

**International Workshop on Content-related Issues  
Policy/Legal Frameworks and Solutions**

**27 February 2002  
at Keidanren Kaikan**

**Keidanren  
Internet Law & Policy Forum  
Content Liability Working Group**

**8:30 – 9:00 Registration**  
<Simultaneous Translation>

**9:00 – 9:15 Opening**

Welcome – Seiichi Shimada, CEO, UNISYS Japan, / Chairman, Subcommittee on International Affairs  
Committee on Information & Telecommunication Policy, Keidanren

Welcome and Introductions – Andreas Goeckel, Deutsche Telekom, Chairperson, ILPF (live stream)

**Plenary Session I: Net Content-related Policy Framework and Legislation (Enacted and  
Proposed) on Intermediary Liability**

**9:15 – 10:30 International Overview**

**Panel Presentations [75 minutes]**

Panel Chair: Masanobu Katoh, Fujitsu, Chairperson Emeritus, ILPF

Panelists will be asked to cover:

- Policy Framework: Promotion of Content related activities on the Net
- Avoiding Direct Regulation on Content
- What roles are expected to intermediaries, sender/posters and right-holders
- Promoting Choice of Net Users (Content Filtering Technologies)
- Legislative solution; safe harbors, notice and take down, horizontal approach, and other approaches

Panelists:

*Makiko Yamada, Director, Telecommunications Consumer Affairs Office,  
Telecommunications Bureau, MPHPT (Japan) (20 minutes)*

- Above issues including New Japanese Provider Liability Law -

*Comment:*

*Prof. Tsuneo Matsumoto, Univ. of Hitotsubashi (Japan) (12 minutes)*

*Prof. Dr. Benoit Frydman, Oxford PCMLP (Europe) (12 minutes)*

*Tom Bell, Perkins & Coie (US) (12 minutes)*

*Prof. Mary Wong, Univ. of Singapore (Singapore) (12 minutes)*

**10:30 – 10:45 Q&A [15 minutes]**

**10:45 – 11:00 Coffee Break [15 minutes]**

## Plenary Session II: Legislation (Enacted and Proposed) on Unsolicited E-MAIL

11:00 – 11:40 Panel Presentations [40 minutes]

Panel Chair: Andrew Konstantaras, ILPF

Panelists will be asked to cover: opt-in and opt-out approaches, marking requirement and filtering at the request of recipient, filtering/blocking by receiving carrier/provider and universal service/censorship, exchange of sender identity between carriers/providers for blocking.

Panelists:

*Prof. Tsuneo Matsumoto, Univ. of Hitotsubashi (Japan)*  
*Emilio Cividanes, Piper Marbury Rudnick & Wolfe (US)*  
*Prof. Michael Geist, Univ. of Ottawa (Canada)*

11:40-11:55 Q&A [15 minutes]

11:55-12:00 Closing Remark [5 minutes]

*Masanobu Katoh, Fujitsu, Chairperson Emeritus, ILPF*

12:00 – 13:20 Hosted Lunch for speakers, ILPF Members & invited experts

< Translation for Japanese Speakers only >

### Expert Session I: Intermediary Liability; Legal Frameworks

13:45-13:55 Opening for Expert Session [10 minutes]

**Purposes and Goals of Expert Session: Moderator** – Andrew Konstantaras

- To identify and understand the similarities and differences in legislation and proposals that address roles and liabilities of Internet intermediaries for online content originated by others.
- To understand the impact of the differences in local law on businesses that use the Internet and/or offer Internet services.
- To consider relevant aspects of current national legal frameworks.
- To explore, at an expert level, the relationships between legal frameworks and specific legislation and perspectives on alternative mechanisms.
- Speakers & Experts are served a table analyzing notices factors specifying illegal/tortuous/infringing content and asked to comment on the legal effect of the notices, whether the effect is curved out by statutory limitation of liabilities/safe harbors, what action is required to avoid liability, what voluntary action as regards allegedly criminal content is legally or ethically/socially expected.

13:55 – 14:55 Public/Criminal Law – Child Pornography, Pornography, and Hate Speech

**Panel Presentations** [40 minutes]

- Legal standards for criminal liability of intermediaries.
- Intermediary regarded as primary wrongdoer? As distributor or possessor?
- Intermediary regarded as aiding and abetting primary wrongdoer?
- Procedural safeguards and its effect on determination of criminal liability.
- Administrative control on content and its rating.
- Privacy/Right of governmental authorities to obtain identity of content originator for direct legal action.

**13:55 – 14:55 Public/Criminal Law – Child Pornography, Pornography, and Hate Speech (cont.)**

**Panel Chair:** *Toru Maruhashi, Fujitsu*

*Chairperson, ILPF Content Liability Working Group* Panelists:

**Panelists:**

*Prof. Dr. Benoit Frydman, Oxford PCMLP*

*Prof. Michael Geist, Univ. of Ottawa*

*Prof. Takato Natsui, Meiji University*

**Discussion**

**[20 minutes]**

- Similarities and differences in substantive laws.
- Role of additional/alternative mechanisms, e.g., codes of conduct, labeling and user controls, best practices, and their relationship with liability determinations.

**14:55 – 15:55 General Torts – Libel, Defamation, and Privacy**

**Panel Presentations**

**[40 minutes]**

- Legal standards for liability as online “publisher/editor” versus “distributor”.
- Privacy/Right of civil plaintiff to obtain identity of content originator or initiate suit against unknown but identifiable content originator.

**Panel Chair:** *Toru Maruhashi, Fujitsu*

*Chairperson, ILPF Content Liability Working Group*

**Panelists:**

*Prof. Dr. Benoit Frydman, Oxford PCMLP*

*Prof. Hisakazu Hirose, Univ. of Tokyo*

*Tom Bell, Perkins & Coie*

**Discussion**

**[20 minutes]**

- Similarities and differences in substantive private law, focusing on intermediaries.
- Effect of degree of knowledge; control; financial gain.
- Effect of law immunizing or limiting liability of intermediaries.
- Role and implications of alternative mechanisms, codes, best practices, ADR, other.

**15:55 – 16:10 Coffee Break**

**[15minutes]**

**16:10 – 17:10 Intellectual Property – Copyright**

**Panel Presentations**

**[40 minutes]**

- Legal standards for intermediary liability; strict liability?
- Privacy/Right of civil plaintiff to obtain identity of content originator or initiate suit against unknown but identifiable content originator.
- Legal standards for intermediary liability for copyright violations.
- Variation of Notice & Takedown

**Panel Chair:** *Masanobu Katoh, Fujitsu, Chairperson Emeritus, ILPF*

**Panelists**

*Prof. Naoki Koizumi, Sophia University*

*Emilio Cividanes, Piper Marbury Rudnick & Wolfe*

*Prof. Mary Wong, Univ. of Singapore*

*Mitsuo Sugawara, JASRAC*

**Discussion**

**[20 minutes]**

- Similarities and differences in substantive private law, focusing on intermediaries.
- Effect of degree of knowledge; control; financial gain.
- Role and implications of alternative mechanisms, codes, best practices, ADR, other.

## Expert Session II; Final Session

**17:10 – 17:50 Summary Discussion – Moderator – Andrew Konstantaras [40 minutes]**

### **Legislative solution:**

- The legislative purpose is to change legal standards? To preserve the legal standards, but create safe harbors? To introduce complete immunity?
- What is the effect of creating the safe harbors? Is there no side effect, e.g. inhibition of user activities on the net?
- Merits and demerits of “horizontal” approach.

### **Non-legislative solution:**

- What is legal effect of a notice from an injured, a right-holder or a third party?
- What kind of legal risk is involved in voluntary actions including takedown, relaying a claim to sender/posters, report to law enforcements?

### **Participants' Observations**

**17:50 – 18:00 Closing remarks** Andreas Goeckel, Deutsche Telekom, Chairperson, ILPF (live stream)  
Masanobu Katoh, Fujitsu Chairperson Emeritus, ILPF

**18:30 – 20:00 Reception**

Location: Top of the Square Utage, Otemachi First Square Building 23F (5 minutes walk from Keidanren-Kaikan)