

GLOBAL INFORMATION SOCIETY WATCH 2009

*Focus on access to online information and knowledge
– advancing human rights and democracy*



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
AND HUMANIST INSTITUTE FOR COOPERATION WITH DEVELOPING COUNTRIES (Hivos)

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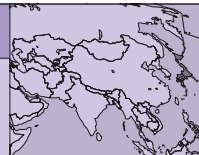
*Dedicated to A.K. Mahan - an activist who valued
intellectual rigour and concrete outcomes.*

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Introduction

An act set up to establish an environment in which minors can safely and securely use the internet became effective on 1 April 2009 in Japan. Among other provisions, it mandates all mobile operators to provide filtering as a default service to minors. Internet content providers are expected to follow suit voluntarily. The original draft proposed by the members of the ruling Liberal Democratic Party (LDP) called for the establishment of a special committee directly placed under the prime minister to define what is harmful, and to set standards for the filtering and rating of content on the internet.

The opposition Democratic Party (DP) had prepared a similar draft, but given pressures from advocacy groups and industry, took a position against direct state involvement. As a result, the Act passed in congress acknowledges the private sector to be primarily responsible for the quality of content, as per a consensus reached by all parties.¹ However, most mobile operators *voluntarily* introduced filtering services before the enforcement using the rating service provided by a private company, NetStar.

This move symbolises the growing concern and pressure to “do something” over the use of internet and mobile, and says farewell to the open and liberal use of the internet in Japan.

Policy environment

The policy regarding the use of online resources is described in the u-Japan Policy Package established in 2004.² There are two categories of policies under the package. One is to promote the use of and access to online resources. These policies promote economic and social development by building nationwide information infrastructure and accelerating the use of online resources to stimulate economic growth and facilitate social and human development.

Another category concerns regulatory policies to suppress or control illegal, harmful or “unfavourable” use of online resources. The sentiment behind this is that “the online world is becoming too wild and we need to control it to achieve a safe and secure society.” This rationale has become stronger in the last few years.

The u-Japan Policy Package consists of three pillars: 1) the development of ubiquitous networks, 2) the advanced use of ICTs and 3) upgrading an enabling environment. The first category of policies are placed under the first two pillars, while regulatory policies fall under the third pillar.

The policies to promote online access are found under the pillar of “advanced use of ICTs”. These policies aim to get “80% of the population to appreciate the role of ICTs in resolving social problems by 2010.” To this end, promoting the “creation, trade, and use of content” and promoting “universal design” are two key policies identified. The former includes the creation and usage of digital archives, while the latter includes the following four items aimed at senior citizens and persons with disabilities:

- The development of advanced agent technology
- The enhancement of user interfaces
- Ensuring information accessibility
- Building support systems for the elderly and disabled.

Legislative environment

Constitution of Japan guarantees the secrecy of communication

Article 21 of the Constitution of Japan guarantees the secrecy³ of communication in addition to other rights as follows:

Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.⁴

Given this constitutional protection, the Telecommunication Business Act also protects the secrecy of communication and prohibits censorship by service providers. Violation of the secrecy of communication can be punished by up to two years in prison. Yet, due to recent social pressure, exemptions to the strict protection of the free flow of information have been added to the law. Two examples are the Act on Interception of Communication for Criminal Investigation, enforced in 2000, which allows law enforcement officials to wiretap online communication; and the Act on Liability Limitation for Internet Service Providers (ISPs), enforced in 2001, which gives certain immunity to ISP liabilities – for example, if they follow the formal procedures to provide notice

1 Since opposition parties hold the majority of votes in the senate, the ruling party alone cannot easily pass laws.

2 “u” was taken from “ubiquitous network”. For more details, see: www.soumu.go.jp/menu_seisaku/ict/u-japan_en/new_plicy_pckg.html

3 The word “secrecy” is used in the constitution, which means more than privacy. Any communication, including letters and telephonic conversations, should be “secret” for the parties involved. This means no censorship is allowed in principle. This is a response to the Second World War, when the military government opened private correspondence, censored it and punished the author if it criticised the government.

4 In Japan, the attempt to control online communication had been kept relatively modest. Behind this was the constitution, which guarantees free speech, no state censorship and the secrecy of communication established during the post-war democratisation process. This was promoted by the occupying forces of the Allies and supported by Japanese citizens.

to the actor who posted illegal content online, and take the content down if the actor does not respond within a certain number of days.

Personal data protection

Another significant move is the full enforcement of the Act on the Protection of Personal Information in 2005. This Act was introduced mostly as a result of growing social pressure to deal with “a remarkable increase in the utilisation of personal information due to development of the advanced information and communications society.” It aimed to “clarify the responsibilities of the State and local governments” and “prescribe the duties to be observed by entities handling personal information regarding the proper handling [of this information].”⁵

It severely limits the use of personal information and intends to prevent its improper use and unintended leakages as well as its theft. Since there is no direct penalty imposed by law, there is still little to deter those sending spam, committing online fraud and “phishing”.

To ban or not to ban: Mobile use by children

As mentioned in the introduction, the Act enforced in April 2009 – also known as the Net Content Regulation Act for Minors – forces all mobile operators to provide default filtering to minors. While filtering itself is not new in other countries, Japan followed Korea on the issue of compulsory filtering for mobile operators, indicating the special situation around the use of mobile internet in Japan.

Internet as an integral part of mobile usage

Thanks to a flat rate for packet services, 75% of all mobile users access the internet via their phones, and almost all mobile phones have a “hot button” to connect directly to the net. In fact, the use of web browsers and internet email, as opposed to short message service (SMS), has become an integral part of mobile usage. This trend is especially visible among the youth who may not have personal computers (PCs) of their own, and want to retain the privacy and secrecy of their communication with their friends from their parents’ purview.

There are different kinds of mobile services targeted at the youth. Most popular among males are the game sites where a vast number of downloadable games are available. Among the sites, “Moba-ge-town” is the most popular, where, in addition to games, other types of services and downloads such as social networking, news, novels, music, horoscopes, online shopping, etc., are also provided. The users do not have to pay any subscription fee, yet they can download and play as many games as they like.⁶

What makes Moba-ge-town attractive is the bulletin board and other social networking functions that let users communicate with each other and build an online

community. The registered number of users exceeded 10 million in April 2008, of which 40% are teenagers, 60% male and 40% female.⁷

Another popular service is “profile exchange”, or “prof” for short, where users exchange their profiles including personal appearance and preferences for things like music, movies, artists, fashion, books and authors, and food. It is a simplified version of social networking and is highly popular among teenage girls. Zenryaku Profile, run by the internet company Rakuten, is the most popular site, with 5.5 million registered users.⁸

Children victims of crimes through mobile use

Many cases have been reported in which children became the victims of crime using mobile web services, such as being lured into prostitution or raped. These minors mostly used mobile dating services with the intention of finding sexual partners.

In November 2007, a sixteen-year-old high school girl was found dead in a hotel room that had been set on fire. It was found that a 30-year-old man had killed her in an attempt to commit a lovers’ suicide (he had failed to kill himself and was rescued). It was revealed that they met through Moba-ge-town social networking services (SNS), bringing the dark side of mobile SNS to the attention of politicians.

Less than a month after this sensational case, the Minister of Internal Affairs and Communication (MIC) Hiroya Masuda made a formal request to all mobile operators and their industry association to voluntarily introduce default filtering service to minors (those under eighteen). It was speculated that behind this unusual request was growing political pressure from members of congress who were determined to introduce strict content regulation and even a ban on all mobile use by children. The stock price of DeNA, the company that operates Moba-ge-town, dropped sharply right after the idea of banning all mobile use for children started to spread widely in political circles.

In December 2007, immediately after Minister Masuda’s request, Congresswoman Miho Takai from the opposition DP party revealed her plan to introduce mandatory filtering for minors. In March 2008, similar yet stricter draft legislation was proposed by a congresswoman from the ruling LDP party, Sanae Takaichi. This would give the national government the authority to set the standard for content rating and filtering to be adopted by all mobile operators and to make it compulsory.

Moves to introduce strong measures continued. Prime Minister Yasuo Fukuda indicated his intention to ban the use and possession of mobile phones by children in April 2008, a proposal supported by some LDP members of congress. In January 2009, the Ministry of Education and

5 Quote from the Act itself: www.japaneselawtranslation.go.jp

6 The site generates its revenue from advertising.

7 The annual revenue of DeNA, the company that operates Moba-ge-town, is USD 370 million, of which 85% is from advertising and other income from Moba-ge-town. See: www.dena.jp/en/ir/pdf/FY08Q4%20Operating%20Results.pdf

8 The registered number includes all previous cumulative registrations and does not reflect the exact current number in use.

Science issued a formal notice to all education commissions requesting them to prohibit students in primary and secondary schools from carrying and using mobile phones during school hours.

All of this was perceived largely as an attempt to introduce state-based censorship over the internet, and some citizens' groups started to protest. The Movement for Internet Advanced Users (MIAU), an advocacy group focusing on freedom of speech and rights for internet users, issued a statement against the draft legislation on 23 April 2008. The WIDE Project, a research consortium focusing on the technical aspects of the internet, also signed the statement prepared by MIAU, together with numerous academics and activists.

What is unique is that the technical internet community and private companies joined in the protest. From the internet and mobile industry, Microsoft Japan, Yahoo Japan, Rakuten, DeNA and NetStart also published a joint statement against the draft. The Japan Internet Service Providers Association (JAIPA) voiced their strong concern for fear of government-driven censorship and extra burdens placed on ISPs. They launched extensive lobbying efforts in an attempt to sway members of congress. The Japan Newspaper Association also submitted a statement against the strong measures.

The concession between the LDP and DP that deleted the state-based rating enforcement from the final Act was achieved partly due to this unusual alliance between citizens' advocacy groups and the industry.

As a consequence of the new Act, two non-profit organisations, the Content Evaluation and Monitoring Association (EMA) and Internet Rating Observation Institute (I-ROI) were established by the private sector in 2008. EMA conducts extensive evaluation of mobile sites and provide certificates, which in turn are accepted by rating service providers and mobile operators, to grant access to these sites for minors. While many major mobile sites have obtained certificates from EMA, the outlook for private sector-driven control is not so positive.

New trends: More control ahead

Despite the certificates, the number of victims falling prey to crime through the use of mobile services did not show a significant decrease, according to statistics released by the National Police Agency.⁹ There has, however, been a clear shift in the number of crimes through the use of different mobile services: fewer crimes are committed using dating services, but more using mobile SNS sites in general.

The police have now tightened their grip on the dating services by establishing a special law to oblige dating services to register with them. Minors are not allowed to use the services, and verification of users' age by sending a copy of a driver's licence or the use of a credit card is enforced. As a result, attempts by young people to look for sexual partners

have moved from dating services to general social networking or profile exchange services.

In April 2009, the police made a strong request to eight major SNS providers to strictly verify the ages of their users so that minors cannot read harmful content online. It is speculated that the police will further enhance the regulatory measures to mandate the monitoring of all communications related to social exchanges between men and women across all internet service providers, and not only mobile service providers.

In short, the new moves by the authorities are a challenge to *all* online content and services across the entire gamut of the internet. In part it was true that the mobile market had attracted much attention from children, and some of the problems looked peculiar to mobile use. Yet if we zoom out a little, one can see that the attempt to constrain online speech and interaction does not apply only to mobile use, but is rather aimed at the internet as a whole.

Action steps

Rather than severely punishing the criminals, the police tend to consider mobile operators and ISPs as the source of social problems. The danger is that this sentiment is widely shared by the majority of the public as well as some hard-line politicians.

Advocacy must now pay full attention to this new trend and further explore and consolidate an alliance between citizens' groups and service providers, as well as with parent-teacher associations, the media, academics and the youth themselves.

There also exists a need to provide adequate guidance to minors, help for children who suffer from cyber bullying or addiction to mobile use, or are harassed in online encounters with strangers. A Network Safety Centre (*Net Anshin Centre*) was launched in June 2009 to provide help via telephone and online interactions as well as to organise seminars in all municipalities in the Oita prefecture, a local province in the Kyushu Island of Japan.

There are similar grassroots activities addressing mobile use by minors in local communities. A networking effort to link these activities is essential. ■

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9 "Criminal Cases with Dating Services in 2008", available only in Japanese, at: www.npa.go.jp/cyber/statics/h20/pdf46.pdf

GLOBAL INFORMATION SOCIETY WATCH (GISWatch) 2009 is the third in a series of yearly reports critically covering the state of the information society *from the perspectives of civil society organisations across the world.*

GISWatch has three interrelated goals:

- **Surveying** the state of the field of information and communications technology (ICT) policy at the local and global levels
- **Encouraging** critical debate
- **Strengthening** networking and advocacy for a just, inclusive information society.

Each year the report focuses on a particular theme. **GISWatch 2009** focuses on *access to online information and knowledge – advancing human rights and democracy*. It includes several thematic reports dealing with key issues in the field, as well as an institutional overview and a reflection on indicators that track access to information and knowledge. There is also an innovative section on visual mapping of global rights and political crises.

In addition, 48 country reports analyse the status of access to online information and knowledge in countries as diverse as the Democratic Republic of Congo, Mexico, Switzerland and Kazakhstan, while six regional overviews offer a bird's eye perspective on regional trends.

GISWatch is a joint initiative of the Association for Progressive Communications (APC) and the Humanist Institute for Cooperation with Developing Countries (Hivos).

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2009 Report

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