

MPHPT Contribution to the ITU Workshop on Internet Governance

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Evaluation on the Geneva Phase of WSIS

- The Internet has penetrated our lives and come to exert significant influence upon various socioeconomic activities. This tendency will continue into the future. The Declaration of Principles and the Plan of Action prescribe an "open and inclusive process that ensures a mechanism for full, active participation of governments, the private sector and civil society from both developing and developed countries, involving relevant intergovernmental and international organizations/fora." This point is very appropriate.
- According to the Plan of Action, a working group on Internet governance, to be established by the Secretary General of the UN, should develop a working definition of Internet governance. As exemplified by this, it is thought that there were various views among stakeholders on what the "Internet governance" means in the preparatory process toward the Geneva Phase. In order to make the future discussions constructive and productive, a clear-cut definition of Internet governance in a well-organized manner shall be indispensable. Thus, Japan will actively contribute to the development of said definition, and to the dialogue in the working group.

Intention of this paper

- The first step to defining what "Internet governance" is shall be the gathering of information on various items related to the Internet in each country, regardless of whether or not such matters are currently recognized as issues of "Internet governance."
- From such a viewpoint, this paper outlines the roles of the private sector and the government in addressing various matters related to the Internet.

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Basic concepts concerning roles of the private sector and the government

- In many cases, the government intervenes in socioeconomic activities (e.g., regulation, development of standards, various support measures, etc.), taking into account the public interest. The basic assumption, however, is that such socioeconomic activities shall be conducted by the private sector on a non-regulated basis. In any case, not only for matters related to the Internet, government intervention shall not be excessive. Even if a government should be urged to adopt some regulatory measures in order to ensure the public interest, such measures shall be limited to the minimum necessary.

Policy matters related to the Internet

- As for the following matters, for instance, the government has been involved to some extent:

1) Security measures:

With respect to domestic security-related regulatory frameworks, the Criminal Code Article 234-2 stipulates "Obstruction of Business by Damaging a Computer," etc.; and while the Law Concerning Unauthorized Access to Computer Systems (Unauthorized Computer Access Law), which prohibits unauthorized computer accesses, including acts using ID or passwords of others without consent and, acts accessing computers by attacking security holes.

At the High Tech Crime Subgroup of the G8 Lyon Group, retention of traceability has been deliberated upon; the Council of Europe adopted the "Convention on Cybercrime" for effectively and swiftly combating cybercrime; Japan, with other countries including Member States of the EU, the U.S. and Canada, become one of the signatories to the Convention, and is proceeding with necessary domestic legislation.

Furthermore, in order to adequately respond to incidents, including cyberattacks and computer crimes, the private sectors have been voluntarily conducting activities for gathering/analyzing such incidents and sharing those information including countermeasures within relevant industries.

2) Intellectual property rights (copyrights):

On a global basis, international protection measures are provided for under the Berne Convention (1886) and the Universal Copyright Convention for the Protection of Literary and Artistic Works (1952) concerning copyrights, and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961) concerning neighboring rights, respectively.

In the 1990s, in response to technological innovations involving ICT which included the Internet, the World Intellectual Property Organization (WIPO) had been deliberating upon the new international protection (rights of making transmittable, rights of uploading works to web servers; obligations on technological means;

obligations on rights management information). After the discussions, new provisions on copyrights were stipulated in the WIPO Copyright Treaty (WCT) (1996); and new provisions on neighboring rights concerning aural performers and phonogram producers were stipulated in the WIPO Performances and Phonograms Treaty (WPPT) (1996).

At present, deliberations upon the rights protection of broadcasters and webcasting are in progress.

With regard to the domestic legal scheme for copyrights, the Copyright Law stipulates a right of communications to the public (public transmission) (right of making transmittable: automatic transmission upon request from the public by using a website via the Internet in the case of the interactive transmission) toward international harmonization.

3) Countermeasures against SPAMs (unsolicited e-mails):

As for the legal frameworks for SPAMs, the "Law Concerning Adjustment, Etc. of Transmission of Specified Electronic Mail" the "Specified Commercial Transactions Law" provide rules for transmission of a huge amount of e-mails by for-profit businesses. In accordance with these laws, ISPs and mobile telephone carriers are taking voluntary regulatory measures for blocking circuits, limiting the number of mails, etc.

On February 2 and 3, 2004, the "OECD Workshop on Spam," hosted by the EU, confirmed that the private and public sectors should make collaborative efforts to take multifaceted countermeasures against SPAMs. From now on, ITU will hold a workshop on SPAMs and OECD will hold the second Workshop on Spam, and APEC will deliberate upon SPAMs.

4) Protection of personal information:

In line with the Recommendation of the OECD Council "Guidelines on the Protection of Privacy and Trans-border Flows of Personal Data" (so-called the 8 Principles) of 1980, the Japanese government adopted the "Guidelines on the Protection of Personal Data in Telecommunications Business" in 1991, and amended the Guidelines by adding concrete measures for appropriate treatment of personal data and issued a notice to that effect in 1998. Based upon these Guidelines, telecommunications carriers are operating their businesses.

Currently, in accordance with the "Law Concerning Personal Data Protection" enacted in May 2003, MPHPT has been working on the personal data protection in the telecommunications field, and will reach a conclusion by the full-scale enforcement of the Law (April 2005).

On coordination/administration to make the Internet operational

- In order to make the Internet operational, it is vital for providers of ICT

infrastructures, including carriers, ISPs, IXs, etc., to appropriately operate their businesses for their customers in a collaborative and coordinated manner. Also with respect to identifiers, such as IP addresses and domain names, it is critical to coordinate and administer them both internationally and domestically.

- Regarding this point, the government has interests from the viewpoint of ensuring the public interest. This, however, does not directly mean that the government should carry out ISP business themselves, or that the government should supervise entities administering those IP addresses, etc. by law.
- The government has no need to intervene in activities of governing entities, provided that the governing entities can sufficiently and smoothly carry out the coordination and administration by establishing voluntary rules. Even if there is a need for ensuring the public interest, the only applicable measures are not necessarily "stringent" measures, such as legal regulations or supervision.
- Taking a look at IP addresses, domain names, the current frameworks are as follows:

1) IP address

- In short, the administration of IP addresses is smoothly carried out by administering entities in accordance with rules, which were established by the administering entities on an open and flexible manner. Concrete details are as follows:
- As for IP addresses, in accordance with the principles of uniqueness, registration, aggregation, conservation and fairness, administering entities, such as ICANN/IANA, Regional Internet Registries (RIRs) and National Internet Registries (NIRs), and ISPs (called Local Internet Registries) who are allocated IP addresses from such higher organizations are carrying out hierarchical distributed administration of IP addresses.
- The four RIRs in the world are taking leading roles in establishing rules for administration. Each RIR is holding an open meeting not limited to memberships for deliberating upon rules and establishes rules according to the consensus at the open meeting. At the same time, these four RIRs are coordinating those rules separately adopted by those RIRs so as to avoid unfair rules through extreme differences among those rules.
- Such a mechanism is intended to consider unique regional characters and at the same time to ensure consistency between regions. Thus, the uniqueness of the Internet "autonomous, distributed and coordinated" is favorably working, and as a result, fair address allocation, etc. are realized.
- This mechanism is adequately functioning in the field of the Internet, where quick response to fierce technological innovations, etc. is required, and will function effectively.

2) Domain names (ccTLD; .jp)

- With regard to administration of domain names, in brief, the public interest is protected not through legal regulations but through collaborative partnerships of

the private and public sectors and self-regulation of the registry. Although the following method has, at present, not generally been adopted by the international community, MPHPT appreciates that the method can be one of the governance models in the future.

<Collaborative partnerships of the private and public sectors>

- .jp registry (Japan Registry Service Co., Ltd.: JPRS) concluded a sponsorship agreement of ccTLD with ICANN. A sponsorship agreement generally is to be concluded by three parties of a registry, ICANN and a government; and provides for each role (the registry administers and operates ccTLD; ICANN confirms stability of DNSs on a global scale; and the government confirms whether or not ccTLD are managed in consideration of the public interest).

In case of Japan, however, the Japanese side proposed a new model for further ensuring the stable operation of .jp domains and this model was included in the agreement. Since both the private sector (Internet community) and the government hold common interests and play respective roles for the sound development of the Internet, JPNIC, an entity accepting opinions from the Internet community, along with the Japanese government, takes a role to ensure appropriateness of registry service operations.

JPNIC is a not-for-profit corporation and working for utilization and operation of the Internet since the dawn of the Internet age in Japan as a representative of the Internet community. The establishment of the Domain Name Dispute Resolution Policy (JP-DRP) for dispute settlement concerning domain names and the preparation of data escrow were also done by JPNIC.

<Self-regulation of registry>

- JPRS is striving to improve efficiency of their business. Thus, JPRS is setting the highest priority on customers' convenience. At the same time, it recognizes that its business to register and administer .jp domain names has public characteristics.
- To this end, with the purpose of ensuring fairness and neutrality of its business to register and administer .jp domain names, JPRS has set up a "jp Domain Name Advisory Committee." The members of the Committee include JPNIC, .jp domain name registrars, ISPs, researchers and individual users and deliberate upon inquiries on operations of .jp domain name registration/administration.
- In addition to the abovementioned coordination/management, the development of technical standards plays an important role for the development of the Internet and the ensuring of smooth operations thereof. It can be said that not only for standardization but also for the Internet as a whole, such a framework shall be one that can flexibly and swiftly respond to technological innovations and changes in the environment for users.