse by a certain organization, it was held that "because the impression is given that the plaintiff is an attorney who engages in extortionate conduct and intimidating conduct, it is recognized as lowering social evaluation."

(In regard to grounds for rejecting illegality)

1) Public nature of the facts (positive example)

It was held that "the facts concerning right infringement in this matter...relate to the status of activity as the plaintiff's attorney in the context of a child guidance center having placed five children in temporary aid custody because of child abuse occurring, and so are recognized to be facts relating to public interest."

2) Public utility of the objective (positive example)

Because the sender, one of the children placed in temporary aid custody, stated on a website that the objective of launching the website lay in clarifying the child-abuse issue of this matter taken up by the media and the status of activity of the plaintiff, it was held that "it can be said that the objective was wholly toward public interest."

- Tokyo District Court – 17 September 2003 (Case in which disclosure was permitted – 3; upheld by the court of second instance, Tokyo High Court – 29 January 2004)

(Regarding lowering of social evaluation)

Regarding a case in which content was posted regarding attorney A, the agent of a company performing hand-luggage transportation and delivery services for airline passengers, worker dispatch, and the like, that the company profited and erected an opulent building by shirking payment of salaries while exploiting workers at low wages, along with "epically stupid," "shouldn't you be getting your own lawyer pretty soon?", "craven," "hard to believe that XX is a lawyer," and the like regarding the attorney A as well, it was held that "all are recognized to be content libeling the plaintiff using contemptuous expressions, and are recognized to lower the social evaluation of the plaintiff."

- Tokyo District Court – 24 December 2003 (Case in which disclosure was permitted – 4)

(Regarding lowering of social evaluation)

Regarding a case in which "Could the reason be he can't completely quit as president of OO while being the chairman of the Osaka Securities Exchange be because of the undeveloped abilities of his stupid son XX? OO can disappear if they want to, but Osaka Securities Exchange is also headed for gradual decline" and the like was posted to an electronic bulletin board under the title "The Last Days of the Osaka Securities Exchange," it was recognized that posts were made that gave general readers the impression that the chairman and vice chairman of the Osaka Securities Exchange were not suitable persons as managers and officers of the Osaka Securities Exchange.

(Regarding grounds for rejecting illegality)

1) Public nature of the facts (positive example)

It was held that "in that the content of the posting in this matter relates to the words and deeds, disposition, and the like of the plaintiffs, ...because plaintiffs Osaka Securities Exchange hold an important role with respect to opening a securities exchange, operating a securities market, protection of investors, and the like, and the plaintiffs are its officers, it is reasonable to say that the posting in this matter states matters relating to public interests."

2) Public utility of the objective (positive example)

It was held that "further, although in addition to the posting in this matter including such expressions lacking in temperateness as 'stupid son', 'idiot', 'useless blustering president', 'coward', 'incompetent', and the like, the title as well was given as 'The Last Days of the Osaka Securities Exchange', and such expressions as 'In conclusion, the role of the Osaka Securities Exchange has come to an end. You employees all be sure to get your inflated severance packages.',

one securities exchange is enough for Japan', 'With this the demise of the Osaka Securities Exchange is finally hastened. Neither the Financial Services Agency nor the Surveillance Commission committee need be circumspect. They should conduct inspection again over and over. The new building, too, is a forgotten a dream of the soldiers.' that seem to anticipate the collapse of plaintiffs Osaka Securities Exchange are used, ...matters relating to public interests are stated, and there is even room to believe that the foregoing expressions, even the portions that seem to anticipate the collapse of plaintiffs Osaka Securities Exchange, were deliberately used to emphasize the problem points therein and convey a sense of crisis to persons concerned. In this, ...the poster in this matter took the objective of urging improvement of the operation of plaintiff Osaka Securities Exchange, and when this is considered together with the statement in the response e-mail that there was no intention of defaming the plaintiffs, it is reasonable to think that a lack of public-interest objective in the posting in this matter cannot be said to be evident."

- Osaka District Court – 26 June 2008 (Case in which disclosure was permitted – 5)
(Regarding lowering of social evaluation)

It was held that "Because the portion of 'the post office delivery person got fired' gives an ordinary person the impression that the plaintiff engaged in unlawful conduct or illegal conduct and was punitively dismissed, it lowers the social evaluation of the plaintiff. Additionally, the 'a personality disorder recognized by anyone' portion as well is a statement that libels the plaintiff, and it lowers the social evaluation of the plaintiff. Moreover, with respect to the portion with 'hikikomori 40-year-old', because generally the word 'hikikomori' imparts an impression accompanied by a negative evaluation, and being a hikikomori at an age of '40 years' also further loads the foregoing impression accompanied by a negative evaluation, it can be said to lower the social evaluation of the plaintiff."

(2) Infringement of privacy

a) With respect to privacy rights, judicial precedent from the Supreme Court that has clearly defined the content thereof is still lacking, but in one judicial precedent that recognized the establishment of tort with respect to infringement of privacy, it was held that in order for information relating to an individual to be protected as private, "it is necessary that it 1) be information that is a fact in private life or that risks being accepted as like a fact in private life, 2) information for which, under the standard of sensitivity of an ordinary person, disclosure to other is recognized as likely not desired in the case of the standpoint of the private person in question, and 3) information not already known to general persons" (the *After the Banquet* case; Tokyo District Court – 28 September 1964).¹¹ Additionally, although

¹¹ Trends in judicial precedent relating to privacy are described in detail on page 10 and after of the Provider Liability Limitation Act Guidelines Relating to Sender Information Disclosure.

it cannot be termed as a clear definition, in a recent Supreme Court verdict it was held that "with respect also to personal information such as student ID number, name, address and telephone number . . . , it is natural that the principal would not wish to have this disclosed without permission to others undesirable to himself or herself, and the expectation for this should be protected" (Waseda University Jiang Zemin lecture case; Supreme Court ruling – 12 September 2003).

p. 16-17

b) According to the foregoing, establishing general criteria with respect to infringement of privacy through distribution of information is difficult. However, when matters such as instances where privacy infringement is taken to be obvious and disclosure of identification information of the sender has been permitted are considered, with respect to the information among the personal information of an ordinary private person such as address, telephone number, and other such contact information, medical history, criminal record, background, and the like that in general the principal would not want disclosed without permission, cases where this has been published to many and unspecified persons together with the name or other items that enable the principal to be specified are ordinarily thought to be infringement of privacy. Additionally, because of the pertinence to an ordinary private person, circumstances such as those that bar illegality (being a matter of legitimate social concern, etc.) are in general difficult to envisage. Consequently, with respect to such modes of infringement of privacy, absent the suggestion of special circumstances under which opening the relevant information to the public is justified, performing disclosure of the identification information of the sender is thought to be possible.

(Cases in Which Obviousness of Right Infringement Was Recognized)

- Tokyo District Court – 12 September 2003 (Case in which disclosure was permitted – 1)

With respect to a case in which an electronic file containing personal information of the plaintiff (relating to leaked customer information from a beauty-treatment salon) was, using WinMX, placed in a receivable state for unspecified third parties, it was held that "a private individual's name, address, telephone number, and e-mail address are information that specify the residence, which is the bastion of private life, and the method of contacting the individual, and it is evident that whether information such as this is to be published is a matter that first and foremost should be decided by each individual in question himself or herself. Additionally, because age and occupation are also personal matters, it is usual not to make them known to an unrelated third party," and it was also held that "it should be deemed evident that the plaintiff's right to privacy was infringed through the distribution of personal information in this matter." Furthermore, it was examined whether it could be said that circumstances did not exist that suggested the existence of grounds for barring illegality, and it was held that "when the opinion of for user 942 was heard regarding the disclosure

of the identification information of the sender in this matter, although user 942 stated a wish for forbearance regarding the disclosure of the identification information of the sender in this matter, according to the entire import of the argument, it is recognized that no circumstances were stated which suggest justifiable grounds with respect to the personal information in this matter having been made open to the public. In addition to this, in light of the content and nature of the personal information in this matter, there is no alternative but to say justifiable grounds for making this public to unspecified persons cannot easily be postulated. Accordingly, with respect to the act of user 942 having made the personal information in this matter open to the public, it should be said that circumstances do not exist which suggest the existence of grounds for barring illegality."

- Tokyo District Court – 24 November 2004 (Case in which disclosure was permitted – 2)

With respect to a case in which the sender, having acquired the Roman-letter initial of the plaintiff's given name joined to the Roman-letter expression of the family name (for example, a form such as "j.tanaka") as the ID displayed in the posts of an anonymous bulletin board service, recorded the plaintiff's mobile telephone number in the publicly open profile of the relevant ID, it was held that "with respect to personal information such as name and telephone number, it is natural to believe that the principal would not wish to have this disclosed without permission to others undesirable to himself or herself, and the expectation for this should be protected. In particular, with bulletin board services, etc., as in this matter, inasmuch as anonymous information exchange is assumed, the rapidity and severity of the expansion of damage on a bulletin board service on the Internet, which anyone can access extremely easily, cannot be ignored, and so it is necessary to protect with even stronger reason the expectation that name and telephone number will not be disclosed." Additionally, with respect to the plaintiff's name being specified only in the above-described form, it was taken to be that "in cases where the family name is written in alphabet letters, and further, the given name is indicated solely by an initial, as in this matter, the possibility of the individual being specified is lower in comparison with cases where family and given names are both written using Chinese characters, and it cannot be said that, with only this, privacy infringement will occur. However, in cases where the name (family name) is displayed together with such personal information as a mobile telephone number, even when the name of the individual cannot be completely specified, because there is risk of suffering severe damage by peaceful private life easily being disturbed by a telephone call from a third party, in cases such as this, this should be subject to legal protection as information pertaining to privacy in the sense of not being disclosed without permission to others in the range not wanted by the person herself or himself. Consequently, the act of displaying the plaintiff's name (family name) recorded using alphabet letters together with the plaintiff's mobile telephone number on a bulletin board service, etc., as in this matter should be said to infringe the privacy of the plaintiff." Further, with respect to illegality-barring grounds, it was held that "there is no sufficient evidence for recognizing circumstances such as the existence of justifiable grounds opening the privacy of the plaintiff to the public, and it is evident that the rights of the plaintiff were infringed."

c) In contrast to this, with respect to opening to the public and other modes of privacy infringement of personal information pertaining to a public official, etc.,¹² determination of whether privacy is infringed is not necessarily easy, and there is no accumulation of judicial precedent to serve as reference. Consequently, at the present point in time, it is difficult to establish general criteria, and it shall be a general rule that disclosure be conducted based on the determination of the courts.

3 Copyright, etc. Infringement

(1) The requester must be the copyright holder, etc.

p. 18-21

In cases where disclosure of identification information of the sender is requested because of reasons of copyright, etc., infringement, the requester being the holder of the copyright, etc., of the work, etc., alleged to have been infringed becomes a prerequisite. In order to make a clear determination that the requester is the copyright holder, etc., of the copyright, etc., alleged to have been infringed, it is thought necessary to rely on the following corroborative material-

1) In cases where registration has been made pursuant to the Copyright Act or cases where registration has been made pursuant to overseas laws and regulations in relation to the work, etc., documentation proving that the registration has been made

2) In cases where the name, etc., of the copyright holder, etc., has been indicated at the time of the publication, sale, etc., of the work, etc., a copy thereof (Refer to article 3 paragraph (1) of the Universal Copyright Convention.)

3) In cases where there are materials which are products, catalogs, etc., made generally available prior to the request that show the requester to be the copyright holder, the materials or a copy thereof

4) In cases where an appropriately administered database is available which allows inquiry into the

¹² "Public official" refers to a National Diet member, prefectural governor, assembly member, public officer holding another important post, and the like. Additionally, as beings having a public character corresponding to "public official," there are also company representatives and celebrities. These public beings, in some cases, may be required to accept that, because of the relationship with their functions, the peacefulness of private life may be disturbed within certain limits, and consideration that differs from that for ordinary private persons is necessary. Additionally, absent special circumstances, the families of public officials are ordinary private persons.

relationship between the work, etc., and the copyright holder, etc., documentation proving that the matter is recorded in the database

5) Documentation showing that the requester is the original author with respect to a derivative work, such as the portions of contracts, confirmation notes, and other such documents concluded between the author of the original work and the author of the derivative work relating to adaptation and the relationship of rights that are necessary for verification of the relationship of rights

6) Documentation verified by a copyright, etc., management service that the organization manages the work, etc.

(2) Copyright, etc. Infringement

With respect to copyright, etc., infringement, infringement can be due to modes such as, for example, infringement of rights of reproduction, infringement of rights of public transmission, or infringement of rights to make transmittable, but it is thought that a provider, etc., that has received a demand for disclosure of the identification information of the sender pursuant to article 4 of the Act must be able to determine clearly that copyright, etc., infringement has occurred in order to carry out disclosure of the identification information of the sender out of court based on determination of the obviousness of right infringement.

Accordingly, the following are conceivable as cases in which such determination becomes possible-

- 1) The information is admitted by the sender to be infringement of copyright, etc.
- 2) The information is a verbatim copy of all or part of a work, etc.
- 3) A verbatim copy of all or part of a work, etc. has been compressed by a current standard compression scheme (one which is reversible).

(Cases in Which Obviousness of Right Infringement Was Recognized)

- Tokyo District Court – 24 June 2005 (Case in which disclosure was permitted)

With respect to a case in which a data file that was a compressed reproduction of musical compositions on a phonogram produced by the plaintiff was, using WinMX, placed in a state receivable by many and unspecified third parties, it has been held that "it is evident that through this...To the plaintiff's rights to make transmittable were severally infringed, and that the identification information of the sender of user "NISSAN" and user "crown" are necessary for exercise of the plaintiff's right to claim damages, and there is not sufficient evidence for overturning this."

(3) Other

The provider, etc., shall verify that the copyright, etc., is within the term of protection, and that the requester has not granted rights to the sender. Additionally, with respect to granting rights, absent a response from the sender to the effect that permission has been received, it shall be acceptable to trust the statement of the requester. In cases where a dispute exists concerning the presence or absence of permission, its existence or nonexistence shall be verified, such as by requiring a sender claiming the existence of permission to submit material proving permission.

(4) The provider, etc., carries out determination regarding copyright, etc., infringement based on materials, etc.,¹³ that the requester submits, but in cases where copyright, etc., infringement occurred in a form satisfying all of the foregoing and no specific claim is made by the sender, it is generally difficult to conceive also of the existence of circumstances such as to bar the establishment of a tort, etc. Consequently, absent the suggestion of special circumstances,¹⁴ conducting disclosure of the identification information of the sender is thought to be possible. On the other hand, for copyright, etc., infringement of a category other than these, determination thereof is not necessarily easy, and is not covered by these guidelines.

4 Trademark Right Infringement

(1) The requester must be the trademark right holder¹⁵

Cases where disclosure of the identification information of the sender is requested for the reason of trademark right

¹³ In relation to the requester needing to be the copyright holder, etc., and the facts of copyright, etc., infringement, with respect to material in which the details thereof are affirmed by a reliability certification organization certified by the Provider Liability Limitation Act Guidelines Review Council (hereinafter referred to simply as "reliability verification organization"), in light of the reliability verification organization having been certified as to the requirements of possessing expert knowledge and an adequate record, it is expected that the provider, etc., also will respect its determination.

¹⁴ For example, in cases that may possibly correspond to quotation (article 32 of the Copyright Act), such as cases where a verbatim copy of a work, etc., is incorporated in a portion of a creation of the sender, determination of copyright, etc., infringement is thought to be not necessarily easy.

¹⁵ Demands for disclosure of the identification information of the sender covers cases where infringement of rights has occurred through the *distribution of information* itself, and cases such as of suffering damage by fraud through inspection of distributed trademark right-infringing information shall be outside the scope of these guidelines.

infringement are predicated on the requester being the trademark right holder (including holders of exclusive right to use; the same shall apply hereinafter). In order to make a clear determination that the requester is the trademark right holder of the trademark right alleged to have been infringed, relying upon a copy of the trademark registry is conceivable.

(2) Trademark Right Infringement

a) In general, infringement of trademark right refers to using, without the permission of the right holder, a trademark identical or similar to a registered trademark for a product or service identical or similar the designated product or designated service of the registered trademark.

Among these, cases construed as infringement of trademark right through distribution of information are those construed to be:

- 1) [the act of 3) below being committed] by a person who assigns, etc., goods in the course of trade,
- 2) with respect to specified goods or goods similar thereto pertaining to trademark registration of a trademark right holder,
- 3) the act of publishing on a web page photographs or images, etc., of goods to which is affixed a mark identical or similar to a registered trademark, or the act of displaying on a web page a trademark (affixed to information whose content comprises advertisement materials, etc.) identical or similar to a registered trademark. ^{16,17}

b) With respect to such trademark right infringement, it is necessary that a provider, etc., that has received a demand for disclosure of the identification information of the sender pursuant to article 4 of the Act be able to determine clearly that trademark right infringement has occurred in order to carry out disclosure of the identification information of the sender out of court based on determination of the obviousness of right infringement, and for this purpose, it is thought necessary that the criteria of a) and b) below each be satisfied.

a) Must fall under any of the following, and be able to be determined that the information relating to the

¹⁶ The way of thinking relating to this point is described in detail on page 2 and after of the Provider Liability Limitation Act Guidelines Relating to Trademark Right.

¹⁷ Specifically, cases such as 1) displaying a counterfeit branded goods, etc., in an online auction, 2) displaying a counterfeit branded goods, etc., in a shopping mall, and 3) advertisements for transfer of counterfeit branded goods, etc., on other websites are conceivable.

goods displayed on a web page do not pertain to authentic goods-

- 1) Goods which the sender of the information admits not to be authentic.
- 2) Goods of a type not manufactured by the trademark right holder.
- 3) Goods for which the trademark right holder shows material¹⁸ proving them not to be authentic goods (excluding those that fall under 2)).

b All of the following matters must be able to be verified, and being trademark right infringement must be able to be verified

- 1) The sender of the information of advertisement materials, etc., must be a person who assigns, etc., goods in the course of trade
- 2) The goods must be identical or similar to specified goods of a registered trademark
- 3) A trademark identical or similar to a registered trademark of the relevant trademark right holder, etc., must be affixed to the information comprising advertisement materials, etc., of the goods.^{19,20}

(3) Other

The provider, etc., shall verify that the requester has not granted a license to the sender. Specifically, in the absence of a response from the sender that a license has been received, it shall be acceptable to believe the statement of the requester. In cases where dispute exists concerning the presence or absence of permission, its existence or nonexistence shall be verified, such as by requiring a sender claiming the existence of permission to submit material proving permission.

¹⁸ Specifically, regarding documentation in which the trademark right holder proves the goods not to be authentic, those in which a person having the expert knowledge of a reliability verification organization, etc., verifies the content thereof are conceivable.

¹⁹ For determination of identity and similarity, verification is made by means of a copy of the trademark bulletin or a copy, etc., of search results for information relating to the trademark on the web page <<http://www.ipdl.inpit.go.jp/homepg.ipdl>> of the Industrial Property Digital Library provided by the National Center for Industrial Property Information and Training

²⁰ Because there are also cases where determination of trademark similarity is not necessarily easy, in these guidelines, those which can be determined to be substantially identical and those for which determination of similarity by the courts or the Japan Patent Office have been shown shall be covered.

(4) The provider, etc., carries out determination regarding trademark right infringement based on materials, etc.,²¹ that the requester submits, but in cases where trademark right infringement occurred in a form satisfying all of the foregoing and no specific claim is made by the sender, it is generally difficult to conceive also of the existence of circumstances such as to bar illegality. Consequently, absent the suggestion of special circumstances, conducting disclosure of the identification information of the sender is thought to be possible.

On the other hand, for trademark right infringement of a category other than these, determination thereof is not necessarily easy, and is not covered by these guidelines.

p. 22

V Procedures of Disclosure and Nondisclosure

I Cases of Sender Consent for Disclosure

(1) With respect to disclosure of the identification information of the sender, in cases where consent has been received from the sender, the provider, etc., shall promptly disclose the identification information of the sender by means of form 4).

(2) In cases where the sender has consented to disclosure solely for a portion of the identification information of the sender for which the requester has demanded disclosure, the provider, etc., shall promptly perform disclosure solely for the relevant portion, and for the portion of which the sender did not give consent, determination of the propriety of disclosure shall be made in accordance with III.²²

²¹ In relation to the requester needing to be the trademark right holder and the fact of trademark right infringement, with respect to material in which the details thereof are affirmed by a reliability certification organization, in light of the reliability verification organization having been certified as to the requirements of possessing expert knowledge and an adequate record, it is expected that the provider, etc., also will respect its determination.

²² The Tokyo District Court – 31 March 2003 held that even in cases such as where the plaintiff already holds a portion of the identification information of the sender and the person who conducted the act of sending itself has been specified, the need to receive disclosure of the remainder of the identification information of the sender is not eliminated.

2 Cases Where Requirements for Disclosure Have Been Determined to Be Satisfied

(1) In cases where the provider, etc., has determined that the demand satisfies the requirements for disclosure, the provider, etc., shall promptly disclose the identification information of the sender by means of form 4).²³

(2) In cases where disclosure has been made, the sender shall be notified of this.

3 Cases Where Requirements for Disclosure Have Been Determined Not to Be Satisfied

(1) In cases where the provider, etc., has determined that the demand does not satisfy the requirements for disclosure, the provider, etc., shall notify the requester by means of form 5) of the reasons for determining that the requirements are not satisfied together with the purport that the identification information of the sender will not be disclosed.

(2) Additionally, at that time, in cases where the provider, etc., has conducted a hearing of the sender's opinion, it is desirable that the provider, etc., notify the sender as well that disclosure of the identification information of the sender was not performed.

END

²³ Concerning article 4 paragraph (4) of the Provider Liability Limitation Act, the Supreme Court (13 April 2010 verdict of the Third Petty Bench – Supreme Court Reports [civil cases] vol. 64 No. 3 page 758) has determined that "it is reasonable to construe that a provider of disclosure-related service incurs liability for damages solely in cases where the disclosure demand is perceived to fall under each of the requirements prescribed by each item of paragraph 1 of the article, such as infringement of the rights for disclosure requester through the distribution of infringing information being obvious, or the falling under each of the foregoing requirements being prima facie obvious, and grave negligence has occurred with respect to being unable to perceive this," and it can be said that because the identification information of the sender is information concerning the sender's privacy, freedom of expression, and secrets in communication, prudent determination is required such that in disclosure thereof, the interests of the sender are not unjustly infringed.

p. 23-24

Form 1) Form for Demand of Disclosure of Identification Information of the Sender

Year month day

To: [Name of specified telecommunications service provider]

[Person claiming infringement of rights] (note 1)

Address

Name Seal

Contact information

Demand for Disclosure of Identification Information of the Sender

Because my rights have been infringed through the distribution of the following information published on a specified telecommunications facilities that [you/your company] administer(s), pursuant to article 4 paragraph (1) 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 (the Provider Liability Limitation Act; hereinafter referred to such as the "Act"), I demand that you disclose the below-stated information contributing to the specification of the sender of the infringing information (hereinafter referred to as "identification information of the sender") that [you/your company] hold(s).

Additionally, in the case that false facts should be contained in the items recorded on this demand form (including any attached or added material), and as a result thereof [you/your company] receives a complaint or demand for compensation of damages, etc., from the subscriber, etc., of whom disclosure of the identification information of the sender is demanded, I will take responsibility for dealing with it.

Specified telecommunications facilities, etc., administered by [you/your company]

(note 2)

Published information

Infringing information, etc.

Infringed right

Reason for claiming evident infringement of the right (note 3)

Justifiable grounds for receiving disclosure of the identification information of the sender (multiple selections possible)
(note 4)

1. Because necessary in order to exercise right to claim damages.
2. Because necessary in order to request measures for restitution of honor such as a published apology.
3. Because necessary in order to exercise right to demand injunction.
4. Because necessary in order to demand deletion by the sender.
5. Other (Enter specifics).

Identification information of the sender for which disclosure is demanded (multiple selections possible)

1. Name or appellation of the sender
2. Address of the sender
3. Electronic mail address of the sender
4. IP address of the sender at the time the sender distributed the infringing information (note 5)
5. Internet connection service user identification code from the mobile telephone terminal, etc., pertaining to the infringing information (note 5)
6. SIM card identification number among those pertaining to the infringing information that was transmitted by the Internet connection service from the mobile telephone terminal, etc. (note 5)
7. Date and time when the infringing information was transmitted from 4 through 6

Evidence (note 6)

Refer to the attached separate sheet.

Information of mine that I do not want shown to the sender (multiple selections possible) (note 7)

1. Name (only in the case of a private individual)
2. Matters entered in the "Reason for claiming evident infringement of the right" field
3. Attached evidence

(Note 1) As a general rule, attach a copy of an official document such as a driver's license, passport, etc., allowing verification of identity in the case of a private individual and a copy of a qualification certificated in the case of a juridical person.

(Note 2) Clearly indicate the URL. However, in a demand to an access provider, etc., clearly indicate information contributing to specifying the sender.

(Note 3) A person claiming that a copyright, trademark right, or other such intellectual property right has been infringed, is to attach material certifying the person to be the legitimate right holder for the relevant right.

(Note 4) According to article 4 paragraph (3) of the Act, conduct in which the person receiving disclosure of the identification information of the sender makes use of the identification information of the sender without permission to unjustly damage the honor or disturb the peaceful existence of the sender is prohibited.

(Note 5) Be priorly aware that there may be cases where the IP address, Internet connection service user identification code from a mobile telephone terminal, or SIM card identification number cannot be specified from among those transmitted from the Internet connection service.

(Note 6) For evidence, attach two pieces: that to be used by the provider, etc., and that for inquiry into the opinion of the sender. If evidence that you do not want shown to the sender is among the evidence (Refer to note 7.), attach the set of evidence that may be shown to the sender as that for inquiry into the opinion of the sender.

(Note 7) Opinion inquiry is, as a general rule, conducted with the respective matters entered in the fields of name of the sender (or the appellation thereof in the case of a juridical person), "Specified telecommunications facilities, etc., administered," "Published information," "Infringing information, etc.," "Infringed right," "Reason for claiming evident infringement of the right," "Justifiable grounds for receiving disclosure of the identification information of the sender," "Identification information of the sender for which disclosure is demanded" and attached evidence shown to the sender, but for the name in cases where the requester is a private individual, "Reason for claiming evident infringement of the right," and evidence, in cases where there are items which the requester does not want shown to the sender, opinion inquiry is conducted without this being shown, and so that is to be clearly indicated. Additionally, as a general rule, contact information is not shown to the sender.

Note, however, that the name of the requester might be conjectured by the sender even if not shown to the sender.

END

p. 25

[Fields for the use of the specified telecommunications service provider]

Date of receipt of disclosure demand

Date of sender opinion inquiry

Sender opinion

Date of response

(Date)

(Date)

Reason in the case where inquiry could not be performed:

Yes (date)

No

Disclosure (date)

Nondisclosure (date)

p. 26

Form 2) Opinion Inquiry Form for the Sender

Year month day

To: [Sender]

[Specified telecommunications service provider]

Address

Company name

Name

Contact information

Opinion Inquiry Form Concerning Disclosure of Identification Information of the Sender

A demand for disclosure of your identification information of the sender has been received from a person claiming infringement of rights through the distribution of the information on the following page which you sent. In this connection, pursuant to article 4 paragraph (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 (the Provider Liability Limitation Act), [we/I] are (am) inquiring into your opinion regarding acceding to disclosure.

If you have an opinion, we ask that you give us your response by means of the attached response form within two weeks of the date of receipt of this inquiry form. If there are circumstances that make it impossible for you to respond within two weeks, please let [us/me] know the reason. In the case that you do not consent to disclosure, please add a note of the specific reason on the response form. Additionally, please understand that in the case that no response is received from you, or even in the case that you do not consent to disclosure, [we/I] may disclose your identification information of the sender to the person claiming infringement of rights.

p. 27

Name of requester

(appellation of juridical person)

Specified telecommunications facilities that (we/I) administer

Published information

Infringing information, etc.

Infringed right

Reason for asserting that the right was evidently infringed

Justifiable grounds for receiving disclosure of identification information of the sender

1. Because necessary in order to exercise right to claim damages.
2. Because necessary in order to request measures for restitution of honor such as a published apology.
3. Because necessary in order to exercise right to demand injunction.
4. Because necessary in order to demand deletion by you.
5. Other.

Your identification information of the sender for which disclosure is demanded-

1. Your name or appellation
2. Your address.
3. Your electronic mail address.
4. Your IP address at the time you distributed the information.
5. Internet connection service user identification code from your mobile telephone terminal, etc., pertaining to the infringing information.
6. Your SIM card identification number among those pertaining to the infringing information that was transmitted by the Internet connection service from the mobile telephone terminal, etc.
7. Date and time when the infringing information was transmitted from 4 through 6 .

Evidence

Refer to the attached separate sheet.

Other

END

p. 28

Form 3) Response Form from Sender

Year month day

To: [Name of specified telecommunications service provider]

[Sender]

Address

Name Seal

Contact information

Response Form

I am responding as follows with respect to the handling of my identification information of the sender about which (your company/you) inquired.

[Response details] (Place a circle for either one.)

I do not consent to disclosure of the identification information of the sender.

[Reason] (note)

I consent to disclosure of the identification information of the sender.

[Remarks]

END

(Note) Because the contents of "Reason" are the reason for refusing disclosure to the other party, please write in detail. In the case that evidence exists, please attach it to this response form.

Form 4) Notice of Decision of Disclosure of Identification Information of the Sender

Year month day

To: [Person claiming infringement of rights]

[Appellation of the specified telecommunications service provider]

Address

Name

Contact information

Notice

With respect to disclosure of the identification information of the sender that [we/I] hold in your demand regarding the following information, we are making disclosure as on the attached separate sheet and so hereby notify you accordingly. Additionally, we ask for your understanding of the following cautionary matter in accepting this disclosure.

[Cautionary matter]

According to article 4 paragraph (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 (the Provider Liability Limitation Act), conduct in which use is made of the identification information of the sender without permission to unjustly damage the honor or disturb the peaceful existence of the sender is prohibited.

END

p. 30

Form 5) Notice of Decision of Nondisclosure of Identification Information of the Sender

Year month day

To: [Person claiming infringement of rights]

[Appellation of the specified telecommunications service provider]

Address

Name

Contact information

Notice

A demand was made by you regarding disclosure of the following identification information of the sender, but for the reason below we cannot accede to disclosure, and so we hereby notify you accordingly.

[Reason] (Circle any one.)

1. We were unable to specify the information in the communication from you.
2. We do not hold the identification information of the sender in the communication from you.
3. Based on the information in the communication from you, we cannot determine there to be "evidence that the rights [...] were infringed" (article 4 paragraph (1) item (1) of the Act).
4. We cannot determine that the reason you gave for receiving disclosure of the identification information of the sender constitutes "justifiable ground [...] to receive disclosure" (article 4 paragraph (1) item (2) of the Act).
5. The Form for Demand of Disclosure of Identification Information of the Sender received from you contained the following formal inadequacy.

Details of inadequacy:

6. Other (request for additional information, etc.)

END

→