

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 November 30, 2001)

(Purpose)

Article 1 The purpose of this Act is to set forth the limitation of liability for damages of specified telecommunications service providers and the right to demand disclosure of identification information of the senders in case of infringement of the rights through information distribution by specified telecommunications services.

(Definitions)

Article 2 In this Act, with respect to the meanings of the terms given in the following items, the definition specified in each item shall apply:

- (i) The term "specified telecommunications service" means transmission (except transmission of telecommunications (hereinafter in this item only referring to "telecommunications" as defined in Article 2 item (i) of the Telecommunications Business Law (Law No. 86 of December 25, 1984)) with the aim of direct reception thereof by the public) of telecommunications with the aim of reception thereof by unspecified persons.
- (ii) The term "specified telecommunications facilities" means telecommunications facilities (referring to "telecommunications facilities" as defined in Article 2 item ii) of the Telecommunications Business Law) being used for the operation of specified telecommunications.
- (iii) The term "specified telecommunications service provider" means a person who relays others' communications with the use of specified telecommunications facilities, or provides specified telecommunications facilities to be used for others' communications.
- (iv) The term "sender" means a person who has recorded information in recording media (limited to such recording media, from which the information recorded therein is to be transmitted to unspecified persons) of specified telecommunications facilities used by a specified telecommunications service provider, or who has input information in the transmission device (limited to such a transmission device, from which the information input therein is to be transmitted to unspecified persons) of such specified telecommunications facilities.

(Limitation of Liability for Damages)

Article 3 (1) When any right of others is infringed by information distribution via specified telecommunications, the specified telecommunications service provider who uses specified telecommunications facilities for said specified telecommunications (hereinafter in this paragraph referred to as a "relevant service provider") shall not be liable for any loss incurred from such infringement, unless where it is technically possible to take measures for preventing such information from being transmitted to unspecified persons and such event of infringement falls under any of the following items. However, where said relevant service provider is the sender of said information infringing rights, this shall not apply.

(i) In cases where said relevant service provider knew that the infringement of the rights of others was caused by information distribution via said specified telecommunications.

(ii) In cases where said relevant service provider had knowledge of information distribution by said specified telecommunications, and where there is a reasonable ground to find that said relevant service provider could know the infringement of the rights of others was caused by the information distribution via said specified telecommunications.

(2) When a specified telecommunications service provider has taken measures to block transmission of information via specified telecommunications, said specified telecommunications service provider shall not be liable for any loss incurred by a sender of such information, transmission of which is prevented by said measures, so far as said measures have been taken within the limit necessary for preventing transmission of said information to unspecified persons and said measures fall under any of the following items:

(i) In cases where there was a reasonable ground for said specified telecommunications service provider to believe that the rights of others were infringed without due cause by the information distribution via said specified telecommunications.

(ii) In cases where a person alleging that his right was infringed by distribution of information via a specified telecommunications filed a petition that said specified telecommunications service provider take measures to prevent said information infringing his right (hereinafter referred to as "infringing information") from being transmitted (hereinafter in this item referred to as "transmission prevention measures"), indicating the infringing information and the allegedly infringed right and the reason why said person insists on said infringement (hereinafter in this item referred to as "infringing information, etc.") and where said specified telecommunications service provider provided such infringing information, etc. to the sender of said infringing information and inquired the sender if said sender agrees

with implementing said transmission prevention measures, where said specified telecommunications service provider has not received any notice from said sender indicating his disagreement with implementation of said transmission prevention measures after seven days from the day of said inquiry to said sender.

(Demand for Disclosure of Identification Information of the Sender, Etc.)

Article 4 (1) Any person alleging that his or her rights were infringed by distribution of information via specified telecommunications may, limited to cases when falling under both of the following items, demand a specified telecommunications service provider using specified telecommunications facilities for the operations of said specified telecommunications (hereinafter referred to as a "provider of disclosure-related service") to disclose identification information of the sender pertaining to said infringement of the rights (referring to information, including a name and address, contributing to identifying the sender of the infringing information and which is as stipulated in the applicable MIC ordinance; hereinafter the same shall apply.) possessed by said provider of disclosure-related service:

- (i) Where there is evidence that the rights of a person demanding said disclosure were infringed by the distribution of the infringing information.
 - (ii) Where said identification information of the sender is necessary for the person demanding said disclosure to exercise his or her rights to claim damages and where there is justifiable ground for said person to receive disclosed identification information of the sender.
- (2) When the provider of disclosure-related service receives such demand as stipulated in the preceding paragraph, said provider shall hear the opinion of the sender of the infringing information pertaining to said demand for disclosure on whether said sender consents to the disclosure of his or her identification information, except where said provider is unable to contact said sender or where there are special circumstances.
- (3) Any person to whom the identification information of the sender has been disclosed in accordance with the provisions of paragraph (1) must not use the identification information of the sender without due cause, unjustly damaging the reputation or disturbing the peaceful existence of the sender.
- (4) The provider of disclosure-related service shall not be liable for any loss incurred by the person who demanded for said disclosure in accordance with the provisions of paragraph (1) arising from said provider's refusal of said demand, unless there is any willful act or gross negligence on the part of said provider. However, where said provider of disclosure-related service is the sender of infringing information pertaining to said demand for disclosure, this shall not apply.

Supplementary Provisions

This Law shall come into force as from the day specified by the applicable cabinet order not exceeding six months calculating from the day of promulgation.