SECOND STUDY COMMISSION QUESTIONNAIRE 2010

CIVIL ISSUES REGARDING THE PROTECTION OF PRIVACY
(WITH PARTICULAR FOCUS ON SUCH MATTERS AS AFFECTED BY THE INTERNET)

Report from JAPAN

A. Laws and Regulations

1) What laws apply to protection of privacy issues in your legal system?

“Act on the Protection of Personal Information” (hereinafter, “Personal Information Protection Act”)

“Act concerning the Prohibition of Unauthorized Computer Access”

“Telecommunications Business Act” and other laws of a like nature apply.

To administrative organs, ① ”Act on the Protection of Personal Information Held by Administrative Organs” and ② ”Act on Access to Personal Information Held by Administrative Organs” apply.

2) Are there civil code/legislative/common law provisions that protect individuals against privacy violations regarding:

a) In the Public Sector

• Access by individuals to information collected by various government agencies about them?

There is the provision of Article 12, paragraph 1 of the Act on the Protection of Personal Information Held by Administrative Organs.

• Protection from disclosure of that information to third parties?

There is the provision of Article 8, paragraph 1 of the Act on the Protection of Personal Information Held by Administrative Organs and Article 5, paragraph 1 of the Act on Access to Personal Information Held by Administrative Organs.
• Access by the media or members of the public to government records, for example, those regarding government decision-making and action, and limitations put on that access?

There are the provisions of Articles 3 & 5 of the Act on the Protection of Personal Information Held by Administrative Organs.

• Limitations put on information sharing between government agencies?

There are the provisions of Article 8, paragraph 1 and paragraph 2, item 3 of the Act on the Protection of Personal Information Held by Administrative Organs.

b) In the Private Sector

• Protection from disclosure to third parties of personal information collected in the world of e-commerce, for example
  ✓ personal information provided through the use of credit/debit cards and other electronic transfers of funds;
  ✓ personal information in relation to credit reporting and banking transactions;
  ✓ records of a customer’s usage (telephone; online activity);
  ✓ records kept for insurance coverage and other social services benefits provided by the private sector?

There is no provision applicable to such information as listed above in the Civil Law nor Common Law, but there is the Act concerning the Prohibition of Unauthorized Computer Access and other laws.

• Protection from surreptitious collection of information via the internet, for example, through internet electronic surveillance technologies such as “spyware” or “adware”?

There is no provision applicable to such information as listed above in the Civil Law or Common Law, but there is the Act concerning the Prohibition of Unauthorized Computer Access and other laws.

3) What laws apply with respect to the investigation and enforcement of privacy rights?

There is no act that directly addresses privacy rights in Japan, but the Act on the Protection of Personal Information covers privacy issues in the private sector and the Act on the Protection of Personal Information Held by Administrative Organs and other
laws of a similar nature (hereinafter collectively, “Act on the Protection of Personal Information of Administrative Organs”) covers those in the public sector.

• How strong is the protection?

It has not been affirmed how strong our protection is compared with other countries.

• Are the laws binding or advisory?

The Act on the Protection of Personal Information provides for the obligations of businesses that handle personal information (Articles 15 through 36). Any business in breach of the provisions is required to voluntarily remedy the breach first. Should the breach not be remedied, then the competent Minister advises, recommends or orders the remedy of such breach. Should the business not follow the order, penalties will be applied. (Articles 56 through 59, indirect penalty)

Under the Act on Personal Information of Administrative Organs, direct penalties are applied to breaches by public servants.

• How does an individual make a complaint when a private actor or government breaks privacy laws?

A victim makes a claim for damages based on tort or on the Act concerning State Liability for Compensation, or files for injunction based on personal rights by filing a complaint against infringement of privacy rights and interests.

• Who prosecutes or enforces – for example, a privacy commissioner, administrative body, such as a privacy tribunal?

In order to impose penalties, a prosecutor institutes an action. When a civil remedy is sought, the victim files a complaint, etc.

Under the Act on the Protection of Personal Information of Japan, there exists no independent law-enforcement officer or a reporting/registration system.
Under the Act on the Protection of Personal Information, only the competent Minister system is adopted. Since no enforcement organ is established under the Act on the Protection of Personal Information of Administrative Body, the Cabinet Office acts as a liaison facility for convenience sake.

- **Is there a right to a court remedy?**

  There is no provision addressing civil remedy in the Act on the Protection of Personal Information nor in the Act on the Protection of Personal Information of Administrative Organ.

- **Are there out-of-court dispute resolution options?**

  The Act on the Protection of Personal Information has a provision seeking an appropriate and prompt settlement of complaints (Article 31). Complaint processing by a business itself is regarded as most important among various means for complaint handling in order to expedite resolution of complaints.

**B. Private-Sector Initiatives**

1) **Do particular companies, industries or professional associations in your country govern themselves regarding the protection of privacy? For example, are there privacy policies, professional codes, voluntary industry standards?**

   Since these issues are addressed by administrative bodies, no detailed information is available to the Court. Each government ministry has guidelines for the protection of personal information regarding private businesses under its supervision. It was reported that 37 guidelines had been developed in 24 areas as of April 1, 2008.

2) **Who or what body, if any, ensures that these standards are met?**

   The decision of whether privacy policies developed by each private business are in line with the guidelines established by the competent government ministry is ultimately made by the ministry.

**C. International and Cross Border Issues**
1) How is privacy protected when information is exchanged or transferred to other countries?

2) Are there any agreements, laws or international treaties or protocols, to protect privacy issues in this situation?

3) Does your country limit its exchange of information to countries with similar protections of privacy?

   This is a matter of agreement on privacy protection among governments. We, as the top court, are not in a position to state anything definitely as the top court.